

125 FERC ¶ 61,168  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

E. ON U.S. LLC

Docket No. ER08-1544-000

ORDER ACCEPTING REVISED TARIFF SHEETS

(Issued November 13, 2008)

1. In this order, we accept E.ON U.S., LLC's (E.ON U.S.) proposed revisions to the Open Access Transmission Tariff (OATT) of its operating subsidiaries to be effective November 14, 2008.

**Background**

2. On September 15, 2008, E.ON U.S., on behalf of its subsidiaries, Louisville Gas and Electric Company and Kentucky Utilities Company (together, E.ON U.S. Operating Companies), filed, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> proposed revisions to E.ON U.S. Operating Companies' OATT to remove the costs of certain direct assignment facilities consisting of radial 69 kV tap lines and structures anticipated to be built for E.ON U.S.'s load serving entity from the costs that are to be recovered from non-affiliates through E.ON U.S. Operating Companies' rates for Network Integration Transmission Service and Point-to-Point Transmission Service. E.ON U.S. maintains that the proposed OATT revisions are consistent with, or superior to, the terms and conditions in the *pro forma* OATT. E.ON U.S. states that when E.ON U.S. Operating Companies construct a direct assignment facility for non-affiliates, they receive an upfront contribution-in-aid of construction (CIAC) payment from these non-affiliate customers. The CIAC payment is then booked as a reduction to plant in service, which reduces transmission rate base in the transmission rate formula in Attachment O of their OATT. However, when E.ON U.S. Operating Companies build direct assignment facilities to service their retail customers, they must book the full cost of these facilities to FERC accounts pursuant to Commission policies. E.ON U.S. Operating Companies do not receive any type of CIAC payments for these facilities because in this case the transmission owner and the transmission customer are the same entity. Accordingly,

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<sup>1</sup> 16 U.S.C. § 824d (2006).

E.ON U.S. proposes to amend E.ON U.S. Operating Companies' Attachment O formula rate to include a line item reduction to the rate base used to determine OATT rates for Network Integration Transmission Service and Point-to-Point Transmission Service.

3. E.ON U.S. states that the purpose of the proposed modifications related to direct assignment facilities built for E.ON U.S.' load serving entity is to ensure going forward that, if E.ON U.S. Operating Companies build direct assignment facilities for their unaffiliated and affiliated customers, they will treat their own retail loads comparably in comparable situations.

### **Notice of Filing and Responsive Pleadings**

4. Notice of E.ON U.S.'s filing was published in the *Federal Register*, 73 Fed. Reg. 58,218 (2008), with interventions and protests due on or before October 6, 2008.

5. On October 6, 2008, Kentucky Municipals,<sup>2</sup> Owensboro Municipal Utilities, Paducah Power System, and the Princeton Electric Plant Board (collectively, Intervenors) jointly filed a motion to intervene with comments.

6. Intervenors agree that while the proposed revision is a good first step, it does not address the classification of existing facilities. Intervenors state that although E.ON U.S. is committing in this filing that if new facilities are classified as direct assignment facilities, it will remove those costs from transmission rate base, it does not address the classification of existing facilities. Therefore, Intervenors state that it does not go far enough to achieve the full comparability to which open-access transmission customers are entitled. Accordingly, Intervenors request that, if the Commission accepts the proposal, it make clear that such acceptance is without prejudice to making the rates fully comparable through future proceedings.

### **Discussion**

#### **A. Procedural Matters**

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motion to intervene serves to make the Intervenors a party to this proceeding.

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<sup>2</sup> The Kentucky Municipals consist of the Frankfort Electric and Water Plant Board and the cities of Barbourville, Bardstown, Bardwell, Benham, Berea, Corbin, Falmouth, Madisonville, Nicholasville, Paris, and Providence, Kentucky.

**B. Commission Determination**

8. We find that E.ON U.S.'s proposed revisions to E.ON U.S. Operating Companies' transmission rate formula in Attachment O of their OATT, to reduce rate base by removing the cost of certain direct assignment facilities built for E.ON U.S.'s load serving entity, are just and reasonable. Accordingly, we accept the revised tariff sheets to be effective November 14, 2008, as requested.

9. Specifically, under E.ON U.S.'s proposal, the value of direct assignment facilities to be included in gross transmission plant in service and the related accumulated depreciation will be treated as a negative value to the rate base to the extent that these values are directly assigned to the E.ON U.S. Load Service Entity. Thereby, E.ON U.S.'s proposal will provide for comparable treatment of costs incurred in the future for service to similarly situated customers.

10. We also clarify that our acceptance of E.ON U.S.'s proposal is without prejudice to any entity seeking, through an appropriate pleading (e.g., pursuant to section 206 of the FPA),<sup>3</sup> a further adjustment to E.ON U.S. Operating Companies' rates with respect to classification of existing facilities.

**The Commission orders:**

E.ON U.S.'s proposed revisions to Attachment O of E.ON U.S. Operating Companies' OATT are hereby accepted, to be effective November 14, 2008, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>3</sup> 16 U.S.C. § 824e (2006).