

133 FERC ¶ 61,012  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

E.ON U.S. LLC

Docket No. ER10-2157-000

ORDER ACCEPTING AMENDED AGREEMENT AND GRANTING WAIVER

(Issued October 5, 2010)

1. On August 6, 2010, E.ON U.S. LLC (E.ON), together with its public utility subsidiaries Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU),<sup>1</sup> filed an Amended and Restated Independent Transmission Organization (ITO) Agreement (Amended ITO Agreement) between E.ON and Southwest Power Pool, Inc. (SPP). The Amended ITO Agreement reflects the revised terms and conditions pursuant to which SPP will continue to act as the ITO for the E.ON transmission system for an additional term of two years. E.ON also requests a limited waiver of the Standards of Conduct regulations. We will accept the Amended ITO Agreement, effective September 1, 2010, and grant the requested waiver, as discussed below.

**I. Background**

2. In 1998, the Commission conditionally approved the merger of LG&E and KU.<sup>2</sup> The Commission stated in the Merger Order that its approval of the merger was based on, among other things, LG&E/KU's continued participation in Midwest Independent Transmission System Operator, Inc. (Midwest ISO).<sup>3</sup> In 2006, LG&E/KU requested Commission approval to withdraw from Midwest ISO and for LG&E/KU to employ SPP as their ITO. The Commission conditionally approved LG&E/KU's request to withdraw from Midwest ISO and accepted LG&E/KU's proposal to employ SPP as their ITO, subject to LG&E/KU making changes to their Open Access Transmission Tariff (Tariff)

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<sup>1</sup> For ease of reading, we will refer to the applicants in this proceeding as E.ON.

<sup>2</sup> See *Louisville Gas and Elec. Co., et al.*, 82 FERC ¶ 61,308 (1998) (Merger Order).

<sup>3</sup> *Id.* at 62,222-23.

to ensure that SPP has independent authority to administer, oversee and grant service under LG&E/KU's Tariff, as well as independent oversight authority over transmission planning on the LG&E/KU system.<sup>4</sup> The Commission found that with the required changes, LG&E/KU's proposal to have SPP act as an ITO sufficiently addressed the merger-related market power concerns that the Commission had outlined in the Merger Order.<sup>5</sup>

3. The Initial ITO Agreement that LG&E/KU entered into with SPP, as conditionally accepted in the Withdrawal Order, took effect on September 1, 2006, with an initial term of four years.<sup>6</sup> After the initial term, the Initial ITO Agreement automatically continues for successive additional one year terms unless and until terminated by either party, with compensation for each subsequent additional year to be negotiated between the parties. The Initial ITO Agreement also provides that no termination of the agreement shall be effective until approved by the Commission.

4. On October 26, 2009, in Docket No. ER10-281-000, E.ON and SPP filed a joint notice to terminate the Initial ITO Agreement, with a requested effective date of September 1, 2010, following SPP's exercise of its right to terminate the Initial ITO Agreement after the initial four year term expired. On October 30, 2009, in Docket Nos. ER10-191-000 and EC06-4-003, E.ON and LG&E/KU submitted a related filing seeking Commission approval to revise the LG&E/KU Tariff to allow LG&E/KU to assume all tariff administration functions that SPP currently performs as the ITO for the LG&E/KU transmission system. The filing was necessitated by SPP's decision to terminate the Initial ITO Agreement.

5. On June 22, 2010, E.ON and LG&E/KU unconditionally withdrew their October 30, 2009 filing submitted in Docket Nos. ER10-191-000 and EC06-4-003, and no party submitted a motion in opposition to the request to withdraw the filing.

6. On August 6, 2010, E.ON and SPP filed a joint conditional request to withdraw their October 26, 2009 notice of termination of the Initial ITO Agreement in Docket No. ER10-281-000. E.ON and SPP stated that their request to withdraw the notice of

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<sup>4</sup> See *Louisville Gas and Elec. Co.*, 114 FERC ¶ 61,282 (2006) (Withdrawal Order).

<sup>5</sup> *Id.* P 80.

<sup>6</sup> Independent Transmission Organization Agreement between Louisville Gas and Electric Company and Kentucky Utilities Company and Southwest Power Pool, Inc. (LG&E/KU FERC Electric Tariff, Fourth Revised Volume No. 1, Original Sheet Nos. 488-553) (Initial ITO Agreement).

termination of the Initial ITO Agreement is expressly conditioned on the Commission's acceptance without material modification of the Amended ITO Agreement submitted in Docket No. ER10-2157-000 (the proceeding that is the subject of this order). No party submitted a motion in opposition to the request to withdraw the filing.

## II. Amended ITO Agreement

7. The Amended ITO Agreement reflects the revised terms and conditions pursuant to which SPP will continue to act as the ITO for the E.ON transmission system for an additional term of two years.

8. E.ON states that the parties have agreed to maintain the main features of the Initial ITO Agreement, such as SPP's independence and SPP's responsibility to administer the terms and conditions of E.ON's Open Access Transmission Tariff. In addition, the Amended ITO Agreement includes new language to clarify the parties' compliance responsibilities, such as those related to Reliability Standards and other Commission rules that were implemented after the Initial ITO Agreement was signed. The Amended ITO Agreement provides for an increase in the annual fixed compensation that E.ON will pay to SPP and includes provisions obligating E.ON to provide additional compensation to reimburse SPP for certain expenditures.<sup>7</sup> The Amended ITO Agreement also provides that SPP will continue to offer the same services to E.ON after the two-year extension unless and until the Commission approves the termination of the Amended ITO Agreement.

9. E.ON also states that, at the request and with the full support of SPP, it seeks waiver of 18 C.F.R. § 358.7(f) (2010), which requires a transmission provider to post the job titles and job descriptions of its transmission function employees.<sup>8</sup> E.ON states that because SPP is an independent third-party, the need and rationale for SPP's compliance with this requirement are inapplicable. Moreover, E.ON states that SPP has advised it that while certain SPP individuals are dedicated principally to ITO functions, performance of SPP's contractual obligations under the Amended ITO Agreement may from time-to-time require resource allocation and adjustment, as necessary. Thus, according to E.ON, identification and posting of those ITO employees performing

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<sup>7</sup> For example, the Amended ITO Agreement now includes a variable compensation provision providing that E.ON will pay the actual invoiced costs that SPP reasonably incurs for certain services provided in its role as ITO, such as legal fees related to preparing filings before regulatory or judicial bodies, costs related to holding transmission planning meetings, expenses for ITO employee training, telecommunication expenses, etc. *See* Amended ITO Agreement, section 3.1(b).

<sup>8</sup> Transmittal Letter at 5.

transmission functions for E.ON could require constant updating based on day-to-day deployment of SPP personnel. E.ON explains that, in light of this request for waiver, it has modified section 2.1 of the Amended ITO Agreement to provide for the posting of ITO personnel only to the extent required by the Commission.

10. E.ON requests waiver of notice to permit the Amended ITO Agreement to go into effect on September 1, 2010.

### **III. Procedural Matters**

11. Notice of the filing in Docket No. ER10-2157-000 was published in the *Federal Register*, 75 Fed. Reg. 49,921 (2010), with interventions and protests due on or before August 27, 2010. The municipal requirements customers of KU (Frankfort Electric and Water Plant Board and the Cities of Barbourville, Bardstown, Bardwell, Benham, Berea, Corbin, Falmouth, Madisonville, Nicholasville, Paris, and Providence, Kentucky), Owensboro Municipal Utilities, and the Kentucky Municipal Power Agency (together, Kentucky Municipals), filed a timely joint motion to intervene.

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motion to intervene serves to make the Kentucky Municipals parties to this proceeding.

### **IV. Discussion**

13. We will accept the Amended ITO Agreement to become effective September 1, 2010, as requested. The Amended ITO Agreement does not diminish any of the functions SPP currently performs under the existing Initial ITO Agreement. It will also allow SPP to continue to have independent authority to administer, oversee and grant service under E.ON's Tariff, as well as independent oversight authority over transmission planning on the E.ON system. The Amended ITO Agreement appropriately clarifies the parties' responsibilities with regard to obligations that were established after the Initial ITO Agreement took effect. In addition, the Amended ITO Agreement maintains the provision that requires Commission approval before any termination can take effect and obligates SPP to continue acting as E.ON's ITO pursuant to the agreement unless and until the Commission approves its termination.

14. We will grant for good cause shown the request for waiver of the Standards of Conduct provision that requires SPP, in its capacity as the ITO for E.ON, to post on its website the job titles and job descriptions of all transmission function employees.<sup>9</sup> The Amended ITO Agreement states that all of the ITO functions will be performed by ITO

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<sup>9</sup> 18 C.F.R. § 358.7(f) (2010).

Personnel<sup>10</sup> or ITO Designees<sup>11</sup> and that all ITO Personnel and ITO Designees shall be independent of E.ON and any E.ON affiliate.<sup>12</sup> In addition, all ITO Personnel and ITO Designees shall be treated, for purposes of the Commission's Standards of Conduct, as transmission employees. All restrictions relating to information sharing and other relationships between merchant employees and transmission employees shall apply to the ITO Personnel and ITO Designees.<sup>13</sup> Furthermore, as an RTO, SPP is independent of any market participant and is not involved in sales of energy for any entity.<sup>14</sup>

15. Accordingly, we find it appropriate to waive the requirement for SPP to post on its website the job titles and job descriptions of ITO Personnel and ITO Designees in these particular circumstances. We note, however, that this limited waiver applies only to SPP in its role as E.ON's ITO. SPP must continue to comply with other Standards of Conduct requirements, including the no conduit rule.<sup>15</sup> In addition, E.ON must comply with all of the Standards of Conduct requirements and must continue to post on its website job titles and job descriptions of its transmission function employees.

The Commission orders:

(A) E.ON's Amended ITO Agreement is hereby accepted for filing to become effective September 1, 2010, as requested.

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<sup>10</sup> ITO Personnel are SPP employees that perform ITO functions under the Amended ITO Agreement. *See* Amended ITO Agreement at section 2.1.

<sup>11</sup> ITO Designees are any persons that SPP contracts with to perform any function under the Amended ITO Agreement. *See* Amended ITO Agreement at section 17.4.

<sup>12</sup> Amended ITO Agreement at section 2.1.

<sup>13</sup> *Id.* at section 2.2.

<sup>14</sup> *See Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110 (2004) (conditionally granting SPP RTO status). SPP has since satisfied all conditions required to meet the independence standard.

<sup>15</sup> 18 C.F.R. § 358.6 (2010).

(B) E.ON's request for waiver of the requirements of section 358.7(f) of the Commission's regulations with respect to SPP is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.