

134 FERC ¶ 61,167
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. OA08-27-003

ORDER ON COMPLIANCE FILING

(Issued March 4, 2011)

1. On August 17, 2009, E.ON U.S. LLC, on behalf of its operating companies Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU),¹ submitted a revised transmission planning process to LG&E/KU's joint open access transmission tariff (OATT), as required by the E.ON Order on Compliance.² In this order, we accept LG&E/KU's compliance filing, as modified below, effective December 7, 2007.

I. Background

2. In Order No. 890,³ the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. One of the Commission's primary reforms was designed to address the lack of specificity regarding how customers and other stakeholders should be treated in the transmission planning process. To remedy the potential for undue discrimination in planning activities, the Commission directed all transmission providers to develop a transmission planning process that satisfies nine

¹ In this order, we refer to the applicants as LG&E/KU.

² *E.ON U.S. LLC*, 127 FERC ¶ 61,276 (2009) (E.ON Order on Compliance).

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

principles and to clearly describe that process in a new attachment to their OATTs (Attachment K).

3. The Commission in Order No. 890 directed each transmission provider to address in its Attachment K planning process the following nine planning principles: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability;⁴ (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. The Commission also directed transmission providers to address the recovery of planning-related costs. The Commission explained that it adopted a principles-based reform to allow for flexibility in implementation of and to build on transmission planning efforts and processes already underway in many regions of the country. The Commission also explained, however, that, although Order No. 890 allows for flexibility, each transmission provider has an obligation to address each of the nine principles in its transmission planning process, and that all of these principles must be fully addressed in the tariff language filed with the Commission. The Commission emphasized that tariff rules, as supplemented with web-posted business practices when appropriate,⁵ must be specific and clear to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.

4. On December 7, 2007, LG&E/KU submitted a new Attachment K to its OATT in compliance with Order No. 890's transmission planning requirements. On September 18, 2008 in the E.ON Planning Order, the Commission accepted that compliance filing, as modified, to be effective December 7, 2007.⁶ The Commission found that LG&E/KU partially complied with the Order No. 890 requirements and directed LG&E/KU to file, in a compliance filing due within 90 days of the date of the order, further revisions to LG&E/KU's Attachment K.

5. On December 17, 2008, LG&E/KU submitted a revised Attachment K as required by the Commission in the E.ON Planning Order. On June 18, 2009, in the E.ON Order on Compliance, the Commission accepted LG&E/KU's compliance filing, as modified. The Commission found that LG&E/KU complied with the Order No. 890 requirements

⁴ In Order No. 890-A, the Commission clarified that the comparability principle requires each transmission provider to identify, as part of its Attachment K planning process, how it will treat resources on a comparable basis and, therefore, how it will determine comparability for purposes of transmission planning. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55.

⁶ *E.ON U.S. LLC*, 124 FERC ¶ 61,263 (2008) (E.ON Planning Order).

related to coordination, information exchange, dispute resolution, regional participation, cost allocation and recovery of planning costs. However, the Commission directed LG&E/KU to file, in a compliance filing due within 60 days of the date of the order, revisions to LG&E/KU's Attachment K to address requirements related to the principles of openness, comparability, and economic planning studies. On August 17, 2009, LG&E/KU submitted a revised Attachment K in compliance with the E.ON Order on Compliance. This third compliance filing is the subject of the instant proceeding.

II. Notice of Filings and Responsive Pleadings

6. Notice of LG&E/KU's filing was published in the *Federal Register*, 74 Fed. Reg. 45,197 (2009), with interventions and protests due on or before September 8, 2009. Kentucky Municipals filed a limited protest. On October 13, 2009, LG&E/KU filed an answer. On October 28, 2009, Kentucky Municipals filed a response to LG&E/KU's answer.

III. Discussion

A. Procedural Matters

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest and/or an answer unless otherwise ordered by the decisional authority. We will accept LG&E/KU's answer and Kentucky Municipals' response because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Openness

a. E.ON Order on Compliance

8. In the E.ON Order on Compliance, the Commission found that LG&E/KU partially complied with the directives in the E.ON Planning Order regarding the openness principle. However, LG&E/KU proposed a weighted voting system for the Stakeholder Planning Committee,⁷ whereby the votes of current customers, eligible customers, and

⁷ LG&E/KU coordinate the development of their annual transmission plan with stakeholders through a Stakeholder Planning Committee, which they state provides a forum to allow members the opportunity to comment on all aspects of the study development cycle.

regulatory bodies are weighted as 1.00, and individuals characterized as the general public are weighted as .10 for each vote.⁸ The Commission found that it was not clear whether developers of transmission, generation and demand resources are weighted as members of the general public, or whether they fit the definition of a current customer, eligible customer, or regulatory body allowing them a weight of 1.00 for each vote.⁹ The Commission further stated that if developers of transmission, generation, and demand resources are not treated comparably to other resource developers, this would violate the requirement that resources are treated on a comparable basis in the planning process. The Commission directed LG&E/KU to clarify that the votes of developers of transmission, generation, and demand resources are weighted 1.00 like those of current and eligible customers and regulatory bodies.¹⁰

9. The Commission also directed LG&E/KU to revise their Attachment K to allow stakeholders to access non-confidential information about, and to participate in, non-confidential parts of the transmission planning process without having to execute a confidentiality agreement.¹¹

b. Compliance Filing

10. LG&E/KU revised section I of their Attachment K to clarify that votes of developers of transmission, generation, and demand resources are weighted 1.00 like those of current and eligible customers and regulatory bodies. LG&E/KU also revised section II of their Attachment K to state that stakeholders may participate in stakeholder meetings and have access to non-confidential information and non-Critical Energy Infrastructure Information (CEII) without executing a confidentiality agreement.

⁸ LG&E/KU proposed in their December 17, 2008 compliance filing to institute a weighted voting system for the Stakeholder Planning Committee, which they state allows greater participation while ensuring that the votes of entities with a direct interest in the outcome of issues before the Stakeholder Planning Committee are given more weight than those entities whose interest may be somewhat speculative. E.ON Order on Compliance, 127 FERC ¶ 61,276 at P 14.

⁹ *Id.* P 16.

¹⁰ *Id.*

¹¹ *Id.* P 17.

c. Commission Determination

11. LG&E/KU have made the revisions in their Attachment K as directed in the E.ON Order on Compliance. Accordingly, we find that, as revised, LG&E/KU's Attachment K complies with the E.ON Order on Compliance and satisfies Order No. 890's openness principle.¹²

2. Comparability

a. E.ON Order on Compliance

12. In the E.ON Order on Compliance, the Commission found that LG&E/KU partially complied with the directives in the E.ON Planning Order related to the comparability principle. However, the Commission found that LG&E/KU's proposed Attachment K did not provide that LG&E/KU will treat demand and generation resources on a comparable basis to transmission resources. Specifically, LG&E/KU's Attachment K stated that where demand resources are able to meet the same criteria as generation resources, demand and generation resources will be treated comparably for transmission planning purposes. It also stated that the criteria that a demand resource must meet are listed in Appendix 4. The Commission found that these provisions do not provide that demand and generation resources will be treated comparably to transmission resources.¹³

13. In addition, the Commission found that Attachment K did not affirmatively provide that, once needs on the LG&E/KU system are identified, sponsors may propose transmission, generation, and demand resources as alternative solutions to identified needs. The Commission therefore directed LG&E/KU to revise their Attachment K to provide that stakeholders may propose transmission, generation, and demand resources as

¹² In the E.ON Planning Order, the Commission found that LG&E/KU's proposed Attachment K, with the modifications required under the openness principle regarding stakeholder access to non-confidential information and confidential information that is not CEII, complied with the requirements of the transparency principle stated in Order No. 890. E.ON Planning Order, 124 FERC ¶ 61,263 at P 23.

¹³ E.ON Order on Compliance, 127 FERC ¶ 61,276 at P 24. The Commission noted that Order No. 890 does not require identical treatment for all resources; it requires that transmission, generation and demand solutions receive comparable treatment in the planning process. ("[W]e emphasize that similarly-situated customers must be treated on a comparable basis, not that each and every transmission customer should be treated the same." (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 495)).

alternative solutions to identified needs.¹⁴ The Commission also directed LG&E/KU to clarify (1) that they will treat demand and generation resources on a comparable basis to transmission resources and (2) why the criteria in Appendix 4 that apply to demand resources are necessary to ensure comparable treatment for transmission, generation and demand resources in the planning process.¹⁵

b. Compliance Filing

14. In their compliance filing, LG&E/KU deleted Appendix 4, which included the criteria that would apply to demand resources, and revised Attachment K to include the following language:

Stakeholders may propose transmission, generation and demand resources as alternative solutions to needs identified during the transmission planning process and proponents of all alternative solutions will be given equal opportunity to participate. Any entity proposing resources must complete a data sheet which will be posted on OASIS that will identify direct control load and interruptible demand. Advanced technologies and demand-side resources will be treated comparably, where appropriate in the transmission planning process, to transmission and generation solutions. Transmission plans developed under this Attachment K will be technology neutral, balancing costs, benefits and risks associated with the use of demand-side resources, transmission and generation to meet the needs of transmission customers and the Transmission Provider.^[16]

c. Commission Determination

15. We find that, as revised, LG&E/KU's Attachment K complies with the E.ON Order on Compliance and now satisfies Order No. 890's comparability principle.

¹⁴ *Id.* P 26.

¹⁵ *Id.*

¹⁶ E.ON U.S. Operating Companies, FERC Electric Tariff, Fourth Rev. Vol. 1, Original Sheet No. 174h.

3. Economic Planning Studies

a. E.ON Order on Compliance

16. In the E.ON Order on Compliance, the Commission found that LG&E/KU partially complied with the requirements of the E.ON Planning Order concerning economic planning studies and directed LG&E/KU to make certain revisions. First, the Commission found that LG&E/KU did not clearly explain which stakeholders are eligible to submit requests for economic planning studies. The Commission directed LG&E/KU to revise their Attachment K to provide that any interested party may request economic planning studies.¹⁷

17. In addition, the Commission found that LG&E/KU did not clearly explain how stakeholders can be recognized for the purpose of nominating a person to the Economic Expansion Planning subcommittee, and how members nominated to be on the subcommittee will be selected.¹⁸ The Commission directed LG&E/KU to more clearly define the process for nominating and selecting members of the Economic Expansion Planning subcommittee.¹⁹

18. The Commission also found that LG&E/KU failed to clarify that an economic planning study may be requested to evaluate network additions or upgrades necessary to integrate *any* new resource on the transmission system. Accordingly, the Commission directed LG&E/KU to revise their Attachment K to clarify that an economic planning study may be requested to evaluate network additions or upgrades necessary to integrate *any* new resource on the transmission system.²⁰

19. With regard to economic planning on a regional basis, LG&E/KU participate in the Southeast Inter-Regional Participation Process (SIRPP). The Commission noted that the tariff language in LG&E/KU's Attachment K relating to the SIRPP required SIRPP stakeholder group members to demonstrate that they have been authorized by the Commission to receive the CEII-protected version of Form No. 715 as a condition to receiving from a Participating Transmission Owner any CEII information used in the SIRPP (Form 715 Requirement). The Commission found that the Form 715 Requirement

¹⁷ E.ON Order on Compliance, 127 FERC ¶ 61,276 at P 44.

¹⁸ *Id.* P 45.

¹⁹ *Id.*

²⁰ *Id.* P 46.

is unjust, unreasonable, unduly discriminatory, or preferential in the context of the transmission planning process.²¹ Accordingly, the Commission directed LG&E/KU to modify the relevant OATT provisions to remove any Form 715 Requirement.²²

20. Further, the Commission found that the SIRPP provision that forbids Participating Transmission Owners from disclosing certain resource-specific data unreasonably restricts access to data that stakeholders may need for participation in or evaluation of studies produced by the SIRPP.²³ The Commission directed LG&E/KU to revise that provision to require that resource-specific data in the planning process be disclosed by Participating Transmission Owners, under applicable confidentiality provisions, if the information is needed to participate in the transmission planning process and/or to replicate transmission planning studies.²⁴

21. In addition, the Commission directed LG&E/KU to revise their Attachment K so that confidential information provided by non-public utility transmission providers is subject to the same information disclosure and confidentiality protections as confidential information provided by public utility transmission providers and other stakeholders in the SIRPP.²⁵

b. Compliance Filing

22. LG&E/KU modified section VIII of their Attachment K to provide that any interested party may request economic planning studies.

23. LG&E/KU also modified section VIII to clarify that members of the Economic Expansion Planning subcommittee will be nominated from the membership of the Stakeholder Planning Committee. Each member of the Stakeholder Planning Committee may nominate a representative to the Economic Expansion Planning subcommittee.

24. LG&E/KU also revised section VIII to state that an economic planning study may be requested to evaluate network additions or upgrades necessary to integrate any new resource on the transmission system.

²¹ *Id.* P 48-53.

²² *Id.* P 53.

²³ *Id.* P 54.

²⁴ *Id.*

²⁵ *Id.* P 55.

25. In addition, LG&E/KU deleted the Form 715 Requirement from the SIRPP provisions outlined in Appendix 5 of Attachment K. To replace the Form 715 Requirement, LG&E/KU added language to Appendix 5 stating that the new procedures stakeholders in the SIRPP must use to obtain CEII are posted on the SIRPP website (e.g., making a formal request for CEII, confidentiality procedures, background checks, and executing the SIRPP CEII Confidentiality Agreement). LG&E/KU also deleted from Appendix 5 all provisions forbidding Participating Transmission Owners from disclosing resource-specific data. Instead, such data will be disclosed under applicable confidentiality provisions if the information is needed to participate in the transmission planning process.

26. LG&E/KU also revised the OATT so that information disclosed by non-public utilities is subject to the same information disclosure and confidentiality protections that are applied to public utility transmission providers and other stakeholders in the SIRPP.

27. LG&E/KU made further revisions to various sections of Attachment K to delete existing language that required stakeholders in its local planning process to sign a confidentiality agreement before obtaining access to CEII and information that is confidential but not CEII. In its place, LG&E/KU propose to require stakeholders in its local planning process to follow the same CEII procedures that SIRPP stakeholders must now follow, and include the new procedures in a revised Appendix 4.²⁶

28. The new procedures in Appendix 4 include a new CEII request form and a background check form entitled “Consent to Release Information for Background Investigation” (Background Check Procedures). The background check form requires the CEII requester’s social security number, date and place of birth, driver’s license number and state issued, all former names used, previous residences (7-year history) and any convictions or pending charges for offenses against the law (other than minor traffic violations), including the charge, date and arresting location. The background check form includes the following language:

In consideration of my being considered eligible to receive any CEII that is likely to be discussed, distributed and/or referenced pertaining to the [Stakeholder Planning Committee (SPC)], and to assist the SPC in protecting CEII, I hereby willingly and voluntarily consent to a background investigation(s) and to the release of all information necessary

²⁶ The new CEII procedures that LG&E/KU propose to include in Appendix 4 are essentially identical to the CEII procedures that apply to the SIRPP and that are posted on the SIRPP website.

for and/or pertaining to my background investigation(s) (including the results thereof) to the SPC, to authorized representatives of the SPC and/or to governmental authorities, as appropriate. In addition, I hereby authorize the SPC and their authorized representatives to procure reports about me (including, but not limited to, Social Security verification, citizenship/visa/green card verification, criminal records and employment verification) from any consumer reporting agency or governmental entity. I further acknowledge and understand that I have a right to request certain information from any consumer reporting agency which provides a report to the SPC, and that I have a right to dispute inaccurate information with the consumer reporting agency.

I hereby release the SPC and their affiliates, agents, officials, representatives, and/or assigned agencies, including officers, employees, and/or related personnel, both individually and collectively, from any and all liability for damages of whatever kind that may at any time be incurred by me, my organization/employer, my heirs, family or associates as a result of my consent to background investigation(s), the use and/or disclosure of my information in any background investigation(s), and/or the disclosure of the results of such investigation(s).²⁷

c. Kentucky Municipals' Protest

29. Kentucky Municipals protest the Background Check Procedures that LG&E/KU propose to include in Appendix 4 of Attachment K. Kentucky Municipals argue that the Commission did not in the E.ON Order on Compliance direct LG&E/KU to make any changes related to the existing process for stakeholders in LG&E/KU's local planning process to obtain CEII or non-CEII confidential material. Rather, according to Kentucky Municipals, the Commission approved the Attachment K provisions specifying that participants must execute a confidentiality agreement in order to gain access to CEII or non-CEII confidential information.²⁸ Kentucky Municipals contend that LG&E/KU's new Background Check Procedures in Appendix 4 go beyond the scope of what the

²⁷ E.ON U.S. Operating Companies, FERC Electric Tariff, Fourth Rev. Vol. 1, Original Sheet No. 174bb.03.

²⁸ Kentucky Municipals' Protest at 5.

Commission directed and, therefore, those changes should be deemed automatically rejected at the time of filing.²⁹

30. Further, Kentucky Municipals argue that even if the Background Check Procedures are not impermissibly outside the scope of changes required by the E.ON Order on Compliance, they should be rejected because LG&E/KU have not shown them to be just and reasonable. Kentucky Municipals argue that, first, it is not clear that an extensive background check of the type proposed is necessary to prevent disclosure of CEII materials to inappropriate persons. Second, it is not clear to Kentucky Municipals whether the Background Check Procedures comport with the Commission's directive in Order No. 890 that "those with a legitimate need for CEII information must be able to obtain it on a timely basis."³⁰

31. Additionally, Kentucky Municipals argue that to the extent background checks do prove necessary and permissible under Order No. 890, the Background Check Procedures that LG&E/KU propose are too broad and vague, lack protections against the misuse of sensitive personal information and create the opportunity for conflict and abuse.³¹

d. LG&E/KU's Answer

32. LG&E/KU answer that Kentucky Municipals do not appreciate the new responsibilities and potential liabilities that LG&E/KU, and possibly all members of the Stakeholder Planning Committee in its local planning process, face as a result of the Commission's holding that the Form 715 Requirement cannot be used to vet stakeholders who request access to CEII. LG&E/KU state that in addition to the SIRPP, LG&E/KU also used the Form 715 Requirement to vet requests for CEII made in their local planning process. LG&E/KU argue, therefore, that because the Commission directed them to eliminate the Form 715 Requirement from the SIRPP, they also had to make changes to the procedures in their Attachment K related to their local planning process and their Stakeholder Planning Committee.³²

33. LG&E/KU claim that Kentucky Municipals ignore the fact that the Commission held in the E.ON Order on Compliance that LG&E/KU cannot use the Form 715

²⁹ *Id.* at 7.

³⁰ *Id.* at 8 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 403).

³¹ *Id.* at 8-10.

³² LG&E/KU Answer at 2-3.

Requirement to identify people or entities who might be considered a risk to harm the bulk power system.³³ LG&E/KU explain that the Attachment K disclosure requirements, coupled with the Commission's decision not to limit the types of entities who may be stakeholders in the Stakeholder Planning Committee of their local planning process, required LG&E/KU to develop a new vetting process. LG&E/KU state that this new vetting process must treat any and all interested parties similarly so as to avoid allegations of discrimination, yet still identify and prevent those who might harm the nation's power grid by misusing CEII obtained through participation in the Stakeholder Planning Committee meetings (which, according to LG&E/KU, is the most sensitive and dangerous type of data, in terms of service disruption and potential liability).³⁴

34. LG&E/KU assert that the Background Check Procedures are necessary because obtaining the personal information of CEII requesters is the only way in which the Stakeholder Planning Committee can access the relevant databases (e.g., criminal background, social security number verification, identity verification) in order to determine whether the requester poses a threat to the transmission system.³⁵ Further, the procedures provide liability protection for LG&E/KU and the other Stakeholder Planning Committee members. According to LG&E/KU, without preventative measures such as the Background Check Procedures, they and the other members of the Stakeholder Planning Committee would face litigation, which could be very significant sums, in the event of a blackout caused by the misuse of CEII.³⁶

35. LG&E/KU explain that the Background Check Procedures are designed to take no longer than necessary to screen applicants. Moreover, once an applicant is screened and deemed eligible to receive CEII, that applicant will have future access to any CEII necessary for it to participate in the Stakeholder Planning Committee and to replicate Stakeholder Planning Committee transmission planning studies.³⁷

36. To the extent practicable, LG&E/KU state that they are willing to address any vagueness or over-broadness, so long as it would not affect the ability of LG&E/KU to

³³ *Id.* at 4.

³⁴ *Id.* at 5.

³⁵ *Id.* at 6.

³⁶ *Id.* at 7.

³⁷ *Id.*

obtain the necessary information to properly vet CEII requesters.³⁸ Additionally, LG&E/KU remind Kentucky Municipals that stakeholders may pursue LG&E/KU's dispute resolution procedures if they feel aggrieved by any CEII access decision made by the Stakeholder Planning Committee, and stakeholders have the right to seek redress from the Commission.³⁹

37. In order to minimize potential abuse, LG&E/KU offer the following additional procedures for background checks: LG&E/KU would provide their representative to the Stakeholder Planning Committee as a resource to process the applications for CEII using the same process LG&E/KU uses for background checks of their employees. LG&E/KU's representative would then present a recommendation to the chair of the Stakeholder Planning Committee based on the results of the background check. If the chair of the Stakeholder Planning Committee is concerned with the recommendation, the chair of the Stakeholder Planning Committee could request that the applicant allow the chair to review the application and the results of the background check. The applicant could either agree to allow the chair of the Stakeholder Planning Committee to review the information and accept the decision, or take the matter to the Commission for a determination at that time.⁴⁰

e. Kentucky Municipals' Response

38. Kentucky Municipals respond that although LG&E/KU assert in their answer, for the first time, that the Form 715 Requirement applicable to participants in the SIRPP also applied to participants in the LG&E/KU local planning process, LG&E/KU never proposed such a requirement for inclusion in their joint OATT.⁴¹ Kentucky Municipals argue that LG&E/KU should not be permitted to impute new meaning to their previous Attachment K proposals to belatedly justify the inappropriate inclusion of the Background Check Procedures in the current compliance filing.⁴²

39. Kentucky Municipals assert that the additional procedures proposed by LG&E/KU in their answer do not resolve Kentucky Municipals' concerns relating to vagueness of

³⁸ *Id.* at 10.

³⁹ *Id.* at 9.

⁴⁰ *Id.* at 10.

⁴¹ Kentucky Municipals Response at 5.

⁴² *Id.* at 6.

the Background Check Procedures. According to Kentucky Municipals, the additional procedures are flawed because they conflict with the language of the background check form and fail to clearly identify how misuse of personal information by LG&E/KU would be prevented.⁴³

40. Kentucky Municipals claim that certain statements in LG&E/KU's answer introduce additional questions as to how LG&E/KU intend for the provisions of the Background Check Procedures to be applied. Additionally, the statements further indicate that the proposed tariff language should be more clearly and specifically crafted to encompass all the concerns related to the disclosure of CEII materials as part of the planning process and to delineate the roles and responsibilities of the various participants in the process.⁴⁴

41. Lastly, Kentucky Municipals reaffirm their position that they support appropriate measures to protect CEII and argue that any such provisions should be crafted with the involvement of stakeholders, proposed appropriately through a Federal Power Act (FPA) section 205 filing to amend the LG&E/KU OATT, and designed to limit the use of sensitive personal information.⁴⁵

f. Commission Determination

42. We find that LG&E/KU's revised Attachment K partially complies with the E.ON Order on Compliance and the economic planning studies principle of Order No. 890. In particular, we find that, as directed by the E.ON Order on Compliance, LG&E/KU made the required modifications to the sections related to who may request economic planning studies, nominating members of the Economic Expansion Planning subcommittee, and integrating new resources on the transmission system. We further find that, as required by the E.ON Order on Compliance, LG&E/KU removed, from the section of Attachment K outlining the SIRPP, the Form 715 Requirement and the prohibitions on disclosure of resource-specific data and confidential information supplied by a non-public utility. LG&E/KU has revised their OATT so that stakeholders will have access to resource-specific information if it is provided in the SIRPP and is needed for stakeholders to participate in the SIRPP and that the same provisions related to confidential information in the SIRPP process will apply to public utility and non-public utility information.

⁴³ *Id.* at n.8.

⁴⁴ *Id.* at 10.

⁴⁵ *Id.* at 11-12.

43. However, we will reject as outside the scope of this compliance proceeding LG&E/KU's proposed changes related to the process stakeholders in their local planning process (as opposed to the SIRPP) must follow to obtain CEII. The tariff changes that LG&E/KU propose to make to the CEII procedures, including the changes to include the Background Check Procedures in Appendix 4, apply to their local planning process and not to the changes the Commission directed in the SIRPP. Although LG&E/KU argue that they are proposing to change the CEII procedures that apply to their local planning process in response to the requirement in the E.ON Order on Compliance to remove any Form 715 Requirement from their OATT, there is currently no Form 715 Requirement that applies to the LG&E/KU local planning process.⁴⁶

44. The existing language in LG&E/KU's OATT (which the Commission previously accepted) requires stakeholders requesting CEII in LG&E/KU's local planning process to sign a confidentiality agreement (currently in their OATT as Appendix 1 to Attachment K).⁴⁷ Compliance with the requirement to remove the Form 715 Requirement from the CEII procedures that apply to the SIRPP does not also require LG&E/KU to change the existing CEII procedures that apply to their local planning process, which does not include the Form 715 Requirement. If LG&E/KU want to change the already-accepted CEII procedures in their OATT for their local planning process so that they match the SIRPP CEII procedures, they must do so in a FPA section 205 filing. Accordingly, we direct LG&E/KU to file, within 30 days of the date of this order, a further compliance filing that revises their Attachment K to remove the proposed changes to the CEII procedures that apply to their local planning process, including the changes to include Background Check Procedures in Appendix 4.

The Commission orders:

(A) LG&E/KU's compliance filing is hereby accepted, as modified, effective December 7, 2007, as discussed in the body of this order.

⁴⁶ The CEII procedures in the OATT for the SIRPP do include a Form 715 Requirement, and removing it necessarily requires LG&E/KU to replace it with new CEII procedures, which they do in this compliance filing.

⁴⁷ The existing CEII procedures for local planning do not include the Background Check Procedures.

(B) LG&E/KU are hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.