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. TX05-1-006

ORDER DENYING REHEARING

(Issued June 20, 2006)

1. On February 21, 2006, the Tennessee Valley Authority (TVA)[1] filed a request for rehearing and clarification of our Final Order directing interconnection issued on January 19, 2006.[2] This order denies TVA's request for rehearing.

I. Background

2. On January 19, 2006, the Commission, pursuant to sections 210 and 212 of the Federal Power Act (FPA),[3] issued a Final Order in this proceeding directing TVA to

[1] TVA is a wholly-owned corporate agency and instrumentality of the United States government organized under the Tennessee Valley Authority Act of 1922. TVA produces and sells electric power in seven states at wholesale for resale to municipal and cooperative distributors and at retail to large industrial customers and to several government facilities. TVA owns and operates an extensive transmission system that is interconnected with the transmission systems of neighboring electric utilities, including EKPC's transmission system. EKPC currently is interconnected to TVA's transmission system at six locations.

[2] *East Kentucky Power Cooperative, Inc.*, 114 FERC ¶ 61,035 (2006) (Final Order). *See also East Kentucky Power Cooperative, Inc.*, 111 FERC ¶ 61,031 (Proposed Order), and *East Kentucky Power Cooperative, Inc.*, 112 FERC ¶ 61,160 (2005) (August 3 Order).

[3] 16 U.S.C. §§ 824i and 824k (2000).

interconnect its transmission system with East Kentucky Power Cooperative, Inc.'s (EKPC)[4] transmission system and to provide coordination services necessary for EKPC to deliver energy to Warren Rural Electric Cooperative Corporation (Warren).[5]

3. As an initial matter, the Commission rejected TVA's argument that the loop flows created as a result of the proposed interconnection are, in fact, transmission service. Additionally, the Commission rejected TVA's assertion that EKPC's facilities are insufficient to deliver power to Warren, noting that TVA had not shown that EKPC's transmission path lacks sufficient capacity, but rather was objecting to the fact that loop flows are generated when EKPC connects to the TVA system to receive coordination services. The Commission found that TVA had offered no convincing evidence or arguments to dispute EKPC's claim that its planned facilities were sufficient to provide service to TVA, but for the coordination services EKPC has requested.

4. The Commission also found that the coordination services requested by EKPC are services which TVA has no statutory basis for objecting to provide under either section 210 or 212. The Commission noted that section 212(j) of the FPA has no prohibition upon the Commission ordering such coordination services to be provided by TVA, and pointed out that section 210(a)(1) explicitly authorizes the Commission to order such services. The Commission noted that loop flows have been, and can be, coordinated, and that proper compensation can be ordered when a demonstrated burden exists. Finally, the

[4] EKPC is an electric generation and transmission cooperative in Kentucky. It supplies electric power to its electric distribution cooperative members that serve retail electric customers in central and eastern Kentucky. As a cooperative with outstanding Rural Utilities Service debt, EKPC is not a Commission-jurisdictional public utility, but it has a reciprocity Open Access Transmission Tariff on file with the Commission. *See East Kentucky Power Cooperative, Inc.*, Docket No. NJ97-14-000, unpublished letter order dated December 17, 1997.

[5] Warren is a distribution cooperative serving approximately 54,000 customers in south central Kentucky. Warren operates 5,000 miles of 13 kV distribution facilities, 200 miles of 69 kV sub-transmission facilities and 37 substations. TVA provides Warren with electric power Warren needs to serve its customers through the following five delivery points on TVA's transmission system: Aberdeen Gap, East Bowling Green, Bristow, Memphis Junction and Franklin. As provided in the Warren/TVA Power Contract covering provision of this service, Warren notified TVA that it would terminate the Agreement on April 1, 2008. At that time, EKPC will begin supplying electric power to Warren under a 33-year full-requirements wholesale power contract. TVA rejected EKPC's proposals for EKPC to purchase transmission service from TVA in order to move power from EKPC to Warren.

Commission found that, although loop flows are *foreseeable*, they are not *desired as an end in themselves*, but only as an unavoidable consequence of TVA's provision of coordination services to EKPC and Warren.

5. As to the revised system impact studies, which the Commission had directed in the August 3 Order, the Commission found that the revised studies were adequate to support the directed interconnection. The Commission, however, rejected the follow-up studies proposed by TVA because they appeared to be premised upon TVA's treatment of loop flows as firm point-to-point transmission service. The Commission found that TVA had not shown that additional follow-up studies were typically performed specifically for loop flows, that other systems were assessed charges for such studies only because of loop flows, or that this proceeding involved loop flow planning costs that were above and beyond those encountered in other instances of loop flow, and that, therefore, warranted special treatment. The Commission also found that EKPC was responsible for all the costs associated with the system impact studies and facilities studies associated with the its interconnection request, and that will be completed as a result of the Final Order, including the costs of the disputed base case.

6. As to TVA's proposed Interconnection Agreement, the Commission concluded that the proposed agreement contained terms and conditions appropriate for the interconnection of TVA's transmission system with EKPC's system, subject to the following modifications: (1) removal of all provisions in the proposed Interconnection Agreement that treat loop flow as firm point-to-point transmission service as well as the requirement for an annual system impact study (which is only required in the context of transmission service and not in the context of interconnection); (2) rejection of the proposed loop flow compensation provisions 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) rejection of proposed provisions relating to compensation for an additional "facilities study" and "project scoping workshop;"[6] (4) elimination of the termination for failure to pay provision in section BA-6.1 of the proposed Interconnection Agreement; (5) elimination or addition of certain other miscellaneous provisions; and (6) correction of various typographical errors. The

[6] In addition, the Commission found that EKPC had not provided TVA with all the technical details needed by TVA to complete the engineering studies in its proposal, and directed EKPC to provide TVA any additional information that was identified by TVA as needed to conclude the engineering studies. The Commission directed, further, that if at any time following the submission of information by EKPC, TVA determined that it still did not have sufficient information to comply with the Final Order, TVA was to request the information from EKPC and file a copy of that request with the Commission.

Commission directed TVA to file a compliance filing including a revised Interconnection Agreement incorporating these modifications within 30 days of the date of the Final Order.

7. The Commission concluded that the proposed interconnection was in the public interest because it would encourage the conservation of energy and capital by providing Warren with access to more economical sources of power. The Commission concluded, further, that Warren and its customers would be able to purchase power at lower rates than they pay to TVA. As a result, the Commission found that an order directing TVA to interconnect with EKPC would optimize the use of existing facilities by allowing increased competition. Finally, the Commission concluded that the requested interconnection was consistent with the requirements of section 212. The Commission, therefore, directed TVA to interconnect with EKPC under the terms and conditions of the proposed Interconnection Agreement, because EKPC met the standards for an interconnection order under sections 210 and 212 of the FPA.

II. TVA's Request for Rehearing

8. In its rehearing request, TVA continues to raise arguments addressed by the Commission in the Proposed Order and in the August 3 Order. Specifically, TVA argues that: (1) the Commission never addressed the question of whether EKPC's application seeks real interconnection or whether EKPC's application is a request for transmission service;[7] (2) the Commission cannot focus solely on the "interconnection" aspect of EKPC's application – when the effect of ordering the interconnection is to require TVA to wheel power across TVA's transmission system to Warren for EKPC – and then claim it is acting only under section 210;[8] (3) the Commission exceeded its statutory authority because section 212(j),[9] the Anti-Cherrypicking Amendment, prohibits the Commission from ordering TVA to wheel power for another entity under section 211 if the power to be transmitted across TVA's transmission system will be consumed within TVA's statutory service area;[10] (4) section 210 does not authorize the Commission to require TVA to provide "coordination services" necessary for EKPC to deliver power within TVA's service area to Warren;[11] (5) the Commission lacks the authority to order TVA to

[7] TVA's Rehearing Request at 11-14.

[8] *Id.* at 14-17.

[9] 16 U.S.C. § 824k(j) (2000).

[10] TVA's Rehearing Request at 17-23.

[11] *Id.* at 23-27.

sell power (whether as back-up power or voltage support) to EKPC or to require TVA to plan additional generation capacity or other resources solely for the purpose of selling power to EKPC for delivery to Warren;[12] (6) the Commission is deviating from established definitions and existing Commission policy in ordering EKPC's interconnection;[13] and (7) the Commission is discriminating against TVA in consideration of EKPC's application.[14]

9. TVA argues, further, that, even if EKPC's application is properly considered under section 210, the application does not satisfy the statutory criteria. As an initial matter, TVA contends that the Commission must convene a formal, on-the-record evidentiary hearing in order to make the factual findings required by section 210.[15] TVA then avers that the Commission is bypassing the restrictions on its authority to order transmission service in section 212(j), arguing that the Commission's purpose in ordering the interconnection, *i.e.*, increased competition, is contrary to Congress's policy against cherry-picking as expressed in section 212(j).[16] TVA also argues that the Commission's finding that approval of EKPC's application would encourage overall conservation of energy or capital is unsupported and: (1) ignores TVA's evidence showing that EKPC's interconnection would result in the loss of transfer capability on the TVA system; (2) would cost TVA in excess of $50 million to replace its lost transfer capability; and (3) would require other neighboring transmission providers to incur costs to replace lost capabilities.[17] TVA also challenges the Commission's finding that approval of EKPC's application would optimize the use of facilities and resources.[18] TVA argues that the "existing facilities" referenced in the Commission's Final Order are parts of TVA's transmission system, the use of which is precluded by the application of section 212(j).[19] TVA argues, further, that EKPC's use of TVA's facilities and resources burdens other facilities that could be used by TVA for other purposes, such as importing and exporting

[12] *Id.* at 27-29.

[13] *Id.* at 30-32.

[14] *Id.* at 32-34.

[15] *Id.* at 35-37.

[16] *Id.* at 37-40.

[17] *Id.* at 40-41.

[18] *Id.* at 41-42.

[19] *Id.* at 41.

power and wheeling power for eligible entities.[20] TVA concludes, therefore, that EKPC failed to carry its burden of proof to show that its interconnection request meets the statutory criteria in section 210(c).[21]

10. Finally, TVA argues that the Commission's Final Order is deficient as a matter of law.[22] According to TVA, the Final Order violates section 211(b) because it fails to evaluate the actual impact of the proposed interconnection and inadvertent loop flow on the reliability of TVA's and other neighboring transmission systems.[23] TVA argues that the Final Order also violates the time line requirements of section 212(f)(1).[24] TVA also argues that the Final Order violates section 212(c)(2)(A) because, rather than prescribing the terms and conditions for the Interconnection Agreement, the Commission directed TVA to provide certain "coordination services" without defining these services.[25]

11. TVA challenges the Commission's decision to require TVA to use EKPC's base case for the system impact study and ignored TVA's evidence demonstrating that the baseline conditions of its transmission system (*e.g.*, facility loadings and voltage levels) would be different in 2010 compared to 2005.[26] TVA also challenges the Commission's characterization of the flows associated with EKPC's interconnection as loop flows rather than transmission service.[27] TVA then argues that the Commission denied TVA compensation for significant loop flows without any consideration of its evidence demonstrating that EKPC's interconnection would result in power flows (whether considered direct or loop under expected contingencies) that will decrease TVA's transfer

[20] *Id.*

[21] *Id.* at 42.

[22] *Id.* at 42-59.

[23] *Id.* at 42-45.

[24] *Id.* at 45.

[25] *Id.* at 45-47.

[26] *Id.* at 47-49.

[27] *Id.* at 49-54.

capability by approximately 700 MW.[28] Finally, TVA argues that EKPC's proposed transmission is not sufficient to serve 100 percent of Warren's load and cannot serve as a basis for ordering the proposed interconnection.[29]

III. Discussion

A. Inapplicability of Section 211

12. We will deny TVA's request for rehearing. As we explained in the Proposed Order and, again in the August 3 Order, our decision directing the proposed interconnection is based solely and appropriately on section 210; we are not acting under section 211.[30] Therefore TVA's arguments related to section 212(j) of the FPA, which expressly applies only to an "order issued under section 211," do not apply in this case.

13. We note that TVA continues to conflate interconnection (which we order under section 210) and transmission (which we can, in other circumstances, order under section 211). Congress clearly intended otherwise, and created separate sections to cover each. It limited the section 212(j) prohibition to section 211 transmission orders. It did not extend the section 212(j) prohibition to section 210 interconnection orders. Indeed, different categories of entities are subject to section 210 interconnection orders (electric utilities) and section 211 transmission orders (transmitting utilities). We explained, further, in the August 3 Order, that some provisions of section 212 explicitly apply to only sections 210 or 211, while other portions apply to both. In addition to section 212(j), which only precludes the Commission from directing transmission by TVA to load within its territory, sections 212(a), 212(c)(2)(B), 212(h) and 212(k) refer only to section 211 or transmission.[31]

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[28] *Id.* at 54-57.

[29] *Id.* at 57-59.

[30] In the August 3 Order, with respect to the numerous TVA arguments concerning its claim that the interconnection results in transmission, we explained that, in accordance with *Laguna Irrigation District*, 95 FERC ¶ 61,305 at 62, 038 (2001), *aff'd sub nom. Pacific Gas and Electric Co.*, 44 Fed. Appx. 170 (9th Cir. 2002) (*Laguna)* and *City of Corona v. Southern California Edison Co.*, 104 FERC ¶ 61,085 at 61,306 (2003) (*Corona)*, cited by TVA, we are not directing TVA to provide EKPC with transmission in this case, but merely to provide interconnection.

[31] Indeed, in *Laguna*, the Ninth Circuit affirmed the Commission's finding that section 212(h) applies only to transmission orders under section 211, but not to interconnection orders under section 210.

14. The Commission has consistently declared throughout this proceeding that we are only directing TVA to interconnect with EKPC. We are not directing TVA to provide transmission service. We reject TVA's contention that, in order for Commission-ordered interconnection to be beneficial, they must be coupled with transmission service. The fact that, in other section 210 proceedings, the entity requesting interconnection either sought transmission service simultaneously under section 211 or was already eligible for transmission service under the utility's tariff, does not mean that, in this case, EKPC must do the same. The circumstances in each case are different. In this case, EKPC is simply requesting interconnection.

15. We also reject TVA's argument that the Commission is discriminating against TVA in consideration of EKPC's application. TVA's arguments again are premised on the false presumption that EKPC's section 210 application for interconnection, in reality, represents an application for transmission service. As we have said time and again, that is not so. The Commission's decision to order the interconnection in this case does not mean that the Commission is conveying a right to delivery service to EKPC. We are simply directing the interconnection. The cases that TVA cites to support its assertion that the Commission's policy vis-à-vis evaluating a section 210 application for interconnection, *i.e.*, that "form" must not prevail over "substance" to ascertain the true nature of the transaction, are inapposite to the Commission's section 210 determination in this proceeding.[32]

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[32] The Commission's determination in denying the section 210 interconnection application in *Mirant Las Vegas*, 106 FERC ¶ 61,156 (2004), *order on reh'g*, 109 FERC ¶ 61,045 (2004) was based on the fact that the facts upon which that section 210 determination was based had changed since the initial section 210 determination, and, therefore, the section 210 determination was no longer valid. The Commission's determination in denying the section 210 interconnection application in *North Hartland, LLC*, 105 FERC ¶ 61,036, *order on reh'g*, 105 FERC ¶ 61,192 (2003), was based on the fact that the request for section 210 interconnection was "bundled" with a request for rehearing of an order on a petition for a declaratory order in a single pleading. In addition, the Commission also pointed out that section 210 refers to the Commission ordering a physical interconnection which was not at issue in that proceeding. The Commission found that North Hartland had consistently sought transmission service on terms and conditions other than those offered by Central Vermont in its Open Access Transmission Tariff. The Commission's determination in *City of Palm Springs, California*, 76 FERC ¶ 61,127 (1996), involved a section 211 application for firm network transmission service and was based on section 212(h) which prohibits the Commission from using its section 211 authority to order retail wheeling directly to an ultimate consumer, and section 212(h)(2) which prohibits the Commission from ordering transmission service to, or for the benefit of, an entity if the energy would be sold by the entity to an ultimate consumer (unless two conditions are satisfied).

16. Moreover, EKPC's interconnection request does not need to be coupled with transmission service because, as EKPC explains in its interconnection application, EKPC is planning new transmission arrangements before it begins selling power to Warren on April 1, 2008. In its application, EKPC proposes to construct the following: (1) 90 miles of 161 kV transmission line, (2) three free-flowing interconnection points between EKPC and TVA, (3) a 69 kV sub-transmission facility at the Franklin substation, and (4) additional sub-transmission facilities to loop the Memphis Junction substation with the General Motors and Aberdeen substations. We conclude, therefore, that we are not deviating from established definitions and existing Commission policy in ordering EKPC's interconnection.

B. No Requirement for Evidentiary Hearing

17. We also reject TVA's argument that the Commission must convene a formal, on-the-record hearing in order to make the statutory findings required by section 210. As we discussed in the Proposed Order, section 210(b)(2) provides that the Commission shall afford *an opportunity* for an evidentiary hearing.[33] It is not a mandatory requirement that there be a formal, evidentiary hearing before we make a section 210 determination.[34] An evidentiary hearing is not warranted where, in this case, TVA has not provided sufficient evidence to require such an evidentiary hearing.[35] TVA's allegations regarding loop flow relate not to the interconnection directed in this proceeding but to the possibility of such flows occurring once the interconnections are in place. But we note that, until the interconnections are in place, such arguments are speculative at best. And, as we have

[33] 16 U.S.C. § 824i(d)(2) (2000).

[34] The courts have recognized that "case law and the Commission's own regulations require an evidentiary hearing only when a genuine issue of material fact exists." Moreover, the courts have recognized that "even where there are disputed issues, [the Commission] need not conduct such a hearing if they may be adequately resolved on the written record." *See Vermont Department of Public Service v. FERC*, 817 F.2d 127, 140 (D.C. Cir. 1987); *see also Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993); *Environmental Action v. FERC*, 996 F.2d 401, 413 (D.C. Cir. 1993); *Alabama Power Co. v. FERC*, 993 F.2d 1557, 1565 (D.C. Cir. 1993).

[35] Mere allegations of disputed fact are insufficient to mandate a hearing; in this case, TVA must make an adequate proffer of evidence to support them. *See Woolen Mill Associates v. FERC*, 917 F.2d 589, 592 (D.C. Cir. 1990); *Pennsylvania Public Utility Commission v. FERC*, 881 F.2d 1123, 1126 (D.C. Cir. 1989); *Cerro Wire & Calbe Co. v. FERC*, 677 F.2d 124, 128-29 (D.C. Cir. 1982).

made plain throughout this interconnection proceeding, in the event such loop flows do occur, then, at that time, TVA may seek recovery for those loop flows as provided in the *AEP* proceedings.[36]

18. In the Proposed Order, we declined TVA's request to establish an evidentiary hearing at that time; we believed it was premature to do so.[37] We explained that, if EKPC and TVA could not reach a mutual resolution within the 30-day negotiation period and there were issues of material fact still in dispute, they could make arguments for an evidentiary filing when they filed their briefs with the Commission. At this time, there are no material facts in dispute requiring an evidentiary hearing and we, again decline to hold one.

C. Statutory Criteria

19. In addition, we continue to find that EKPC meets the statutory criteria for an order directing interconnection under section 210(c) because the requested interconnection would: (1) enable EKPC to enlarge its membership and to optimize the use of system resources, (2) encourage the conservation of energy and capital by providing Warren with access to more economical sources of power; and (3) optimize the use of existing facilities by allowing increased competition.[38] We find, further, that TVA has not provided any evidence to refute these findings. As we concluded in the Final Order, therefore, it is in the public interest to direct TVA to interconnect with EKPC.

20. We also did not violate section 212(f)(1) with our directions to TVA in the Final Order: (1) to conduct certain engineering studies, (2) to make a compliance filing with those results, or (3) to include in the compliance filing a modified Interconnection Agreement. Nor did we violate section 212(f)(1) by our decision to accept the Interconnection Agreement for filing to be effective on the date of the Final Order's issuance. Section 212(f)(1) provides that no order under section 210 or 211 requiring

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[36] *See infra* n.48.

[37] *See* Proposed Order at P 47.

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

TVA to take any action will take effect for 60 days following the date of issuance of the order. This 60-day before action provision is in the statute to provide TVA with an opportunity to appeal any section 210 or 211 determination to the appropriate Court of Appeal before it is required to make what in this case is the interconnection with EKPC. The engineering studies, compliance filing with results, compliance filing of a modified Interconnection Agreement, and the effective date for the Interconnection Agreement directed in the Final Order are not the types of action covered under the 60-day provision in section 212(f)(1). We also note that we are not directing a sale or delivery of power in this proceeding that would trigger the 60-day period for evidentiary hearing provision in section 212(f)(1). We are, as we have said all along in this proceeding, only directing TVA to interconnect with EKPC's transmission system under section 210. The Interconnection Agreement provides the terms and conditions for the interconnection and the associated coordination services, in this case, back-up power and voltage services; it is not a contract for sale or delivery of power.

D. Coordination Service

21. TVA argues that the Final Order is ambiguous with regard to the type of coordination services necessary to accommodate the interconnection with EKPC; that neither the Commission nor EKPC has provided TVA with any details regarding the quantity, type, duration, frequency of use, or other data necessary to craft such "coordination services." TVA argues that, in section 210 of the FPA, the terms sale, exchange, and coordination relate to the implementation and operation of the physical interconnection between two utility systems. TVA argues that section 210 cannot be read so expansively as to cover any type of service that would enable EKPC to deliver power to Warren. In support, TVA points to the fact that, in Order No. 888,[39] the Commission considers voltage support a transmission-related ancillary service under the *pro forma* Open Access Transmission Tariff (OATT).

22. We disagree. TVA's arguments are premised on the idea that any service contemplated as a provision the Commission's *pro forma* OATT must therefore be part of transmission service properly, and exclusively, ordered under section 211 of the FPA. We find no reason to accept this interpretation. The Commission never intended the

[39] *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,704-12 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

OATT or its ancillary service schedules to serve as a list of services that could only be ordered under section 211 of the FPA. Indeed, our authority to implement portions of the open access policy established in the OATT derives from the requirement under sections 205 and 206 of the FPA[40] to remedy undue discrimination,[41] not section 210 or section 211. We have found, in the Order No. 888 context, that interconnection is a subset of transmission.[42] As noted above, in the context of sections 210 and 211, interconnection and transmission are two distinct services. Thus, TVA's argument that since certain coordination services are in the OATT, they are, therefore, transmission services that can only be ordered under section 211, is flawed.

23. TVA also argues that the Final Order errs in interpreting section 210(a)(1)(C) of the FPA as providing authority for the Commission to order the coordination services. TVA argues that, under the Final Order's interpretation, there are no limits on the use of TVA resources by EKPC due to its failure to construct or acquire adequate transmission and generation resources. We disagree. Section 210(a)(1)(C) provides that, in ordering an interconnection, the Commission may require "such sale or exchange of electric energy or other coordination, as may be necessary to carry out the purpose of [the interconnection]." TVA does raise a valid question about how this provision should be interpreted, but we find that TVA's interpretation is incorrect. The question of whether the coordination services at issue can be properly ordered under section 210 rests solely on whether such services are contemplated by this statutory language, and in particular, what it means for a sale or exchange of energy or other coordination to be "necessary to carry out the purpose of [an interconnection]."[43] The limits on the use of TVA's resources are well-established by the limitations on issuing orders under section 210, and by the limitations on ordering services properly ordered under specific sections of the

[40] 16 U.S.C. §§ 824d, 824e.

[41] Order No. 888 at 31,635.

[42] *Tennessee Power Co.* 90 FERC ¶ 61,238 (2000); *see also, Entergy Services, Inc.*, 91 FERC ¶ 61,149 (2000).

[43] We note that interconnection equipment itself never requires "sale or exchange of energy or other coordination" in order to function and "carry out [its] purpose" of electrically connecting two systems. Thus, the statute could not intend simply for such transactions to be necessary to make the interconnection "work" or function. Rather, we believe the best interpretation is that such transactions may, instead, serve as the purpose for the interconnection in the first place; they "carry out the purpose" of the interconnection, and indeed *are* the purpose of the interconnection.

FPA or another statute.[44] TVA's interpretation of section 210(a)(1)(C) cannot explain why Congress would have contemplated in the statute sales and provisions of energy and other coordination services that serve no purpose in terms of the functioning of the interconnection facilities themselves. Congress must have intended otherwise. Moreover, as discussed above, none of the coordination services contemplated here implicate transmission service properly ordered under section 211. Although some coordination services do implicate energy sales, as discussed above, we do not agree that such transactions are transmission service simply because similar transactions are contemplated in the OATT. Indeed, nothing in section 211 contemplates anything similar to the coordination services requested by EKPC.

24. TVA's argument that the Commission cannot require TVA to plan additional generation capacity or other resources associated with providing these coordination services solely for the purpose of selling power to EKPC for delivery to Warren is yet another attempt to twist the interconnection and associated coordination services into something which it is not – in this case a sale of "surplus power." We reject TVA's attempt to treat the "back-up power" and "voltage outage" coordination services as sales of "surplus power." The back-up power we referred to in the Final Order is power provided on an emergency basis pursuant to agreed-upon terms between the parties when EKPC's normal source of power is unavailable. As we stated in the Final Order, to the extent there are any rates, terms and conditions associated with such coordination services, including voltage outage or back-up power, TVA should establish rates, terms and conditions in the context of the Interconnection Agreement.[45]

25. TVA continues to argue that, in addition to the requested interconnection service, EKPC is also seeking to have TVA deliver power across its system to Warren. We disagree. TVA still has provided no convincing evidence or arguments to demonstrate that EKPC's facilities are insufficient to deliver power to Warren, or that the loop flows TVA is objecting to are anything other than the unintended result of EKPC's lawful request for TVA to provide coordination services.

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[44] Specifically, the Commission may not issue an order for an interconnection and/or for the provision of coordination services unless the order meets the public interest and other criteria established in section 210(c). Also, if the coordination services *were* properly ordered under section 211, we find that the limitations of section 212(j) would prevent those services from being ordered as coordination services.

[45] We note that TVA's revised Interconnection Agreement will be addressed in a separate order.

E. Reliability of TVA's System

26. In support of its argument regarding the impact of an interconnection on the reliability of the connected systems, TVA relies on section 211(b) which provides that the Commission may not order a section 210 interconnection if such an order would unreasonably impair the continued reliability of the electric systems affected by the order. TVA notes that, in the August 3 Order, the Commission "recognized inadvertent loop flow could cause reliability issues" and "committed to evaluate the proposed interconnection to ensure that reliability is not impaired."[46] TVA selectively misstates the Commission's statement regarding reliability in the August 3 Order. We were addressing TVA's argument concerning the requirement in *El Paso Electric Co. v. FERC*[47] to consider foreseeable consequences, such as reliability. We recognized that inadvertent loop flow *may* be a consequence from the interconnection ordered here, and noted that, in the Proposed Order, we directed the parties to ensure that any agreement that may be reached with respect to interconnection must adequately maintain the reliability of the system. We stated that, after we received the revised system impact studies directed in the August 3 Order, we would evaluate the proposed interconnection to ensure that reliability would not be impaired.

27. In addressing the revised system impact studies in the Final Order, we noted that the parties apparently failed to coordinate in order to comply with the Commission's August 3 Order. We have ordered TVA and EKPC to cooperate to complete certain detailed studies of the impacts of the interconnection on TVA's system. While EKPC has identified certain improvements in system reliability, TVA has neither identified any specific reliability problems, nor presented any arguments or evidence to contradict EKPC reliability claims. Therefore, we find TVA's claims that reliability issues remain to be addressed to be without merit.

F. Base Case

28. Finally, TVA argues that the Commission failed to examine EKPC's base case or provide a rational for using EKPC's base case. In the Proposed Order, we found that EKPC's base case analysis was sufficient because it properly included Warren's load, as it currently exists on TVA's system. However, our approval of EKPC's base case was not intended to exclude consideration of the loss of transmission capacity by TVA. Claims for compensation for impacts of an interconnection, specifically for loop flows and any loss of transmission capacity are properly considered under our *American*

[46] August 3 Order at P 30.

[47] *El Paso Electric Co. v. FERC*, 201 F.3d 667 (5th Cir. 2000) (*El Paso*).

Electric Power Service Corporation precedent, [48] and the base case has no impact on our determination of whether such burdens exist. The base case would be relevant only if there was a dispute about the funding of the interconnection, and, in the instant proceeding, EKPC has agreed to fund the entire interconnection.

29. In its rehearing request, TVA continues to allege that EKPC's interconnection would result in the loss of transfer capability on the TVA system, cost TVA in excess of $50 million to replace its lost transfer capability and require other neighboring transmission providers to incur costs to replace lost capabilities. We find that these speculative allegations are based on its continued mischaracterization of EKPC's interconnection request as a transmission request and the alleged consequences if it were indeed a transmission request. With regard to TVA's arguments that it should be compensated for loop flows resulting from the interconnections and any associated loss of transmission capacity, we find that TVA has not demonstrated that the loop flows resulting from the interconnections constitute a burden for which TVA should be compensated under *AEP*.

30. In conclusion, therefore, the Commission denies TVA's request for rehearing and directs TVA to interconnect with EKPC's transmission system, as directed in the Commission's Final Order. This order on rehearing triggers the 60-day action clock provided in section 212(f)(1) for TVA to appeal the Commission's Final Order section 210 interconnection decision.

The Commission orders:

TVA's request for rehearing is denied as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

[48] *See* 49 FERC ¶ 61,377 at 62,381, *reh'g denied*, 50 FERC ¶ 61,192 (1990) (*AEP I*). *See also American Electric Power Service Corp.*, 93 FERC ¶ 61,151 at 61,474 (*AEP II*).