

121 FERC ¶ 61,012  
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.

East Kentucky Power Cooperative, Inc.

Docket No. NJ07-5-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued October 2, 2007)

1. On July 13, 2007, East Kentucky Power Cooperative, Inc. (East Kentucky) filed a petition for declaratory order requesting a finding that its updated “safe harbor” open access transmission tariff (OATT) constitutes an acceptable reciprocity tariff pursuant to the provisions of Order No. 890.<sup>1</sup> East Kentucky also requests waiver of the filing fee.
2. In this order, we will grant East Kentucky’s petition for declaratory order and grant East Kentucky’s request for waiver of the filing fee.

**I. Background**

3. East Kentucky is an electric generation and transmission cooperative that provides electric energy to its member-owner distribution cooperatives in central and eastern Kentucky. East Kentucky supplies its sixteen member distribution cooperatives (Members) the electric power and energy required to serve their respective retail electric customers through base load generating plants, peaking units, hydropower and more than 2,800 miles of transmission lines. East Kentucky and each of its Members are not-for-profit organizations that are obligated to provide electric service at the lowest cost reasonably possible. East Kentucky asserts that it and each of its Members are not “public utilities” subject to the FERC’s jurisdiction.
4. In Order No. 890, the Commission reformed the Order No. 888 *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission

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<sup>1</sup> *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).

service is provided on a non-discriminatory basis.<sup>2</sup> Among other things, Order No. 890 amended the Order No. 888 *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems, and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights, and reassignments of transmission capacity.

## II. East Kentucky's Reciprocity Tariff Filing

5. East Kentucky submits a petition for declaratory order requesting a finding that its updated safe harbor OATT constitutes an acceptable reciprocity tariff and also requests waiver of the Commission's filing fee based on its non-jurisdictional status.

6. East Kentucky states that its OATT incorporates all of the revisions to the Order No. 890 *pro forma* OATT that were adopted by Order No. 890, with the exception of the reporting requirements under section 19.9 (Penalties for Failure to Meet Study Deadlines). Also, in the course of this filing, East Kentucky states that it became aware of minor omissions in its previously filed OATT that are inconsistent with the Order No. 888 *pro forma* OATT and, accordingly, East Kentucky is proposing certain ministerial revisions in order to render its tariff consistent with the Order No. 888 *pro forma* OATT.

7. East Kentucky states that it is a non-jurisdictional electric cooperative and, therefore, is not subject to the filing and review requirements applicable to public utilities. East Kentucky proposes to exclude from its OATT the requirement in section 19.9(i) of the Order No. 890 *pro forma* OATT that requires transmission providers to file a notice with the Commission in the event they have failed to meet the deadlines for completing System Impact Studies and Facilities Studies.<sup>3</sup> East Kentucky states that it is not proposing to waive the penalty provisions associated with section 19.9, just the filing requirements. East Kentucky states that, given that it is not proposing to waive the penalty provisions, section 19.9, as revised, substantially conforms to the *pro forma* Order No. 890 OATT. In support of its proposal, East Kentucky states that it receives very few study requests and rarely has had more than one request pending at any

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<sup>2</sup> See *id.* at P 26-61.

<sup>3</sup> Section 19.9(i) of the *pro forma* OATT provides that the transmission provider is required to file a notice with the Commission in the event that more than 20 percent of non-affiliates' System Impact Studies and Facilities Studies completed by the transmission provider in any two consecutive calendar quarters are not completed within the 60-day study completion deadlines. Such notice must be filed within 30 days of the end of the calendar quarter triggering the notice requirement. See Order No. 890 *pro forma* OATT at Original Sheet No. 84.

given time. As a result, East Kentucky states that it does not anticipate that it will be unable to adhere to the 60-day deadline.

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

8. Notice of East Kentucky's filing was published in the *Federal Register*, 72 Fed. Reg. 41,717 (2007), with comments, protests, or motions to intervene due on or before August 3, 2007. E.ON U.S., LLC (E.ON), on behalf of its public utility subsidiaries Louisville Gas and Electric Company and Kentucky Utilities Company, filed a timely motion to intervene and protest.

9. E.ON opposes East Kentucky's omission of the reporting requirements under section 19.9 of the *pro forma* OATT. It states that the Commission emphasized in Order No. 890 the importance of transparency "for the processing of service requests by all transmission providers." E.ON contends that the requirement in section 19.9 of the *pro forma* OATT to notify the Commission when a transmission provider has failed to complete at least 80 percent of its non-affiliates' transmission studies within the required timeframe, and has consistently failed to do so for more than 6 months (two consecutive quarters), is essential to ensuring this transparency. If East Kentucky is granted waiver of this requirement, E.ON argues that East Kentucky will not be offering its transmission customers "comparable service."

### **IV. Discussion**

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), E.ON's timely, unopposed motion to intervene serves to make it a party to this proceeding.

#### **Reciprocity Tariff**

11. In Order No. 888, the Commission established a safe harbor procedure for the filing of reciprocity tariffs by non-public utilities.<sup>4</sup> Under this procedure, non-public utilities may voluntarily submit to the Commission a transmission tariff and a petition for declaratory order requesting a finding that the tariff meets the Commission's

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<sup>4</sup> *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, at 31,760 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, at 30,281-87, *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 (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).

comparability (non-discrimination) standards. If the Commission finds that such a tariff contains terms and conditions that substantially conform or are superior to those in the *pro forma* OATT, the Commission will deem it to be an acceptable reciprocity tariff and will require public utilities to provide open access transmission service upon request to that particular non-public utility.<sup>5</sup> Order No. 890 requires that a non-public utility that already has a safe harbor OATT (e.g., East Kentucky) must amend its OATT so that its provisions substantially conform or are superior to the new *pro forma* OATT in Order No. 890 if it wishes to continue to qualify for safe harbor treatment.<sup>6</sup>

12. With regard to E.ON's concerns about transparency of the process by which East Kentucky processes transmission service requests, since East Kentucky maintains an Open Access Same-Time Information System (OASIS)<sup>7</sup> which oversees East Kentucky's transmission functions, including receiving, acknowledging, reporting, and responding to transmission service requests, E.ON's concerns regarding transparency are adequately addressed. Accordingly, we find that East Kentucky's revised safe harbor OATT substantially conforms or is superior to the *pro forma* OATT in Order No. 890 and therefore is an acceptable reciprocity tariff.

### **Filing Fee**

13. We will grant East Kentucky's request for waiver of the filing fee. As we stated in Order No. 888-A, "[the Commission's] regulations specifically exempt states, municipalities, and anyone who is engaged in the official business of the Federal Government from filing fees. Because of the nature of the safe harbor and waiver provisions, we will also waive the filing fee for declaratory orders for all other non-public utilities in those circumstances."<sup>8</sup>

### **The Commission orders:**

(A) East Kentucky's petition for declaratory order is hereby granted, and its

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<sup>5</sup> In Order No. 888-A, the Commission clarified that, under the reciprocity condition, a non-public utility must also comply with the OASIS and standards of conduct requirements or obtain waiver of them. Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,286.

<sup>6</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 191.

<sup>7</sup> <https://www.oatioasis.com/EKPC/>

<sup>8</sup> Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,288-89.

revised OATT is hereby deemed to represent an acceptable reciprocity tariff, as discussed in the body of this order.

(B) East Kentucky's request for waiver of the filing fee is hereby granted.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Acting Deputy Secretary.