

144 FERC ¶ 61,067  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

East Kentucky Power Cooperative, Inc., and PJM Interconnection, LLC	Docket Nos. ER13-1177-001 ER13-1178-001 ER13-1179-001
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ORDER ON CLARIFICATION  
OR, IN THE ALTERNATIVE, REHEARING

(Issued July 26, 2013)

1. On June 21, 2013, Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU) (collectively, LG&E/KU) filed a request for clarification or, in the alternative, rehearing (request for clarification/rehearing) of the letter order<sup>1</sup> that accepted for filing a joint submission by PJM Interconnection, LLC (PJM) and East Kentucky Power Cooperative, Inc. (EKPC) describing how existing interconnection customers and transmission service providers in the EKPC Zone will transfer to PJM transmission service in connection with EKPC's June 1, 2013 integration into PJM (EKPC integration). As discussed more fully below, we deny LG&E/KU's request for clarification/rehearing of the May 2013 Letter Order.

**I. Background**

2. EKPC, an exempt generation and transmission cooperative,<sup>2</sup> has transferred functional control of its transmission facilities rated 100 kV and above to PJM and integrated into the PJM markets. On March 28, 2013, in Docket Nos. ER13-1177-000, ER13-1178-000, and ER13-1179-000, PJM and EKPC submitted a joint filing in connection with EKPC's June 1, 2013 integration into PJM. In conjunction with EKPC's integration into PJM and with that filing, PJM filed modifications to its Open Access Transmission Tariff (OATT), Amended and Restated Operating Agreement (OA),

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<sup>1</sup> *East Kentucky Power Coop., Inc.*, Docket No. ER13-1177-000 *et al.*, (May 22, 2013) (delegated letter order) (May 2013 Letter Order).

<sup>2</sup> *See* 16 U.S.C. § 824(f) (2006).

Reliability Assurance Agreement Among Load Serving entities in the PJM Region (RAA), and Consolidated Transmission Owners Agreement (CTOA). EKPC also submitted support for modifications to the PJM OATT related to the establishment and recovery of EKPC's revenue requirements, rate design and transmission-related cost recovery provisions of the PJM OATT.

3. 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 settlement agreement (Stipulation). The Stipulation was entered into between PJM, the Office of the Attorney General of the Commonwealth of Kentucky, EKPC, and LG&E/KU and was accepted by the Kentucky Public Service Commission (Kentucky Commission) which, among other things, conditionally approved EKPC's application to transfer functional control of its transmission facilities operated at 100 kV and above to PJM.<sup>3</sup> The NITSA and Stipulation together spell out the terms and conditions of the transmission service received by LG&E/KU from PJM. The 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.<sup>4</sup> The Stipulation provides that EKPC will contract separately with LG&E/KU to provide Ancillary Services Schedule 1 (Scheduling, System Control and Dispatch Service) and Ancillary Services Schedule 2 (Reactive Power Supply and Voltage Control From Generation or Other Sources Service) services (collectively, Schedule 1 and Schedule 2 services).<sup>5</sup> The Stipulation also memorializes the parties' agreement that any LG&E/KU intervention into EKPC's integration proceedings (including withdrawal of EKPC's OATT) before the Commission shall be in support of and not to contest these arrangements.<sup>6</sup> Finally, Section 6.1 of the Stipulation reserved the Kentucky Commission's jurisdiction over the Stipulation for the enforcement and monitoring of the commitments in the agreement.<sup>7</sup>

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<sup>3</sup> EKPC integration filing, Transmittal at 10-12.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> EKPC integration filing, Attachment F, Section 6 of the NITSA.

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 and made effective June 1, 2013, as requested.
5. 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. EKPC states that, as part of becoming a transmission owning member of PJM, it must cancel its reciprocity OATT. EKPC further states that the transmission service being provided to LG&E/KU pursuant to the EKPC OATT will instead now be provided by PJM pursuant to a NITSA with LG&E/KU.
6. 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 OATT to receive compensation for making reactive power production capability available to PJM.
7. Both of the above filings were protested by LG&E/KU.<sup>8</sup>

## **II. LG&E/KU Request for Clarification/Rehearing**

8. LG&E/KU request that the Commission clarify or, in the alternative, grant rehearing of the May 2013 Letter Order. LG&E/KU state that the Commission's May 2013 Letter Order does not discuss the NITSA, the Stipulation, or the appropriate rates to be charged by PJM to LG&E/KU for Schedule 1 and Schedule 2 services. LG&E/KU aver that the Commission erred in not specifically stating that the NITSA (which incorporated the Stipulation) was accepted for filing because the terms of the Stipulation were meant to hold LG&E/KU harmless from the effects of EKPC's membership in PJM, including for the provision of Schedule 1 and Schedule 2 services. LG&E/KU claim that, as a condition of holding LG&E/KU harmless, PJM and EKPC committed under the Stipulation that the initial Schedule 1 and Schedule 2 charges would be the same as those in the EKPC OATT pending withdrawal in Docket No. ER13-1570-000.

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<sup>8</sup> EKPC's notice to cancel its reciprocity tariff is addressed in a separate but concurrently issued order in Docket No. ER13-1570-000. EKPC's related filing in Docket No. EL13-68-000 is also addressed in another concurrently issued order in that docket.

9. Specifically, with regard to the Schedule 1 and Schedule 2 services, LG&E/KU assert that Section 7.4 of the NITSA confirms that the charges will be based on the “terms and conditions in the Stipulation, as approved by FERC.”<sup>9</sup> LG&E/KU further assert that Section 2.1.4 of the Stipulation provides, in pertinent part:

*[w]ith respect to [Schedules 1 and Schedules 2], the Utilities [LG&E/KU] will contract with EKPC to supply such services to the Utilities [LG&E/KU], who will purchase them based upon the terms and conditions as currently set forth in Schedules 1 and 2 of EKPC’s current Open Access Transmission Tariff. EKPC reserves the right to modify the rates for Schedules 1 and 2, and thus the charges payable by the Utilities [LG&E/KU]; however, any such change shall be based only on EKPC’s costs and not PJM’s costs.*<sup>10</sup>

LG&E/KU argue that the above terms of the Stipulation prove that the current filed rate for the provision of the Schedule 1 and Schedule 2 services are the rates shown in the EKPC OATT.

10. In addition, LG&E/KU argue that, because the Stipulation states the current EKPC OATT rates would be used, EKPC’s right to modify the Schedule 1 and Schedule 2 rates in the future is only effective after such rates have been filed and accepted by the Commission. LG&E/KU state that it now takes transmission service from PJM under a Commission-jurisdictional tariff because EKPC has joined PJM, which is a Commission-jurisdictional utility. Because service is now provided to LG&E/KU by PJM, LG&E/KU argue that the Commission must now exercise its authority under the Federal Power Act (FPA) to ensure that such charges are just and reasonable. Therefore, LG&E/KU argue the Commission should clarify that the NITSA and the Stipulation were accepted for filing by the Commission so any future changes to EKPC’s current Schedules 1 and 2 rates for LG&E/KU must be subject to Commission review to ensure that the pass-

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<sup>9</sup> LG&E/KU Request for Clarification/Rehearing at 7 (citing the NITSA at Section 7.4).

<sup>10</sup> LG&E/KU Request for Clarification/Rehearing at 7 (citing the Stipulation at Section 2.1.4 (emphasis added)).

through charge for the Schedule 1 and Schedule 2 services are just and reasonable under *City of Vernon*.<sup>11</sup>

11. On July 5, 2013, EKPC filed an answer to LG&E/KU's request for clarification/rehearing. On July 15, 2013, LG&E/KU filed a motion to respond and a response to EKPC's answer.

### **III. Discussion**

#### **A. Procedural Matters**

12. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 713(d)(1) (2012), prohibits an answer to a request for rehearing. Therefore, we reject EKPC's answer to LG&E/KU's request for clarification/rehearing and we also reject LG&E/KU's response to EKPC's answer.

#### **B. Substantive Matters**

13. We deny LG&E/KU's request for clarification/rehearing of the May 2013 Letter Order for the reasons discussed below.

14. LG&E/KU state that they have no problem with the Commission accepting the NITSA and Stipulation as filed. However, LG&E/KU maintain that the May 2013 Letter Order failed to specifically accept each individual component of the EKPC integration filing by name. The tariff records were all identified in the filings and the May 2013 Letter Order accepted all of those tariff records and thus, it was not necessary to separately list each of the specific tariff records in the order.

15. With regard to the rest of the arguments in this matter, LG&E/KU and EKPC differ on their assessment of the jurisdictional status of various provisions in the accepted tariffs, particularly the NITSA and the attached Stipulation referenced by the NITSA. LG&E/KU assert that both the NITSA and Stipulation are jurisdictional, while EKPC contends that only the NITSA is jurisdictional.

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<sup>11</sup> See *City of Vernon, California and California Independent Sys. Operator, Inc.*, Opinion No. 479, 111 FERC ¶ 61,092 (2005), *order on reh'g* Opinion N. 479-A, 112 FERC ¶ 61,207 (2005), *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006) (*City of Vernon*).

16. In *City of Vernon*, the Commission recognized that, as a municipally-owned utility, Vernon was not subject to its section 205 jurisdiction.<sup>12</sup> However, the Commission noted that because Vernon voluntarily submitted its revenue requirement as a component of an RTO's, California Independent System Operator Corporation's (CAISO's), jurisdictional rate, Vernon's revenue requirement is "subject to a full and complete section 205 review as part of our section 205 review of that jurisdictional rate."<sup>13</sup> The Commission explained that, in *Pacific Gas & Elec. Co. v. FERC*, the U.S. Court of Appeals for the District of Columbia Circuit held that the Commission has statutory authority to review Vernon's revenue requirement "to the extent necessary to ensure that the CAISO rates are just and reasonable."<sup>14</sup> Subsequently, the court upheld the Commission's decision that subjecting the revenue requirements of non-jurisdictional utilities (like Vernon) to a full section 205 review is "the only way to ensure that CAISO's rate is just and reasonable."<sup>15</sup>

17. EKPC is, like Vernon, an exempt utility<sup>16</sup> that has voluntarily chosen to integrate into PJM and transfer functional control over its transmission facilities rated 100 kV and above to PJM. Now, PJM bills LG&E/KU for transmission service on EKPC's system pursuant to the NITSA. This makes them pass-through rates and therefore, subject to Commission jurisdiction because the NITSA, as accepted, establishes the Commission-jurisdictional rates that PJM can charge LG&E/KU for transmission service provided by PJM, albeit over EKPC-owned transmission facilities, and the Commission must ensure that PJM's rates are just and reasonable.

18. LG&E/KU claims that, because we have jurisdiction over transmission service provided to LG&E/KU, we also have jurisdiction over the ancillary service Schedule 1

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<sup>12</sup> See *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005), *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006).

<sup>13</sup> *City of Vernon*, Opinion No. 479, 111 FERC ¶ 61,092 at P 44.

<sup>14</sup> *Id.* P 43 (quoting *Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1117 (D.C. Cir. 2002)).

<sup>15</sup> *Transmission Agency of Northern California v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007).

<sup>16</sup> See 16 U.S.C. § 824(f) (2006).

and Schedule 2 contract and rates between EKPC and LG&E/KU because these rates are also pass-through rates from PJM. We do not agree with this assertion and address this argument at length in the related order in Docket No. ER13-1570-000. Briefly, as discussed in that order, we find that the Schedule 1 and Schedule 2 services are not jurisdictional services because these services are to be provided by EKPC, an exempt utility, pursuant to a separate, bilateral contract between EKPC and LG&E/KU.

The Commission orders:

LG&E/KU's request for clarification or, in the alternative, rehearing is hereby denied.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.