

137 FERC ¶ 61,195
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Louisville Gas and Electric Company and
Kentucky Utilities Company

Docket Nos. ER11-4396-000
EC98-2-000
(not consolidated)

ORDER CONDITIONALLY APPROVING TARIFF REVISIONS

(Issued December 15, 2011)

1. On August 30, 2011, Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU) (collectively, Applicants) submitted under sections 203 and 205 of the Federal Power Act (FPA)¹ a proposal to revise certain provisions of their open access transmission tariff (OATT) that pertain to their Independent Transmission Organization (ITO). Specifically, Applicants propose to change the entity that serves as their ITO, and to change certain aspects of the ITO arrangement. Applicants state that their proposal satisfies: (i) the conditions established by the Commission in connection with Applicants' merger in 1998;² and (ii) the conditions placed on Applicants in connection with their withdrawal from the Midwest Independent Transmission System Operator, Inc. (MISO).³
2. For the reasons discussed below, we conditionally accept Applicants' proposal, to become effective September 1, 2012, as requested, subject to a compliance filing.

¹ 16 U.S.C. §§ 824b and 824d (2006).

² See *Louisville Gas and Electric Co.*, 82 FERC ¶ 61,308 (1998) (Merger Order); *E.ON AG*, 97 FERC ¶ 61,049 (2001) (E.ON Merger Order).

³ See *Louisville Gas and Electric Co., et al.*, 114 FERC ¶ 61,282 (2006) (Withdrawal Order).

I. Background

A. Applicants

3. Applicants are transmission-owning utilities operating in the Commonwealth of Kentucky. LG&E provides retail electric service to over 397,000 customers.⁴ KU provides retail electric service to over 546,000 customers. Under the name Old Dominion Power, KU also provides retail electric service to over 29,000 retail customers in Virginia. In addition to its retail service, KU also sells wholesale electric energy to 12 municipalities in Kentucky. Applicants' total generation capacity is 3,320 megawatts (MW) and 4,989 MW, respectively.

4. Applicants are wholly-owned subsidiaries of PPL Corporation (PPL).⁵ PPL is headquartered in Allentown, Pennsylvania and controls about 19,000 MW of generation in Pennsylvania, Montana, and Kentucky.

B. Merger Order

5. In evaluating Applicants' proposed merger in 1998, the Commission found that the companies' participation in MISO would ensure that the merger did not adversely affect competition in the wholesale power market.⁶ The Commission accepted Applicants' joining MISO (and turning over operation of their transmission facilities to MISO) as a mitigation measure that would provide: (i) impartial transmission planning to reduce congestion; (ii) fair and efficient congestion management; (iii) removal of abuses of native load priority; (iv) elimination of incentives to curtail competitors' generation; and (v) removal of incentives to game Open Access Same-Time Information System (OASIS) management.⁷ Applicants were involved in two subsequent mergers, the first in 2000 with PowerGen plc,⁸ and the second in 2001 with E.ON AG.⁹ In the E.ON Merger Order, the Commission noted Applicants' MISO membership and found

⁴ Applicants' August 30 Filing at 5.

⁵ *Id.*

⁶ *Id.* (citing Merger Order, 82 FERC at 62,214).

⁷ Merger Order, 82 FERC at 62,222, n.39.

⁸ *Louisville Gas & Elec. Co.*, 91 FERC ¶ 61,321 (2000).

⁹ E.ON Merger Order, 97 FERC ¶ 61,049.

that, as a result of such membership, Applicants lacked the ability to exploit their transmission assets to harm competition in wholesale electricity markets.¹⁰

C. Withdrawal Order

6. In 2005, Applicants filed with the Commission to withdraw from MISO.¹¹ Applicants proposed to utilize independent third parties as their ITO and Reliability Coordinator in order to “maintain the requisite level of independence with respect to the operation of their transmission system and administration of the OATT.”¹² In the Withdrawal Order, the Commission found that Applicants’ proposal to use an ITO and Reliability Coordinator addressed horizontal and vertical market power concerns arising from Applicants’ previous mergers.¹³ Southwest Power Pool, Inc. (SPP) has been Applicants’ ITO since Applicants withdrew from MISO on September 1, 2006.

II. Applicants’ Proposal

7. Applicants propose to appoint TranServ International, Inc. (TranServ) as the new ITO for Applicants’ transmission system. They propose that TranServ, together with its subcontractor MAPPCOR, will perform the functions currently performed by the current ITO (SPP), after SPP’s contract as ITO expires on August 31, 2012.

A. Consistency with Merger Order and Withdrawal Order

8. Applicants request that the Commission find that the assignment of functions under their proposed ITO arrangement with TranServ continues to satisfy their merger commitments as modified by the Withdrawal Order and is otherwise consistent with the requirements of section 203(b) of the FPA. Applicants submit that their continued use of an ITO is in the public interest, and will not have an adverse effect on rates, regulation, or competition.

9. Applicants assert that their proposal to appoint TranServ as ITO will have no adverse effect on rates because the amount paid to TranServ will be less than the amount

¹⁰ Applicants’ August 30 Filing at 5-6 (citing E.ON Merger Order, 97 FERC at 61,283).

¹¹ *Id.* at 6.

¹² *Id.* (citing Louisville Gas and Electric Company, Filing to Withdraw from the Midwest ISO, Docket Nos. ER06-20-000 and EC06-4-000 (filed Oct. 7, 2005)).

¹³ Withdrawal Order, 114 FERC ¶ 61,282 at P 80.

previously paid to SPP. Applicants state that they will reimburse TranServ for certain expenses and costs in addition to annual compensation, but, according to Applicants, TranServ's total compensation will be a significant cost savings to their customers over SPP.¹⁴

10. With regard to regulation, Applicants state that their proposal presents no change in Applicants' current federal/state regulatory obligations. Accordingly, Applicants argue that there is no adverse impact on regulation.¹⁵

11. Applicants also argue that except for the functions specifically proposed to be assumed by Applicants, the proposed ITO arrangement assigns to TranServ the same functions as ITO that are currently assigned to SPP as ITO. Applicants note their proposal continues to satisfy the five specific areas where an independent entity can mitigate transmission-related vertical market power, as set forth in the Withdrawal Order.¹⁶ Therefore, Applicants assert that their proposal will have no adverse effect on competition.

12. While Applicants request an effective date of September 1, 2012, Applicants request Commission action by January 1, 2012, to allow time for transition. Applicants request waiver of any portion of FPA section 205 or 18 C.F.R. Part 35 that has not been satisfied by their filing.

B. Change in ITO Entity

13. SPP's term as ITO expires on August 31, 2012.¹⁷ With stakeholder input, Applicants developed a solicitation process for a successor ITO.¹⁸ Based on the review and evaluation of the numerous bids received (including a bid from SPP), Applicants selected TranServ. Accordingly, on August 29, 2011, Applicants and TranServ entered into an Independent Transmission Organization Agreement (ITO Agreement), which Applicants have filed as part of Attachment Q to Applicants' OATT.¹⁹ Tennessee Valley

¹⁴ Applicants' August 30 Filing at 24.

¹⁵ *Id.*

¹⁶ *Id.* at 19-22 (citing Withdrawal Order, 114 FERC 61,282 at P 81).

¹⁷ *Id.* at 7 (citing Amended and Restated Independent Transmission Organization Agreement, at section 4.8).

¹⁸ *Id.* at 7-9.

¹⁹ *Id.* at 9-10.

Authority (TVA) will continue to serve as Applicants' Reliability Coordinator.²⁰ Applicants state that they chose TranServ to be the ITO because of its "extensive knowledge and experience, thorough work plan, and reasonable cost bid."²¹ TranServ will employ a subcontractor, MAPPCOR, for long-term planning support.²² The ITO Agreement states that TranServ, its personnel and designees (including MAPPCOR) are subject to the Commission's Standards of Conduct²³ as transmission function employees, and will take steps to ensure compliance.²⁴ The ITO Agreement has an initial term of three years, with successive two-year terms if neither party terminates it.²⁵

C. Changes to ITO Arrangement

14. Applicants state that under their proposal, with certain exceptions described below, the functions assigned to TranServ as the ITO will be the same as the functions assigned to SPP.²⁶ TranServ will, among other things, be responsible for receiving and approving/denying transmission and generator interconnection service requests, including Available Transmission Capacity (ATC) evaluation, performing system impact studies or feasibility analysis studies as provided under Applicants' OATT, calculation and posting of ATC, validating interchange schedules, reviewing and approving all planning activities, administering Applicants' OATT, and operating and maintaining the OASIS site, in the same manner as SPP.²⁷ TranServ will review the Available Flowgate Capacity²⁸ values and flowgate allocations made by TVA for Applicants' system.

²⁰ The Amended Reliability Coordinator Agreement, dated July 19, 2006, between Applicants and TVA is part of Attachment Q to Applicants' OATT. *See* Louisville Gas and Electric Company, Compliance Filing, Docket No. ER06-20-004 (filed July 19, 2006).

²¹ Applicants' August 30 Filing at 2.

²² *Id.*

²³ 18 C.F.R. Part 358 (2011).

²⁴ Applicants' August 30 Filing at 12 (citing ITO Agreement at section 2.2).

²⁵ ITO Agreement at section 4.

²⁶ Applicants' August 30 Filing at 14.

²⁷ *Id.*

²⁸ Available Flowgate Capacity is the process used to calculate ATC on the Applicants' transmission system.

TranServ will also submit a report to the Commission every six months, as SPP has done, describing any concerns expressed by stakeholders, and the ITO's responses, and any issues or OATT provisions that hinder the ITO from performing its functions and responsibilities.²⁹

15. Applicants state that MAPPCOR, serving as TranServ's subcontractor, will be responsible for performing Applicants' long-range transmission planning and for facilitating stakeholder meetings on long-range transmission planning issues.³⁰

16. However, Applicants' proposal (which modifies Appendix 5 (Balancing Authority Functions Performed) of Attachment P (Functions of the Reliability Coordinator and the ITO) of their OATT and places the ITO Agreement with TranServ in Attachment Q) changes the current ITO assignment of functions such that Applicants will assume all of the functions generally performed by a Balancing Authority entity registered with the North American Electric Reliability Corporation (NERC).³¹

17. Applicants state that they currently perform almost all of the Balancing Authority functions, but some are assigned to SPP as the ITO. When TranServ assumes the role of the ITO, Applicants will assume responsibility for evaluating, approving and monitoring all interchange schedules in and out of the Balancing Authority area for purposes of ensuring reliability. Applicants state that this includes the responsibility to curtail interchange schedules if necessary to comply with transmission loading relief (TLR) procedures. Applicants state that, today, this responsibility rests with SPP as the ITO, which Applicants state has resulted in operational inefficiencies and difficulty in implementing reliability measures.³²

18. Applicants state that six NERC Reliability Standards are implicated in the current delineation of Balancing Authority functions between Applicants and SPP: IRO-006, curtailing an interchange schedule in response to a reliability event; INT-001, coordinating and verifying interchange transaction tags coming into the system; INT-003, coordinating schedules between neighboring Balancing Authorities; INT-004, dynamic

²⁹ Applicants' August 30 Filing at 14 (citing ITO Agreement at section 2.1.2). We note that the reporting requirement is also set down in section 3.2.11 of Attachment P (Functions of the Reliability Coordinator and the ITO).

³⁰ *Id.* at 11.

³¹ *Id.* at 15.

³² *Id.*

transfer scheduling; INT-006, reliability assessments for transactions; and INT-009, monitoring and validating net schedule interchange calculations.³³

19. Applicants describe how, for each of the six NERC Reliability Standards, the parties operate now and how they propose to operate if Applicants assume all of the Balancing Authority functions.

1. IRO-006 – Transmission Loading Relief Procedures

20. With respect to IRO-006, Applicants state that there are operational inefficiencies which can set back the parties' ability to curtail a schedule quickly when necessary for reliability.³⁴ Applicants state that SPP does not maintain the same reliability-related operational view of Applicants' system, and thus requires a directive from the Reliability Coordinator (TVA) in order to curtail a schedule.³⁵ Applicants state that, when the curtailment will occur at a local level (usually 69 kV and below), the Reliability Coordinator does not believe that it has an obligation to step in. Applicants state that they must get all the parties (Applicants, TVA, SPP, and the customer) on the phone in order to have the schedule curtailed, which they argue can challenge the real-time nature of managing reliability.³⁶

21. Applicants propose to assume the IRO-006 Balancing Authority functions in-house, which they argue will significantly streamline compliance with this requirement. Applicants state that, prior to implementing a redispatch or curtailment, they will attempt to contact the affected customer and work out a solution to the reliability problem, and they will only ask for redispatch or curtail a schedule if the customer is unable or unwilling to remedy the problem itself. Further, Applicants state that the customer, TranServ, and the Reliability Coordinator (TVA) will receive real-time communication through the scheduling system that the schedule will be curtailed and the reasons therefore, providing these parties with a means to follow up and audit the curtailment

³³ Applicants' August 30 Filing at 16-17. According to the list of standards posted on the NERC website, <http://www.nerc.com/page.php?cid=2|20>, "IRO" stands for "Interconnection Reliability Operations and Coordination," and "INT" stands for Interchange Scheduling and Coordination."

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

process if necessary.³⁷ Applicants state that they will institute procedures whereby statistics regarding schedules that Applicants modify and the reasons therefore are posted on OASIS.³⁸ Applicants also note that their actions are subject to TVA, SERC, and NERC oversight.³⁹ Applicants state that there is no opportunity for them to discriminate against customers in performing this function, because Applicants can only curtail a schedule pursuant to the NERC Reliability Standards.⁴⁰ Thus, Applicants state that they cannot exercise market power or otherwise harm competition by assuming this function.⁴¹

2. INT-001 (Interchange Information)

22. Applicants state that, under this standard, a Balancing Authority coordinates and verifies interchange transaction tags coming into the system from Source Balancing Authorities. Although today SPP performs this function as ITO, Applicants propose to assume this function. Applicants assert that this is primarily a matching function, ensuring that the Source Balancing Authority and Applicants have the same schedule in their systems.

3. INT-003 (Interchange Transaction Implementation)

23. Applicants state that, under this standard, a Balancing Authority coordinates schedules with Sending and Receiving Balancing Authorities, i.e., neighboring Balancing Authorities that will be transmitting energy into and from a system. Although today SPP performs this function as ITO, Applicants propose to assume this function in-house. Applicants assert that, like INT-001, this is primarily a matching activity, ensuring that the Sending and Receiving Balancing Authorities' schedules match Applicants' schedules.

4. INT-004 (Dynamic Interchange Transaction Modifications)

24. Applicants state that, under this standard, if a Dynamic Transfer schedule is curtailed, once the reliability event is complete, the transaction must be resubmitted and

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 18.

⁴⁰ *Id.* at 16-17.

⁴¹ *Id.* at 17.

approved, and the Sink Balancing Authority informed.⁴² Applicants state that, at this time, there is only one customer on Applicants' transmission system that requires Dynamic Transfer; therefore, this NERC standard is rarely implicated. Nevertheless, Applicants state that, if a Dynamic Transfer transaction must be reloaded, this responsibility currently rests with SPP as ITO. Applicants propose to assume this function, which they state is purely administrative.

5. INT-006 (Response to Interchange Authority)

25. Applicants state that, under this standard, the Balancing Authority must perform a reliability assessment of a transaction before it is implemented.⁴³ Applicants state that SPP currently performs this function as ITO. Applicants note that SPP does not have the same reliability-related operational view of their transmission system as Applicants have. Thus, Applicants state that SPP relies on information and data that Applicants provide. Applicants propose to assume this function, which they argue allows for more efficient performance of this activity.

6. INT-009 (Implementation of Interchange)

26. Applicants state that, under this standard, a Balancing Authority must implement Confirm Interchange as received from the Interchange Authority.⁴⁴ Applicants state that they already perform this function today. Applicants state that OATI software calculates the Net Scheduled Interchange value which is then provided to SPP. SPP provides that data to Applicants, who then verify that the value matches the value in the Energy Management System. Applicants state that the only change under their proposal is that the OATI Net Scheduled Interchange calculation will be provided directly to Applicants, rather than going through TranServ. Applicants state that TranServ will remain responsible for monitoring and validating the Net Scheduled Interchange calculation.

27. Applicants note that all the functions described above are circumscribed by the NERC Reliability Standards and are subject to the Reliability Coordinator (as well as SERC and NERC) oversight. Further, Applicants argue that assuming these functions in-house will result in a savings to customers because if TranServ were to take on these functions, it would have to establish a desk with NERC-Certified Operators that is staffed

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at 18.

24 hours a day, seven days a week, which would require additional staffing and training, resulting in higher costs to customers.

III. Notice of Filing And Responsive Pleadings

28. Notice of Applicants' filing was published in the *Federal Register*, 76 Fed. Reg. 55,896 (2011), with interventions, protests, and comments due on or before September 20, 2011. Bluegrass Generation Company, LLC filed a motion to intervene. SPP and American Municipal Power, Inc. filed motions to intervene in Docket No. ER11-4396-000. East Kentucky Power Cooperative, Inc. (East Kentucky) filed a motion to intervene and comments and supplemental comments in Docket No. EC98-2-000. Kentucky Municipals⁴⁵ filed a motion to intervene and comments in Docket No. ER11-4396-000. On October 4, 2011, Applicants filed an answer responding to the comments.

A. Comments

29. East Kentucky states that while it does not oppose Applicants' filing, it has two potential concerns relating to future implementation of the proposal. East Kentucky notes that Applicants intend to assume the operational responsibility of implementing requested curtailments of schedules when and as necessary to comply with TLRs initiated by the Balancing Authority and/or the Reliability Coordinator, as required under the NERC Reliability Standards. East Kentucky argues that the Commission must strictly limit Applicants' role to operational implementation of TLRs initiated by the Balancing Authority and/or the Reliability Coordinator and make clear that Applicants will have no authority to initiate TLRs.⁴⁶

30. East Kentucky also strongly urges the Commission to make clear that Applicants intend that TransServ perform all the functions and responsibilities described in Applicants' August 30 Filing, including receipt and processing of all transmission and generator interconnection service requests, ATC evaluation, performance of system impact studies or feasibility analysis studies as provided under the OATT, receipt and processing of requests to designate or undesignate network resources, receipt and processing of service modifications or assignments as provided under the OATT, and tracking and posting all required study performance metrics.⁴⁷ East Kentucky clarifies in

⁴⁵ Kentucky Municipals consist of: Kentucky municipal requirements customers of KU; Owensboro Municipal Utilities; Kentucky Municipal Power Agency and its members; Paducah Power System; and the Princeton Electric Plant Board.

⁴⁶ East Kentucky September 20, 2011 Comments at 2-3.

⁴⁷ *Id.* at 4 (citing Applicants' August 30 Filing at 14).

its supplemental comments that it believes that transmission interconnection issues, including transmission system-to-transmission system issues, should be considered part of the ITO's independent oversight.

31. Kentucky Municipals state that they do not oppose appointment of TranServ as ITO. However, Kentucky Municipals request that the Commission make acceptance of the filing conditional on Applicants abiding by statements in Applicants' filing, including but not limited to: the statement that Applicants' ability to curtail transactions is limited to instances where it is necessary to implement TLRs, as described in the NERC IRO Standards; the statement that the Reliability Coordinator and the customer will receive real-time communications regarding the curtailed schedule and the reasons for the curtailment; and the statement that TranServ will have the same planning authority that SPP has had as the ITO.⁴⁸

B. Answer

32. In their answer, Applicants reply that East Kentucky is correct that the initiation of TLRs may be declared only by the Reliability Coordinator. Applicants counter, though, that Applicants have not proposed to alter the status quo with regard to how and when TLRs are initiated and the Balancing Authority's response to them. Applicants state that TLRs are initiated only in response to regional, rather than local, reliability events. Applicants reiterate that they do not seek to remove or modify the Reliability Coordinator's sole authority to initiate TLRs.⁴⁹

33. Applicants state that, as described in Applicants' Filing, the Reliability Coordinator has made it clear that when a schedule modification is required to address a reliability problem at the local level (usually 69 kV and below), resolution of such issues properly rests with the Balancing Authority rather than the Reliability Coordinator. Applicants note that they themselves are the Balancing Authority for their system. Applicants clarify that they have proposed that, as the Balancing Authority, they must have the ability to curtail transmission schedules in order to address reliability issues at the local level as they arise. Applicants state that this function currently rests with SPP in its capacity as ITO. Applicants state that the current terms of the OATT provide that the ITO is responsible for implementing schedule changes in such a circumstance, and SPP requires a directive from the Reliability Coordinator before SPP will act. Applicants state that in order to modify a schedule, Applicants must gather all parties (TVA, SPP, the

⁴⁸ See Kentucky Municipals September 20, 2011 Comments at 5-6 (citing Applicants' August 30 Filing at 3, 22).

⁴⁹ Applicants' October 4 Answer at 9-10.

customer, and itself) on a conference call before SPP will modify the schedule. Applicants state that this can be a time-consuming process, causing particular reliability challenges when the circumstances call for an immediate response.⁵⁰

34. In proposing to manage curtailment that occurs at a local level, Applicants identify safeguards to ensure that Applicants cannot favor their own generation or otherwise harm competition by assuming this function. First, Applicants' actions in modifying a schedule are subject to Reliability Coordinator, SERC, and NERC oversight. As a Balancing Authority, Applicants may modify a schedule only in response to a legitimate, verifiable reliability event, not for competitive purposes. Second, the customer, the ITO, and the Reliability Coordinator will receive real-time communication through the scheduling system that the schedule will be modified and the reliability reasons for such modification. This will provide the affected party with the means to follow up on and audit Applicants' decision-making process, if necessary. Third, Applicants propose to post statistics regarding such curtailments on OASIS, to ensure transparency and independent oversight by all customers. Fourth, TranServ, as the ITO, will remain responsible for granting transmission service, including schedule approval and modification as the transmission provider. Applicants submit that, taken together, these measures make certain that Applicants will have no opportunity to harm competition by assuming these additional Balancing Authority functions.⁵¹

35. Applicants also object to East Kentucky's concern over ITO involvement in transmission system-to-transmission-system issues. Applicants state that East Kentucky is concerned that requests for new interconnections pursuant to the parties' interconnection agreement are currently negotiated directly between the parties, without the ITO playing a role. Applicants note that this is the first time East Kentucky has mentioned such concerns. Applicants state that when Applicants withdrew from MISO, they proposed the ITO in order to administer the terms of the OATT and ensure that transmission service is provided in an open and transparent manner. Applicants state that the ITO's functions have never included oversight for the transmission system-to-transmission system issues addressed by the interconnection agreement, which Applicants describe as physical interconnection issues such as metering, equipment operation, and identification of the parties' transmission assets at a given interconnection point. Applicants state that they did not propose, nor did the Commission ever require, that the ITO have a role in such issues. Applicants claim that besides stating a general belief that transmission system-to-transmission system issues could have an influence on transmission service, East Kentucky cites no specific incident or concern that requires

⁵⁰ *Id.*

⁵¹ *Id.* at 10-11.

modification of the status quo with regard to the interconnection agreement.⁵²

IV. Discussion

A. Procedural Matters

36. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁵³ the timely motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority.⁵⁴ We accept Applicants' answer because it provides information that assisted us in our decision-making process.

B. Substantive Matters

1. Whether Applicants' Proposal is Consistent with the Requirements in the Merger Order and Withdrawal Order

37. As discussed below, we find that, subject to certain conditions, the arrangement with TranServ likewise satisfies the requirements in the Merger Order and Withdrawal Order. Regarding horizontal competition concerns, in the Merger Order the Commission found that Applicants' participation in MISO, by making available transmission service at non-pancaked rates, increased the number of suppliers able to reach the KU requirements customers' destination market, thereby expanding the geographic scope of the market and adequately lowering market concentration. Thus, the Commission conditioned its approval of Applicants' merger on their participation in MISO.⁵⁵ Regarding vertical competition concerns, in the Merger Order the Commission outlined five specific areas where an independent entity can mitigate transmission-related vertical market power: determining system expansion, a lack of economic stake in maintaining congested interfaces, eliminating the potential for the strategic use of the transmission owner's priority to use internal system capacity for native load, eliminating the incentive

⁵² *Id.* at 12.

⁵³ 18 C.F.R. § 385.214 (2011).

⁵⁴ *Id.* § 385.213(a)(2).

⁵⁵ Merger Order, 82 FERC at 62,214.

to engage in strategic curtailments of generation owned by the transmission owner's generation service competitors, and lack of incentive to game OASIS.⁵⁶

38. In the Withdrawal Order, the Commission found that Applicants' ITO proposal (after revision and in combination with the Reliability Coordinator arrangement with TVA) satisfied the vertical market power concerns in these five areas, and therefore met the Commission's merger requirements in Docket No. EC98-2-000.⁵⁷ The Commission also conditionally accepted Applicants' proposed arrangement for maintaining rate de-pancaking on their withdrawal from MISO to satisfy horizontal market power concerns.⁵⁸

39. Applicants' proposal does not have an adverse impact on horizontal market power or on rates or regulation. Applicants' proposed change in the entity serving as ITO and certain of the ITO functions in no way implicate the Applicants' Commission approved

⁵⁶ Merger Order, 82 FERC at 62,222, n.39:

[I]f properly structured, an ISO . . . can improve the process for determining system expansion needs because that process will no longer be dominated by a transmission operator that also owns generation assets. A properly structured ISO would have no economic stake in maintaining congested interfaces. Moreover, an ISO could eliminate the potential for the strategic use of the transmission owner's priority to use internal system capacity for native load. The ISO could also eliminate the incentive to engage in strategic curtailments of generation owned by the transmission operator's generation service competitors. Also, any incentives for gaming OASIS operations could be removed. These benefits will promote generation entry and competition because the affected markets will be perceived by potential entrants as fairer as a result of the transmission system no longer being controlled by their generation service competitors.

⁵⁷ Withdrawal Order, 114 FERC 61,282 at P 80-81.

⁵⁸ See Withdrawal Order, 114 FERC ¶ 61,282 at P 108-119 (finding that Applicants' rate proposal addresses concerns regarding horizontal market power); see also *E.ON U.S. LLC*, 116 FERC ¶ 61,019 (2006) (conditionally accepting Applicants' proposal on compliance); *E.ON U.S. LLC*, Docket Nos. ER06-20-004 and ER06-20-005, (Aug. 23, 2006) (unpublished letter order) (accepting Applicants' proposal on compliance, including a rate schedule with KU requirements customers).

rate de-pancaking arrangement. Therefore, we find that Applicants' proposal continues to satisfy the Commission's concerns with regard to horizontal competition. With respect to rates, we note Applicants' statement that their proposal to employ TranServ represents a cost savings to customers over the current arrangement with SPP. With regard to regulation, we note that Applicants' proposal presents no change in Applicants' current federal/state regulatory obligations.

40. With respect to vertical market power, TranServ as the ITO will be independent from Applicants, transmission customers, wholesale power customers, and any other Market Participants.⁵⁹ Applicants will have no veto authority over TranServ's personnel decisions.⁶⁰ Compensation disputes will be adjudicated before the Commission.⁶¹ In addition, TranServ will submit a report to the Commission every six months, describing any stakeholder concerns and the ITO's responses, and any issues or OATT provisions that hinder the ITO's performance.⁶² In addition, Applicants have not proposed any changes to TVA's role as Reliability Coordinator, as described in Applicants' OATT and as approved in the Withdrawal Order.⁶³ As noted above, the Commission outlined five specific areas where an independent entity such as an independent system operator (ISO) can mitigate transmission-related vertical market power.⁶⁴ We consider each of these issues here.⁶⁵

⁵⁹ See proposed Attachment P (Functions of the Reliability Coordinator and the ITO), section 3 (Functions of the ITO), section 3.3 (Independence).

⁶⁰ See ITO Agreement, section 2.1 (TranServ Personnel).

⁶¹ See *id.*, section 3.6 (Compensation Disputes).

⁶² See proposed Attachment P (Functions of the Reliability Coordinator and the ITO), section 3 (Functions of the ITO), section 3.2 (General Functions), 3.2.11 (providing for and describing the contents of ITO reports to the Commission every six months).

⁶³ TVA will no longer be contacted regarding curtailments at the local level, below the view of the interchange distribution calculator. As described by Applicants, TVA did not believe it was required to be involved, and the change formalizes TVA's non-involvement.

⁶⁴ Merger Order, 82 FERC at 62,222, n.39.

⁶⁵ We note that our analysis in this section presumes that Applicants will satisfy the compliance directives set forth herein.

a. **System Expansion**

41. In the Merger Order, the Commission found that an ISO can improve the process for determining system expansion needs because that process would not be dominated by a transmission operator that also owns generation assets.⁶⁶ In the Withdrawal Order, the Commission required Applicants to modify their proposed allocation of functions listed in Attachment L of their OATT and in all related agreements to give the entity serving as ITO the same authority over Applicants' transmission planning duties that MISO had at that time.⁶⁷ Specifically, the Commission required Applicants to assign to the ITO approval authority over all models, planning criteria, study criteria, plans, studies, the methodology for calculating ATC, and any inputs or numerical values provided by Applicants to the same extent as MISO had authority over these matters at that time.⁶⁸

42. Additionally, the Commission stated that while the Reliability Coordinator may retain authority to certify transmission plans for reliability purposes, the ITO must have ultimate review and approval authority over such planning functions to the same extent as MISO had at that time.⁶⁹ Applicants submitted a compliance filing on July 19, 2006 to address the Commission's requirements, and the compliance filing was subsequently accepted by the Commission.⁷⁰

43. Our review of the proposal's provisions governing long-term planning on Applicants' system indicates that TranServ will continue to have the same planning authority that SPP currently has as ITO.⁷¹ We reject East Kentucky's argument (filed in Docket No. EC98-2-000) that the ITO should handle transmission system-to-transmission system interconnection issues. Nothing in the Merger Order or Withdrawal Order

⁶⁶ Merger Order, 82 FERC at ¶ 62,222, n.39.

⁶⁷ Withdrawal Order, 114 FERC ¶ 61,282 at P 86.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *See Louisville Gas and Electric Co.*, Docket Nos. ER06-20-004 and ER06-20-005 (Aug. 23, 2006) (unpublished letter order).

⁷¹ The blackline version of Attachment P (Functions of the Reliability Coordinator and the ITO), proposed Appendix 2 (Division of Responsibilities for the Planning Function), shows that TranServ's planning authority as ITO is unchanged from SPP's planning authority as ITO.

requires the ITO to handle such issues. Therefore, we find that Applicants' proposal adequately addresses concerns regarding system expansion.

b. Maintenance of Congested Interfaces

44. In the Withdrawal Order the Commission conditionally approved Applicants proposal on the basis that SPP and TVA, as entities independent from Applicants, would perform functions that take away Applicants' ability to maintain congested interfaces.⁷² Specifically, the Commission directed that SPP as ITO would calculate ATC and Total Transmission Capability and would be responsible for ensuring that ATC values are calculated on a nondiscriminatory basis consistent with the ATC methodology in the Applicants' OATT. SPP would also validate interchange schedules, including verification of valid sources, sinks and transmission arrangements for such schedules.⁷³

45. Additionally, the Commission determined that TVA, as Reliability Coordinator, would be responsible for coordination of the interfaces between Applicants' system and those of MISO and PJM Interconnection, LLC under the Joint Reliability Agreement. The Commission concluded that neither SPP nor TVA would benefit from higher prices in Applicants' markets, and, therefore SPP and TVA do not have the incentive to maintain congested interfaces on Applicants' system for the purpose of creating higher prices in Applicants' markets.⁷⁴

46. Our review of the proposal indicates that TranServ will continue to calculate and post ATC in the same manner that SPP does currently as ITO.⁷⁵ Under the proposal, TranServ as ITO will not approve interchange schedules, as SPP as ITO did. Instead, Applicants will approve interchange schedules, and TranServ will monitor and validate them.⁷⁶ We find this change is consistent with the Merger Order and Withdrawal Order

⁷² Withdrawal Order, 114 FERC ¶ 61,282 at P 89.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ The blackline version of proposed Appendix 1 (Division of Responsibility for Transmission Service and Interchange) to Attachment P (Functions of the Reliability Coordinator and the ITO) shows that TranServ's authority over calculating and posting ATC as ITO is unchanged from SPP's authority as ITO.

⁷⁶ Proposed Appendix 5 (Balancing Authority Functions Performed) of Attachment P (Functions of the Reliability Coordinator and the ITO) provides that

requirements. NERC Reliability Standards state that Balancing Authorities are to approve interchange transactions,⁷⁷ and Applicants are the Balancing Authority for their system. We agree with Applicants that approving interchange transactions is primarily a matching function, ensuring that the adjacent Balancing Authority and Applicants have the same schedule in their systems, and does not give Applicants discretion over transmission service. Therefore, we find that this change is consistent with the Merger Order and Withdrawal Order. In addition, because TranServ, like SPP and TVA, would not benefit from higher prices in Applicants' markets, we find that the proposal does not provide an incentive to maintain congested interfaces on Applicants' transmission system.

c. **Transmission Provider's Use of its Internal System Capacity**

47. In the Withdrawal Order, the Commission conditionally approved Applicants' proposal on the basis that SPP, as an independent entity separate from Applicants and market participants, would perform functions that take away Applicants' ability to improperly use their native load priority to make off system sales. Specifically, SPP would receive and approve or deny all transmission service requests, as well as calculate and post ATC. SPP would also validate interchange schedules, including verification of valid sinks and transmission arrangements for such schedules. The Commission concluded that as an independent entity, SPP, like MISO, would have no incentive to facilitate any such abuse.⁷⁸

48. As discussed above, our review of the proposal indicates that TranServ will be responsible for receiving and approving or denying all transmission service requests, calculating and posting ATC in the same manner that SPP does currently, and will monitor and validate interchange schedules.⁷⁹ Additionally, TranServ's actions are subject to audit by SERC and NERC. Thus we find that, as an independent entity, TranServ will have no incentive to facilitate any abuse relating to Applicants' use of internal system capacity.

TranServ as ITO will monitor and validate interchange schedules, and Applicants will approve them.

⁷⁷ Subsequent to the date of the Withdrawal Order, NERC standards have become mandatory rather than voluntary.

⁷⁸ Withdrawal Order, 114 FERC ¶ 61,282 at P 91.

⁷⁹ Applicants' August 30 Filing at 23.

d. Curtailments

49. In the Merger Order, the Commission found that an independent entity such as an ISO could eliminate the incentive to engage in strategic curtailments of generation owned by the transmission owner's generation service competitors. The Commission found that SPP, serving as ITO, adequately addressed concerns about strategic curtailments. Under Applicants' proposal, TVA, not Applicants, will continue to have the sole ability to initiate the curtailment of generation by initiating TLRs.⁸⁰ The functions that Applicants propose to assume do not allow for discretion, in that they are governed by NERC Reliability Standards concerning Balancing Authorities. The relevant NERC Reliability Standard provides that the Regional Coordinator initiates all TLRs, whether inter-regional or intra-regional.⁸¹ Accordingly, we find that the proposed changes comply with the Merger Order and Withdrawal Order and continue to mitigate Applicants' horizontal and vertical market power.

50. We note that in contrast to Applicants' agreement with SPP as ITO, TLR directives will be handed down from the Reliability Coordinator to Applicants rather than to the ITO. For interchange transactions that are causing an overload in the Applicants' system, TVA will notify Applicants of the specific transaction(s) and amount(s) to be curtailed. For overloads not caused by interchange transactions (i.e., overloads caused by transactions that source and sink within the Applicants' Balancing Authority, including network and native load), TVA will notify Applicants of the total amount of reduction needed, and Applicants will then use curtailment and/or redispatch and, if necessary, load shedding, as appropriate, to mitigate the overload, consistent with the curtailment priorities in their OATT.⁸² We find that Applicants' implementation of these curtailments, as the Balancing Authority, removes the operational inefficiency under the previous arrangement without significantly reducing the ITO's ability to prevent Applicants from exercising market power.

⁸⁰ In response to Kentucky Municipals' and East Kentucky's concerns, we note that Applicants' proposal does not give Applicants the ability to initiate TLRs.

⁸¹ See NERC Reliability Standard IRO-006-EAST-1 (Regional Coordinator will initiate TLR procedures resulting in one or more of the following actions: Inter-area redispatch of generation, Intra-area redispatch of generation, reconfiguration of the transmission system, demand side management, load shedding, etc.).

⁸² Curtailment procedures and priorities are set out in section 13.6 of Applicants' OATT.

51. In regard to Applicants' statements that TVA will not be involved in a curtailment that occurs at the local level,⁸³ the Commission understands these statements as referring to curtailments on non-Bulk Electric System⁸⁴ facilities. Although NERC Reliability Standards do not govern such facilities, we find that Applicants' proposal to post on their OASIS details of any curtailments on these facilities will provide adequate transparency and oversight for the ITO and customers because they will have the real-time notice of Applicants' actions and they will have the ability to make these actions the subject of audits or complaints.⁸⁵

e. ATC Posting

52. In the Withdrawal Order, the Commission stated that an OASIS operator that also owns generation assets would have the ability and incentive to understate the calculation of ATC posted on its OASIS in order to foreclose rival generators. We find Applicants' proposal adequately addresses this concern.

53. Under Applicants' proposal, TranServ will be responsible for the review of transmission service requests, eTag action and statistics, ATC calculation, and the posting of ATC on OASIS, in accordance with SPP's current responsibilities as ITO. TranServ, as an independent entity, has no incentive to manipulate OASIS operations. In addition, TVA will review Applicants' Base Case Model used by TranServ for calculating ATC for reliability purposes. Finally, TVA, not Applicants, will determine Available Flowgate Capacity values and flowgate allocations, and TranServ will have the authority to review these values.

⁸³ In the Applicants' August 30 Filing at 16, Applicants state, "[h]owever, when the curtailment will occur at a local level (usually 69-kV and below), the RC [Reliability Coordinator] does not believe that it has an obligation to step in – the RC [Reliability Coordinator] understands that resolution of such issues rest with the BA [Balancing Authority]."

⁸⁴ The NERC's definition of bulk electric system states "[a]s defined by the Regional Reliability Organization, the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition." NERC is currently revising this definition. *See Revision to Electric Reliability Organization Definition of Bulk Electric System*, Order No. 743, 133 FERC ¶ 61,150 (2010).

⁸⁵ *See Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 542, 392 U.S. App. D.C. 339 (D.C. Cir. 2010).

2. Whether the Proposal is Just and Reasonable and Not Unduly Discriminatory or Preferential

54. Applicants' proposal is consistent with the ITO arrangement conditionally approved in the Withdrawal Order as just and reasonable, not unduly discriminatory, and consistent with or superior to the *pro forma* OATT.⁸⁶

55. We reject Kentucky Municipals' request (filed in Docket No. ER11-4396-000) that we make our acceptance of the filing conditional on Applicants' abiding by all statements in Applicants' August 30 transmittal letter.⁸⁷ Applicants' OATT provisions, rather than Applicants' statements in the transmittal letter, are binding on Applicants.⁸⁸ We note that of Kentucky Municipals' three examples of transmittal letter statements that should be binding on Applicants, two of the three examples are reflected in Applicants' proposed OATT provisions, while one is not.⁸⁹ Below we direct Applicants to revise the

⁸⁶ Withdrawal Order, 114 FERC ¶ 61,282 at P 91.

⁸⁷ See Kentucky Municipals September 20, 2011 Comments at 5-6 (citing Applicants' August 30 Filing at 3, 22).

⁸⁸ Applicants, as the NERC-certified Balancing Authority, must also abide by all applicable NERC Reliability Standards.

⁸⁹ With one partial exception, the three transmittal letter statements cited by Kentucky Municipals are reflected in provisions in proposed Attachment P (Functions of the Reliability Coordinator and the ITO). Specifically, the statement that Applicants' ability to curtail transactions is limited to instances where it is necessary to implement TLRs, as described in the NERC IRO Standards, is reflected in proposed Attachment P, Appendix 4 (Division of Responsibilities for the Reliability Function), section 2.1 (Reliability Coordinator Functions) and section 2.2 (Transmission Owner Responsibilities) (providing TVA will determine, direct, and document appropriate actions to be taken in accordance with NERC Reliability Standards, and Applicants will receive reliability alerts from TVA and follow TVA directives for corrective actions). The statement that TranServ will have the same planning authority that SPP has had as ITO is reflected in proposed Attachment P, Appendix 2 (Division of Responsibilities for the Planning Function) (providing that the ITO's planning authority is unchanged from what it is with SPP as the ITO). However, Applicants' statement in the transmittal letter that the Reliability Coordinator and the customer will receive real-time communications regarding the curtailed schedule and the reasons for the curtailment is only partially reflected in the proposed OATT revisions. Attachment P, Appendix 5 (Balancing Authority Functions Performed), section 1 (Balancing Authority Functions performed by the Transmission Owner) states that Applicants will provide real-time operational

(continued...)

proposed OATT provisions to include this statement. With the clarifying changes directed herein, Applicants' proposed OATT revisions are just and reasonable and adequately formalize the relative responsibilities of Applicants and TranServ, and are otherwise consistent with the Merger Order and Withdrawal Order.

56. While we find the overall proposed ITO arrangement to be just, reasonable, and not unduly discriminatory or preferential, we find certain aspects of the proposal to be unclear, and therefore we require Applicants to submit, within 30 days of the issuance of this order, a revised proposal that addresses the following issues.

57. First, in the Applicants' August 30 Filing, Applicants state that TranServ will not maintain a 24/7 call center. Sections 4 and 4.1 of Appendix A (Independent Transmission Organization Service Specification) of the ITO Agreement provide that TranServ personnel will provide 24-hour support, and that after normal business hours the support is by telephone, with TranServ personnel responding within 30 minutes of notification of a "critical" or "high" importance event. In contrast, Applicants' Attachment P at section 1 of Appendix 1 (Division of Responsibility for Transmission Service and Interchange) states that consistent with the OATT, "the ITO will notify Transmission Customers of curtailments and interruptions of TSRs [transmission service requests]." Curtailments can occur outside of regular business hours, but the provision does not address how TranServ can notify a customer of a curtailment that occurs outside of TranServ's business hours, given that TranServ's personnel may not respond for 30 minutes. Therefore, we direct Applicants to file, in a compliance filing to be submitted within 30 days of the date of this order, revisions to Attachment P or the ITO Agreement to clarify TranServ's role in notifying customers of curtailments that occur outside of regular business hours.

58. Second, Applicants' Attachment P, Appendix 5 (Balancing Authority Functions Performed) states: "The Transmission Owner and ITO will split the functional responsibilities for the Balancing Authority, as defined in *Version 2* of the NERC Reliability Functional Model, as follows . . ." [Italics added.] However, the current NERC Reliability Functional Model is Version 5.⁹⁰ Therefore, we direct Applicants to include in their compliance filing tariff revisions that refer to Version 5 instead of

information to TVA for monitoring, but it does not state that the customer will receive real-time communications regarding the curtailed schedule and the reasons for the curtailment. As stated below, we direct Applicants to file revised language addressing this omission, within 30 days of the issuance of this order.

⁹⁰ NERC posts the current version of the Reliability Functional Model: http://www.nerc.com/files/Functional_Model_V5_Final_2009Dec1.pdf.

Version 2. In addition, if Version 5 differs from Version 2 in any way that affects the functional responsibilities for the Balancing Authority, Applicants must revise the responsibilities to reflect the difference, and must describe and explain the revisions in the transmittal letter.

59. Third, as noted above, Applicants state in their transmittal letter that the customer and the ITO, and the Reliability Coordinator will receive real-time communications regarding a schedule curtailment and the reasons for the curtailment through the scheduling system.⁹¹ However, this statement is not reflected in the proposed OATT provisions. Therefore, we direct Applicants to include in their compliance filing tariff revisions providing that the customer, the ITO, and the Reliability Coordinator will receive real-time communications regarding a schedule curtailment and the reasons for the curtailment.

60. Finally, we will grant waiver of the Commission's advance notice requirement to permit an effective date of September 1, 2012 for the proposed OATT revisions.⁹²

The Commission orders:

(A) Applicants' proposal to appoint TranServ as their ITO and change certain aspects of the ITO arrangement is hereby conditionally approved, as discussed in the body of this order.

(B) Applicants' tariff revisions are hereby conditionally accepted to become effective September 1, 2012, as requested, as discussed in the body of this order.

⁹¹ Applicants' August 30 Filing at 16.

⁹² See *PSI Energy, Inc.*, 56 FERC ¶ 61,237, at 61,911 (1991) (waiving 120-day advance notice requirement); see also *Trans Bay Cable LLC*, 112 FERC ¶ 61,095, at P 2-3, 32 (2005).

(C) Applicants are hereby directed to make a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.