

152 FERC ¶ 61,078
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
and Tony Clark.

Duke Energy Carolinas, LLC and Duke Energy Progress, Inc.	Docket Nos. ER13-83-008
Louisville Gas and Electric Company and Kentucky Utilities Company	ER13-897-005
Alabama Power Company	ER13-908-005
Ohio Valley Electric Corporation	ER13-913-005

ORDER ON COMPLIANCE

(Issued July 28, 2015)

1. On April 13, 2015, the Commission issued an order¹ accepting, subject to additional compliance filings, the filings made by Duke Energy Carolinas, LLC and Duke Energy Progress, Inc. (Duke-Progress); Louisville Gas and Electric Company and Kentucky Utilities Company (LG&E/KU); Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company (collectively, Southern Companies); and Ohio Valley Electric Corporation (OVEC)² to comply with

¹ *Duke Energy Carolinas, LLC*, 151 FERC ¶ 61,021 (2015) (Third Compliance Order).

² For purposes of this order, we refer to the public utility transmission providers in the Southeastern Regional Transmission Planning (SERTP) region (Duke-Progress, LG&E/KU, Southern Companies, and OVEC) as Filing Parties. The non-public utility transmission providers that have enrolled in the SERTP region are: (Associated Electric Cooperative Inc., Dalton Utilities, the Municipal Electric Authority of Georgia, PowerSouth Energy Cooperative, and the Tennessee Valley Authority (TVA)).

the local and regional transmission planning and cost allocation requirements of Order No. 1000³ and the Commission's Second Compliance Order.⁴ The Commission also denied the requests for rehearing of the Second Compliance Order and granted in part and denied in part the requests for clarification.

2. On May 12 and 13, 2015, Filing Parties separately submitted, pursuant to section 206 of the Federal Power Act (FPA),⁵ revisions to the local and regional transmission planning and cost allocation requirements of their respective Open Access Transmission Tariffs (OATTs)⁶ to comply with the Third Compliance Order (Fourth Compliance Filings).⁷

³ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁴ *Duke Energy Carolinas, LLC*, 147 FERC ¶ 61,241 (2014) (Second Compliance Order).

⁵ 16 U.S.C. § 824e (2012).

⁶ Southern Companies, Open Access Transmission Tariff, Attachment K (The Southeastern Regional Transmission Planning Process) (5.0.0) (Southern Companies OATT, Attachment K); OVEC, Open Access Transmission Tariff, Attachment M (The Southeastern Regional Transmission Planning Process) (6.0.0) (OVEC OATT, Attachment M); LG&E/KU, Joint Pro Forma Open Access Transmission Tariff, Attachment K (Transmission Planning Process) (11.0.0) (LG&E/KU OATT, Attachment K); Duke Energy Carolinas, LLC Tariff Volume No. 4, Open Access Transmission Tariff, Attachment N-1, Transmission Planning Process (DEP Zone and DEC Zone) (9.0.0) (Duke-Progress OATT, Attachment N-1). Unless otherwise noted, citations to a Filing Party's proposed OATT revisions are from the versions of the OATTs listed here.

⁷ OVEC inadvertently made its filing on May 12, 2015 in Docket No. ER15-1697-000. On May 13, 2015, OVEC withdrew this filing and resubmitted the filing in Docket No. ER13-913-005.

3. For the reasons discussed below, we accept the compliance filings of Duke-Progress, LG&E/KU, and Southern Companies. We also accept the compliance filing of OVEC and require OVEC to submit an additional compliance filing within 30 days of the date of issuance of this order.

I. Compliance Filings

4. In response to the Third Compliance Order, Filing Parties submitted further revisions to their local and regional transmission planning and cost allocation requirements to comply with the Commission's compliance directives.

5. Notice of Duke-Progress's, LG&E/KU's, and Southern Companies' May 12, 2015 compliance filings was published in the *Federal Register*, 80 Fed. Reg. 28,262 (2015), with interventions and protests due on or before June 2, 2015. Notice of OVEC's May 13, 2015 filing in Docket No. ER13-913-005 was published in the *Federal Register*, 80 Fed. Reg. 28,995 (2015), with interventions and protests due on or before June 3, 2015. None was filed.

II. Discussion

6. We find that the compliance filings made by Duke-Progress, LG&E/KU, and Southern Companies comply with the directives in the Third Compliance Order. We find that OVEC's compliance filing partially complies with the directives in the Third Compliance Order and thus we require OVEC to make an additional compliance filing within 30 days of the date of issuance of this order.

A. Language Relating to Rights-of-Way

7. In the Third Compliance Order, the Commission found that Filing Parties' specific provision providing that "the proposed transmission project cannot be located on the property and/or right-of-way belonging to anyone other than the transmission developer absent the consent of the owner of the property and/or right-of-way, as the case may be," is not consistent with Order No. 1000. As a result, the Commission directed Filing Parties to remove the entire provision from their OATTs.⁸ While requiring the removal of the above language, the Commission also found that:

Filing Parties have proposed new language that is consistent with Order No. 1000 and that can be modified to include references to rights-of-way.

⁸ Third Compliance Order, 151 FERC ¶ 61,021 at P 78.

Specifically, Filing Parties propose new language stating that, “[t]he proposed regional transmission project must not contravene state or local laws with regard to construction of transmission facilities.”... This language can also be expanded as follows to capture the references to rights-of-way that Filing Parties included in the provision we are directing them to delete: “The proposed regional transmission project must not contravene state or local laws with regard to rights-of-way or construction of transmission facilities.”⁹

8. The Commission directed Filing Parties to revise their OATTs to move the language in the proposed new footnote into the body of their OATTs and to modify the provision to add the phrase “rights-of-way or.” With the exception of OVEC’s proposed OATT language, Filing Parties have deleted the language as directed, have moved the language from the proposed footnote to the body of the text and incorporated the phrase “rights-of-way or” into their respective OATTs.¹⁰ In contrast, OVEC incorporates the phrase “rights-of-way of,” which is inconsistent with Commission’s finding in the Third Compliance Order.¹¹ Therefore, we direct OVEC to submit, within 30 days of the date of issuance of this order, a further compliance filing to modify section 15.2 of its OATT (Attachment M) to delete the phrase “rights-of-way of” and add the phrase “rights-of-way or” as discussed above.

B. Additional Compliance Requirements

9. In the Third Compliance Order, the Commission directed Filing Parties to remove from their OATTs the requirement that a public or non-public utility transmission owner or transmission service provider that wishes to enroll in the SERTP region own or provide transmission service over transmission facilities within the SERTP region. The Commission also directed Filing Parties to delete a footnote that they had added, which stated:

‘[S]hould a NERC-registered transmission owner or transmission service provider that owns or provides transmission service over facilities located adjacent to, and interconnected with, transmission facilities within the SERTP region provide an application to enroll in the SERTP region, such a request to expand the SERTP

⁹ *Id.* P 79.

¹⁰ *See, e.g.*, Southern Companies, OATT, Attachment K, § 15.2.

¹¹ Third Compliance Order, 151 FERC ¶ 61,021 at P 79.

region will be considered by the transmission provider, giving consideration to the integrated nature of the SERTP region.’¹²

10. In the Fourth Compliance Filings, Filing Parties have removed the proposed footnote and the language that included the requirement that a public or non-public utility transmission owner or transmission service provider that wishes to enroll in the SERTP region own or provide transmission service over transmission facilities within the SERTP region.¹³

11. In the Third Compliance Order, the Commission directed Filing Parties to delete from the Preamble of Attachment K the language providing that transmission needs “typically arise from long-term (i.e., one year or more) firm transmission commitment(s) whether driven in whole or in part by public policy requirements or economic or reliability considerations.”¹⁴ In the Fourth Compliance Filings, Filing Parties have removed this language from the Preamble to Attachment K.¹⁵

12. Similarly, in the Third Compliance Order, the Commission directed Filing Parties to remove the following language from their OATTs concerning transmission needs driven by public policy requirements. “This includes the planning for and expansion of physical transmission system delivery capacity to provide long-term firm transmission services to meet i) native load obligations and ii) wholesale Transmission Obligations under the Tariff.”¹⁶ In their Fourth Compliance Filings, Filing Parties have revised their OATTs to remove the language identified above as directed in the Third Compliance Order.¹⁷

13. In the Third Compliance Order, the Commission required Duke-Progress to remove language from its OATT that stated “the criteria for determining if public policy drives a local transmission need include the existence of facts showing that the identified

¹² *Id.* P 20.

¹³ *E.g.*, Southern Companies Transmittal Letter at 3-4.

¹⁴ Third Compliance Order, 151 FERC ¶ 61,021 at P 34.

¹⁵ *E.g.*, Southern Companies Transmittal Letter at 5-6.

¹⁶ Third Compliance Order, 151 FERC ¶ 61,021 at P 35.

¹⁷ *E.g.*, Southern Companies Transmittal Letter at 5-6.

need cannot be met absent the construction of additional transmission facilities.”¹⁸ In its compliance filing, Duke-Progress has removed this language from its OATT.¹⁹

14. In the Third Compliance Order, the Commission directed Filing Parties to remove from their OATTs the requirement that to be eligible for selection in the regional transmission plan for purposes of cost allocation, a transmission project must have two or more Beneficiaries.²⁰ In the Fourth Compliance Filings, Filing Parties have removed this provision from their OATTs.²¹

15. In the Third Compliance Order, the Commission accepted Filing Parties’ proposal to allocate prudently-incurred costs for cost allocation determinations that change after a project is originally accepted. However, the Commission required Filing Parties to remove the following words in italics as beyond the scope of the Commission’s directive to revise their OATTs to state that all prudently-incurred costs will be fully allocated in subsequent planning cycles: “All prudently incurred costs of the regional transmission project will be allocated if the project remains selected in the regional plan for [cost allocation] *and is constructed and placed into service.*”²² In the Fourth Compliance Filings, Filing Parties have removed this language from their OATTs.²³

16. We find that Filing Parties’ proposals, described above, comply with the directives of the Third Compliance Order.

The Commission orders:

(A) The compliance filings of Duke-Progress, LG&E/KU, Southern Companies are hereby accepted, effective June 1, 2014.²⁴

¹⁸ Third Compliance Order, 151 FERC ¶ 61,021 at P 37.

¹⁹ *E.g.*, Duke-Progress Transmittal Letter at 5-6.

²⁰ Third Compliance Order, 151 FERC ¶ 61,021 at P 57.

²¹ *E.g.*, Southern Companies Transmittal Letter at 6.

²² Third Compliance Order, 151 FERC ¶ 61,021 at P 122.

²³ *E.g.*, Southern Companies Transmittal Letter at 7-8.

²⁴ *See* Third Compliance Order, 151 FERC ¶ 61,021 at § (B).

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(B) The compliance filing of OVEC is accepted, subject to a further compliance filing, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

Document Content(s)

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