

120 FERC 61,133
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 Nos. ER07-596-000
ER07-596-001

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued August 3, 2007)

1. In this order, we conditionally accept E.ON U.S., LLC's proposal to revise the joint Open Access Transmission Tariff (OATT) of its subsidiaries, Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU) (collectively, Applicants), to include a new, optional Feasibility Analysis Service (FAS), effective on May 5, 2007, and order a compliance filing.

I. Background

2. In 1998, the Commission conditionally approved the merger of LG&E and KU.¹ The merger raised concerns regarding increased vertical market power through the combination of LG&E's and KU's transmission and generation facilities, but these concerns were addressed, in part, by Applicants' commitment to turn over control of their transmission facilities to Midwest Independent Transmission System Operator, Inc. (Midwest ISO). Applicants fulfilled this commitment but, in 2006, the Commission approved Applicants' proposal to withdraw their transmission facilities from Midwest ISO.² In lieu of belonging to Midwest ISO, Applicants delegated certain transmission-related tasks to the Southwest Power Pool, Inc. (SPP), serving as the Independent

¹ See *Louisville Gas and Electric Co.*, 82 FERC ¶ 61,308 (1998).

² See *Louisville Gas and Electric Co.*, 114 FERC ¶ 61,282 (Withdrawal Order), *order on reh'g*, 116 FERC ¶ 61,020 (2006).

Transmission Organization (ITO) for Applicants' transmission system. In addition, as a condition of Applicants' withdrawal from Midwest ISO, the Commission specifically prohibited SPP from delegating to Applicants performance of any System Impact Study (SIS).

II. Description of Filing

3. On March 5, 2007, as amended June 4, 2007,³ Applicants filed proposed OATT amendments to govern a new FAS. A customer who requests FAS will receive a preliminary, non-binding estimate of the nature of, potential costs, and the construction time frame associated with system upgrades. FAS will be an optional additional service that customers may use before making a new request for Network Integration Transmission Service (network service) or Point-to-Point Transmission Service (point-to-point service) internal to Applicants' transmission system (*i.e.*, where the point of receipt and point of delivery are both within Applicants' transmission system).⁴ Any Eligible Customer under the OATT, whether or not that customer has executed a network or point-to-point service agreement, may receive FAS.⁵ The non-binding estimates will be provided to the customer within thirty days of executing an FAS Agreement.⁶ FAS will

³ Applicants amended their filing in response to a deficiency letter dated May 3, 2007.

⁴ Applicants originally proposed to make FAS available only to customers requesting network service. However, in response to the deficiency letter, Applicants state that FAS will also be available to customers requesting internal point-to-point transmission service. Applicants state that they will file tariff sheets reflecting this change on compliance. *See* June 4 amendment at 4.

⁵ Applicants originally proposed to make FAS available only to customers that first executed a service agreement. However, in response to the deficiency letter, Applicants state that FAS will be available to any Eligible Customer, as defined in their OATT. Applicants state that they will file tariff sheets reflecting this change on compliance. *See* June 4 amendment at 5.

⁶ Applicants originally proposed that FAS would be completed within 60 days after the execution of an FAS Agreement. However, in response to the deficiency letter, Applicants state that this was a typographical error and that FAS will be completed in 30 days. Applicants state that they will file tariff sheets reflecting this change on compliance. *See* June 4 amendment at 2.

cost \$5,000, but if a customer later requests an SIS from SPP, the \$5,000 will be credited back to the customer, up to the amount of the cost of the SIS.⁷

4. Applicants state that they are proposing FAS because some customers would prefer or need to have the option of obtaining quickly a general estimate of costs and a timeline for construction. They also state that FAS can benefit customers that need a full SIS because FAS would limit the number of “speculative” economic development projects in the SIS queue.⁸ These speculative projects require only extremely quick preliminary assessments of the feasibility and cost of interconnecting the project load to the transmission system. FAS could provide this preliminary information without delaying completion of SISs for more definitive projects in the SIS queue. Applicants also state that by providing an earlier, informal estimate of the cost and timing of necessary upgrades, FAS will result in transmission infrastructure being added to the grid at an earlier date.

5. A customer requesting FAS will apply to SPP, but SPP may delegate the performance of the Feasibility Analysis to a third party (including Applicants). Applicants state that this does not conflict with the Commission’s requirement in the Withdrawal Order that Applicants not perform SISs because SPP, as the ITO, will retain exclusive authority to perform SISs. Applicants state that FAS is only an additional, optional service, and the result of any subsequent SIS and Facilities Study will still be the basis on which SPP will determine whether system upgrades are needed to provide a particular service.

6. Applicants also state that the proposed change to their OATT is consistent with or superior to the *pro forma* OATT in both Order No. 888⁹ and Order No. 890.¹⁰

⁷ A customer can receive a credit for more than one Feasibility Analysis against the cost of a single SIS as long as all the Feasibility Analyses are directly related to the SIS.

⁸ Applicants state that a speculative economic development project could be one where a proposed facility to be sited in Kentucky is merely one possibility among many, and therefore is not firm enough to warrant a definitive service request that will go through the normal OATT-prescribed process.

⁹ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046

Specifically, Applicants state that their FAS proposal is consistent with the goal of ensuring that transmission studies are completed in a timely manner because it will give customers timely, transparent information regarding their transmission service.

7. Applicants requests waiver of the Commission's regulations so that the proposed tariff sheets may become effective March 5, 2007.

III. Notice and Responsive Pleadings

8. Notice of Applicants' March 5, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 11,859 (2007), with interventions and protests due on or before March 26, 2007. East Kentucky Power Cooperative, Inc. filed a timely motion to intervene. Kentucky Municipals filed a timely motion to intervene and protest.¹¹ On April 10, 2007, Applicants filed an answer to Kentucky Municipals' protest. On April 24, 2007, Kentucky Municipals filed a request to reject that answer and a reply answer to Applicants' answer.

9. Notice of Applicants' June 4, 2007 amendment was published in the *Federal Register*, 72 Fed. Reg. 33,482 (2007), with interventions and protests due on or before June 25, 2007. Kentucky Municipals filed a renewed protest. On July 10, 2007, Applicants filed an answer to Kentucky Municipals' renewed protest.

(1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

¹⁰ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007).

¹¹ The Kentucky Municipals are Owensboro Municipal Utilities, Frankfort Electric and Water Plant Board and the Cities of Barbourville, Bardstown, Bardwell, Benham, Berea, Corbin, Falmouth, Madisonville, Nicholasville, Paris, and Providence, Kentucky, as well as Paducah Power System and the Princeton Electric Plant Board.

IV. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 384.213(a)(2) (2007), prohibits an answer to a protest and or answer unless otherwise ordered by the decisional authority. We will accept Applicants' and the Kentucky Municipals' answers because they have provided information that assisted us in our decision making.

B. Analysis

1. Conditions Related to Applicants' Withdrawal from Midwest ISO

a. Applicants' Proposal

12. A customer requesting FAS will apply to SPP, but SPP may delegate the performance of the Feasibility Analysis to a third party (including Applicants). Applicants assert that this does not conflict with the Commission's requirement in the Withdrawal Order that Applicants not perform SISs. They note that the results of the Feasibility Analysis are expressly non-binding on Applicants, the customer, and SPP. SPP, as the ITO, will retain full and sole authority to evaluate requests for transmission service on Applicants' system. If SPP delegates authority to perform a Feasibility Analysis to Applicants, SPP remains the independent tariff administrator with final review authority over the Feasibility Analysis, and SPP will be able to review the results of all Feasibility Analyses performed by Applicants to determine if the analysis is unduly discriminatory.¹² All SISs must still be performed by SPP, and may not be delegated to Applicants.

¹² Applicants state that in reviewing the Feasibility Analysis, SPP will exercise its engineering judgment to identify any anomalous patterns in outcome or process that may indicate that undue discrimination may be occurring. SPP will follow up diligently if such patterns are occurring. Applicants state that SPP has agreed to assume these additional responsibilities and that SPP supports Applicants' efforts to improve service to their transmission customers and develop processes that enhance opportunities for

(continued)

13. In their answer, Applicants also note that under their Commission-approved OATT, they do have a role in performing transmission studies; however, Applicants retain authority to perform Facilities Studies. According to Applicants, this shows that the Commission did not intend that Applicants would be completely cut out of the transmission study process. Applicants state that they perform Facilities Studies in much the same way that studies for FAS are performed: the customer approaches SPP and requests the Facilities Study, Applicants perform the study, and the results are reviewed by SPP before they are presented to the customer.

14. Applicants also state that if the Commission approves FAS, SPP will still determine what upgrades (if any) are necessary to provide customers with service. FAS does not prejudice the outcome of the SIS process, nor does it create an opportunity for Applicants to exercise undue discrimination. In addition, Applicants state in their June 4 amendment that in order to ensure the FAS process is transparent to customers, they will maintain a new queue on their open access same-time information system (OASIS) to track requests for FAS. In addition to posting the results of Feasibility Analyses, Applicants will direct SPP to track and post on OASIS the following statistics on a quarterly basis: number of Feasibility Analyses completed; number of Feasibility Analyses completed more than 30 days after receipt of an executed FAS Agreement; average time from receipt of an executed FAS Agreement to the date when a completed Feasibility Analysis was made available to the transmission customer; and average cost of Feasibility Analyses completed during the period. Applicants state that this mirrors the performance measures for SISs that the Commission requires in Order No. 890.¹³

b. Kentucky Municipals' Protest

15. Kentucky Municipals note that Applicants' FAS proposal comes little more than six months following the companies' withdrawal from Midwest ISO and that the Commission required in the Withdrawal Order that Applicants ensure independent operation of their transmission grid. They argue that via the FAS proposal, Applicants put themselves back into the role of conducting transmission studies. They argue that the

customers to reach supply alternatives through open access to the bulk electric transmission system. Neither Applicants nor SPP believe that these review activities will require an inordinate amount of additional resources. However, if additional resources are needed, SPP will take such actions as necessary to fulfill its contractual and Commission-mandated responsibilities.

¹³ See Order No. 890, FERC Stats. & Regs. ¶ 31,241.

proposal disregards the intent of the requirement in the Withdrawal Order that transmission planning on Applicants' system be done on an independent, non-discriminatory basis and that SPP perform SISs.¹⁴ Kentucky Municipals acknowledge that the proposal in Applicants' June 4 amendment to post statistics about FAS on OASIS brings some transparency to the FAS proposal. However, Applicants still do not provide for any oversight criteria to ensure that Applicants do not favor their own FAS requests over others.

16. While Kentucky Municipals argue that the Commission should not approve FAS as proposed, they would support making the 30-day, quick-look aspect of FAS an element of the SIS process, as long as SPP (or another independent third party) is responsible for the process. Like FAS, this quick look would include a preliminary assessment of the nature and costs of, and the construction timeline for, any facilities needed to provide requested transmission service. Kentucky Municipals argue that this approach would help ensure independence by keeping SPP in the driver's seat and Applicants out of the process. Because it would be part of SPP's SIS process and presumably compatible with the SIS methodology, the approach would also be more likely to provide information upon which SPP and the customer could rely.

c. Commission Determination

17. We find that the proposal to allow SPP to delegate to Applicants the performance of Feasibility Analyses does not conflict with the Commission's Withdrawal Order and will not affect the independent oversight SPP has as the ITO for Applicants' transmission system. The Withdrawal Order required that SISs be performed by SPP (or a third party independent of Applicants and other market participants).¹⁵ The Commission also found that SPP must, as an independent, non-market participant, have the authority to ensure that transmission planning on Applicants' system is done on an independent, non-discriminatory basis. The Commission required that Applicants assign to SPP, as the ITO, approval authority over all models, planning criteria, study criteria, plans, studies, the methodology for calculating Available Transmission Capability, and any inputs or numerical values provided by Applicants to the same extent as the Midwest ISO had authority over those matters before Applicants' withdrawal.¹⁶ Kentucky Municipals do not allege that SPP will lose its authority over these matters as a result of the FAS

¹⁴ *Citing* Withdrawal Order, 114 FERC ¶ 61,282, at P 84-85, 90-91.

¹⁵ Withdrawal Order, 114 FERC ¶ 61,282, at P 145.

¹⁶ Withdrawal Order, 114 FERC ¶ 61,282, at P 85-86.

proposal, and we find that the proposed changes to include FAS in Applicants' OATT will not affect the fulfillment of these requirements.

18. Significantly, SPP will continue to perform all SISs, and it is the SIS, together with any Facility Studies, that SPP will use in evaluating transmission service requests. The fact that Applicants may perform a separate Feasibility Analysis before SPP performs an SIS does not mean that Applicants will be involved in SISs. Furthermore, SPP will have final review authority over any Feasibility Analyses that Applicants perform. As required by the Commission in the Withdrawal Order, SPP will continue to approve or deny all transmission service requests, as well as calculate and post Available Transmission Capability.¹⁷ SPP will also have authority to validate interchange schedules, including verification of valid sinks and transmission arrangements for such schedules. In addition, as Applicants point out, SPP already performs similar oversight duties when Applicants perform any Facilities Studies associated with requests for transmission service. Thus, it is not necessary to make FAS part of the existing SIS process.

19. We agree with Kentucky Municipals, however, that Applicants must provide oversight criteria to ensure that Applicants do not favor their own FAS requests over others. Although Applicants contend that the statistics they propose to post on OASIS are the same as those required in Order No. 890 for SISs, Applicants do not propose to calculate the statistics separately for affiliates and non-affiliates.¹⁸ Such statistics are important to ensure that FAS is being provided on a non-discriminatory basis. We require that Applicants calculate the statistics separately for affiliates and non-affiliates and post the results on OASIS.

2. Limiting FAS to Internal Point-to-Point Service

a. Applicants' Proposal

20. Applicants propose to offer FAS to customers requesting network service and to those requesting point-to-point service internal to Applicants' transmission system. They state that it is proper to offer FAS to these two classes of customers because these are the only customers for whom a study can be performed on a short-term basis (*i.e.*, within 30 days). Applicants note that unlike the SIS and Facilities Study process, which all customers may need, FAS is not a required transmission study. Thus, they state, limiting

¹⁷ Withdrawal Order, 114 FERC ¶ 61,282, at P 91.

¹⁸ See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1309.

the availability of FAS does not preclude all eligible customers from seeking service on Applicants' transmission system.

21. Applicants state that when submitting a network service request, customers provide a significant amount of data regarding their load and resources connected to the transmission system. As a result, the entity performing a Feasibility Analysis will know which transmission facilities to examine, and need not waste time studying facilities or paths that may not be used for network service. Similarly, customers requesting internal point-to-point service must limit the scope of the Feasibility Analysis to Applicants' transmission system, so the entity performing the Feasibility Analysis does not need to coordinate with other transmission systems.

22. Applicants state that in contrast, in order to provide FAS for an external point-to-point service request (where the point of receipt or delivery is outside Applicants' transmission system), the entity performing the Feasibility Analysis would have to coordinate with other transmission systems to determine the effect that the service request may have on other systems, as well as examining the various permutations and paths that the service request may take, even for a rough estimate. The additional complexity of transmission studies for external point-to-point service requests could make it impossible to perform a Feasibility Analysis for such requests within the 30-day deadline.

b. Kentucky Municipals Protest

23. Kentucky Municipals state that Applicants have not justified not offering FAS for point-to-point service that is not internal. They argue that restricting FAS availability to internal point-to-point transactions is unreasonable because few, if any, customers could take advantage of the service.¹⁹ In addition, they dispute Applicants' claim that it is proper to limit FAS to network and internal point-to-point service customers because these are the only customers for whom a study can be performed quickly. They state that all point-to-point service requests provide the transmission provider with information that is at least as concrete and specific as that supplied by network customers. Kentucky Municipals state that Applicants' argument about having to coordinate with other transmission systems for external point-to-point transactions is also faulty because the *pro forma* OATT specifically allows for network loads and network resources to also be located outside Applicants' transmission system.

¹⁹ They state that in all likelihood, points of receipt on the Applicants' system are already associated with loads under existing network service arrangements.

c. Commission Determination

24. We find that Applicants have not justified their proposal to exclude external point-to-point service from the potential services for which FAS may be requested. As support for their proposal, Applicants state that their OATT requires customers that request network service to provide a significant amount of data and that this will allow the entity performing a Feasibility Analysis to not waste time studying facilities or paths that may not be used for network service. However, that detailed information is only required when a customer submits a formal request for transmission service. While Applicants will already have this information for existing network service customers, they will not have this information for potential new network service customers. Such customers will request FAS *before* submitting a formal request for transmission service, and a customer that requests FAS needs to provide only the point of receipt, point of delivery, source, sink, and the transaction period. This limited information is consistent with the quick, non-binding nature of FAS. Thus, an entity performing the Feasibility Analysis will have the same (limited) information whether the Feasibility Analysis is for new network service or point-to-point service.

25. Moreover, Applicants state that it is appropriate to exclude external point-to-point service because a Feasibility Analysis for external point-to-point service would require the entity performing the study to coordinate with other systems. However, as Kentucky Municipals note, a customer that requests FAS for network service can also designate a source or sink that is outside Applicants' system, and a Feasibility Analysis for such a transaction would also require some level of coordination with other systems. Therefore, we will require that Applicants submit in a compliance filing, within 30 days of the date of this order, revisions to their OATT so that FAS is available for network service and for point-to-point service, regardless of whether the point of receipt or delivery is not on Applicants' system.²⁰

²⁰ Applicants argue that a Feasibility Analysis for external point-to-point service will take more than 30 days to complete. We believe that customers that request FAS for external point-to-point transactions may find the service valuable even if the Feasibility Analysis takes more than 30 days. If it does take more than 30 days to complete a Feasibility Analysis for an external point-to-point transaction, Applicants must include an explanation of the additional complexity or coordination that caused the delay with the FAS statistics that are posted on Applicants' OASIS.

3. Value to Customers

a. Applicants' Proposal

26. Applicants state that because of its preliminary nature, a Feasibility Analysis will be simpler than an SIS and will not duplicate the SIS. For example, the request for FAS will *not* be evaluated as if all existing requests in the transmission service request queue are granted. Instead, the Feasibility Analysis will analyze the request based on the then-existing state of the system. Other requests for FAS will also not be factored into the FAS results. In addition, alternative planning redispatch will not be studied.²¹ Even with the limited scope of FAS, FAS will provide value by allowing a customer to determine whether to pursue service on Applicant's transmission system or to pursue other alternatives, if the customer wishes to make that decision quickly, based on a rough estimate. Although the SIS and FAS processes will not be the same, all Feasibility Analyses will also be made available to SPP to use as it, in its independent judgment, finds appropriate.

27. In addition, Applicants state that the FAS will encourage investment in transmission infrastructure. They argue that by providing an acceptable and quick avenue through which a customer can evaluate transmission service options, FAS will result in transmission infrastructure being added to the grid at an earlier date.

b. Kentucky Municipal Protest

28. Kentucky Municipals argue that Applicants have not shown that FAS provides any value to transmission customers or SPP. They state that it would be foolish to rely on FAS to make power supply or service decisions because the results of FAS are non-binding. They also state that FAS will be conducted based on unrealistic assumptions because it will ignore existing transmission service requests and will not consider redispatch as an alternative to facility upgrades. According to Kentucky Municipals, FAS seems incapable of providing information that could help SPP perform its responsibilities because, as Applicants state, the FAS analysis will be simpler and less accurate than an SIS. They also note that Applicants offer no evidence that FAS will encourage investment.

²¹ Applicants state that they will direct SPP to clarify the nature of FAS in Applicants' Business Practices, which are posted on OASIS.

c. Commission Determination

29. We disagree with Kentucky Municipals that FAS has no value. Although it provides limited, non-binding information, FAS may prove useful to certain customers that are looking for a quick, general idea about the upgrade costs they may face under different scenarios. The availability of the optional FAS service in no way harms customers that need more definitive information because, as always, they can go through the normal SIS process available to all customers. FAS merely provides customers with an additional option to obtain information about potential transmission service and related transmission upgrade costs. If Kentucky Municipals find no value in FAS, they can simply not use it.

30. We do find that customers requesting FAS must be fully informed about the limitations of the service, and, therefore, we will require Applicants to provide more information in the FAS Agreement that customers must execute to receive FAS. The proposed FAS Agreement states that FAS is non-binding and that SPP retains sole authority to conduct a formal SIS, and Applicants' Business Practices posted on OASIS will be updated to fully describe the nature of FAS. However, in addition to this, Applicants must, within 30 days of the date of this order, submit a compliance filing to revise the FAS Agreement to make clear that the results provided to FAS customers will not include alternative planning redispach and will not take into account any existing transmission service requests or any other requests for FAS. So that customers can gauge the accuracy of FAS, Applicants must also have posted on their OASIS the cost estimates in each Feasibility Analysis and the costs in each related SIS that is ultimately completed.²² Although the information in the FAS is non-binding, with the additional information, customers can make their own informed decisions about whether the FAS is useful to them. Applicants must also revise their OATT to include all of the changes that they committed to make in their June 4 Response.

4. Order No. 888 and Order No. 890

a. Applicants' Proposal

31. Applicants state that the proposed change to their OATT is consistent with or superior to the *pro forma* OATT in Order No. 888 and Order No. 890. They assert that their FAS proposal is consistent with the goal of ensuring that customers receive timely,

²² We note that Applicants will already have to keep track of whether each request for FAS leads to an SIS because customers will receive a \$5,000 credit toward the cost of any SIS that results from a request for FAS.

transparent information regarding their transmission service requests. The total time for completion of the FAS – from the time the FAS Agreement is executed to the time the Feasibility Analysis is completed – will be no more than thirty days. Additionally, the results of Feasibility Analyses will be posted on OASIS. Applicants state that the proposal is also superior to the Order No. 890 *pro forma* OATT, which retains the seven month deadline for completion of both the SIS and Facilities Studies. The FAS goes a step further in customer service by arming customers with important information in far less than seven months, so that customers may move forward with their planning. Applicants argue that FAS would take nothing away from the current OATT process while providing an additional service to customers for a quicker, simpler analysis should they desire such limited information more quickly.

32. In their March 5 filing, Applicants also state that one reason they proposed FAS is that SPP was completing SISs outside the 60-day deadline in the Order No. 888 *pro forma* OATT. However, Applicants in their June 4 amendment state that although SISs for 13 out of the initial 15 SIS requests that customers submitted to SPP were completed late, delays are being reduced as SPP gains experience performing the SISs. SPP also now has customized software that will allow it to analyze SIS results for Applicants' system more quickly. In addition, part of the initial delay was caused by a specific SIS that was extremely complex, took extra time to perform, and thus delayed the start date of subsequent studies. In any event, Applicants argue that FAS will provide customers with additional benefits even as SPP reduces the time it takes to perform SISs.

b. Kentucky Municipals' Protest

33. Kentucky Municipals note that Applicants say that SPP's problems with SIS are being resolved. Therefore, they argue that if there ever was a need for FAS, it may no longer exist. Kentucky Municipals reiterate that FAS provides no value to customers and note that Applicants did not provide any evidence that customers want this service. Thus, Applicants have not shown that FAS is just, reasonable, and an improvement over the *pro forma* OATT.

c. Commission Determination

34. We find that Applicants' proposal to revise their OATT to include a new, optional FAS is consistent with or superior to the non-rate terms and conditions in the Order No. 888 and Order No. 890 *pro forma* OATTs. FAS will not affect the rights that customers currently have. It is an optional, additional service that Applicants are making available for those customers that would like a quick, non-binding study. FAS would help customers by giving them very quick access to information about possible transmission service, albeit on a limited, non-binding basis. Whether or not a customer requests FAS will not affect any transmission service request that customer ultimately submits and will

not hurt any other customer (or potential customer). In fact, in addition to providing a service to customers that actually request FAS, the proposal might also provide a benefit to OATT customers in general by keeping speculative projects out of the transmission service request queue.²³

5. Effective Date

35. Applicants requests waiver of the 60-day prior notice requirement in section 35.11 of the Commission's regulations (18 C.F.R. § 35.11 (2007)). Applicants do not explain why they seek waiver or otherwise provide a basis for us to grant such a request. Therefore, we deny the request for waiver of the 60-day prior notice requirement and we will make the revised tariff sheets effective May 5, 2007.²⁴

The Commission orders:

(A) Applicant's tariff sheets are conditionally accepted, effective May 5, 2007, as discussed in the body of this order.

(B) Applicants are 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. Commissioners Wellinghoff and Kelly dissenting with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.
Acting Deputy Secretary.

²³ Our finding here does not affect any of Applicants' Order No. 890 compliance requirements or Commission evaluation of any of Applicants' proposals to meet those requirements, including, for example, the obligation for coordinated, open and transparent transmission system planning.

²⁴ See *Central Hudson Gas and Electric Co.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

E.ON U.S., LLC

Docket Nos. ER07-596-000
ER07-596-001

(Issued August 3, 2007)

WELLINGHOFF and KELLY, Commissioners, dissenting:

In today's order, the Commission conditionally accepts E.ON U.S., LLC's proposal to revise the joint OATT of its subsidiaries, LG&E and KU (Applicants), to include a new Feasibility Analysis Service (FAS). Because we do not believe that Applicants have adequately supported their proposal, we respectfully dissent.

It is important to recognize that the FAS would be a potentially important early stage of the transmission planning process. A prospective customer may well decide, on the basis of the cost and timeline estimates in an FAS study, to abandon its transmission service request rather than proceed to the System Impact Study and Facilities Study that would determine the actual costs and timeline of upgrades associated with the request. Therefore, although FAS would be an optional – not a required – step for prospective customers, it could act as a significant filter in the transmission planning process.

One way in which Applicants have failed to adequately support their proposal is that it is unclear whether the proposal would provide for sufficient independent oversight at this potentially important stage of the transmission planning process. Applicants state that SPP, as their Independent Transmission Organization, would have final review authority over FAS studies. However, Applicants also state that neither they nor SPP believe that any such review would require SPP to duplicate Applicants' process for FAS studies or to expend "an inordinate amount of additional resources." These statements suggest that SPP would play only a minor role with regard to FAS and may not review the substance of FAS studies in any detail. By contrast, SPP plays a major role with regard to System Impact Studies and Facilities Studies associated with transmission service requests on Applicants' system.¹ In light of the fact that FAS could act as a

¹ As a condition on Applicants' withdrawal from the Midwest ISO, the Commission prohibited SPP from delegating responsibility for System Impact Studies to Applicants or other market participants. *Louisville Gas and Elec. Co.*, 114 FERC ¶ 61,282 at P 145 (2006). Although Attachment P to Applicants' OATT assigns to Applicants the responsibility for performing Facilities Studies, SPP is required to review Applicants' determination regarding the scope and cost of necessary additions and upgrades, as well as to prepare the initial draft of the Facilities Study report.

significant filter in the transmission planning process, the absence of rigorous independent oversight constitutes a flaw in Applicants' proposal.

Another way in which Applicants have failed to adequately support their proposal involves their claim that FAS will encourage investment in transmission infrastructure. The Commission acknowledges many limitations of FAS, including that it will not include alternative planning redispatch and will not take into account any existing transmission service requests or other requests for FAS. As a result of these limitations, the cost and timeline estimates in an FAS study could diverge dramatically from the actual costs and timeline that would be determined in a System Impact Study and Facilities Study. When prospective customers abandon their requests based on FAS cost and timeline estimates that would prove to be excessive if the System Impact Study and Facilities Study were conducted, those investments in transmission infrastructure will not be made. Applicants' claim that FAS will encourage investment in transmission infrastructure does not adequately account for this prospect. Similarly, the Commission ignores this potential harm when it concludes that Applicants' proposal "might also provide a benefit to OATT customers in general by keeping speculative projects out of the transmission service request queue."

Finally, there is a noteworthy lack of evidence that Applicants' OATT customers are interested in FAS. As observed by the Kentucky Municipals, Applicants have not provided concrete examples of actual OATT customers that desire FAS,² nor did any such customers file comments in support of Applicants' proposal.

We sympathize with prospective customers that faced delays in receiving the results of System Impact Studies. Because of the shortcomings discussed above, however, we do not believe that FAS is an appropriate solution to that problem.

For these reasons, we respectfully dissent.

Jon Wellingshoff
Commissioner

Suede G. Kelly
Commissioner

² Docket Nos. ER07-596-000, *et al.*, Renewed Protest of Kentucky Municipals, June 25, 2007, at 9.