137 FERC ¶ 61,038
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Ohio Valley Electric Corporation Docket No. OA08-19-003

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued October 13, 2011)

1. On May 7, 2010, Ohio Valley Electric Corporation (Ohio Valley) submitted a revised transmission planning process to its Open Access Transmission Tariff (OATT) in compliance with the Commission's directives in its March 2010 Order.[1] In this order, we accept Ohio Valley's compliance filing, as modified, effective December 7, 2007, subject to a further compliance filing.

I. Background

2. In Order No. 890,[2] 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] *Ohio Valley Elec. Corp.*, 130 FERC ¶ 61,168 (2010) (March 2010 Order).

[2] *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]

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, Ohio Valley submitted a new Attachment K to its OATT in compliance with Order No. 890's transmission planning requirements. In the February 2009 Order, the Commission accepted that compliance filing, as modified, to be effective December 7, 2007.[6] The Commission found that Ohio Valley partially complied with the Order No. 890 requirements and directed Ohio Valley to file, in a compliance filing to be submitted within 90 days of the date of the February 2009 Order, further revisions to its Attachment K.

---

[3] Ohio Valley's transmission planning attachment is labeled "Attachment M," rather than "Attachment K," because of a pre-existing attachment to its OATT labeled with the letter "K." In this order, we refer to Ohio Valley's transmission planning attachment as "Attachment K" for uniformity with other Commission orders.

[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] *Ohio Valley Elec. Corp.*, 129 FERC ¶ 61,106 (2009) (February 2009 Order).

5. On May 11, 2009, Ohio Valley submitted a revised Attachment K as directed by the Commission in the February 2009 Order. In the March 2010 Order, the Commission accepted Ohio Valley's compliance filing, as modified, to be effective December 7, 2007. The Commission found that Ohio Valley complied with the Order No. 890 requirements related to transparency, dispute resolution, and economic planning studies. However, the Commission directed Ohio Valley to file, in a compliance filing due within 60 days of the date of the order, revisions to its Attachment K to further address: (1) openness; (2) comparability; (3) regional participation; and (4) recovery of planning related costs.

6. On May 7, 2010, Ohio Valley submitted a revised Attachment K in compliance with the March 2010 Order. This third compliance filing is the subject of the instant proceeding.

II. Notice of Filing and Responsive Pleadings

7. Notice of Ohio Valley's filing was published in the *Federal Register*, 75 Fed. Reg. 28,002 (2010), with interventions and protests due on or before May 28, 2010. None was filed.

III. Discussion

8. We find that Ohio Valley's Attachment K transmission planning process, as modified below, partially complies with the Commission's directives in the March 2010 Order. Accordingly, we accept Ohio Valley's Attachment K, as modified, effective December 7, 2007, subject to a further compliance filing to be submitted within 60 days of the date of this order, as discussed below.

A. Compliance with Order No. 890 Planning Principles

1. Openness

a. March 2010 Order

9. In the March 2010 Order, the Commission found that Ohio Valley's proposed Attachment K partially complied with the directives in the February 2009 Order regarding the openness principle. However, the Commission found that that it was not sufficient to condition implementing procedures to access non-CEII and non-confidential information and discussion on an entity's refusal to enter into a confidentiality agreement. Therefore, the Commission directed Ohio Valley to revise its Attachment K to provide that it will put into place appropriate procedures to access non-CEII and non-

confidential information and discussion, without conditioning the procedures on an entity's refusal to enter into a confidentiality agreement.[7]

b. Ohio Valley Filing

10. Ohio Valley modified its Attachment K to state that Ohio Valley will put into place appropriate procedures to allow entities that have not executed the form confidentiality agreement access to non-CEII and non-confidential information, such as by creating a separate section of its OASIS site with restricted access for CEII or confidential information and/or by structuring meetings to have separate discussion of issues involving CEII or confidential information with only those participants who have executed the confidentiality agreement.

c. Commission Determination

11. We find that, as revised, Ohio Valley's Attachment K complies with the Commission's directives in the March 2010 Order and now satisfies Order No. 890's openness principle.

2. Comparability

a. March 2010 Order

12. In the March 2010 Order, the Commission noted that Ohio Valley partially complied with the directives in the February 2009 Order related to the comparability principle. In particular, the Commission found that Ohio Valley did not specify when it would find information for use in developing base-line assumptions and models "necessary or appropriate" from sponsors of all types of resources.[8] Accordingly, Ohio Valley was directed to indicate when developers of transmission, generation, and demand resources must submit their data.[9] In addition, the Commission found that Ohio Valley's Attachment K did not affirmatively provide that, once needs on the Ohio Valley system are identified, sponsors may propose transmission, generation, and demand resources as alternative solutions to identified needs, or when and where in the transmission planning process stakeholders can propose alternative solutions to identified needs. The Commission also found that Ohio Valley failed to identify how it will evaluate alternative solutions when determining what facilities will be included in its transmission plan. The Commission therefore directed Ohio Valley to revise its Attachment K to provide:

---

[7] March 2010 Order, 130 FERC ¶ 61,168 at P 11.

[8] *Id.* P 19.

[9] *Id.*

(1) when developers of transmission, generation, and demand resources can submit their data; (2) where and when stakeholders can propose alternatives; and (3) how Ohio Valley will evaluate and select from competing solutions such that all types of resources are considered on a comparable basis.[10]

b. <u>Ohio Valley Filing</u>

13. Ohio Valley modified its Attachment K to state:

> In accordance with the principles and procedures set forth in Principle 1: Coordination, Ohio Valley's planning process is an objective process that evaluates use of the transmission system on a comparable basis for all customers. 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. All proposals and alternatives from stakeholders that are presented on a timely basis (in accordance with the process set forth in Principle 1: Coordination), including transmission solutions, generation solutions and solutions utilizing demand response resources, whether presented by [Ohio Valley] or a stakeholder, will be evaluated on a comparable basis. The same criteria will be applied to the same types of projects, and addressed on a first-come, first-served basis to ensure that [Ohio Valley's] interests do not take precedence over those of their similarly situated customers. Transmission plans will be technology neutral, balancing costs, benefits and risks associated with the use of various transmission, generation, and demand resources to meet the needs of transmission customers and the [Ohio Valley] System. Alternatives will be evaluated against one another on the basis of the following criteria to select the preferred solution or combination of solutions: (1) ability to practically fulfill the identified need; (2) ability to meet applicable reliability criteria or NERC

[10] *Id.* The Commission stated that tariff language could, for example, state that solutions will be evaluated against each other based on a comparison of their relative economics and effectiveness of performance. Although the particular standard a transmission provider uses to perform this evaluation can vary, it should be clear from the tariff language how one type of investment would be considered against another and how the transmission provider would choose one resource over another or a competing proposal.

> Planning Standards; (3) technical, operational and financial feasibility; (4) operational benefits/constraints or issues; (5) cost-effectiveness over the time frame of the study or the life of the facilities, as appropriate (including adjustments as necessary for operational benefits/constraints or issues, including dependability); and (6) where applicable, consistency with State or local integrated resource planning requirements, or regulatory requirements, including cost recovery through regulated rates.[11]

14. Further, Ohio Valley has modified the language under the heading Principle 1: Coordination by including the following language:

> Committee members will have thirty (30) days from the date of the annual meeting in which to submit written comments or other information for the next transmission plan. In particular, customers and stakeholders (including sponsors of transmission solutions, generation solutions, and solutions utilizing demand resources) may submit information for consideration in the annual transmission plan such as load forecast, generation requirements, generation retirements, generation outage schedules, demand response availability (including demand resources available to reduce demand for interconnected entities), distribution construction programs, and any other relevant information as it deems necessary or appropriate to the proposed transmission plan (including alternative proposals) and each entity proposing alternative solutions will be given equal opportunity to participate. Any entity proposing alternatives must complete a description thereof with reasonable detail, which will be posted on OASIS. If any proposals or other data is not submitted in a timely manner pursuant to the planning process, then such proposals or data may not be able to be incorporated into the then-current planning cycle, although it will be included in the next annual proposal and planning cycle, as applicable.[12]

---

[11] Ohio Valley Electric Corporation, FERC Electric Tariff, Second Rev. Sheet No. 441.

[12] Ohio Valley Electric Corporation, FERC Electric Tariff, First Rev. Sheet No. 434.

15. Ohio Valley states that similar language was approved by the Commission in Docket No. OA08-38-004.

c. Commission Determination

16. We find that Ohio Valley partially complies with the directives in the March 2010 Order related to the comparability principle as outlined in Order No. 890 and Order No. 890-A. Specifically, Attachment K now provides when and where stakeholders can propose alternatives and how they will be evaluated. It also provides that transmission plans will be technology neutral, balancing costs, benefits and risks associated with the use of various transmission, generation, and demand resources to meet the needs of transmission customers and the Ohio Valley system.

17. However, Attachment K currently states that "the same criteria will be applied to the same types of projects, and addressed on a first-come, first-served basis to ensure that [Ohio Valley's] interests do not take precedence over those of their similarly situated customers," but does not clarify who is "first." Further, the Attachment K states that "[w]here demand resources are able to meet the same criteria as generation resources, demand and generation resources will be treated comparably for transmission planning purposes." To ensure that Ohio Valley's interests do not take precedence in the transmission planning process, we direct Ohio Valley to submit a compliance filing, within 60 days of the date of this order, revising its Attachment K to clarify the window of opportunity for each project and for the stakeholders and for the transmission provider[13] and to clarify that all resources, whether transmission, generation or a demand resource, must meet the same criteria and will be treated comparably in the transmission planning process.

3. Regional Participation

a. March 2010 Order

18. In the March 2010 Order, the Commission found that Ohio Valley partially complied with the directives in the February 2009 Order regarding the regional participation principle. The Commission directed Ohio Valley to describe in detail its participation in the Southeast Inter-Regional Participation Process (SIRPP), its process

---

[13] We note that although Ohio Valley states that it is proposing language similar to language submitted by Nevada Power Company and Sierra Pacific Power Company, and accepted by the Commission in *Sierra Pacific Resources Operating Companies*, Docket No. OA08-38-004 (Mar. 3, 2010) (delegated letter order) (*Sierra Pacific*), the language regarding being addressed on a first-come, first-served basis is not included in the language accepted by the Commission in *Sierra Pacific*.

for coordinating with interconnected systems to share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data and identify system enhancements that could relieve congestion or integrate new resources. The Commission noted that other utilities participating in the SIRPP included the complete SIRPP process as an appendix to their OATTs.[14]

b. Ohio Valley Filing

19. Ohio Valley states that although Ohio Valley initially offered to join the SIRPP as a member, after discussions with representatives of SIRPP and in light of Ohio Valley's uniqueness, Ohio Valley participates in SIRPP as a stakeholder. Ohio Valley's Attachment K provides that in accordance with the SIRPP process, stakeholders are given access to information flow and are included in the planning process without discrimination. Further, Attachment K states that it is expected that Ohio Valley's participation in the SIRPP will enhance coordination of Ohio Valley planning efforts with systems to the south. Ohio Valley included the SIRPP process document, which describes stakeholder and other participation rights and other processes, as Exhibit II to its Attachment K.

c. Commission Determination

20. We find that Ohio Valley complies with the Commission's directives in the March 2010 Order and now satisfies Order No. 890's regional participation principle.

4. Recovery of Planning Costs

a. March 2010 Order

21. In the March 2010 Order, the Commission found that Ohio Valley partially complied with the directives in the February 2009 Order regarding recovery of planning costs. The Commission noted that although Ohio Valley's transmission planning processes provided a mechanism for the recovery of some planning costs, it did not provide a mechanism for the recovery of planning costs associated with participation in regional planning activities. The Commission directed Ohio Valley to revise its Attachment K to address how it will recover planning costs associated with participation in regional planning activities.[15]

---

[14] March 2010 Order, 130 FERC ¶ 61,168 at P 29.

[15] *Id.* P 35.

b. Ohio Valley Filing

22. Ohio Valley modified its Attachment K to state that "Costs associated with participation in regional planning activities will be rolled into its existing jurisdictional cost-based rates."

c. Commission Determination

23. We find that Ohio Valley complies with the Commission's directives in the March 2010 Order regarding the recovery of planning-related costs.

The Commission orders:

(A) Ohio Valley's compliance filing, as modified, is hereby accepted, subject to a further compliance filing, as discussed in the body of this order.

(B) Ohio Valley is hereby directed to submit a compliance filing, within 60 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.