

147 FERC ¶ 61,097
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

East Kentucky Power Cooperative, Inc. Docket Nos. EL13-68-000

East Kentucky Power Cooperative, Inc. ER13-1570-000

East Kentucky Power Cooperative, Inc. ER13-1177-000
ER13-1178-000
ER13-1179-000

(not
consolidated)

ORDER APPROVING SETTLEMENT AGREEMENT AND ACCEPTING REACTIVE
POWER FILING SUBJECT TO CONDITION

(Issued May 8, 2014)

1. On August 2, 2013, East Kentucky Power Cooperative, Inc. (EKPC) and Louisville Gas & Electric Company (LG&E) and Kentucky Utilities (KU) (collectively, LG&E/KU) filed, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.602 (2013)), an offer of settlement and settlement agreement (Settlement) in the above-captioned proceedings. On August 27, 2013, the Chief Administrative Law Judge (Chief Judge) certified the Settlement to the Commission as uncontested. As discussed below, the Commission approves the uncontested Settlement.

2. On May 30, 2013, EKPC filed in Docket No. EL13-68-000, a cost study and testimony in support of its proposed Schedule 2 rates under the PJM Tariff. This filing was protested by LG&E/KU. On July 26, 2013, the Commission issued an order that accepted EKPC's reactive power revenue requirements and set the matter for hearing and

settlement judge procedures.¹ Pursuant to the parties' Settlement, LG&E/KU has withdrawn its protest of EKPC's reactive power filing. As discussed below, the Commission accepts EKPC's reactive power filing subject to the condition that EKPC submit a tariff with its rate schedule for reactive power within 30 days of the date of this order.

I. Background

3. EKPC, an exempt generation and transmission cooperative,² transferred functional control of its transmission facilities rated 100 kV and above to PJM Interconnection, L.L.C. (PJM) and integrated into the PJM markets. On March 28, 2013, PJM and EKPC submitted a joint integration filing in Docket Nos. ER13-1177-000, ER13-1178-000, and ER13-1179-000, modifying the PJM Open Access Transmission Tariff (Tariff) and other agreements to effectuate EKPC's integration into PJM. The EKPC integration filing also included a non-conforming Network Integration Transmission Services Agreement (NITSA) between PJM and LG&E/KU along with an attached agreement (NITSA Stipulation). The NITSA and NITSA Stipulation define the terms and conditions of the transmission service received by LG&E/KU from PJM. The NITSA Stipulation states that LG&E/KU will pay PJM for transmission service on the EKPC load, but LG&E/KU will not be a part of the PJM markets and will not pay any other PJM rates or charges. The Stipulation provides that EKPC will contract separately with LG&E/KU to provide Ancillary Services Schedule 1 (Scheduling, System Control and Dispatch Service, (i.e., Schedule 1 service)) and Ancillary Services Schedule 2 (Reactive Power Supply and Voltage Control From Generation or Other Sources Service (i.e., Schedule 2 service)) (collectively, Schedule 1 and Schedule 2 services).

4. On April 18, 2013, LG&E/KU filed comments supporting the filing of the NITSA. On May 22, 2013, EKPC's integration filing was accepted by the Commission and made effective June 1, 2013, as requested.³

5. On June 21, 2013, LG&E/KU filed a request for clarification, or in the alternative, rehearing of the May 2013 Letter Order in Docket Nos. ER13-1177-001, ER13-1178-001, and ER13-1179-001.

¹ *East Kentucky Power Coop, Inc., et al.*, 144 FERC ¶ 61,063 (2013) (Hearing Order).

² *See* 16 U.S.C. § 824(f) (2013).

³ *East Kentucky Power Coop., Inc.*, Docket No. ER13-1177-000, *et al.*, (May 22, 2013) (delegated letter order) (May 2013 Letter Order).

6. On May 29, 2013, EKPC filed in Docket No. ER13-1570-000, a request to withdraw its reciprocity OATT, effective June 1, 2013, or the effective date of EKPC's integration into PJM.
7. On May 30, 2013, EKPC filed in Docket No. EL13-68-000, a cost study and testimony in support of its proposed Schedule 2 rates under the PJM Tariff to receive compensation for making reactive power production capability available to PJM.
8. EKPC's filings in Docket Nos. ER13-1570-000 and EL13-68-000, were protested by LG&E/KU.
9. On July 26, 2013, the Commission issued three orders (collectively, July 2013 Orders) simultaneously that: (1) denied LG&E/KU's request for clarification, or in the alternative, rehearing in Docket Nos. ER13-1177-001, ER13-1178-001, and ER13-1179-001;⁴ (2) accepted EKPC's reactive power revenue requirements to be effective July 1, 2013, and set the matter for hearing and settlement judge procedures in Docket No. EL13-68-000;⁵ and (3) accepted cancellation of EKPC's reciprocity OATT in Docket No. ER13-1570-000. In the Hearing Order, the Commission also stated that, in accordance with the NITSA Stipulation, LG&E/KU will not receive Schedule 2 reactive power service from PJM but instead will receive the service pursuant to a separate bilateral agreement with EKPC. Therefore, the Commission advised that the hearing and settlement judge proceedings should account for the impact of this arrangement on EKPC's proposed revenue requirement.⁶
10. The parties held several informal settlement discussions concerning the filings and issues raised in Docket No. EL13-68-000, as well as Docket Nos. ER13-1177-000, ER13-1178-000, ER13-1179-000, and ER13-1570-000.
11. On August 1, 2013, counsel for EPKC filed a motion requesting to hold appointment of settlement judge and initiation of settlement judge proceedings in abeyance because EPKC and LG&E/KU were in the process of finalizing the Settlement and anticipated filing it with the Commission in the next few days.
12. On August 2, 2013, the Chief Judge issued an order holding settlement procedures and appointment of a settlement judge in abeyance.

⁴ *East Kentucky Power Coop, Inc., et al.*, 144 FERC ¶ 61,067 (2013).

⁵ *East Kentucky Power Coop, Inc.*, 144 FERC ¶ 61,066 (2013).

⁶ *Id.* P 24.

13. On that same date, EPKC and LG&E/KU filed the Settlement, stating that, if approved by the Commission, the Settlement will resolve all issues before the Commission in the captioned dockets, including LG&E/KU's rights to seek rehearing on appeal of the July 2013 issued by the Commission. EKPC and LG&E/KU request that the Commission accept the Settlement and approve it without condition or modification.

14. On August 22, 2013, Commission Trial Staff filed comments in support of the Settlement on August 22, 2013. No other comments were received. Therefore, on August 27, 2013, the Chief Judge certified the Settlement to the Commission as uncontested.

II. Settlement Terms

15. Article 1 describes the procedural background of this case since its inception.

16. Article 2 sets forth the terms of agreement. LG&E/KU agrees not to seek clarification or rehearing of and not to appeal or seek judicial review of the Commission's July 2013 Orders. The Settlement provides that LG&E/KU's rate for Schedule 2 service will be as specified in the Ancillary Services Agreement between EKPC and LG&E/KU. The rates to be paid by LG&E/KU to EKPC for Schedule 1 and Schedule 2 services for network transmission service shall be determined in accordance with the Ancillary Services Agreement. With respect to EKPC's filing of its Schedule 2 transmission revenue requirement to receive in Docket No. EL13-68-000, LG&E/KU agrees that its protests to EKPC's filed revenue requirement shall be deemed withdrawn. Further, LG&E/KU agrees to cooperate in good faith with EKPC to terminate the hearing and settlement judge procedures that the Commission established.

17. Section 2.5 of Article 2 states that, in recognition that EKPC is not a Commission-jurisdictional entity and that the Ancillary Services Agreement is not a Commission-jurisdictional agreement, the Ancillary Services Agreement in Attachment A is being presented for informational purposes only and not for Commission acceptance or approval.

18. Section 2.6 of Article 2 provides standard of review of the Settlement:

The standard of review for any proposed changes sought by any party to the terms of this Settlement shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Services Corp.*, 350 U.S. 332 (1956), *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and *Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527 (2008), and the standard of review for any changes proposed by a non-party or the Commission acting *sua sponte* shall be the ordinary just and reasonable standard of review, not the public interest

standard of review, see *Devon Power LLC*, 134 FERC ¶ 61,208, at P 10 (2011).

19. Article 3 denotes the conditions of effectiveness and provides that the Settlement becomes effective when the Commission issues an order approving it without condition or modification.

20. Article 4 contains general provisions. Specifically, this article provides, among other things, that the Settlement is submitted pursuant to Rule 602 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.602 (2013)) and that the Settlement shall not be admissible as evidence or made a part of the record in any proceeding except as necessary to implement the Settlement. Article 4 also states that neither LG&E/KU, EKPC or any other party or person shall be prejudiced or bound by the Settlement, except as specifically provided within the Settlement.

III. Discussion

A. Settlement Agreement

21. The Settlement resolves all outstanding issues in the above captioned dockets. The Settlement appears to be fair, reasonable, and in the public interest and is hereby approved. Commission approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

B. EKPC Reactive Power Filing

22. Because LG&E/KU has withdrawn its protest to EKPC's proposed revenue requirements for reactive power production under Schedule 2 of the PJM Tariff, EKPC's filing is now unopposed. The Commission accepts EKPC's Proposed Revenue Requirement for Reactive Supply and Voltage Control Services pursuant to Schedule 2 of PJM the PJM OATT subject to the condition that EKPC submit a tariff with its rate schedule for reactive power within 30 days of the date of this order in the eTariff format required by Order No. 714.

The Commission orders:

(A) The Settlement is hereby approved as discussed in the body of this order.

(B) EKPC must submit a compliance filing within 30 days from the date of this order in eTariff format, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.