

127 FERC ¶ 61,276
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

E.ON U.S. LLC

Docket No. OA08-27-001

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued June 18, 2009)

1. On December 17, 2008, E.ON U.S. LLC, on behalf of its operating companies Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU),¹ submitted a revised transmission planning process to LG&E/KU's joint Open Access Transmission Tariff (OATT) in compliance with the Commission's directives in the E.ON Planning Order.² In this order, we accept LG&E/KU's compliance filing, as modified, effective December 7, 2007, subject to a further compliance filing.

I. Background

2. In Order No. 890,³ the Commission reformed the *pro forma* 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 activities, the Commission directed all

¹ In this order, we refer to the applicants as LG&E/KU.

² *E.ON U.S. LLC*, 124 FERC ¶ 61,263 (2008) (E.ON Planning Order).

³ *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).

transmission providers to develop a transmission planning process that satisfies nine principles and to clearly describe that process in a new attachment to their OATTs (Attachment K).

3. 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;⁴ (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 an obligation to address each of the nine principles in its transmission planning process, and that 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,⁵ must be specific and clear to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.

4. On December 7, 2007, LG&E/KU made their filing in compliance with Order No. 890's transmission planning requirements in Docket No. OA08-27-000. In the E.ON Planning Order, the Commission accepted that compliance filing, as modified, to be effective December 7, 2007. The Commission also directed LG&E/KU to file, in a compliance filing to be submitted within 90 days of the date of the E.ON Planning Order, revisions to their Attachment K to further address: (1) coordination; (2) openness; (3) information exchange; (4) comparability; (5) dispute resolution; (6) regional participation; (7) economic planning studies; (8) cost allocation; and (9) recovery of planning costs.

⁴ 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.

⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55.

II. Notice of Filing and Responsive Pleadings

5. Notice of LG&E/KU's filing was published in the *Federal Register*, 74 Fed. Reg. 273 (2009), with interventions and protests due on or before January 7, 2009. None was filed.

III. Discussion

6. As discussed below, we find that LG&E/KU's Attachment K transmission planning process, as revised and with certain modifications, complies with the directives in the E.ON Planning Order. Accordingly, we accept LG&E/KU's Attachment K, as modified, effective December 7, 2007, subject to a further compliance filing as discussed below. We direct LG&E/KU to file a further compliance filing within 60 days of the date of this order.

7. Although we accept LG&E/KU's compliance filing below, subject to a further compliance filing to address certain discrete issues, 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 deployment of interregional transmission facilities, the integration of large amounts of location-constrained generation, and the interconnection of distributed energy sources.

A. Compliance with Order No. 890 Planning Principles

1. Coordination

a. E.ON Planning Order

8. In the E.ON Planning Order, the Commission determined that LG&E/KU's proposed Attachment K partially complied with the coordination principle. The Commission found that, although LG&E/KU stated that all aspects of the study

development cycle are subject to stakeholder review, LG&E/KU did not identify opportunities for stakeholders to provide input regarding the criteria, assumptions and data that LG&E/KU will use to develop transmission plans. The Commission directed LG&E/KU to revise their Attachment K to allow all stakeholders an opportunity to review and comment on the criteria, assumptions and data used by LG&E/KU to develop their transmission plans.⁶

b. LG&E/KU Filing

9. LG&E/KU state that they modified their Attachment K to provide that stakeholders may provide comments on both the development of the transmission plan and on the criteria, data, and assumptions that LG&E/KU use in developing the annual transmission plan. Stakeholders will have an opportunity to make such comments at the semi-annual Stakeholder Planning Committee⁷ meetings as well as at meetings the Stakeholder Planning Committee will hold at least quarterly to update stakeholders on the status of the following year's transmission plan.

c. Commission Determination

10. We find that LG&E/KU have complied with the Commission's directives to allow all stakeholders an opportunity to review and comment on the criteria, assumptions and data used by LG&E/KU to develop their transmission plans.

2. Openness

a. E.ON Planning Order

11. In the E.ON Planning Order, the Commission found that LG&E/KU's proposed Attachment K partially complied with the openness principle. The Commission found that LG&E/KU's proposal to allow only eligible customers to be members of the Stakeholder Planning Committee, and to limit Southwest Power Pool's (SPP) semi-annual meetings only to eligible customers, neighboring utilities, and state commission representatives, unreasonably restricts the ability of interested parties to participate in

⁶ E.ON Planning Order, 124 FERC ¶ 61,263 at P 15.

⁷ LG&E/KU coordinate the development of their annual transmission plan with stakeholders through a Stakeholder Planning Committee, which they state will provide a forum to allow members the opportunity to comment on all aspects of the study development cycle.

LG&E/KU's transmission planning process.⁸ The Commission directed LG&E/KU to revise their Attachment K to allow all interested parties the opportunity to participate in the transmission planning process.⁹

12. In addition, the Commission found inappropriate LG&E/KU's proposal to treat as confidential all planning-related information and to require every participant in the transmission planning process to execute a confidentiality agreement. The Commission directed LG&E/KU to revise their Attachment K to provide stakeholders access to non-confidential planning-related information without execution of a confidentiality agreement and access to confidential information that is not Critical Energy Infrastructure Information (CEII) without satisfying the standards for access to CEII.¹⁰

b. LG&E/KU Filing

13. LG&E/KU modified their Attachment K to expand entities eligible for membership in the Stakeholder Planning Committee from "Eligible Customers" to include "any interested party." In addition, LG&E/KU stakeholder meetings held by SPP are now open to all interested parties.

14. LG&E/KU also modified their Attachment K to state that their intent is that issues before the Stakeholder Planning Committee be resolved on a consensus basis but that there may be circumstances where sending an issue to a vote would be appropriate. LG&E/KU state that, because they expanded the membership of the Stakeholder Planning Committee to any interested party, they have revised Attachment K to institute a weighted voting system for the Stakeholder Planning Committee, which allows greater participation while ensuring that the votes of entities with a direct interest in the outcome (i.e., current customers) are given more weight than those entities whose interest in the outcome may be somewhat speculative. As proposed, current customers, eligible customers,¹¹ and regulatory bodies, are weighted as 1.00. Individuals characterized as

⁸ SPP acts as the Independent Transmission Organization for the LG&E/KU system and has responsibility and authority to administer LG&E/KU's OATT.

⁹ E.ON Planning Order, 124 FERC ¶ 61,263 at P 18.

¹⁰ *Id.* P 19.

¹¹ LG&E/KU's OATT defines "eligible customer" as (i) any electric utility (including the transmission owner and any power marketer), federal power marketing agency, or any person generating electric energy for sale for resale; or (ii) any retail customer taking unbundled transmission service pursuant to a state requirement that the independent transmission organization or the transmission owner offer the transmission

the general public are weighted as .10 for each vote. The Stakeholder Planning Committee is free to modify the vote allocations.

15. LG&E/KU state they also modified their confidentiality agreement so that parties can choose whether to use it to access: (1) confidential information; (2) CEII information; or (3) both. A party that wants to access any File Transfer Protocol sites containing CEII and/or confidential planning information must execute LG&E/KU's confidentiality agreement and meet the requirements for the level of access requested. Additionally, LG&E/KU revised Attachment K to provide that if a meeting will involve discussion of confidential and/or CEII information, LG&E/KU will provide notice to stakeholders beforehand, together with an opportunity to execute a confidentiality agreement, so that a stakeholder can participate in such meeting. In the alternative, stakeholder meetings will be structured to have separate discussion of issues involving CEII and/or confidential data with only participants that have executed the applicable confidentiality agreement.

c. Commission Determination

16. We find that LG&E/KU partially comply with the directives in the E.ON Planning Order regarding the openness principle. Under Attachment K, all interested parties will be eligible for membership in the Stakeholder Planning Committee. In addition, LG&E/KU stakeholder meetings held by SPP are now open to all interested parties. However, LG&E/KU has also proposed a weighted voting system for the Stakeholder Planning Committee whereby the votes of current customers, eligible customers, and regulatory bodies, are weighted as 1.00, and individuals characterized as the general public are weighted as .10 for each vote. It is not clear, however, whether developers of transmission, generation, and demand resources are weighted as members of the general public, or whether they fit the definition of a current customer, eligible customer, or regulatory body allowing them a weight of 1.00 for each vote. If developers of transmission, generation, and demand resources are not treated comparably to other resource developers, this would violate the requirement that resources are treated on a comparable basis in the planning process. Accordingly, in a compliance filing to be made within 60 days of the date of this order, LG&E/KU are directed to clarify that the votes of developers of transmission, generation, and demand resources are weighted 1.00 like those of current and eligible customers and regulatory bodies.

service, or pursuant to a voluntary offer of such service by the transmission owner. E.ON U.S. Operating Companies, FERC Electric Tariff, Third Rev. Vol. No. 1, Original Sheet No. 13, Section 1.11.

17. LG&E/KU also revised their confidentiality agreement to distinguish between parties requesting CEII information and those requesting confidential information that is not CEII. Stakeholder meetings will also be structured, if necessary, to have separate discussion of issues involving CEII and/or confidential information with only those participants that have agreed to execute the applicable confidentiality agreement. It appears, however, that LG&E/KU are still requiring every participant in the planning process to execute a confidentiality agreement. Their Attachment K still includes the following statement: “In order to participate in the transmission planning portion of the stakeholder meetings, or to gain access to the transmission planning links on the Transmission Owner’s OASIS, the entity requesting participation must execute a confidentiality agreement”¹² While it is appropriate for LG&E/KU to limit access to confidential information and CEII subject to execution of a confidentiality agreement, stakeholders should be able to obtain information that is not confidential and not CEII, and to participate in portions of the planning process that do not involve confidential information and/or CEII, without executing confidentiality agreements. Accordingly, we direct LG&E/KU to file, within 60 days of the date of this order, a further compliance filing that revises their Attachment K to allow for stakeholders to access non-confidential information about, and to participate in, non-confidential parts of the transmission planning process without having to execute a confidentiality agreement.

3. Information Exchange

a. E.ON Planning Order

18. In the E.ON Planning Order, the Commission found that LG&E/KU’s proposed Attachment K partially complied with the requirements of the information exchange principle. Customers will be able to submit information to LG&E/KU regarding anticipated uses of the system pursuant to a clearly identified process and schedule. However, LG&E/KU failed to identify the particular information point-to-point transmission customers should submit if they desire to contribute to the transmission planning process. LG&E/KU were directed to revise their proposed Attachment K to identify the information that point-to-point customers can submit for inclusion in the transmission planning process.¹³

¹² E.ON U.S. Operating Companies, FERC Electric Tariff, Fourth Rev. Vol. No. 1, Second Rev. Sheet No. 174e.

¹³ E.ON Planning Order, 124 FERC ¶ 61,263 at P 28.

b. LG&E/KU Filing

19. LG&E/KU state that they modified their Attachment K to invite long-term point-to-point transmission customers to provide information regarding their usage of the transmission system that will exceed five years, including anticipated volumes, identification of source and sink points, and whether the customer anticipates using the system on or off peak.

c. Commission Determination

20. We find that LG&E/KU have complied with the Commission's directive to identify the information that point-to-point transmission customers may submit for inclusion in the transmission planning process.

4. Comparability

a. E.ON Planning Order

21. In the E.ON Planning Order, the Commission found that LG&E/KU's proposed Attachment K complies with the comparability principle stated in Order No. 890. In particular, the Commission found that LG&E/KU will treat similarly-situated customers on a comparable basis in their transmission planning process and will apply the same planning criteria to the same types of projects.¹⁴ However, the Commission noted that Order No. 890-A was issued on December 28, 2007, after LG&E/KU submitted their Order No. 890 Attachment K compliance filings. In Order No. 890-A, the Commission provided additional guidance as to how the transmission provider can achieve compliance with the comparability principle. Specifically, 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."¹⁵ The Commission directed LG&E/KU to provide the necessary demonstration required by Order No. 890-A in a compliance filing within 90 days of the date of the order.

¹⁴ *Id.* P 31.

¹⁵ *Id.* (citing Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216).

b. E.ON's Filing

22. Section III of Attachment K provides that LG&E/KU commence the transmission expansion planning process by considering input from the Stakeholder Planning Committee and information provided by transmission customers. Under section IV, generators, demand resources, network customers, and point-to-point customers must provide to LG&E/KU by December 1 of each year certain information for use in the planning process.¹⁶ Section III of Attachment K provides that the LG&E/KU transmission system planning guidelines are applied to power flow models containing all of the data collected from customers to identify overloaded elements.¹⁷ Potential solutions are identified, and a least-cost revenue requirements analysis is then applied to select solutions to resolve these problems.

23. Section V of Attachment K provides that, for purposes of transmission planning, all network customers, including LG&E/KU's native load, and firm point-to-point transmission customers with a term of five years or more, will be treated comparably. Where demand resources are able to meet the same criteria as generation resources, demand and generation resources will be treated comparably for transmission planning purposes. LG&E/KU have added a new Appendix 4 to Attachment K to outline the criteria they will use in considering demand resources in the planning process. The new Appendix 4 provides that for any demand resource to qualify to receive comparable treatment to a generation resource, the demand resource must: (1) be equal to or greater than 100 kW (a grouping of smaller resources may qualify in meeting this standard); (2) be available to be scheduled for a load reduction at the targeted load reduction level or by moving to the firm service level with no more than 12 hours start time; (3) be capable of ramping down to meet the targeted load reduction level or achieve the firm service level by the hour designated by LG&E/KU's scheduling instructions once scheduling instructions are given by LG&E/KU that require a load reduction; (4) be able to maintain the target level of load reduction or firm service level for at least four continuous hours once targeted level of load reduction or firm service level is achieved; and (5) be capable of achieving the interruption level for up to 400 hours per calendar year. Appendix 4 provides that failure of a demand resource to respond to an interruption request may mean that the demand resource will no longer receive comparable treatment to a generation resource.

¹⁶ For example, parties must submit information about existing and planned demand resources and their impacts on demand and peak demand.

¹⁷ LG&E/KU's transmission system planning guidelines are available on the E.ON section of the SPP OASIS.

c. **Commission Determination**

24. We find that LG&E/KU partially comply with the directives in the E.ON Planning Order related to the comparability principle as outlined in Order No. 890-A. Attachment K provides all stakeholders, through the Stakeholder Planning Committee meetings, with an opportunity to provide input regarding the development of basic criteria, assumptions and data used by LG&E/KU for transmission planning. Attachment K also provides that LG&E/KU will evaluate and select from potential solutions it identifies based on a least-cost revenue requirements analysis. However, Attachment K does not provide that LG&E/KU will treat demand and generation resources on a comparable basis to transmission resources. Specifically, section V states that where demand resources are able to meet the same criteria as generation resources, demand and generation resources will be treated comparably for transmission planning purposes. Section V also states that the criteria that a demand resource must meet are listed in Appendix 4. These provisions do not provide that demand and generation resources also will be treated comparably to transmission resources.¹⁸

25. It is also not apparent that by requiring demand resources to meet the criteria listed in Appendix 4, LG&E/KU will be treating those resources comparably to generation and transmission resources in the planning process. The criteria appear to be more appropriate for emergency demand response resources. This could restrict demand resources from being considered as a resource to provide ancillary services, such as, for example, balancing services to support variable generation. In addition, Attachment K does not affirmatively provide that, once needs on the LG&E/KU system are identified, sponsors may propose transmission, generation, and demand resources as alternative solutions to identified needs.¹⁹

¹⁸ We note that Order No. 890 does not require identical treatment for all resources; it requires that transmission, generation and demand solutions receive comparable treatment in the planning process. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 495 (“[W]e emphasize that similarly-situated customers must be treated on a comparable basis, not that each and every transmission customer should be treated the same.”).

¹⁹ As discussed further below, Attachment K also does not clearly indicate that any stakeholder may submit a request that LG&E/KU study potential economic upgrades or other investments, whether in transmission, generation, or demand resources, identified by the stakeholder.

26. We therefore direct LG&E/KU to file a further compliance filing, within 60 days of the date of this order, with a revised Attachment K to provide that stakeholders may propose transmission, generation and demand resources as alternative solutions to identified needs. LG&E/KU must also revise Attachment K in this same compliance filing to clarify (1) that it will treat demand and generation resources on a comparable basis to transmission resources and (2) why the criteria in Appendix 4 that apply to demand resources are necessary to ensure comparable treatment for transmission, generation and demand resources in the planning process.

5. Dispute Resolution

a. E.ON Planning Order

27. In the E.ON Planning Order, the Commission directed LG&E/KU to revise their dispute resolution principle to include procedures for resolving planning-related disputes involving all stakeholders (including stakeholders that are not customers) and to preserve the ability of a party to exercise its rights under section 206 of the FPA.²⁰

b. LG&E/KU Filing

28. LG&E/KU have revised section VI of Attachment K so that the dispute resolution procedures apply to a dispute, claim, or controversy among itself, the Independent Transmission Organization (i.e., SPP), and/or any stakeholder. LG&E/KU also revised their Attachment K to provide that, notwithstanding the dispute resolution procedures, any party to a dispute retains its rights to file a complaint pursuant to section 206 of the FPA.

29. LG&E/KU explain that they also added a provision that any dispute between a stakeholder and a Participating Transmission Owner²¹ in the Southeastern Inter-Regional Participation Process (SIRPP), other than LG&E/KU, that arises from the SIRPP shall be addressed by the dispute resolution measures contained in the SIRPP.²²

²⁰ E.ON Planning Order, 124 FERC ¶ 61,263 at P 34.

²¹ Participating Transmission Owners are transmission owners participating in the SIRPP and are listed at www.southeastirpp.com.

²² As discussed below, the SIRPP is included as a new Appendix 5 to the Attachment K and details how members interact and resolve disputes within the SIRPP.

c. Commission Determination

30. We find that LG&E/KU have complied with the Commission's directives to include procedures for resolving planning-related disputes involving all stakeholders and to preserve the ability of a party to exercise its rights under section 206 of the FPA.

6. Regional Participation

a. E.ON Planning Order

31. In the E.ON Planning Order, the Commission found that LG&E/KU's proposed Attachment K did not provide sufficient detail to allow customers and other interested stakeholders to understand how their planning activities will be integrated into and coordinated with their regional planning activities. For example, LG&E/KU did not identify the particular regional planning activities performed by Tennessee Valley Authority (TVA), Midwest Independent Transmission System Operator, Inc. (Midwest ISO), and PJM Interconnection (PJM), nor how LG&E/KU will participate in those activities. Additionally, LG&E/KU referred to the development of models by SERC Reliability Corporation (SERC) and North American Electric Reliability Corporation (NERC) but did not identify the process for developing those models, including the timelines and milestones for coordinating model development and opportunities for stakeholders to provide input and comment. Similarly, LG&E/KU committed to participate in the SIRPP, but provided no detail on its participation. The Commission stated that it is unclear how each of these regional planning activities will interact with each other when coordinated with LG&E/KU's planning activities. The Commission directed LG&E/KU to describe in detail their process for coordinating with interconnected systems to share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and identify system enhancements that could relieve congestion or integrate new resources.²³

b. LG&E/KU Filing

32. LG&E/KU state that they have revised section VII of Attachment K to explain that LG&E/KU coordinates regionally with Midwest ISO, PJM and TVA through the Joint Reliability Coordination Agreement (Joint Agreement) among Midwest ISO, PJM and

²³ E.ON Planning Order, 124 FERC ¶ 61,263 at P 40.

TVA.²⁴ TVA acts as the Reliability Coordinator for LG&E/KU, and TVA participates in the Joint Agreement on its own behalf and on behalf of LG&E/KU. Section VII also now provides that LG&E/KU participate with affected system such as Midwest ISO, PJM, and TVA on affected system studies when new generator interconnections so require.

33. The Joint Agreement establishes a series of measures to enhance data exchange and other communications, flowgate coordination, coordination of long-term transmission planning, and emergency procedures between Midwest ISO, PJM, and TVA. Also under the Joint Agreement, Midwest ISO, PJM, and TVA (on its own behalf and on behalf of LG&E/KU) have agreed to coordinate the results of their respective transmission expansion planning processes in order to establish inter-regional planning. The Joint Agreement establishes the Joint Planning Committee, which is required to meet at least semi-annually to review and coordinate transmission planning activities.

34. Section VII of Attachment K provides that LG&E/KU participate in the NERC Multiregional Modeling Working Group process through LG&E/KU's association with SERC. LG&E/KU have revised section VII to describe this process as a bottom-up process in which information gathered through the stakeholder process outlined in Attachment K may be included in the Multiregional Modeling Working Group plan if it meets the Working Group's criteria. There is no separate timeline for evaluation under the Multiregional Modeling Working Group; once a project is added to LG&E/KU's model, it is included in the Multiregional Modeling Working Group.

35. In addition, LG&E/KU have revised section VII to provide that, as an overall matter, the regional programs described in Attachment K operate on bottom-up principles. The individual transmission-owning participants work with their stakeholders to identify problems or projects, which are then presented to the regional group as appropriate. The project or problem is then studied and/or acted upon pursuant to the regional group's standards committee using objective criteria. If a project moves forward at the regional level, costs are allocated pursuant to the regional group's cost allocation methodology (if any).²⁵

²⁴ Joint Reliability Coordination Agreement Among and Between Midwest Independent Transmission System Operator, Inc., PJM Interconnection L.L.C., and Tennessee Valley Authority, dated April 22, 2005 (Attachment 1 to Appendix Q of LG&E/KU OATT).

²⁵ LG&E/KU also included a description of the SIRPP process as new Appendix 5 to Attachment K, which we address below under Economic Planning Studies.

c. Commission Determination

36. We find that LG&E/KU comply with the directive in the E.ON Planning Order to describe in detail their process for coordinating with interconnected system to share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data and identify system enhancements that could relieve congestion or integrate new resources. Specifically, LG&E/KU revised Attachment K to specify that it coordinates with TVA, Midwest ISO and PJM as outlined in the Joint Agreement.²⁶ LG&E/KU participate with Midwest ISO, PJM and TVA on affected system studies when new generator interconnections so require. LG&E/KU have also added language describing the NERC Multiregional Working Group process that it participates in through SERC. Lastly, as discussed below, LG&E/KU have modified their Attachment K by including the complete SIRPP process in their OATT.

7. Economic Planning Studies

a. E.ON Planning Order

37. In the E.ON Planning Order, the Commission found that LG&E/KU's proposed Attachment K partially complied with the economic planning studies principle stated in Order No. 890. The Commission found that LG&E/KU's proposed provisions for economic planning studies did not consider the integration of all types of resources. Additionally, LG&E/KU failed to explain which stakeholders are eligible to submit requests for economic planning studies, how stakeholders can be recognized for the purpose of nominating a person to the Economic Expansion Planning subcommittee, and how members nominated to be on the subcommittee will be selected. LG&E/KU were directed to revise their Attachment K to: (1) clarify that an economic planning study may be requested to evaluate network additions or upgrades necessary to integrate any new resource on the transmission system; (2) identify how interested parties may be recognized for the purpose of nominating a person to the Economic Expansion Planning subcommittee; and (3) provide detail about membership on the Economic Expansion Planning subcommittee.²⁷

²⁶ The Commission has found that the Joint Agreement, as described by PJM and Midwest ISO, meets the inter-regional coordination requirements of Order No. 890. See *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,163, at P 75 (2008) and *Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,169, at P 31 (2009).

²⁷ E.ON Planning Order, 124 FERC ¶ 61,263 at P 52.

38. With regard to economic planning on a regional basis, the Commission accepted LG&E/KU's commitment to participate in the SIRPP. The Commission found that the SIRPP, an inter-regional process created to conduct stakeholder-requested economic planning studies across multiple interconnected systems, is an open and coordinated process that generally satisfies the requirements of the economic planning studies principle as it relates to those entities that participate in the SIRPP.²⁸ However, the Commission expressed concern about certain aspects of the SIRPP process and directed LG&E/KU to revise the SIRPP to provide for: (1) participation by any interested party in the SIRPP stakeholder group; (2) the distribution of information to be discussed at a stakeholder meeting sufficiently in advance of that meeting to provide for meaningful stakeholder review; and (3) the ability of the SIRPP stakeholder group to cluster or batch requests for economic studies.²⁹ The Commission also directed LG&E/KU to revise their Attachment K (and/or any SIRPP document they append to their Attachment K) to remove the requirement that stakeholders seeking non-CEII confidential information from SIRPP participants first request and obtain from the Commission the Form No. 715, including CEII, for the relevant SIRPP participants.³⁰

39. In addition, the Commission directed LG&E/KU to demonstrate how the dispute resolution provisions of their Attachment K can be used to address and resolve disputes related to SIRPP planning activities or, alternatively, propose different dispute resolution provisions that can be used to address and resolve such disputes and implement agreements reached through such dispute resolution.³¹ Lastly, although the Commission was able to evaluate the SIRPP based on information provided by other utilities participating in that process, the Commission directed LG&E/KU to file a more detailed description of the SIRPP and their participation in the SIRPP process.³²

b. LG&E/KU Filing

40. LG&E/KU state that as previously proposed and accepted by the Commission, the Stakeholder Planning Committee will form an Economic Expansion Planning subcommittee, which will develop a process for considering economic projects.

²⁸ *Id.* P 53.

²⁹ *Id.* P 54.

³⁰ *Id.* P 55.

³¹ *Id.* P 57.

³² *Id.* P 58.

LG&E/KU revised section VIII of Attachment K to clarify that the Economic Expansion Planning subcommittee is a subset of the Stakeholder Planning Committee and the members of the Stakeholder Planning Committee form from their ranks the Economic Expansion Planning subcommittee. In March, each transmission or network customer, or other recognized stakeholder, may nominate one person to the Economic Expansion Planning subcommittee. LG&E/KU have also revised section VIII to state that economic planning studies will be open to participation by all interested parties. Transmission customers, network customers, eligible customers, interconnection customers, or other stakeholders who have been active in the transmission planning process may submit requests for economic planning studies.

41. LG&E/KU have now included details about the SIRPP process as new Appendix 5 to Attachment K. The SIRPP, as described in Appendix 5, has also been revised to address the Commission's concerns. Membership in the SIRPP stakeholder group is now open to any interested party. The SIRPP Participating Transmission Owners will now be required to use reasonable efforts to distribute information to be discussed at a stakeholder meeting at least 10 calendar day prior to the particular meeting.

42. In addition, Appendix 5 provides that if two or more SIRPP economic studies are similar in nature and the Participating Transmission Owners conclude that clustering of such requests and studies is appropriate, the Participating Transmission Owners may, following communications with the SIRPP stakeholder group, cluster those studies. Appendix 5 also explains how stakeholders can obtain non-CEII confidential information, and does not include a requirement that stakeholders seeking non-CEII confidential information from SIRPP participants first request and obtain from the Commission the Form No. 715. The dispute resolution process for SIRPP stakeholders has also been outlined in Appendix 5.

c. Commission Determination

43. We find that LG&E/KU partially comply with the Commission's directives in the E.ON Planning Order regarding the economic planning principle.

44. LG&E/KU do not clearly explain which stakeholders are eligible to submit requests for economic planning studies. Their revised Attachment K provides that requests for economic planning studies may be submitted by transmission customers, network customers, eligible customers, interconnection customers, "or other stakeholders who have been active in the transmission planning process."³³ LG&E/KU do not explain

³³ E.ON Operating Companies, FERC Electric Tariff, Fourth Rev. Vol. No. 1, First Rev. Sheet No. 174l.

how they will determine if a stakeholder has been “active” in the transmission planning process. Furthermore, this provision could exclude a stakeholder that is a potential new customer of the LG&E/KU system from requesting an economic planning study. We therefore direct LG&E/KU, in a compliance filing to be made within 60 days of the date of this order, to revise their Attachment K to provide that any interested party may request economic planning studies.

45. In addition, LG&E/KU do not clearly explain how stakeholders can be recognized for the purpose of nominating a person to the Economic Expansion Planning subcommittee, nor how members nominated to be on the subcommittee will be selected. LG&E/KU’s Attachment K provides that members of the Stakeholder Planning Committee will form “from their ranks” an Economic Expansion Planning Committee³⁴ and that each transmission customer, network customer “or other recognized stakeholder” may nominate one person to the Economic Expansion Planning subcommittee.³⁵ Although we interpret the Stakeholder Planning Committee “ranks” to mean members of that committee, the tariff language does not make this clear. Similarly, LG&E/KU do not explain how they will determine who is a “recognized stakeholder” eligible to nominate a member to the Economic Expansion Planning subcommittee. LG&E/KU also do not explain how the Stakeholder Planning Committee will select the members of the Economic Expansion Planning subcommittee from among those who are nominated. We therefore direct LG&E/KU to revise their Attachment K, in a compliance filing to be made within 60 days of the date of this order, to more clearly define the process for nominating and selecting members of the Economic Expansion Planning subcommittee.

46. In addition, LG&E/KU failed to clarify that an economic planning study may be requested to evaluate network additions or upgrades necessary to integrate *any* new resource on the transmission system. LG&E/KU’s Attachment K provides that economic planning studies will be open to participation by all interested parties, but the economic planning studies are limited to evaluating network additions or upgrades “necessary to integrate new generation resources or load on the Transmission System.”³⁶ Accordingly, we direct LG&E/KU to revise their Attachment K, in a compliance filing to be made

³⁴ E.ON Operating Companies, FERC Electric Tariff, Fourth Rev. Vol. No. 1, First Rev. Sheet No. 174l.

³⁵ E.ON Operating Companies, FERC Electric Tariff, Fourth Rev. Vol. No. 1, First Rev. Sheet No. 174l.

³⁶ E.ON Operating Companies, FERC Electric Tariff, Fourth Rev. Vol. No. 1, First Rev. Sheet No. 174l.

within 60 days of the date of this order, to clarify that an economic planning study may be requested to evaluate network additions or upgrades necessary to integrate *any* new resource on the transmission system.

47. With regard to economic planning on a regional basis, we find that LG&E/KU partially comply with the requirements outlined in the E.ON Planning Order. As discussed above, LG&E/KU have included a new Appendix 5 to their Attachment K that contains a detailed description of the SIRPP process. The SIRPP states that membership in the SIRPP stakeholder group is open to any interested party.³⁷ The SIRPP now specifies that the SIRPP stakeholder group should consider clustering similar economic studies.³⁸ The SIRPP also specifies that members of the SIRPP stakeholder group that request data and information to facilitate their ability to replicate the SIRPP Inter-Regional Studies are required to meet CEII standards only for CEII data. There are separate provisions for non-CEII confidential information supplied by an entity that is not a public utility and for non-CEII confidential information supplied by a public utility.³⁹ Participating Transmission Owners will also use reasonable efforts to make information for meetings available at least 10 calendar days prior to the particular meeting.⁴⁰ LG&E/KU proposed procedures for handling disputes between stakeholders, between transmission owners in multiple regional planning processes, and between a stakeholder and a transmission owner.⁴¹ Finally, Appendix 5 also explains how stakeholders can obtain non-CEII confidential information, and does not include a requirement that stakeholders seeking non-CEII confidential information from SIRPP participants first request and obtain from the Commission the Form No. 715.

³⁷ E.ON Operating Companies, FERC Electric Tariff, Fourth Rev. Vol. No. 1, First Rev. Sheet No. 174hh.

³⁸ E.ON Operating Companies, FERC Electric Tariff, Fourth Rev. Vol. No. 1, First Rev. Sheet No. 174gg.

³⁹ E.ON Operating Companies, FERC Electric Tariff, Fourth Rev. Vol. No. 1, First Rev. Sheet Nos. 174ii - 174jj.

⁴⁰ E.ON Operating Companies, FERC Electric Tariff, Fourth Rev. Vol. No. 1, First Rev. Sheet No. 174ee.

⁴¹ E.ON Operating Companies, FERC Electric Tariff, Fourth Rev. Vol. No. 1, First Rev. Sheet No. 174jj.

48. However, the tariff language related to the process that the SIRPP stakeholder group members must use to obtain CEII data and information used in the SIRPP includes a requirement that the stakeholders demonstrate that they have been authorized by the Commission to receive the CEII-protected version of Form 715 as a condition to receiving any CEII information from a Participating Transmission Owner (Form 715 Requirement). As discussed further below, we find that the Form 715 Requirement is unjust, unreasonable, unduly discriminatory or preferential because it is unnecessarily burdensome and restrictive in the context of the transmission planning process, as it relates to CEII or non-CEII confidential information.

49. 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.⁴²

50. 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.⁴³

⁴² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 404.

⁴³ *Id.* P 460.

51. 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. 643,⁴⁴ 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.⁴⁵

52. 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.⁴⁶ Finally, if a dispute does arise with respect to providing confidential and CEII information, that dispute may be brought to the Commission for resolution.

53. For these reasons, we find that the Form 715 Requirement proposed by LG&E/KU is unjust, unreasonable, unduly discriminatory or preferential in the context of the transmission planning process and that its removal will yield a just and reasonable result. Therefore, we direct LG&E/KU, in a compliance filing to be submitted within 60 days of the date of this order, to modify the relevant OATT provisions to remove any Form 715 Requirement.

54. We also find that the SIRPP provision that forbids Participating Transmission Owners from disclosing certain resource-specific data unreasonably restricts access to data that stakeholders may need for participation in or evaluation of studies produced by

⁴⁴ *Amendments to Conform Regulations With Order No. 630 (Critical Energy Infrastructure Information Final Rule)*, Order No. 643, FERC Stats. & Regs. ¶ 31,149 (2003).

⁴⁵ Order No. 643, FERC Stats. & Regs. ¶ 31,149 at P 16.

⁴⁶ *See Duke Energy Carolinas, LLC*, 124 FERC ¶ 61,267, at P 23 (2008).

the SIRPP.⁴⁷ As written, the provision requires Participating Transmission Owners to exempt from disclosure any resource-specific data that can be used to determine security constrained unit commitment and economic dispatch or to perform an economic evaluation of costs and benefits, even if that data would not otherwise be considered confidential. In addition, even if the resource-specific data is confidential, it is not clear why all such data must be exempt from disclosure, even under appropriate confidentiality protections that are already in the tariff. Moreover, this provision conflicts with the requirement that stakeholders have sufficient information to replicate all transmission planning studies,⁴⁸ and is unduly discriminatory. Therefore, we direct LG&E/KU to revise the provision, within 60 days of the date of this order, to require that resource-specific data in the planning process be disclosed by Participating Transmission Owners, under applicable confidentiality provisions, if the information is needed to participate in the transmission planning process and/or to replicate transmission planning studies.⁴⁹

55. Finally, LG&E/KU must revise the tariff language related to SIRPP so that non-public utility transmission providers do not have more confidentiality protections than public utility transmission providers in the transmission planning process. Specifically, the SIRPP tariff language requires a Participating Transmission Owner not to disclose information supplied by an entity that is not a public utility under section 201(e) of the

⁴⁷ E.ON Operating Companies, FERC Electric Tariff, Fourth Rev. Vol. No. 1, Original Sheet No. 174jj. The provision states:

Resource-specific data shall not be made available by the Participating Transmission Owners if the data has been designated confidential by the data provider or if the data can be used to (a) determine security constrained unit commitment or economic dispatch of resources or (b) perform an economic evaluation of costs and benefits.

⁴⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471. The Commission also noted, that without certain generator dispatch and economic information, it becomes difficult or impossible to conduct meaningful load flow studies for some transmission planning purposes. The Commission therefore required disclosure of criteria, assumptions, data and other information that underlie transmission plans. *Id.* P 478.

⁴⁹ We note that the Commission previously accepted an identical provision in the SPP OATT. However, the Commission is addressing the SPP provision in an order on rehearing being issued concurrently with this order. See *Southwest Power Pool, Inc.*, 127 FERC ¶ 61,271 (2009).

FPA.⁵⁰ In Order No. 890, the Commission stated that a coordinated, open and transparent regional planning process cannot succeed unless all transmission owners participate. The Commission also stated that it expects all non-public utility transmission providers will fully participate in the transmission planning processes required by Order No. 890. The Commission added that reciprocity dictates that non-public utility transmission providers that take advantage of open access due to improved planning should be subject to the same requirements of openness and transparency as public utilities.⁵¹ Therefore, we direct LG&E/KU to revise their OATT, in a compliance filing due within 60 days of the date of this order, so that information provided by non-public utility transmission providers is subject to the same information disclosure and confidentiality protections that are applied to public utility transmission providers and other stakeholders in SIRPP.

8. Cost Allocation

a. E.ON Planning Order

56. In the E.ON Planning Order, the Commission found that LG&E/KU failed to identify the cost allocation methodology that will be used for economic upgrades identified through a SIRPP study. The Commission therefore directed LG&E/KU to address the allocation of costs for upgrades identified through the SIRPP economic planning process.⁵²

b. LG&E/KU Filing

57. LG&E/KU explain that the SIRPP provides that cost allocation for economic upgrades would be based upon the tariff provisions of each transmission owner where each portion of the upgrade construction would be located. The cost allocation method of each SIRPP transmission owner will be posted on the SIRPP website.

c. Commission Determination

58. We find that LG&E/KU comply with the Commission's directives in the E.ON Planning Order regarding the cost allocation principle.

⁵⁰ E.ON Operating Companies, FERC Electric Tariff, Fourth Rev. Vol. No. 1, Appendix 5, Original Sheet Nos. 174ii – 174jj.

⁵¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 441.

⁵² E.ON Planning Order, 124 FERC ¶ 61,263 at P 66.

9. Recovery of Planning Costs

a. E.ON Planning Order

59. In the E.ON Planning Order, the Commission directed LG&E/KU to clarify the treatment of costs associated with the performance of economic planning studies. The Commission noted that in the economic planning section, LG&E/KU stated that the cost of the top five yearly economic planning studies shall be included in transmission rates via a line-item added to their formula rate, while the cost of additional studies will be recovered directly from customers requesting the study. However, when discussing the recovery of planning costs, LG&E/KU proposed more broadly that all costs of economic planning studies will be charged to entities that sign an economic expansion study agreement. LG&E/KU were directed to correct this discrepancy and provide details about the economic expansion study agreement.

b. LG&E/KU Filing

60. LG&E/KU explain that costs for economic planning studies in excess of the five identified by the Economic Expansion Planning subcommittee will be borne by the individual entities that request economic planning studies and execute an Economic Planning Study Agreement. Additionally, LG&E/KU state that they also added a *pro forma* Economic Planning Study Agreement as a new Appendix 6 to its Attachment K.

c. Commission Determination

61. We find that LG&E/KU have complied with the Commission's directives in the E.ON Planning Order with regard to the recovery of planning costs.

B. Revisions to Appendices

1. E.ON Planning Order

62. In the E.ON Planning Order, the Commission directed LG&E/KU to edit their Attachment K Appendices 1 and 3 to reflect certain textual oversights in response to comments by Kentucky Municipals.⁵³ Specifically, Kentucky Municipals noted that Appendix 1 refers to a non-disclosure certificate that Kentucky Municipals claims does

⁵³ Kentucky Municipals consist of Owensboro Municipal Utilities, Frankfort Electric and Water Plant Board and the Cities of Barbourville, Bardstown, Bardwell, Benham, Berea, Corbin, Falmouth, Madisonville, Nicholasville, Paris, and Providence, Kentucky, as well as Paducah Power System and the Princeton Electric Plant Board.

not exist. Additionally, Kentucky Municipals noted that LG&E/KU should modify a sentence in Appendix 3 of the Transmission System Planning Guidelines to refer to comparable planning rather than to the provision of transmission service in general.

2. LG&E/KU Filing

63. LG&E/KU state that they removed all references to the non-disclosure certificate in Appendix 1. Additionally, LG&E/KU state that the Transmission System Planning Guidelines they included in Appendix 3 were subject to change and were included for illustrative purposes only. Therefore, they have deleted all the language in Appendix 3 and replaced it with a link to the current version of the Transmission System Planning Guidelines. LG&E/KU state they are in the process of modifying their Transmission System Planning Guidelines to refer to comparable planning rather than to the provision of transmission service in general.

3. Commission Determination

64. We find that LG&E/KU have complied with our order to revise its Appendix 1. However, LG&E/KU state they have not yet made the required changes to their Transmission System Planning Guidelines. Although they removed the Transmission System Planning Guidelines from Appendix 3 and replaced it with a link to those guidelines, they still must change the Transmission System Planning Guidelines to refer to comparable planning rather than to the provision of transmission service in general. LG&E/KU state only that they are in the process of doing so. Therefore, we direct LG&E/KU to include a copy of the Transmission System Planning Guidelines showing the required changes in a compliance filing to be submitted within 60 days of the date of this order.

The Commission orders:

(A) LG&E/KU's compliance filing, as modified, is hereby accepted, subject to a further compliance filing, as discussed in the body of this order.

(B) LG&E/KU are hereby directed to submit a compliance filing, within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.