

144 FERC ¶ 61,066  
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.

Docket No. EL13-68-000

ORDER ACCEPTING PROPOSED REVENUE REQUIREMENTS, AND  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued July 26, 2013)

1. On May 30, 2013, East Kentucky Power Cooperative, Inc. (EKPC) submitted its cost-based reactive power revenue requirements for the reactive power production capability of its Cooper Generating Plant (units 1 and 2) and the Spurlock Generating Plant (units 1 to 4) (together, Cooper-Spurlock Units).<sup>1</sup> The reactive power production capability from the Cooper-Spurlock Units will be utilized by PJM Interconnection, L.L.C. (PJM) to provide reactive supply and voltage control services pursuant to Schedule 2 of the PJM Open Access Transmission Tariff (PJM OATT).<sup>2</sup> EKPC states that, in the event the Commission determines to set the level of revenue requirements for hearing and/or commence settlement judge procedures, it commits that it will make refunds with interest of any revenues it collects for reactive power from the Cooper-Spurlock Units in excess of the revenue requirements that the Commission approves following the completion of any such hearing and/or settlement judge procedures. EKPC's filing was protested by Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU) (collectively, LG&E/KU). For the reasons discussed

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<sup>1</sup> On June 26, 2013, EKPC amended its reactive power filing by providing supplemental direct testimony of its witness.

<sup>2</sup> Schedule 2 of the PJM Tariff, Reactive Supply and Voltage Control from Generation Sources Service, compensates owners of generation for making available to PJM their reactive power production capability.

below, the Commission accepts EKPC's reactive power revenue requirements to be effective July 1, 2013, and sets the matter for hearing and settlement judge procedures.

## **I. Background**

2. EKPC, a non-jurisdictional generation and transmission cooperative 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, PJM and EKPC submitted a joint filing in Docket Nos. ER13-1177-000, ER13-1178-000, and ER13-1179-000 in connection with EKPC's June 1, 2013 integration into PJM. In conjunction with EKPC's integration into PJM and with that filing, EKPC submitted support for modifications to the PJM OATT related to the establishment and recovery of EKPC's revenue requirements, rate design and provisions of the PJM OATT governing the recovery of transmission-related costs incurred by EKPC.

3. While EKPC states its rates are not Federal Power Act (FPA)<sup>3</sup> jurisdictional rates, EKPC requests that the Commission accept EKPC's proposed reactive power revenue requirements with an effective date of June 1, 2013 in order to enable PJM to compensate EKPC for the reactive power service.

## **II. Details of the Filing**

4. EKPC's proposed reactive power revenue requirements in this filing concern reactive supply and voltage control services from the Cooper-Spurlock Units. EKPC explains in its filing that it is not at this time seeking compensation for the reactive power service supplied from the Dale Generating Station or other generating units owned by EKPC or in which EKPC has a capacity entitlement, but reserves its rights to do so in the future.

5. EKPC explains that its proposed reactive power revenue requirements are cost-based values calculated in accordance with the methodology approved by the Commission in Opinion No. 440.<sup>4</sup> EKPC notes that it applied an allocation factor based on the capability of the Cooper-Spurlock Units to produce reactive power, as measured at the generator terminals, to allocate expenses to reactive power production. Further,

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<sup>3</sup> See 16 U.S.C. § 824(f) (2006).

<sup>4</sup> See *American Electric Power Service Corp.*, Opinion No. 440, 88 FERC ¶ 61,141 (1999), *withdrawal of reh'g granted*, 92 FERC ¶ 61,001 (2000) (Opinion No. 440).

EKPC explains that it based the reactive power revenue requirements for the Cooper-Spurlock Units on the levelized gross plant methodology.<sup>5</sup>

6. EKPC states that in order to determine its reactive supply and voltage control services' costs for the Cooper-Spurlock Units, it relied on EKPC's audited accounting data for calendar year 2012 to calculate the fixed plant costs associated with the Cooper-Spurlock Units' reactive power production capability. This data, as EKPC presents it, is identified in EKPC's Form FF1.<sup>6</sup> EKPC states that the first step in this process was to isolate the four components of EKPC's investments in the Cooper-Spurlock Units that provide the reactive supply and voltage control service capability from these units. EKPC states that the four cost components used are: (i) the plant in-service value (split between the turbine portion and the amount allocable to the generator and the exciter); (ii) the accessory electrical equipment; (iii) the reactive allocator (to distribute generator-exciter investment to the reactive supply function); and (iv) balance of production plant (excluding those portions attributed directly to the preceding generator-exciter investments).<sup>7</sup>

7. EKPC states that a fixed charge rate is applied to these costs to calculate the return on investment to which EKPC is entitled. EKPC asserts that the purpose of the fixed charge calculation is to put the test year costs allocated to the reactive supply function on the basis of dollars of expense per dollars of investment for each resource. EKPC states that the components of the fixed charge calculation are: (i) the fixed cost component for operating and maintenance fixed production expenses; (ii) the fixed cost component for administrative and general expenses; (iii) the depreciation expense factor; (iv) an overall rate of return factor; (v) the total fixed charge rate. EKPC explains that the rate of return

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<sup>5</sup> EKPC Filing at 4. See Exhibit EKP-1 at 4, Daniel E. Cooper explains in his testimony that EKPC's methodology is consistent with the methodology accepted by the Commission in *American Electric Power Service Corp.* 88 FERC ¶ 61,141 (1999) (AEP Methodology).

<sup>6</sup> EKPC Filing at 4. See Exhibit EKP-2 at 2-3. R. Charlene Creager explains in her testimony that although FERC does not require EKPC to submit a FERC Form 1, EKPC does prepare a Form FF1 annually for submission to the Kentucky Public Service Commission (Kentucky Commission). Creager explains that while the Form FF1 is not submitted to the Commission, EKPC believes it meets the same requirements that apply to a Commission-jurisdictional entity's preparation of a FERC Form No. 1.

<sup>7</sup> EKPC Filing at 4.

is based on the Times Interest Earned Ratio (TIER) benchmark instead of a return on equity.<sup>8</sup>

8. EKPC states that its annual revenue requirement for the reactive power service from the Cooper Generating Plant (units 1 and 2) is \$341,964. EKPC states that the proposed revenue requirement for the reactive power service from the Spurlock Generating Plant (units 1 through 4) is \$1,956,167. Further, EKPC states that together, the total annual cost-based revenue requirements proposed in its filing are \$2,298,131 (\$191,510.90 per month).<sup>9</sup>

9. EKPC requests that the Commission approve or accept for filing the proposed EKPC revenue requirements for reactive supply and voltage control services from the Cooper-Spurlock Units. EKPC also asks that the revenue requirements be made effective on June 1, 2013, consistent with the date for EKPC's integration into PJM approved in the May 2013 Letter Order. EKPC requests the June 1, 2013 effective date so that it can begin receiving compensation and recovering its costs of providing reactive power service from the Cooper-Spurlock Units upon its integration into PJM. Finally, EKPC states that it commits that it will make refunds with interest of any revenues it collects for reactive power from the Cooper-Spurlock Units in excess of the revenue requirements that the Commission approves following the completion of any such hearing and/or settlement judge procedures.

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

10. Notice of EKPC's filing was published in the *Federal Register*, 78 Fed. Reg. 34,370 (2013), with interventions and protests due on or before June 20, 2013. LG&E/KU filed a timely motion to intervene and protest on June 20, 2013. On July 5, 2013, EKPC filed a motion to answer and an answer to LG&E/KU's protest. On July 15, 2013, LG&E/KU filed a motion to respond and a response to EKPC's answer.

#### **A. LG&E/KU Protest**

11. With regard to the issues relating to EKPC's reactive power revenue requirements filing, LG&E/KU argue that EKPC's filing should be rejected outright or, at a minimum,

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<sup>8</sup> EKPC Filing at 5. *See* Exhibit EKP-2 at 4. EKPC states that R. Charlene's Creager discusses in her testimony that the return is based on the TIER value most recently approved by the Kentucky Commission for EKPC to use in setting rates for EKPC's member cooperatives.

<sup>9</sup> EKPC Filing at 1. *See* Exhibit Nos. EKP-1 and EKP-1A.

set for evidentiary hearing and suspended for the maximum extent possible, because there is not enough information for a determination on the justness and reasonableness of EKPC's proposed rates. LG&E/KU argue that EKPC has not provided enough information and that what has been provided suggests the rate is unjust and unreasonable.<sup>10</sup>

12. LG&E/KU argue that reactive power rates are, by their nature, data intensive and require a significant factual record. LG&E/KU argue that support for many of the key inputs to EKPC's reactive rate are absent from EKPC's filing. As a preliminary matter, LG&E/KU note that EKPC states that the factual basis for many inputs to the rate is EKPC's 2012 "Form FF1." LG&E/KU argue that, because EKPC does not file its Form FF1 at the Commission and the Form FF1 was not included in EKPC's filing (and only references an internet link to the Form FF1), the factual support upon which EKPC relies on cannot be found in this record. LG&E/KU argue that whichever Form FF1 EKPC used to develop this rate should have been filed as an exhibit so that this record contains some factual support for the rate.<sup>11</sup>

13. LG&E/KU provide several examples of inputs that they argue are either unsupported, contradicted by other publicly available information, or are otherwise indicative that the proposed reactive power rate is unjust and unreasonable. Some of these examples are: (i) EKPC's proposal for a reactive power rate with a 22 percent return on equity (ROE) cannot be deemed to be just and reasonable; (ii) EKPC does not support its capital structure; (iii) EKPC has not supported using fleet depreciation values for the Cooper-Spurlock Units; (iv) EKPC has not supported its generator/exciter allocation and other key account balances; and (v) EKPC's TIER value does not represent the cost of capital.<sup>12</sup>

#### **B. EKPC Answer**

14. In its answer, EKPC states that LG&E/KU erroneously claim that EKPC is seeking to apply a 22 percent ROE to its reactive power revenue requirements and that EKPC's TIER value is not adequately explained. EKPC argues that it does not seek to recover any ROE to its revenue requirements, much less a 22 percent one. EKPC argues that it is a not-for-profit cooperative whose member-owners are also its customers. EKPC avers that its financing and motivations are fundamentally different from those of

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<sup>10</sup> LG&E/KU Protest at 9.

<sup>11</sup> LG&E/KU Protest at 10.

<sup>12</sup> LG&E/KU Protest at 10-16.

public utilities subject to Commission jurisdiction. EKPC contends that it incurs debt costs and must set its rates to maintain coverage that meets its TIER requirement, but it does not have an equity component on which it seeks to earn an ROE as do for-profit, investor-owned utilities.<sup>13</sup> EKPC explains that a 22 percent figure shown in the supporting workpapers for the reactive revenue requirements is for proprietary capital and is used by EKPC to meet the TIER benchmark approved by the Kentucky Commission.<sup>14</sup> EKPC states that it must comply with any applicable borrowing regulations promulgated by the Rural Utilities Service and any minimum debt coverage ratio as approved by the Kentucky Commission. EKPC also asserts that it derived the annual reactive revenue requirement using the information contained in its annual EKPC Form FF1. EKPC states that, after the development of the EKPC reactive power revenue requirements, it filed an amended Form FF1 with the Kentucky Commission. EKPC asserts that it describes the adjustments that it made in the amended Form FF1 in the attached supplemental testimony, as well as the effect the adjustments would have on the proposed rate, were EKPC to seek to modify its filing.<sup>15</sup>

15. EKPC contends that it has provided support for its depreciation expense. EKPC states that it developed its revenue requirements using a levelized fixed charged to account for depreciation. EKPC asserts that the recovery of depreciation is included through the Depreciation Expense Factor. EKPC states that, contrary to LG&E/KU's allegations, the EKPC Cooper and Spurlock units are not fully depreciated and the depreciation values are justified.<sup>16</sup> EKPC argues that it has supported its generator/exciter costs using a Commission-accepted method for the purpose of determining an appropriate cost split.<sup>17</sup>

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<sup>13</sup> EKPC Answer at 9.

<sup>14</sup> EKPC Answer at 10. *See* Exhibit EKP-1A, Workpaper Exhibit 3 Line 4 for each of the Cooper Generating Station and the Spurlock generation units.

<sup>15</sup> EKPC Answer at 9 (citing Exhibit EKP-4, Second Supplemental Direct Testimony of Daniel E. Cooper).

<sup>16</sup> EKPC Answer at 13-14.

<sup>17</sup> EKPC Answer at 14 (citing *Dynegy Midwest Generation, Inc.*, Opinion No. 498, 121 FERC ¶ 61,025 (2007)).

16. Finally, EKPC asserts, contrary to LG&E/KU's request, its revenue requirement is not subject to Commission suspension authority because it is not a public utility under the FPA. However, EKPC states that it voluntarily commits to refund with interest any revenues it collects for reactive power service from the Cooper-Spurlock Units in excess of the revenue requirements that the Commission approves.

**C. LG&E/KU Response**

17. In their response, LG&E/KU reassert their claims that EKPC's proposed revenue requirements for the provision of reactive power under Schedule 2 of the PJM OATT is not just and reasonable. LG&E/KU argue again that EKPC has a 22 percent ROE and that it is unjust and unreasonable. LG&E/KU also argue that EKPC acknowledges that its revenue requirements is derived from an erroneous FF1.

18. In response to EKPC's assertion that its revenue requirements is not subject to suspension authority, LG&E/KU argue that EKPC fails to acknowledge that its revenue requirements will be included in PJM's Schedule 2 rate, and that PJM is a Commission-jurisdictional entity and its rates are subject to review under FPA section 205.<sup>18</sup>

**IV. Discussion**

**A. Procedural Matters**

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), LG&E/KU's unopposed motion to intervene serves to make them a party to this proceeding.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits answers to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers that EKPC and LG&E/KU filed in this proceeding because the answers have provided information that assisted us in our decision-making process.

**B. Standard of Review**

21. The Commission has addressed the standard of review to be applied to petitions involving revenue requirements filed by non-jurisdictional entities in the California Independent System Operator Corporation (CAISO) in an opinion reviewing the revenue

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<sup>18</sup> 16 U.S.C. § 824(d).

requirements filed by the City of Vernon, California (Vernon).<sup>19</sup> In Opinion No. 479, the Commission recognized that, as a municipally-owned utility, Vernon was not subject to its section 205 jurisdiction. However, the Commission noted that because Vernon voluntarily submitted its revenue requirement as a component of 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>20</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>21</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>22</sup>

22. Therefore, we find that, based on the court's rulings it is appropriate to apply the just and reasonable standard of FPA section 205 in reviewing EKPC's reactive power revenue requirements. To determine the justness and reasonableness of the rates in EKPC's filing, we find that hearing and settlement judge procedures are appropriate as discussed below.

23. Furthermore, EKPC is not subject to Commission-imposed rate suspension and refund obligations under section 205 of the FPA. However, we note that EKPC has agreed to refund with interest any revenues it collects for reactive power service from the Cooper-Spurlock Units in excess of the revenue requirements that the Commission approves.

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<sup>19</sup> See *City of Vernon, California and California Independent Sys. Operator, Inc.*, 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>20</sup> *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092 at P 44.

<sup>21</sup> *Id.* P 43 (quoting *Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1117 (D.C. Cir. 2002)).

<sup>22</sup> *Transmission Agency of Northern California v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007).

### C. Hearing and Settlement Judge Procedures

24. Based on a review of this filing, and LG&E/KU's protest,<sup>23</sup> we find that the filing raises issues of fact that we cannot resolve based on this record. Our preliminary analysis indicates that EKPC's proposed reactive power revenue requirements has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept EKPC's proposed revenue requirements for filing, to be effective as of July 1, 2013, and set all issues for hearing and settlement judge procedures. Instead of the June 1, 2013 effective date originally requested by EKPC, July 1, 2013 will be the applicable effective date because that is the first day of the month in which the rate schedule is accepted.<sup>24</sup> We add that, in accordance with a stipulation entered into among PJM, the Office of the Attorney General of the Commonwealth of Kentucky, EKPC, and LG&E/KU, and accepted by the Kentucky Commission, LG&E/KU will not receive schedule 2 reactive power service from PJM but instead will receive that service pursuant to a separate bilateral agreement with EKPC. Accordingly, the hearing and settlement judge procedures should account for the impact of this arrangement on EKPC's proposed revenue requirement.

25. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before the hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>25</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding,

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<sup>23</sup> LG&E/KU also raise issues relating to Schedule 1 and Schedule 2 of EKPC's prior reciprocity OATT. Those issues are addressed in orders concurrently issued in Docket Nos. ER13-1570-000 and ER13-1177-001, *et al.*

<sup>24</sup> PJM explains in its June 10, 2013 motion to intervene that it is imperative that the Commission allow an effective date of the first day of the month in which the rate schedule is accepted, because PJM's retroactive billing adjustments would otherwise adversely impact all network customers in the affected zone, as well as all PJM point-to-point customers, by requiring them to review their accounting records for past months. Schedule 2 of the PJM Tariff provides that, for each month of Reactive Supply Service provided by generators in the PJM region, PJM shall pay each generation owner an amount equal to the generation owner's monthly revenue requirement as accepted or approved by the Commission.

<sup>25</sup> 18 C.F.R. § 385.603 (2012).

otherwise the Chief Judge will select a judge for this purpose.<sup>26</sup> The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) EKPC's revenue requirements for the reactive power production capability from the Cooper-Spurlock Units to provide reactive supply and voltage control services pursuant to Schedule 2 of the PJM OATT are hereby accepted to become effective July 1, 2013, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of EKPC's proposed tariff sheets, as discussed in the body of this order. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

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<sup>26</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.