

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

East Kentucky Power Cooperative, Inc.

Docket Nos. TX05-1-000
TX05-1-001
TX05-1-002

PROPOSED ORDER DIRECTING INTERCONNECTION, ESTABLISHING
FURTHER PROCEDURES AND OFFERING SETTLEMENT JUDGE PROCEDURES

(Issued April 14, 2005)

1. On October 1, 2004, East Kentucky Power Cooperative, Inc. (EKPC) filed an application for a Commission order under sections 210 and 212 of the Federal Power Act (FPA)¹ requiring Tennessee Valley Authority (TVA) to interconnect its transmission system with EKPC's transmission system.² EKPC is seeking three new interconnections with TVA to allow it to provide full requirements service to Warren Rural Electric Cooperative Corporation (Warren) beginning April 1, 2008.

2. As discussed below, this proposed order directs TVA to interconnect its transmission system with EKPC, under section 210,³ and orders further procedures to establish the terms and conditions of the proposed interconnection. This order benefits

¹ 16 U.S.C. §§ 824i and 824k (2000).

² On February 7, 2005, EKPC and TVA both provided additional information regarding the application in response to a Commission order requesting additional data. *See* 110 FERC ¶ 61,008 (2005) (Commission Request for Information).

³ 16 U.S.C. § 824i (2000).

customers because it encourages a competitive marketplace and promotes the ability of customers to obtain lower cost power supplies.

I. Background

3. EKPC is an electric generation and transmission cooperative utility in Kentucky. It supplies electric power to its electric distribution cooperative members that serve retail electric customers in central and eastern Kentucky.⁴

4. TVA is a wholly-owned corporate agency and instrumentality of the United States government organized under the Tennessee Valley Authority Act of 1933.⁵ TVA produces and sells electric power in eight states⁶ at wholesale for resale to municipal and cooperative distributors and at retail to large industrial customers and to several government facilities. TVA owns and operates an extensive transmission system that is interconnected with the transmission systems of neighboring electric utilities, including EKPC's transmission system. EKPC is interconnected to TVA's transmission system at six locations.

5. Warren is a distribution cooperative serving approximately 54,000 customers in south central Kentucky.⁷ TVA provides Warren with the electric power Warren needs to serve its customers through five delivery points on TVA's transmission system that are designed so that power flows in one direction – from the TVA transmission system to the

⁴ As a cooperative with outstanding Rural Utilities Service Debt, EKPC is not a Commission-jurisdictional public utility, but it has a reciprocity Open Access Transmission Tariff on file with the Commission. *East Kentucky Power Cooperative, Inc.*, Docket No. NJ97-14-000, unpublished letter order dated December 17, 1997.

⁵ 16 U.S.C. §§ 831-831dd (2000).

⁶ Alabama, Georgia, Kentucky, Mississippi, North Carolina, Tennessee and Virginia.

⁷ Warren operates 5000 miles of 13 kV distribution facilities, 200 miles of 69 kV sub-transmission facilities and 37 substations, including 8 delivery point stations.

Warren distribution system.⁸ As provided in the Warren/TVA Power Contract covering provision of this service, Warren notified TVA that it would terminate the agreement on April 1, 2008. At that time, EKPC will begin supplying electric power to Warren under a 33-year full-requirements wholesale power contract.

II. Description of EKPC's Filing

6. EKPC states that, since its transmission system is not currently connected with Warren, they are planning new transmission arrangements before EKPC begins selling power to Warren on April 1, 2008. They propose to construct the following: (1) 90 miles of 161 kV transmission line, (2) three free flowing interconnection points between EKPC and TVA,⁹ (3) a 69 kV sub-transmission facility at the Franklin substation, and (4) additional sub-transmission facilities to loop the Memphis Junction substation with the General Motors and Aberdeen substations.¹⁰ EKPC explains that it will need three new interconnections with the TVA transmission system to provide reliability and voltage support for service to Warren, and an arrangement for backup service from TVA when there are system outages.¹¹ EKPC alleges that these new facilities, supported by the three new interconnections and backup service provided by TVA, will be capable of meeting all of Warren's load under normal operating conditions.

7. EKPC states that it and Warren initiated discussions with TVA regarding the proposed interconnections on March 4, 2004, but TVA informed EKPC that it would not

⁸ Aberdeen Gap, East Bowling Green, Bristow, Memphis Junction and Franklin.

⁹ The proposed free flowing interconnections between EKPC and TVA will be at three existing substations: East Bowling Green; Memphis Junction; and Franklin. EKPC explains that a free flowing interconnection is a connection between electric utilities that permits the transfer of electric power and energy in either direction.

¹⁰ EKPC states that these new transmission facilities are needed because of TVA's refusal to wheel power for EKPC to Warren over TVA's transmission system. According to EKPC, TVA claims it lacks the authority to provide wheeling service to or for EKPC.

¹¹ EKPC's application, p. 9 and Paul C. Atchison's November 22, 2004 Affidavit, p. 2.

provide the requested interconnections. According to EKPC, TVA justified its decision based on the results of a System Impact Study that allegedly demonstrated that there were no “mutual benefits” to all the systems involved that compelled TVA to provide EKPC with the requested interconnections.

8. EKPC challenges TVA’s conclusion that no “mutual benefit” will result from the proposed interconnections. EKPC also challenges the methodology used in TVA’s System Impact Study; the base case did not include Warren load on the TVA transmission system or TVA’s interconnections with Warren. The “change case”¹² in TVA’s study then reintroduced the Warren load and the existing TVA interconnections with Warren in addition to the new EKPC transmission lines and interconnections with TVA. Based on this base case and change case scenario, TVA’s study concluded that available transfer capacity on its transmission system would be reduced.

9. EKPC submits that the proper base case for a System Impact Study should include TVA’s currently existing system configuration, including transmission service and interconnections with Warren, which should then be compared to a change case that includes the new transmission lines and three new free flowing interconnections proposed by EKPC and Warren. Using this methodology, a System Impact Study would show that EKPC’s proposed interconnections would actually relieve a number of constraints on the TVA system.¹³

10. EKPC asserts that TVA’s refusal to provide either wheeling services or the proposed interconnections prohibits Warren from exercising its rights to terminate its Power Contract with TVA and keeps Warren isolated from the rest of the transmission grid.¹⁴ EKPC asserts further that TVA’s refusal to interconnect with EKPC is contrary to the public interest.

¹² EKPC and TVA use the terms “change case” and “test case,” respectively, to refer to the system configuration studied to determine the effects when the system is modified from the “base case.”

¹³ *Id.*

¹⁴ EKPC’s Application, p. 12.

11. EKPC, therefore requests the Commission to issue a proposed order directing TVA to interconnect with EKPC, and affording the parties a period of time to negotiate an interconnection agreement and related coordination services.¹⁵ EKPC requests expedited consideration so that it can begin the activities needed for the transmission facilities to become operational when the Warren/TVA Power Contract expires and EKPC begins service to Warren, April 1, 2008. Finally, EKPC requests that we provide guidance regarding the appropriate base case/change case methodology to be used in a System Impact Study (i.e., whether the base case should be based on the present status quo (EKPC's position) or on the premise that Warren's load on the TVA transmission system and its interconnections do not exist (TVA's position)).

III. Notice of Filing and Responsive Pleadings

12. Notice of EKPC's application was published in the *Federal Register*, 69 Fed. Reg. 64,044 (2004), with interventions or protests due on or before November 1, 2004. The Knoxville Utilities Board and Memphis Light, Gas & Water Division (filing jointly) and Warren filed timely motions to intervene. The Tennessee Valley Public Power Association (TVPPA) filed an untimely motion to intervene on December 27, 2004, and the TVA Distribution Group filed an untimely motion to intervene on February 3, 2005. On January 5, 2005, EKPC filed an answer opposing TVPPA's untimely motion to intervene and requesting that the Commission reject TVPPA's motion.

13. On November 1, 2004, TVA filed a response to EKPC's application. On November 22, 2004, as supplemented on December 8, 2004, EKPC filed an answer in response to TVA's response. On December 7, 2004, TVA filed a request for EKPC to produce documents. On January 7, 2005, TVA filed an answer in response to EKPC's November 22, 2004 answer.

14. Notice of TVA's response to the Commission's January 6, 2005 order requesting additional information was published in the *Federal Register*, 70 Fed. Reg. 9,067 (2005) with interventions and protests due February 28, 2005. None was filed. Notices of

¹⁵ EKPC anticipates that, if the parties cannot resolve their differences, the Commission would resolve them in its final order directing interconnection.

EKPC's responses to the Commission's January 6, 2005 order were published in the *Federal Register*, 70 Fed. Reg. 9,067 (2005) and 70 Fed. Reg. 13,492 (2005), with interventions or protests due on or before February 28, 2005 and March 21, 2005, respectively. None was filed.

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that made them parties to this proceeding. We will grant TVPPA's and TVA Distribution Group's untimely motions to intervene given their interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept EKPC's November 22, 2004 answer and TVA's January 7, 2005 answer because they provided information that assisted us in our decision-making process.

B. Statutory Provisions

17. Section 210(a)(1)¹⁶ provides that upon application of an electric utility
[T]he Commission may issue an order requiring –

(A) the physical connection of. . .the transmission facilities of any electric utility, with the facilities of such applicant.

¹⁶ 16 U.S.C. § 824i (2000).

(B) such action as may be necessary to make effective any physical connection described in subparagraph (A), which physical connection is ineffective for any reason, such as inadequate size, poor maintenance, or physical unreliability.

18. Section 210(c), however, limits the Commission's ability to order interconnection:

No order may be issued by the Commission under subsection (a) unless the Commission determines that such order –

(1) is in the public interest,

(2) would –

(A) encourage overall conservation of energy or capital,

(B) optimize the efficiency of use of facilities and resources, or

(C) improve the reliability of any electric utility system or Federal power marketing agency to which the order applies, and

(3) meets the requirements of section 212.

19. Section 212(c)(1) provides that, before issuing a final order under section 210, the Commission shall issue a proposed order setting a reasonable time for the parties to agree to terms and conditions for carrying out the order, including the apportionment of and compensation for costs.

20. Section 212(f)(1) provides that, within 60 days following the issuance by the Commission of any order under section 210 or section 211 requiring the TVA to enter into any contract for the sale or delivery of power, the Commission may on its own motion or upon petition of any aggrieved person initiate an evidentiary hearing to determine whether or not the sale or delivery would result in violation of the third sentence of section 15d(a) of the Tennessee Valley Authority Act of 1933 (TVA Act)

(Inside the Fence Provision).¹⁷ The Inside the Fence provision prohibits TVA from making any contracts for the sale of delivery of power which would have the effect of making TVA or its distributors, directly or indirectly, a source of power supply outside the area for which TVA or its distributors were the primary source of power supply on July 1, 1957.¹⁸

V. Parties' Arguments

A. EKPC's Arguments

21. EKPC argues that its interconnection request meets the requirements of section 210.¹⁹ It argues that its proposed interconnections serve the public interest and will optimize the efficient use of facilities and resources. It points out that the requested arrangements will allow EKPC to enlarge its membership and the geographic scope of its transmission system. This expansion will optimize the efficient use of resources and encourage the conservation of energy and capital by providing Warren with access to economic sources of power, which will result in lower costs to Warren's customers. EKPC also says that the proposed facilities would optimize efficient use of resources and conserve capital by building only what is needed to serve Warren's load, and not building the facilities TVA wants EKPC to construct.

¹⁷ Section 212(j), on the other hand, provides that with respect to an electric utility which is prohibited by federal law from being a source of power supply, either directly or through a distributor of its electric energy, outside an area set forth in such law, *no order issued under section 211* may require such electric utility (or a distributor of such electric utility) to provide transmission services to another entity if the electric energy to be transmitted will be consumed within the area set forth in such federal law, unless the order is in furtherance of a sale of electric energy to that electric utility. The Commission notes that section 212(j) applies only to transmission requests, not to interconnection requests.

¹⁸ 16 U.S.C. 831n-4 (2000).

¹⁹ 16 U.S.C. § 824i(a)(1) (2000).

22. EKPC argues that its proposed interconnections also would provide added reliability. Its studies indicate that its proposed interconnections would reduce power flows on TVA facilities so that equipment capacities would not be exceeded.

23. EKPC argues that TVA is acting contrary to the public interest by its refusal to interconnect with EKPC and its frustration of Warren's right to terminate the Warren/TVA Power Contract. According to EKPC, TVA's refusal to provide wheeling services forces Warren to make other transmission arrangements, which it did with its service agreement with EKPC. TVA's subsequent refusal to interconnect EKPC's facilities with TVA's transmission system, in essence, prohibits Warren from exercising its rights to terminate the Warren/TVA Power Contract and keeps Warren isolated from the rest of the transmission grid. EKPC asks the following rhetorical question: if TVA will not provide wheeling service to Warren and refuses to allow the necessary interconnections to allow another supplier to serve Warren, how else can Warren obtain a power supply other than to continue to buy from TVA?

24. EKPC argues that its interconnection request also meets the requirements of section 212. Section 212(f) contains requirements specific to interconnection orders involving TVA; it provides that the Commission may hold an evidentiary hearing to determine whether or not such sale or delivery would result in violation of the Inside the Fence Provision. EKPC notes that section 15d(a) of the TVA Act provides that TVA shall not make any contracts for the sale or delivery of power that would have the effect of making TVA, directly or indirectly, a source of power supply outside the area for which TVA was the primary source of power supply on July 7, 1957.²⁰ According to EKPC, it, not TVA, will supply power to Warren under the Warren/EKPC Power Contract. Therefore, EKPC concludes that the requested interconnection will not cause TVA to be a source of power outside the protected area.

25. Finally, EKPC asserts that its interconnection request does not implicate sections 212(h) or 212(j). EKPC points out that it is requesting an interconnection order under section 210, not an order for transmission service under section 211. According to EKPC, the Commission has found that the prohibitions of section 212(h) do not apply to

²⁰ *Id.*

interconnection orders.²¹ EKPC asserts further that section 212(j) applies to wheeling orders under section 211, not to interconnection orders under section 210.

B. TVA's Arguments

26. In its November 1, 2004 response, TVA argues that EKPC's interconnection request does not meet the standard of section 210. According to TVA, the service that would result from EKPC's interconnection request is actually transmission service over TVA's transmission system, since most or in some cases all of the power will flow over TVA's system. TVA further claims that, under section 212(j), the Commission cannot order transmission service under section 211.

27. TVA argues further that EKPC's interconnection request and inadequate transmission planning are not in the public interest. If the Commission grants EKPC's interconnection request, EKPC will evade its transmission planning responsibilities to serve its internal load from its own resources without burdening neighboring systems.²² TVA says that, while it was Warren's supplier, it accepted this responsibility by continually monitoring Warren load and factoring it into investments in TVA's transmission system. Even where it was not cost-effective to supply portions of Warren's system from TVA's own transmission lines, TVA states that it arranged and paid for transmission over a neighboring system.

28. According to TVA, now that EKPC will be responsible for supplying Warren's needs in April 2008, its neighboring transmission systems, including TVA, are entitled to expect EKPC to act in a similar manner. TVA says that this can be done if EKPC expands its own transmission system or purchases transmission service from another

²¹ *Citing Laguna Irrigation District*, 88 FERC ¶ 61,164 (1999), *reh'g denied*, 95 FERC ¶ 61,305 (2001), *aff'd sub nom. Pacific Gas & Electric Co.*, 44 Fed. Appx. 170 (9th Cir. 2002).

²² TVA points out that the planning standards and principles of North American Electric Reliability Council (NERC), Southeastern Electric Reliability Council (SERC) and the East Central Area Reliability Council all recognize that each system is responsible for designing its own transmission system to meet the needs of its service area.

system. EKPC chooses to do neither; rather, EKPC is under-designing its transmission facilities so that it can obtain what amounts to free transmission service over neighboring transmission systems.

29. TVA argues that if interconnected adjoining systems do not address the power supply needs of their own control areas, reliability of the integrated grids suffers. If a system has sufficient generation to meet the load in its area, but refuses to build or acquire the transmission for that generation to be delivered to the load, burdens are placed on neighboring systems and the security of the integrated grid deteriorates.

30. According to TVA, therefore, EKPC's proposal is not in the public interest because it (1) discourages investment in new transmission infrastructure, (2) threatens the continued development of a reliable integrated grid, and (3) hinders the development of wholesale markets.

31. TVA argues further that EKPC's interconnection request does not encourage overall conservation of energy or capital. While EKPC's proposal would reduce EKPC's capital investment, it would come at the cost of allowing EKPC free access to the transmission facilities of its neighbors, chiefly TVA, which would be forced to invest capital to protect the security of the integrated grid.

32. TVA asserts that EKPC's interconnection request also does not optimize the efficient use of facilities and resources. First, under FPA section 212(j), EKPC is not permitted to use the TVA transmission system and therefore, this section 210 criterion does not apply in this case. Even if section 212(j) does not forbid the service, a transmission strategy that imposes burdens on neighboring systems by transferring responsibility to serve load onto others is not the type of optimization of efficient use of facilities and resources envisioned by section 210. According to TVA, loop flow impedes the operation of transmission systems, decreases transfer capability and reduces the amount of transmission service available to the wholesale market. TVA concludes, therefore, that EKPC cannot meet this criterion even if it applies.

33. TVA also argues that EKPC's interconnection request would result in decreased reliability. TVA contends that the loop flows created by EKPC's proposed interconnections would reduce TVA's overall transfer capacity by over 700 MW and states that the ability to transfer power is important for reliability in the region. While approval of EKPC's interconnection request might strengthen EKPC's ability to serve Warren, regional reliability would suffer.

34. TVA argues further that EKPC's proposed interconnections are not necessary for EKPC to serve Warren, challenging EKPC's statement that the only way it can serve the

load is through the proposed interconnections. TVA declares that, instead of planning to serve the Warren load from its own resources, EKPC's plan depends largely – and in some instances, exclusively – on TVA moving EKPC's power through the TVA transmission system and across the proposed interconnections to Warren delivery points. TVA notes that these alternatives may be more costly but would be more reliable.

35. Finally, TVA argues that it is not denying Warren any rights under the Warren/TVA Power Contract. TVA declares that it has done nothing to prevent EKPC, or any other transmission provider, from building adequate transmission facilities to serve the Warren load. Rather, TVA declines to interconnect EKPC in a manner that undermines the TVA transmission system and in a way that ignores the protections that FPA section 212(j) gives to TVA's ratepayers.

36. TVA concludes, therefore, that EKPC is seeking more than the law allows, and that the Commission must treat EKPC's "disguised" transmission request as such and reject EKPC's application. TVA argues further that, even if EKPC's application were proper under section 210, it fails to satisfy any of the section 210 criteria. In the alternative, TVA requests the Commission to set this proceeding for an evidentiary hearing.

VI. Commission Decision

A. Section 210 Determination

37. Section 210(c) requires the Commission to find that an interconnection order is in the public interest and that the proposed interconnection will meet at least one of the three specified criteria, i.e., it will encourage conservation of energy or capital, optimize efficiency of facilities and resources, or improve the reliability of any electric utility system to which the order applies.

38. We find that EKPC will meet the standards for a proposed order directing interconnection under section 210(c).²³ The requested interconnections would enable EKPC to enlarge its membership and to optimize the use of system resources. We also

²³ With respect to meeting the requirements of section 212, we order further procedures, as discussed below.

find that the requested interconnections would encourage the conservation of energy and capital by providing Warren with access to more economical sources of power. As a result of the interconnection, Warren and its customers would be able to purchase power at lower rates than they pay TVA. We also find that an order directing TVA to interconnect with EKPC would optimize the use of existing facilities by allowing increased competition.²⁴ Therefore, based on these preliminary findings, it is in the public interest to issue this proposed order directing interconnection. However, any agreement that may be reached with respect to interconnection must adequately maintain the reliability of the system.

B. Commission Guidance on the System Impact Study Base Case

39. EKPC requests the Commission to include in the proposed order guidance on the question of whether the base case for a System Impact Study should reflect the status quo (EKPC's position) or whether the base case should assume that Warren's load on the TVA system and its TVA interconnections or delivery points do not exist (TVA's position).²⁵ As an initial matter, the parties have discussed whether or not a "mutual benefits" standard applies to the interconnection request. TVA states that the applicable standard is that a single party can decline the interconnection if there would be any negative impacts on that party.²⁶ We disagree. As discussed above, we find that EKPC

²⁴ We have long held that the "benefit of a competitive market is that it enhances efficiency." See *Public Service Company of New Mexico*, Opinion No. 203, 25 FERC ¶ 61,469 at 62,038 (1983), *opinion and order denying reh'g*, Opinion No. 203-A, 27 FERC ¶ 61,154 (1984). See also *Public Service Company of Indiana*, 49 FERC ¶ 61,346 at 62,243 (1989) (enhancing efficiency, by competition, can help achieve the goal of ensuring the lowest cost energy to consumers in the long run, consistent with reliable service). See generally *NAACP v. FPC*, 520 F.2d 432, 441 (D.C. Cir. 1975), *aff'd*, 425 U.S. 662 (1976).

²⁵ EKPC's Application, p. 15. TVA's Response of November 1, 2004, pp. 9-10 and TVA's Response of January 7, 2005, pp. 2-8.

²⁶ TVA's Response of November 1, 2004, pp. 9-10.

has met the applicable standards under section 210 for an interconnection, which does not contain a mutual benefits standard.

40. In addition, EKPC states that the question of which base case to use in the System Impact Study is relevant to the question of which system upgrades are needed to accommodate EKPC's request.²⁷ In this regard, we agree with EKPC's position that the base case study should reflect the status quo, i.e., the existence of Warren's load on the TVA system as it exists today.

C. Further Procedures

41. Because our preliminary conclusion is that EKPC's request meets the requirements of section 210, this proposed order directs TVA to interconnect and encourages the parties to enter into negotiations toward an agreement for interconnection.

42. Section 212(c)(1) provides that before issuing a final order under section 210, the Commission shall issue a proposed order setting a reasonable time for the parties to agree to terms and conditions for carrying out the order, including the apportionment of and compensation for costs. If the parties to the proposed interconnection order are able to agree, the Commission will issue an order reflecting the agreed-upon terms and conditions, if the Commission approves of them. If the parties to the proposed interconnection order are unable to agree within the allotted time, the Commission will evaluate the positions of each party and prescribe the apportionment of costs, compensation, terms, and conditions of interconnection, if appropriate.

43. Accordingly, we will give EKPC and TVA 30 days from the date of issuance of this proposed order to negotiate the terms and conditions for the new interconnection ordered herein, consistent with section 212. We will also require EKPC and TVA to submit to the Commission, within 15 days after the expiration of the 30-day negotiation period, all terms and conditions on which they have mutually agreed, accompanied by

²⁷ EKPC's Answer of November 22, 2004, p. 7.

explanations. If there are matters still in dispute, the parties should file, on or before that date, briefs to support their final positions, accompanied by any necessary supporting data.²⁸

44. We encourage the parties to use this time to resolve their differences associated with interconnection arrangements to facilitate EKPC's service agreement with Warren. The Commission offers settlement judge procedures, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, in order to assist the parties in resolving this matter.²⁹ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding; otherwise the Chief Administrative Law Judge will select a judge for this purpose.³⁰

45. Pursuant to section 212(c)(1), this proposed order shall not be reviewable or enforceable in any court. In addition, we clarify that, consistent with Rule 713 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713 (2004), this is an interlocutory order not subject to requests for rehearing. The proper time for the parties to seek rehearing is after the Commission issues a final order under section 210.³¹

46. By not allowing rehearing of findings that are expressly preliminary, in an order that is only a proposed order, the Commission is exercising its discretion to develop

²⁸ Briefs may be filed by EKPC and TVA only. Other parties, to the extent that they may be aggrieved by our final order, may file their comments in petitions for rehearing of the final order issued under section 210. *See, e.g., Florida Municipal Power Agency v. Florida Power & Light Co.*, 65 FERC ¶ 61,372 at 63,012 (1993) (*FPMA v. FP&L*).

²⁹ 18 C.F.R. § 385.603 (2004).

³⁰ 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 days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience, available at <<http://www.ferc.gov/about/offices/oalj/oalj-dj.asp>>.

³¹ *See FPMA v. FP&L* at 63,013.

workable, efficient procedures for administering section 210 and 211. To entertain and respond to arguments regarding preliminary findings and a proposed order could result in a waste of resources for both the Commission and the parties, and could unnecessarily delay the interconnection. This is because the parties to the order might negotiate a mutually agreeable resolution – one which might differ from the proposed order – that could resolve many of the issues, or the Commission, based on arguments on brief of the parties with the most direct interest in this proceeding (here EKPC and TVA) might order different services or pricing in its final order. We note, moreover, that this procedure will not deprive parties of an opportunity to make their further views known (that is, their views in addition to those views they have already made known). Rather, it provides a more appropriate time for making those views known.

47. We decline TVA's request to establish an evidentiary hearing now. The Commission has made no determination yet whether such an evidentiary hearing will be needed; it is premature to do so. If EKPC and TVA cannot reach a mutual resolution within the 30-day negotiation period, and there are issues of material fact in dispute, they may make arguments for such an evidentiary hearing when they file their briefs to the Commission.

The Commission orders:

(A) TVA is hereby ordered to interconnect with EKPC pursuant to section 210, as discussed in the body of this order.

(B) TVA and EKPC are hereby directed to undertake procedures to implement Ordering Paragraph (A) above, as discussed in the body of this proposed order.

(C) At the parties' request, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge within 15 days of the date of this order. Such settlement judge shall have all the 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 5 days of the date of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.