

116 FERC ¶ 61,072
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

East Kentucky Power Cooperative, Inc.

Docket No. TX05-1-007

ORDER ON COMPLIANCE FILING

(Issued July 20, 2006)

1. On February 21, 2006, the Tennessee Valley Authority (TVA) submitted a Revised Interconnection Agreement, as directed by the Commission's Final Order of January 19, 2006, which also directed TVA to interconnect its transmission system with East Kentucky Power Cooperative Inc.'s (EKPC) transmission system.¹ We will accept the Revised Interconnection Agreement, subject to further modifications.

I. Background

2. In the Final Order, the Commission found TVA's proposed Interconnection Agreement contained appropriate terms and conditions to accomplish the interconnection of TVA's transmission system with that of EKPC. However, the Commission directed TVA to remove all provisions that treated loop flows as firm point-to-point transmission service. In addition, the Commission rejected TVA's proposed loop flow compensation provision without prejudice to TVA demonstrating that loop flows exist and proposing compensation that specifically mitigates the burden on its system caused by the loop flows. Furthermore, the Final Order stated that, to the extent there are any rates, terms and conditions associated with the interconnection or with coordination services (such as voltage outage and back-up power) to make the interconnection effective, TVA should establish rates, terms and conditions using standard interconnection agreement provisions comparable to other TVA system interconnection agreements.

3. The Commission also directed TVA to complete any necessary analysis or cost estimates and submit the completed facilities matrix and estimated project costs as part of its compliance filing. The Commission stated that, if any conclusions could not be determined within that time, TVA should provide specific reasons and a specific timeline

¹ *East Kentucky Power Cooperative, Inc.*, 114 FERC ¶ 61,035 (2006) (Final Order).

as to when those conclusions would be available. The Commission also directed EKPC to provide to TVA, within seven days of the date of the Final Order, any information that had been identified by TVA as needed to conclude the engineering studies.

II. Notice of Filing

4. Notice of TVA's filing was published in the *Federal Register*, 71 Fed. Reg. 11,603 (2006), with comments, protests or interventions due on or before March 14, 2006. On March 14, 2006, EKPC filed a protest to TVA's compliance filing. TVA filed an answer to EKPC's protest on March 31, 2006.

III. Discussion

A. Procedural Matters

5. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2)(2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept TVA's answer because it provides information that has assisted us in our decision-making process.

B. Commission Decision

6. We find that TVA is continuing to treat EKPC's interconnection as a transmission-related service, in violation of our directive in the Final Order. Thus, we again will direct TVA to remove all transmission-related provisions and to establish rates, terms and conditions consistent with standard interconnection agreement provisions. We address below specific provisions in the Revised Interconnection Agreement.

1. Compensation for Loop Flows

7. TVA states that it eliminated the term "FERC-Authorized Flows" from the Interconnection Agreement, but reiterates the claim that it has made throughout this entire proceeding that the EKPC power flows on the TVA transmission system are real and tangible. Therefore, TVA explains that it continues to reference such power flows in the Revised Interconnection Agreement.² TVA explains, further, that it is substituting a contractual provision that recognizes its right to claim and to be paid compensation under the Revised Interconnection Agreement if TVA meets the burden of proof referred to in

² TVA defines "EKPC Power Flows" in section BA-2 (Definitions) as "...the EKPC Power Flows over the TVA transmission system that will result from the implementation and operation of the FERC-ordered interconnection points and enable EKPC to serve Warren. The EKPC Power Flows shall be limited to the amount of power needed to supply the Warren load, excluding the K[entucky] U[tility] Load."

the Final Order. TVA cites to section 3.2 of the 1964 interconnection agreement (1964 IA) between TVA and EKPC that provides for either the equitable compensation of such burdens or for the party causing the burden to take proper measures to remove the burden.

8. TVA argues that it is appropriate to retain a revised section BA-6.1 (In General) to provide appropriate measures to mitigate EKPC power flows determined to be a burden on the TVA transmission system. TVA states that it revised section BA-6.1 to reflect that, if TVA does studies at its own expense which demonstrate that the TVA transmission system needs modifications -- including network upgrades to maintain the interconnections, in order to carry the EKPC power flows, or to provide the coordinating services -- TVA has the right to request that EKPC pay TVA for such modifications.

9. EKPC protests TVA's reference to section 3.2 of the 1964 IA, which it states does not include a pricing provision for loop flows. EKPC believes that TVA is seeking to avoid having to obtain Commission approval for loop flow compensation by prosecuting such claims under the non-jurisdictional 1964 IA. EKPC argues that loop flow compensation properly remains subject to the jurisdiction of the Commission.

10. EKPC also requests the elimination of Article BA-6 (Modifications to the TVA Transmission System Associated with Establishing and Maintaining the FERC-Ordered Interconnection Points, Carrying the EKPC Power Flows, Or Providing the Coordination Services). EKPC argues that the Revised Interconnection Agreement must be modified to accurately describe the loop flow issue. EKPC also argues that TVA's characterization of loop flow in section BA-0.3 (Compensation for EKPC Power Flows) implies that the Commission has already determined that TVA is entitled to compensation, which, EKPC points out, is not the case. EKPC proposes that section BA-0.3 be modified to state that "In the FERC Order, FERC provided TVA with the opportunity to seek compensation for loop flows when and if TVA can make the demonstrations of excessive burden resulting from such loop flows consistent with FERC Policy." Lastly, EKPC protests Article BA-12 (Control and Operation of the EKPC Interconnection Facilities). EKPC argues that this provision treats loop flows as transmission service and must be modified to remove any reference to "curtailment" of EKPC power flows.

11. In its answer, TVA states that, by seeking to strike the reference to "EKPC Power Flows," EKPC is attempting to limit TVA's compensation to the costs of establishing the interconnection and providing coordination services.

Commission Determination

12. As noted above, in the Final Order, the Commission rejected TVA's proposed loop flow compensation without prejudice to TVA demonstrating that such a burden exists and proposing compensation that specifically mitigates the burden on its system

caused by the loop flows.³ TVA has not provided any studies to date demonstrating such a burden. We are unwilling to accept TVA's provisions relating to EKPC power flows, which serve as a placeholder, without being provided any reasonable basis to conclude a burden exists with regard to the loop flows. Accordingly, we will require TVA to remove the phrase "EKPC Power Flows" from section BA-6.1.

13. We will also require TVA to delete any reference to section 3.2 of the 1964 IA in the Revised Interconnection Agreement. TVA states that, in including the provision, it is not waiving its rights to compensation and is referencing section 3.2 of the 1964 IA because it expressly recognizes that such a right exists. Such a reference is not necessary. As we have stated, to the extent that TVA makes a demonstration that the interconnection causes a burden on its system, it can file to amend the Interconnection Agreement. We will not permit TVA to include placeholders in this agreement for any future provision involving compensation for loop flows.

2. Study Agreements

14. As part of the Revised Interconnection Agreement, TVA submitted a revised Transmission Impact Study Agreement and a Facilities Study Agreement, under which it would collect charges for studies related to the impact of the interconnection. TVA explains that, initially, it will, at its own expense, do the periodic studies it deems appropriate to assess the condition of the TVA transmission system as it relates to the Interconnection Agreement. TVA explains, further, that, if these studies show impacts on the TVA system from the interconnections, EKPC power flows, or coordination services, TVA will be entitled to be reimbursed for the study costs related to identified and demonstrated impacts that need to be mitigated.

15. EKPC argues that section BA-5 (Future System Impact and Facilities Studies) should be revised to eliminate the term "EKPC Power Flows." TVA, however, argues that its definition of EKPC Power Flows is clear, specific, and accurate in all respects. TVA states that, without the definition, the Interconnection Agreement becomes ambiguous with respect to both parties' obligations regarding the flows associated with the FERC-ordered interconnections. TVA also states that Article BA-5 of the Revised Interconnection Agreement is intended to provide a workable procedure to ensure that TVA has the requisite capacity to maintain the FERC-ordered interconnections, carry the EKPC power flows and to provide coordination services.

16. Additionally, EKPC proposes to eliminate Section BA-5.1 (Conduct of System Impact Studies), which obligates EKPC to notify TVA immediately of any changes to

³ Final Order at P 40.

Warren's distribution and transmission system that would impact the magnitude of EKPC power flows necessary for EKPC to supply Warren's load. EKPC also proposes to strike the requirement that EKPC submit a 10-year load forecast on an annual basis.

Commission Determination

17. As discussed *infra*, we will require TVA to delete any reference to "EKPC Power Flows." TVA has not made a showing consistent with our *American Electric Power Service Corporation* precedent⁴ which would induce us to order compensation at this point. However, TVA continues to retain the right to conduct additional studies in the future when circumstances change which may reflect burdens for which it should be compensated. If and when TVA makes such a showing, consistent with *AEP*, TVA may amend its Interconnection Agreement with EKPC to recover such costs. However, while TVA is free to perform any system impact studies it deems necessary to assess any changes on TVA's transmission system, EKPC is entitled to finality with regard to study costs. We also will direct TVA to strike the requirement that EKPC submit a 10-year load forecast annually. EKPC is required to notify TVA of any changes in its system that may impact the interconnection, so this requirement is not needed.

3. Loss of Contract Path

18. TVA states that it has always been its position that the ordered interconnections would cause TVA to use its facilities to transmit EKPC's power to Warren in a manner that cannot be ordered by the Commission under applicable federal law. TVA states that, even under the terms of the Final Order, it needs to discuss with EKPC the matter of what communication protocols and other measures are needed to address EKPC's loss of certain transmission elements that result in EKPC no longer having an uninterrupted contract path on its system to supply the Warren load. TVA states that, if there is no contract or transmission path that does not involve the facilities of TVA, continued flows on the TVA transmission system cannot be loop flow and TVA is not agreeing that its facilities be used to carry such flows. TVA argues that, in such circumstances, the interconnections will need to be opened to prevent TVA from providing transmission service. TVA states that this is consistent with applicable law and the provisions of the Final Order, and TVA has never agreed to provide this service. TVA states that a new provision has been added to section BA-12.3 (Failure to Comply and Loss of Contract Path) to address this issue.

19. EKPC protests section BA-12.3(a)(iv), which addresses TVA's rights under section 212(j) of the FPA. EKPC notes that it has no objection to the first two sentences

⁴ See 49 FERC ¶ 61,337 at 62,381, *reh'g denied*, 50 FERC ¶ 61,192 (1990) ; see also *American Electric Power Service Corp.*, 93 FERC ¶ 61,151 at 61,474 (collectively, *AEP*).

of section BA-12.3(a)(iv) although they properly belong in section BA-12.4 (Limitations on Services Provided by TVA). EKPC argues, however, that the balance of section BA-12.3(a)(iv) should be stricken as unnecessary and inconsistent with the Final Order. EKPC notes that section BA-12.1 already provides in detail those circumstances under which either party may disconnect the interconnections. EKPC objects to the implication that interconnections and resulting inadvertent loop flows are tantamount to transmission service.

Commission Determination

20. We direct TVA to remove section BA-12.3(a)(iv). We reiterate that TVA is inappropriately tying transmission service to interconnection service. We note that TVA's argument with regard to this Commission's jurisdiction and section 212(j) of the FPA were raised by TVA in its request for rehearing of the Final Order (and earlier). We addressed this issue in our previous orders in this proceeding,⁵ and see no need to address it further now. Notwithstanding that TVA disagrees with our conclusions, TVA is required to follow our directives.

4. Coordination Services

21. TVA argues that it is unable at this time to provide specific terms, conditions and rates for coordination services, as the Final Order does not provide TVA with sufficient information to structure the terms of such services, including the applicable rates, and EKPC has not provided it with such specific information with regard to coordination services. TVA contends that there is no information in the Final Order as to the magnitude of the services (either initially being requested or needed over the lengthy contract term) nor is there information as to frequency of use, duration or conditions requiring use. TVA also argues that, to the extent coordination services involve the sale of power, it will need to assess the capability of its transmission system to accommodate any such power transfers. TVA states that, notwithstanding this lack of detail, it included provisions in this section under which EKPC may request coordination services from TVA with sufficiently detailed information for TVA to assess the request.

22. TVA further states that, under the terms of section BA-14.2 (Rates, Terms, and Conditions Applicable to Coordination Services), the availability, rates and terms or conditions for coordination services, including those that involve the sale of power, will be determined by TVA in accordance with the provisions of the Tennessee Valley Authority Act (TVA Act).⁶ TVA explains that provisions have been included in this section to recognize that the coordination services made available by TVA will at all

⁵ See, e.g., *East Kentucky Power Cooperative, Inc.*, 115 FERC ¶ 61,347 (2006).

⁶ 16 U.S.C. § 831n-4 (2000).

times be consistent with applicable law, including the TVA Act. TVA states that, in this regard, it included terms to recognize that the provision of coordination services, to the extent that such services involve the sale of exchange power by TVA to EKPC, will be consistent with the provisions of the Consent Judgment in *Alabama Power Co. v. Tennessee Valley Authority*, CV-97-C-0885-S (N.D. Ala. 1997) (Consent Judgment).

23. TVA also points out that the Commission has recognized that TVA's ability to incur debt is limited under the TVA Act.⁷ TVA states that its limited capital must be preserved for its use in building or acquiring resources to serve its existing customers in the TVA area. TVA argues that, in any event, if TVA determines that it is not able to provide the coordination services from available resources and additional resources must be acquired or built, EKPC should bear the responsibility and costs of serving its customers.

24. EKPC protests Article BA-14 (Coordination Services), stating it is void of meaningful details regarding the provision of coordination services, and instead allows EKPC, from time-to-time, to "request in writing coordination services from TVA."⁸ EKPC proposes to include more specific language detailing the provision of coordination services, which it includes as an attachment to its protest. EKPC also protests section BA-14.2 (Rates, Terms, and Conditions Applicable to Coordination Services) which requires that the rates, terms and conditions for any coordination services will be made by the Board of Directors in accordance with the TVA Act. EKPC requests modification to section BA-14.2 to reflect the role of the Commission in approving the rates, terms and conditions for the provision of coordination services. EKPC also protests TVA's incorporation of the Consent Judgment in the coordination services provision.

Commission Determination

25. We note that, in Attachment D to its protest to TVA's compliance filing, EKPC provided detailed information regarding the coordination services it required, specifically, Emergency Power and Reactive Support, and find that this information is sufficient to structure the terms of the coordination services.⁹ We note, further, that

⁷ Citing Final Order at P 56.

⁸ See Revised Interconnection Agreement, section BA-14.1.

⁹ To the extent TVA disagrees and believes that it needs additional information, it must request this information from EKPC and file a copy of the request with the Commission within seven days of the date of this order. We note that the details currently provided by EKPC are consistent with the coordination services details included as part of their proposed interconnection agreement filed May 31, 2005 (EKPC's Proposed IA). See EKPC's Proposed IA at P 10 and Attachment 4.

EKPC is only seeking additional emergency power that can be supplied without jeopardy to the supplying party's property and operations. Therefore, we will direct TVA to modify Article BA-14 of the Revised Interconnection Agreement to incorporate the changes requested by EKPC.¹⁰

5. Future Changes

26. In the Final Order, we directed TVA to modify section GP-9.14 (Future Changes) "to provide that requests for unilateral modification can be made at any time, and must be approved by the Commission."¹¹ In the compliance filing, TVA declares that it disagrees with the Commission's finding in the Final Order, but rather believes that this provision promotes finality in the interconnection arrangements, and, accordingly, did not make the required modification. In support, TVA explains that, over time, critical matters such as reliability conditions might change and necessitate changes in the arrangements and therefore the criteria for such changes have been carefully crafted to be limited by the term "Amendment Criteria." TVA also states that section GP-9.14 includes provisions for the parties to use an expert acceptable to both parties when dealing with technical matters as an efficient and effective way of resolving disputes concerning such matters.

27. EKPC argues that section GP-9.14 still contains procedures that are complicated and unclear. EKPC avers that, although it does not object to dispute resolution procedures governing amendments to the Interconnection Agreement, TVA's proposal is convoluted and will generate more disputes than it resolves. EKPC also argues that TVA ignored the Commission's directive to modify section GP-9.14 to allow for the unilateral modification of the interconnection agreement, subject to Commission approval. EKPC states that, if TVA disagrees with a Commission determination, the proper course is for TVA to seek rehearing of that determination, not to ignore it. EKPC proposes simplifying section GP-9.14 so that the parties retain their right to propose unilateral modifications to the Interconnection Agreement. But EKPC argues that the parties must first agree to submit to dispute resolution if they are unable to agree to a proposed amendment to the Interconnection Agreement before submitting that proposal to the Commission.

Commission Determination

28. Once again, TVA is inappropriately continuing to disregard the Commission's clear directives in the Final Order, simply because it does not agree with the

¹⁰ It appears that the word "eminent" in the definition of emergency power should really be "imminent."

¹¹ Final Order at 58.

Commission's findings. To the extent that TVA disagrees with the Commission's directives in this proceeding, it may raise those issues in the context of its appeal to the courts. In the meantime, it cannot ignore the Commission's directives. Once again, we direct and order TVA to revise section GP-9.14 to allow for unilateral modification of the Interconnection Agreement, consistent with our Final Order. Absent a court-ordered stay, failure to file as directed within 30 days may result in a further order initiating a proceeding to enforce these directives. Such a proceeding may include a determination of whether civil penalties are appropriate for failure to comply with the Commission's directions in this order.

The Commission orders:

(A) TVA is hereby directed to file, within 30 days of the date of this order, further modifications to the Revised Interconnection Agreement, as discussed in the body of this order.

(B) TVA's revised Interconnection Agreement, subject to the modifications directed in Ordering Paragraph (A), is hereby accepted for filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.