

127 FERC ¶ 61,280
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

East Kentucky Power Cooperative, Inc.

Docket No. NJ08-4-001

ORDER CONDITIONALLY GRANTING PETITION FOR DECLARATORY ORDER

(Issued June 18, 2009)

1. On January 15, 2009, East Kentucky Power Cooperative, Inc. (East Kentucky) submitted revisions to the Attachment M Transmission Planning Process (Attachment M) to its reciprocity Open Access Transmission Tariff (Tariff or reciprocity Tariff), in response to the Commission's October 17 Order.¹ The October 17 Order conditionally granted East Kentucky's request for its Tariff to continue to be an acceptable reciprocity tariff under the requirements of Order No. 890.²

2. In this order, we will conditionally grant East Kentucky's petition for declaratory order based on East Kentucky's revisions to its Attachment M as discussed further below.

I. Background

3. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (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

¹ *East Kentucky Power Coop., Inc.*, 125 FERC ¶ 61,077 (2008) (October 17 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).

activities, the Commission directed all transmission providers to develop transmission planning processes that satisfy nine principles (discussed below) and to clearly describe those processes in a new attachment to their OATTs.

4. The nine planning principles each transmission provider was directed by Order No. 890 to address in its Attachment K planning process are: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability;³ (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 a clear obligation to address each of these nine principles in its transmission planning process and 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,⁴ must be specific and clear to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.

5. In Order No. 888, the Commission established a safe harbor procedure for the filing of reciprocity tariffs by non-public utilities.⁵ Under this procedure, a non-public utility may voluntarily submit to the Commission a transmission tariff and petition for declaratory order requesting a finding that the tariff meets the Commission's

³ 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.

⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55.

⁵ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

comparability (non-discrimination) standards. If the Commission finds that the terms and conditions of such a tariff substantially conform to or are superior to those in the *pro forma* OATT, the Commission will deem it to be an acceptable reciprocity tariff and will require public utilities to provide open access transmission service upon request to that particular non-public utility.⁶ Order No. 890 requires that a non-public utility that already has a safe harbor OATT (as does East Kentucky) must amend its OATT so that its provisions substantially conform to or are superior to the new *pro forma* OATT in Order No. 890 if it wishes to continue to qualify for safe harbor treatment.⁷

6. East Kentucky is not a public utility within the Commission's jurisdiction under sections 205 and 206 of the Federal Power Act (FPA). After the issuance of Order No. 888, East Kentucky sought and obtained a determination by the Commission that it had an acceptable reciprocity tariff.⁸ East Kentucky revised its tariff in response to Order No. 890 and obtained a determination by the Commission that it continued to have an acceptable reciprocity tariff.⁹

7. On July 13, 2007, East Kentucky filed a petition for declaratory order requesting a finding that its updated Tariff, which included its Attachment M, constitutes an acceptable reciprocity tariff pursuant to the provisions of Order No. 890. In the October 17 Order, the Commission conditionally granted East Kentucky's petition for declaratory order, finding that with certain revisions East Kentucky would satisfy the nine planning principles and other planning requirements of Order No. 890.

II. East Kentucky's Reciprocity Tariff Filing

8. On January 15, 2009, in Docket No. NJ08-4-001, East Kentucky filed proposed revisions to Attachment M of its reciprocity Tariff as discussed in the Commission's October 17 Order. With these revisions, East Kentucky requests that the Commission

⁶ In Order No. 888-A, the Commission clarified that, under the reciprocity condition, a non-public utility must also comply with the Open Access Same-Time Information System (OASIS) standards of conduct requirements or obtain waiver of them. *See* Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,286.

⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 191.

⁸ *See East Kentucky Power Coop. Inc.*, Docket No. NJ97-14-000 (Dec. 18, 1997) (Commission Letter Order).

⁹ *East Kentucky Power Coop., Inc.*, 121 FERC ¶ 61,012 (2007).

find that its proposed Attachment M satisfies the applicable transmission planning principles of Order No. 890 and that its Tariff continues to be an acceptable reciprocity tariff.

III. Notice of Filing and Responsive Pleadings

9. Notice of East Kentucky's filing was published in the *Federal Register*, 74 Fed. Reg. 6027-28 (2009), with comments, protests, or motions to intervene due on or before February 5, 2009. None were filed.

IV. Discussion

10. We find that East Kentucky's revised Attachment M satisfies the concerns expressed by the Commission in the October 17 Order. Accordingly, we will grant East Kentucky's petition for declaratory order that its Tariff continues to be an acceptable reciprocity tariff under the requirements of Order No. 890. Although we are granting East Kentucky's petition for declaratory order, the Commission remains interested in the development of transmission planning processes and will continue to examine the adequacy of the processes accepted to date. We reiterate the encouragement made in prior orders for further refinements and improvements to the planning processes as transmission providers, their customers, and other stakeholders gain more experience through actual implementation of the processes. As part of the Commission's ongoing evaluation of the implementation of the planning processes, the Commission intends to convene regional technical conferences later this year to determine if further refinements to these processes are necessary. The focus of the 2009 regional technical conferences will be to determine the progress and benefits realized by each transmission provider's transmission planning process, obtain customer and other stakeholder input, and discuss any areas that may need improvement. The conferences will examine whether existing transmission planning processes adequately consider needs and solutions on a regional or interconnection-wide basis to ensure adequate and reliable supplies at just and reasonable rates. The Commission will also explore whether existing processes are sufficient to meet emerging challenges to the transmission system, such as the development of inter-regional transmission facilities, the integration of large amounts of location-constrained generation, and the interconnection of distributed energy resources.

A. Coordination

1. October 17 Order

11. In the October 17 Order, the Commission found that East Kentucky's proposed Attachment M partially satisfied the coordination principle stated in Order No. 890. It also stated that, if East Kentucky wishes to maintain its safe harbor status, East Kentucky must revise its Tariff to explain the process for stakeholders to participate in planning activities that are distinct from studies that are performed by the Central Public Power

(CPP) Participants¹⁰ and clarify how participation in the regional CPP stakeholder group would allow for participation in East Kentucky's planning activities beyond the specific studies performed by the CPP Participants.¹¹

2. East Kentucky Filing

12. East Kentucky states that it has provided a more detailed explanation in section II.1 of Attachment M distinguishing the East Kentucky planning process from the CPP Participants planning process and has outlined opportunities for stakeholder participation in both the East Kentucky and separate CPP Participants planning processes. Specifically, East Kentucky has revised section II.1 of Attachment M to provide that in addition to the coordination that occurs through the CPP Participants process, East Kentucky will coordinate with its stakeholders through an annual planning meeting open to all East Kentucky stakeholders. East Kentucky has also revised Attachment M to provide that stakeholders are encouraged to participate throughout the planning cycle by reviewing all information (data, transmission expansion plans, updates) and providing input on a continual basis. Forms of stakeholder involvement that are encouraged include: participation in East Kentucky's planning meetings; submittal of data; review of study models, processes, expansion plans, and study reports; and providing ideas, options or alternatives for consideration in East Kentucky's planning process.¹²

13. East Kentucky further commits to share planning related data and analyses with interested stakeholders throughout its planning cycle to ensure that adequate opportunities for input are provided throughout the planning process, rather than only at specific, limited points. Opportunities for East Kentucky stakeholder input on particular problems and associated projects are available throughout the East Kentucky planning process until East Kentucky has selected a final project to be submitted to the East Kentucky Board of Directors and the Rural Utilities Service for approval.

14. East Kentucky states that the transmission planning page of the East Kentucky OASIS will serve as the central point of communication to support stakeholder involvement in the East Kentucky planning process. All transmission planning

¹⁰ East Kentucky, together with Associated Electric Cooperative, Big Rivers Electric Cooperative, and the Tennessee Valley Authority, has formed the CPP Participants for the purpose of coordinating transmission planning.

¹¹ October 17 Order, 125 FERC ¶ 61,077 at P 16.

¹² East Kentucky, FERC Electric Tariff, Original Vol. No. 1, First Revised Sheet Nos. 447a-c.

information, including expansion plans, studies, stakeholder meeting materials, meeting minutes, and written comments regarding East Kentucky's expansion plan and planning process will be posted on the transmission planning page. East Kentucky states that all comments received by stakeholders, and East Kentucky's written response to those comments, will also be posted on the transmission planning page.

3. Commission Determination

15. We find that East Kentucky has satisfied the Commission's concerns with respect to the coordination principle. Specifically, we find that Attachment M makes clear that stakeholders are invited to fully participate in East Kentucky's own planning activities, in addition to planning activities coordinated through the CPP Participants planning process. To that end, stakeholders will be provided the opportunity to participate in East Kentucky's planning meetings as well as the CPP Participants planning meetings. Further, stakeholders will have access to data, study models, processes, expansion plans, and study reports, and will have the opportunity to provide ideas, options or alternatives for consideration in both East Kentucky's planning process and the CPP Participants planning process.

B. Openness

1. October 17 Order

16. In the October 17 Order, the Commission found that East Kentucky's proposed Attachment M partially satisfied the openness principle stated in Order No. 890. It stated that, to maintain its safe harbor status, East Kentucky must revise its Tariff to clarify that both its own planning processes, and the planning activities to be coordinated with the CPP Participants, are open to all interested parties, including developers of merchant transmission or alternative resources.¹³

2. East Kentucky Filing

17. East Kentucky has revised section II.2 of Attachment M to provide that all stakeholders, including, but not limited to, East Kentucky transmission customers, neighboring utilities and Regional Transmission Operators, state regulatory agencies, generation owners, developers of merchant generation, and developers of alternative resources will be given full opportunity to participate in both the East Kentucky and CPP Participants transmission planning processes. Attachment M provides that East Kentucky welcomes full participation by all interested parties in its own planning activities as well

¹³ October 17 Order, 125 FERC ¶ 61,077 at P 20.

as all transmission planning activities coordinated through the CPP Participants process. East Kentucky will separately list East Kentucky and CPP Participants stakeholder meeting notices on the transmission planning page of East Kentucky's OASIS site.

18. East Kentucky also provides that Confidential Energy Infrastructure Information (CEII) data filed by East Kentucky with the Commission as Form No. 715 can be obtained by filing a CEII request with the Commission using the Commission's established procedures. For other CEII or commercially-sensitive information that East Kentucky is requested to provide to a party with a legitimate need, East Kentucky will require the receiving party to execute a nondisclosure agreement.

3. Commission Determination

19. We find that East Kentucky has partially satisfied the Commission's concerns with respect to the openness principle. Specifically, we find that East Kentucky makes clear that both its own planning process, as well as the CPP Participants planning process, are open to all interested parties, including developers of transmission, generation, and demand resources.

20. However, as discussed further below, we find that requiring stakeholders to file a CEII request with the Commission to receive the CEII-protected version of Form 715 as a condition to receiving such information from East Kentucky (Form 715 Requirement) is unnecessarily burdensome and restrictive in the context of the transmission planning process, as it relates to CEII or non-CEII confidential information.

21. In Order No. 890, the Commission acknowledged its responsibility to protect CEII and recognized that those with a legitimate need for CEII information must be able to obtain it on a timely basis. In several places the Commission specified the measures transmission providers can use to protect CEII, but did not require stakeholders to receive authorization from the Commission to access CEII data, as would be the case under the Form 715 Requirement. For example, in order to provide transparency and avoid undue delays in providing information to those with a legitimate need for it, the Commission required transmission providers to establish a standard disclosure procedure for CEII, noting measures such as digital certificates or passwords, additional login requirement for users to view CEII sections of the OASIS, requiring users to acknowledge that they will be viewing CEII information, and nondisclosure agreements. The Commission also noted that it will be available to resolve disputes if they arise.¹⁴

¹⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 404.

22. The Commission confirmed this approach when it emphasized that the overall development of the transmission plan and the planning process must remain open. The Commission agreed with the concerns of some commenters that safeguards must be put in place to ensure that confidentiality and CEII concerns are adequately addressed in transmission planning activities. The Commission required that transmission providers, in consultation with affected parties, develop mechanisms, such as confidentiality agreements and password-protected access to information, in order to manage confidentiality and CEII concerns.¹⁵

23. There is nothing in the Commission's regulations or precedent that would require the imposition of a requirement like the Form 715 Requirement. To the contrary, in Order No. 643,¹⁶ the Commission amended its CEII regulations and noted that nothing in the revisions it was making nor in the regulations outlined in Order No. 630 is intended to require companies to withhold CEII or to prohibit voluntary arrangements for sharing information. The Commission's CEII regulations do not affect an entity's ability to reach appropriate arrangements for sharing CEII and the Commission in fact encourages such arrangements. In many cases, companies and persons that have had dealings with one another in the past will be in a better position than the Commission to judge the security of such an arrangement. There is nothing in the CEII regulations that would, for example, prevent a regional council from obtaining data from member companies or from sharing it both with member and non-member companies.¹⁷

24. The Commission has also previously stated that the Form 715 Requirement unreasonably restricts the ability of affected stakeholders to participate fully in transmission planning meetings and that transmission providers may develop mechanisms, such as confidentiality agreements and password-protected access to information, in order to manage confidentiality and CEII concerns.¹⁸ Finally, if a dispute does arise with respect to providing confidential and CEII information, that dispute may be brought to the Commission for resolution.

¹⁵ *Id.* P 460.

¹⁶ *Amendments to Conform Regulations With Order No. 630 (Critical Energy Infrastructure Information Final Rule)*, Order No. 643. FERC Stats. & Regs. ¶ 31,149, (2003).

¹⁷ Order No. 643, FERC Stats. & Regs. ¶ 31,149, at P 16.

¹⁸ *See Duke Energy Carolinas, LLC*, 124 FERC ¶ 61,267, at P 23 (2008).

25. For these reasons, we find that the Form 715 Requirement as proposed by East Kentucky should be removed. Therefore, if East Kentucky wishes its Tariff to continue to be an acceptable reciprocity tariff, East Kentucky should submit a filing, within 60 days of the date of this order, to modify the relevant OATT provisions to remove any Form 715 Requirement.

C. Comparability

1. October 17 Order

26. In the October 17 Order, the Commission found that East Kentucky's proposed Attachment M partially satisfied the comparability principle stated in Order No. 890 and Order No. 890-A.¹⁹ The Commission noted that section II.5 of Attachment M provides that the same criteria and planning processes will be applied to the same types of service and/or projects, regardless of type or class of customer. Section II.5 also provides that customer demand resources will be considered on a comparable basis with generation resources in the planning process. Similarly, section II.3 of Attachment M provides that demand side resources will be considered on a comparable basis to other alternatives and that all resources will be evaluated to determine if they can provide the needed functionality and can be relied upon on a long-term basis. If so, the resource will be evaluated along with other alternatives, including economics and effectiveness of performance. Section II.3 also provides that stakeholders may propose alternatives to any upgrade identified in East Kentucky's transmission plan, ensuring that alternative resource options are considered by East Kentucky.²⁰

27. The Commission interpreted sections II.3 and II.5 of Attachment M to mean that East Kentucky will treat generation and demand resources (without regard to the type of resource or whether the resource is a customer) comparably by first determining if these resources provide the needed functionality and can be relied upon on a long-term basis and then evaluating these resources based on economics and effectiveness of performance. The Commission found that East Kentucky will therefore consider during its planning process the costs and benefits of potential generation and demand resources and their relative ability to resolve identified needs.²¹ As such, the Commission

¹⁹ October 17 Order, 125 FERC ¶ 61,077 at P 32.

²⁰ *Id.* P 33.

²¹ The Commission did not interpret East Kentucky's proposal to evaluate the economics of potential resources as requiring a formal cost-benefit analysis. The Commission recognized that the benefits of certain resource solutions may be difficult to quantify. *Id.* P 34, n.23.

determined that these sections adequately meet the Order No. 890-A comparability requirements as to generation and demand resources.²² However, the Commission found Attachment M did not describe how generation and demand resources will be treated comparably to transmission resources. Therefore, the Commission found that, if East Kentucky wishes to maintain its safe harbor status, East Kentucky must revise its Attachment M to describe how generation and demand resources will be treated comparably to transmission resources in East Kentucky's transmission planning process. In this same filing, East Kentucky must also provide greater specificity as to when in the planning process alternative resources are to be considered.²³

2. East Kentucky Filing

28. East Kentucky has revised section II.5 of Attachment M to provide that demand resources will be considered on a comparable basis with both generation and transmission resources in the transmission planning process.

29. To explain when in the planning process alternative resources will be considered, East Kentucky revised section II.5 of Attachment M to state that East Kentucky's transmission customers/users should include their demand resources appropriately in their load projections. East Kentucky will evaluate the use of "generic" demand resources and determine if further development of these alternatives is warranted to address specific problems. As an example, Attachment M states that if East Kentucky determines that installation of customer level distributed generation is economically viable to provide needed support in an area, such an alternative will be further developed in addition to other transmission alternatives.

30. Section II.5 also provides that, if stakeholders have a demand resource or a generation resource that is not already included in the East Kentucky transmission planning process, the stakeholder should provide to East Kentucky the information (cost, performance, lead time, etc.) necessary to consider such a resource on a comparable basis to transmission alternatives. All stakeholders will have the opportunity to provide information and data at the beginning of the planning cycle. After the analysis of the transmission system performance has been completed and deficiencies have been

²² In Order No. 890-A, the Commission stated that the transmission provider needed to identify as part of its Attachment K planning process "how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning." Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

²³ October 17 Order, 125 FERC ¶ 61,077 at P 34.

identified, stakeholders will have the opportunity to propose alternative solutions to be considered along with traditional transmission solutions.²⁴

3. Commission Determination

31. We find that East Kentucky has satisfied the Commission's concerns with respect to the comparability principle. Specifically, East Kentucky states that demand resources will be considered on a comparable basis with generation and transmission resources in the transmission planning process. Additionally, East Kentucky states that it will treat all stakeholder resources on a comparable basis with East Kentucky-owned resources for transmission planning purposes.

32. East Kentucky also provides greater specificity as to when in the planning process alternative resources are to be considered. Specifically, as an initial matter, East Kentucky's transmission customers/users include their demand resources appropriately in their load projections. Secondly, stakeholders can propose alternatives for consideration at the beginning of the planning cycle. Once analysis of the transmission system has identified deficiencies, stakeholders will again have the opportunity to propose alternative solutions for consideration. East Kentucky will also evaluate the use of generic demand resources and determine if further development of these alternatives is warranted to address specific problems.

D. Dispute Resolution

1. October 17 Order

33. In the October 17 Order, the Commission found that East Kentucky's proposed Attachment M partially satisfied the dispute resolution principle stated in Order No. 890. East Kentucky's dispute resolution provision uses a combination of negotiation, mediation, and a choice of arbitration or filing a compliance with the Commission to resolve substantive and procedural disputes that arise from its local and regional transmission planning processes. Because East Kentucky's proposed dispute resolution process may inappropriately affect the ability of a party to certain disputes to exercise its rights under section 206 of the FPA, the Commission found that, in order for East Kentucky to maintain its safe harbor status, it would have to clarify that during the

²⁴ East Kentucky FERC Electric Tariff, Original Vol. No. 1, First Revised Sheet No at 447k.

dispute resolution process affected parties retain any rights they may have under FPA section 206 to file a complaint with the Commission.²⁵

2. East Kentucky Filing

34. East Kentucky revised section II.6 of Attachment M to provide: “Nothing in this Attachment M shall restrict the rights of any party to file a Complaint with the Commission under relevant provisions of the Federal Power Act.”

3. Commission Determination

35. We find that East Kentucky has satisfied the Commission’s concerns with respect to the dispute resolution principle.

E. Regional Participation

1. October 17 Order

36. In the October 17 Order, the Commission found that East Kentucky’s proposed Attachment M partially satisfied the regional participation principle stated in Order No. 890. However, in order for East Kentucky to maintain its safe harbor status, the Commission stated that East Kentucky must distinguish between the planning activities it performs independently and those performed on a regional basis through coordination with the CPP Participants.²⁶

37. The Commission also noted that East Kentucky had not identified the timelines and milestones for the coordination of models and operational requirements by Southeastern Electric Reliability Council (SERC); did not provide a description of how stakeholders can participate in the SERC processes; and did not provide a description of how the SERC processes will interact with East Kentucky’s own planning activities. In order to maintain its safe harbor status, the Commission found that East Kentucky should provide direct links to the appropriate documents on the SERC website.²⁷

38. The Commission also conditioned safe harbor status on East Kentucky providing details regarding joint planning activities and studies performed with interconnected

²⁵ October 17 Order, 125 FERC ¶ 61,077 at P 38.

²⁶ *Id.* P 44.

²⁷ *Id.*

systems, such as how they are integrated into East Kentucky's planning process and the ability of stakeholders to be involved.²⁸

2. East Kentucky Filing

39. East Kentucky states that it has complied with the Commission's directives in the October 17 Order with respect to the regional participation principle. East Kentucky revised section II.7 of Attachment M to clarify that it participates in regional and inter-regional planning on its own behalf and is represented by the CPP Participants in other regional efforts. Section II.7 of Attachment M also now makes clear that East Kentucky performs its own transmission planning process, and that its regional and inter-regional planning processes are in addition to the East Kentucky planning process.²⁹

40. East Kentucky also clarifies in section II.7.A.i that it is a member of SERC, and that its participation in the regional transmission study processes within SERC supplement East Kentucky's own study processes.³⁰ In addition, East Kentucky revised section II.7 of Attachment M to provide that it will provide updates regarding SERC regional activities at its annual stakeholder meetings and will post additional information regarding SERC activities on the transmission planning section of its OASIS page. In addition to providing in Attachment M direct links to the relevant SERC documents, East Kentucky will notify stakeholders of opportunities to provide input regarding the SERC regional planning processes, either by placing such items on East Kentucky stakeholder meeting agendas or through direct solicitation on the transmission planning section of the East Kentucky OASIS.

41. East Kentucky also describes its planning process with neighboring utilities in section II.7.A.ii, including details about the planning activities and how stakeholders can be involved.³¹ East Kentucky coordinates its transmission planning with E.ON U.S. (E.ON) through quarterly planning meetings to discuss planning issues unique to the two

²⁸ *Id.*

²⁹ East Kentucky, FERC Electric Tariff, Original Vol. No. 1, First Revised Sheet Nos. 4471.03 and First Revised Sheet No. 447n.

³⁰ East Kentucky, FERC Electric Tariff, Original Vol. No. 1, First Revised Sheet No. 447n.

³¹ East Kentucky, FERC Electric Tariff, Original Vol. No. 1, First Revised Sheet No. 4471.03.

companies. Necessary joint planning studies are identified as part of these meetings. At the East Kentucky stakeholder meetings, East Kentucky will apprise its stakeholders of pertinent issues discussed at these meetings. East Kentucky will also work with Southwest Power Pool, Inc., which acts as the Independent Transmission Operator for E.ON and is responsible for many of E.ON's planning functions. E.ON's stakeholder meetings will also provide an opportunity for East Kentucky stakeholders to participate in the coordinated planning efforts between East Kentucky and E.ON.

42. East Kentucky is also interconnected with American Electric Power, Dayton Power & Light, Duke Energy-Ohio, and Tennessee Valley Authority. East Kentucky will coordinate plans with these entities and, where applicable, regional entities responsible for their planning (for example, Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.). This will be accomplished by notifying these neighboring entities whenever projects are identified that could potentially impact them. These neighboring entities will also be invited to East Kentucky's annual stakeholder meeting to coordinate plans. East Kentucky stakeholders will be made aware of communications with neighboring entities and will be given the opportunity to provide input regarding seams issues through stakeholder meetings and written communications.

3. Commission Determination

43. We find that East Kentucky has satisfied the Commission's concerns with respect to the regional participation principle. Specifically, East Kentucky has clarified the distinction between planning activities it performs itself and those performed through coordinating with regional entities. East Kentucky has also sufficiently addressed the SERC planning process by providing the URL links to the appropriate planning documents on the SERC website and providing information about the SERC processes on the transmission planning page of the East Kentucky OASIS.

44. East Kentucky also provided an adequate description of its planning activities with other neighboring transmission providers. In addition, East Kentucky sufficiently explained how stakeholders can participate in the planning activities.

F. Economic Planning Studies

1. October 17 Order

45. In the October 17 Order, the Commission found that East Kentucky's proposed Attachment M partially satisfied the economic planning studies principle stated in Order No. 890.³² However, in order for East Kentucky to maintain its safe harbor status, the

³² October 17 Order, 125 FERC ¶ 61,077 at P 52.

Commission stated that East Kentucky would have to amend its reciprocity Tariff to provide additional detail about the economic study process being developed by the CPP Participants and the inter-regional economic studies performed by the Southeastern Inter-Regional Participation Process (SIRPP), and explain how stakeholders can request that economic upgrades be studied on a regional basis and be involved in each of these processes.³³

2. East Kentucky Filing

46. East Kentucky clarified in section II.7.A.iii that it will participate in the SIRPP both directly, as an individual stakeholder, and indirectly through its membership in the CPP Participants. East Kentucky states that it provides additional clarification regarding economic studies provided in the CPP Participants economic study process and how requests from stakeholders for economic studies will be handled. Sections II.7.B. and II.8 of Attachment M describe the various methods for stakeholders to request the performance of economic studies. East Kentucky makes clear that it maintains its own distinct process for requesting and performing economic studies, but that East Kentucky stakeholders may also request economic studies through the CPP Participants planning process and the SIRPP planning process. East Kentucky clarifies that the CPP Participants process provides for unlimited economic planning studies to be performed at no charge. The one caveat is, if, after gaining experience with performing the studies, the number of studies requested exceeds the CPP Participants members' resources, the number of studies performed will be limited, but the minimum will not be less than five studies per year. East Kentucky also describes the process for submitting such requests for economic studies in the CPP Participants' process. East Kentucky also describes the opportunity for stakeholders to request economic studies through the SIRPP process that is inter-regional in nature. East Kentucky states that it will post information about opportunities for East Kentucky stakeholders to participate in the SIRPP meetings and activities on the Transmission Planning section of its OASIS site.

3. Commission Determination

47. We find that East Kentucky has satisfied the Commission's concerns regarding the economic planning studies principle. Specifically, sections II.7.B. and II.8 of East Kentucky's Tariff adequately describe the various methods for stakeholders to request the performance of economic studies. East Kentucky makes clear that it maintains its own distinct process for requesting and performing economic studies, but that East Kentucky stakeholders may also request economic studies through the CPP Participants planning process and the SIRPP planning process.

³³ *Id.*

The Commission orders:

East Kentucky's petition for declaratory order is hereby conditionally granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.