

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 Nos. TX05-1-000
TX05-1-001
TX05-1-002

ORDER DIRECTING THE FILING OF AN INTERCONNECTION AGREEMENT
AND REVISED SYSTEM IMPACT STUDIES

(Issued August 3, 2005)

1. This order directs the Tennessee Valley Authority (TVA) to file the rates, terms, and conditions under which it will interconnect with East Kentucky Power Cooperative, Inc.'s (EKPC) system, pursuant to sections 210 and 212 of the Federal Power Act (FPA),¹ and provide coordination services necessary for EKPC to deliver energy to Warren Rural Electric Cooperative Corporation (Warren). This order also directs TVA and EKPC to file revised System Impact Studies reflecting the modified interconnection request submitted by EKPC as discussed in this order.

I. Background

2. 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.²

3. TVA is a wholly-owned corporate agency and instrumentality of the United States

¹ 16 U.S.C. §§ 824i and 824k (2000).

² 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. *East Kentucky Power Cooperative, Inc.*, Docket No. NJ97-14-000, unpublished letter order dated December 17, 1997.

government organized under the Tennessee Valley Authority Act of 1933.³ TVA produces and sells electric power in seven states⁴ 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.

4. Warren is a distribution cooperative serving approximately 54,000 customers in south central Kentucky.⁵ TVA provides Warren with the electric power Warren needs to serve its customers through five delivery points on TVA's transmission system.⁶ 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.

5. On October 1, 2004, EKPC filed an application for a Commission order under sections 210 and 212 of the FPA directing TVA to interconnect its system to the EKPC system in order to allow EKPC to provide full requirements service to Warren following the termination of Warren's existing power contract with TVA on April 1, 2008 (Application). In the Application, EKPC proposed to construct approximately 90 miles of 161 kV transmission line⁷ and three free flowing interconnection points between the

³ 16 U.S.C. §§ 831-831dd (2000) (TVA Act).

⁴ Alabama, Georgia, Kentucky, Mississippi, North Carolina, Tennessee and Virginia.

⁵ Warren operates 5,000 miles of 13 kV distribution facilities, 200 miles of 69 kV sub-transmission facilities and 37 substations, including eight delivery point stations.

⁶ Aberdeen Gap, East Bowling Green, Bristow, Memphis Junction and Franklin.

⁷ The 161 kV transmission line as proposed in the Application includes: (1) 25 miles of line from EKPC's Barren County Substation to the Warren System at the General Motors Substation; (2) 25 miles of line from the Aberdeen Substation to the Big Rivers Electric Corporation's Wilson 161 kV Substation; (3) 40 miles of line between the General Motors, Memphis Junction, and Aberdeen Substations to form a 161 kV network between Barren County and Wilson.

systems of EKPC and TVA.⁸ EKPC explained that it would need three new interconnections with the TVA transmission system for reliability purposes, and in order to facilitate its request for coordination services from TVA.⁹

6. TVA responded with several objections to the proposed interconnection and the method EKPC proposed to evaluate the interconnection, arguing that: (1) the request for interconnection is actually an attempt to obtain transmission service over TVA's transmission system, circumventing section 212(j) of the FPA, which prohibits the Commission from ordering transmission service under section 211 of the FPA; (2) EKPC's proposal does not meet the statutory requirements for an interconnection order under section 210 of the FPA; and (3) the System Impact Study Base Case should reflect the system as it will exist without Warren, rather than the status quo.

7. On April 14, 2005, the Commission issued a proposed order under sections 210 and 212 of the FPA requiring TVA to interconnect its transmission system at the three requested points.¹⁰ In the Proposed Order, the Commission found that section 210(c) requires that in order for the Commission to order an interconnection it must find that the interconnection is in the public interest and that the proposed interconnection will meet at least one of the three specified criteria, *i.e.*, it will encourage conservation of energy or capital, optimize efficiency of facilities and resources, or improve the reliability of any electric utility system to which the order applies.¹¹ The Commission found that EKPC met these standards because: (1) the requested interconnections would enable EKPC to

⁸ The interconnections between EKPC and TVA as proposed in the Application were at three existing substations: East Bowling Green, Memphis Junction, and Franklin.

⁹ Section 210 of the FPA provides that, in addition to ordering the physical interconnection of facilities, the Commission is also authorized to order "such sale or exchange of electric energy or other coordination, as may be necessary to carry out the purposes of any order" issued under section 210 (emphasis added). *See* 16 U.S.C. §§ 824i(a)(1)(A) and 824i(a)(1)(C) (2000). EKPC's Application requested "any additional coordination services required to maintain these interconnections." *See* Application at 9. In its May 31 Brief, EKPC states that the existing Interconnection Agreement between EKPC and TVA already provides for the coordination services contemplated by EKPC in its Application, specifically voltage support and, in the event of a contingency, additional backup service.

¹⁰ *East Kentucky Power Coop., Inc.*, 111 FERC ¶ 61,031 (2005) (Proposed Order).

¹¹ *Id.* at P 37.

enlarge its membership and to optimize the use of system resources; (2) the requested interconnections would encourage the conservation of energy and capital by providing Warren with access to more economical sources of power; and (3) the requested interconnections would optimize the use of existing facilities by allowing increased competition.¹² The Commission, therefore, concluded that it was in the public interest to issue a proposed order directing interconnection, ordered further procedures to establish the terms and conditions of the proposed interconnection, and offered settlement judge procedures to facilitate the parties' negotiations.

8. Section 212(c)(1) provides that, before issuing a final order under section 210, the Commission issue a proposed order setting a reasonable time for the parties to agree to terms and conditions for carrying out the order, including the apportionment of and compensation for costs. Thus, the Proposed Order provided that, if the parties were able to agree, the Commission would issue a final order reflecting the agreed-upon terms and conditions in that agreement, if the Commission approves of them. In the alternative, if the parties were unable to agree within the allotted time, the Commission would evaluate the positions of each party and prescribe the apportionment of costs, compensation, terms, and conditions of interconnection, if appropriate.

9. The Commission gave EKPC and TVA 30 days from the date of issuance of the Proposed Order to negotiate the terms and conditions for the new interconnection, consistent with section 212. The Commission also required EKPC and TVA to submit to the Commission, within 15 days after the expiration of the 30-day negotiation period, all terms and conditions on which they had mutually agreed, accompanied by explanations. The Commission directed that, if there were matters still in dispute, the parties should also file briefs to support their final positions, accompanied by any necessary supporting data. The Commission offered settlement judge procedures to assist the parties in resolving the matter. Finally, the Commission declined TVA's request to establish an evidentiary hearing, explaining that it was premature at the time of the Proposed Order to do so. The Commission stated that, if EKPC and TVA could not reach a mutual resolution in the 30-day negotiation period, and there were issues of material fact in dispute, the parties could make arguments for such an evidentiary hearing when they filed their briefs to the Commission. Finally, the Commission agreed with EKPC that the Base Case study should reflect the status quo.¹³

¹² *Id.* at P 38.

¹³ *Id.* at P 40.

10. The parties were unable to reach any agreement on the terms and conditions of the proposed interconnection directed in the Proposed Order. As a result, following expiration of the 30-day negotiation period provided in that order, the parties filed briefs with the Commission on May 31, 2005.¹⁴

II. Parties' Briefs

A. EKPC's May 31 Brief

11. In its May 31 Brief, EKPC proposes that the requested interconnections be facilitated through amendments to an existing interconnection agreement (Existing IA) between the parties (Proposed Amendments). In addition, EKPC now proposes modifications to the physical interconnections in its initial proposal, including a shift of one of the interconnection points (which, in its Application, was at Franklin) to Salmons. EKPC states that the Proposed Amendments are consistent with previous additions of interconnections, and do not materially change the terms of the agreement. The Proposed Amendments obligate EKPC to reimburse TVA for costs associated with the installation, operation and maintenance of the interconnection facilities, and provide for the coordination services requested by EKPC. EKPC argues that the Commission can order coordination services for the proposed interconnection under section 210(a)(1)(C) of the FPA. EKPC further argues that voltage support is requested (with a compensation structure proposed) only to avoid duplication of facilities; and that the requested back-up power service obligates TVA to provide power only as-available, and does not obligate TVA to incur any costs to ensure that it can deliver such back-up power. Finally, EKPC argues that an evidentiary hearing is not required since the parties' disagreements are only based on legal matters, not factual disputes.

12. EKPC also includes an affidavit of Darrin Adams, who testifies: (1) that EKPC's new changes to their proposal are only minor and resolve the overload of a transformer during certain contingencies, and create no adverse effects; (2) that TVA's previous assertion that certain portions of the transmission systems would be negatively impacted by the proposal is incorrect (the identified overloads either are actually relieved by the changes to the proposal and/or exist regardless of the added interconnection); (3) that TVA's claim that EKPC's load at Franklin is completely served by TVA is incorrect (load is actually served from other EKPC substations, not TVA's Franklin substation);

¹⁴ EKPC supplemented its May 31 Brief with filings made on June 1, 2005 and June 2, 2005.

and (4) that TVA's claim of a 731 MW reduction in export capability exists only if the base case proposed by TVA is used, which the Commission rejected in its guidance on the System Impact Study Base Case.

B. TVA's May 31 Brief and July Response

13. TVA argues that EKPC's request for interconnection is the equivalent of a request for transmission service over TVA's system. TVA points out that the Commission's section 211 authority when applied to TVA is limited by section 212(j). According to TVA, section 212(j) specifically provides that the Commission cannot order TVA to transmit power for any entity if that power will be consumed within the TVA service area. TVA argues that this transmission service over TVA's system is the foreseeable effect of ordering the interconnection, and that *El Paso Electric Co. v. FERC*¹⁵ has established that the Commission must consider all foreseeable consequences, not just the benefits, before issuing an interconnection order.

14. TVA makes several arguments as to why it believes the proposed interconnection involves transmission service, and not merely loop flow as EKPC has maintained. TVA claims that loop flow has been defined as inadvertent or unauthorized power flows that are an unavoidable consequence of interconnected utility operations that can occur sometimes.¹⁶ According to TVA, EKPC's flows do not fit that definition because: (1) they are not inadvertent or unavoidable; (2) they will happen every day instead of being an occasional occurrence; and (3) the magnitude¹⁷ of the flows will be significant.

15. TVA further argues that, even if the flows were inadvertent loop flows, such flow of power is still transmission service. TVA notes that the Commission has previously found that unauthorized loop flows constitute a service for which a transmission rate may

¹⁵ 201 F.3d 667 (5th Cir. 2000) (*El Paso*).

¹⁶ Citing *American Electric Power Service Corp.*, 49 FERC ¶ 61,377 at 62,381 *reh'g denied*, 50 FERC ¶ 61,192 (1990) (*AEP I*) and *American Electric Power Service Corp.*, 93 FERC ¶ 61,151 at 61,474 (2000) (*AEP II*).

¹⁷ According to TVA, if the Commission grants the interconnections, it will be ordering TVA to wheel power to EKPC, including up to 60 percent of Warren's power during normal conditions (including, it claims, 100 percent of the load at Franklin), and 100 percent of the Warren load when EKPC experiences single contingency facility outages and during scheduled outages. *See* TVA's May 31 Brief at 15.

be charged.¹⁸ TVA acknowledges that compensation would ordinarily be the appropriate remedy, but argues that, because of section 212(j), TVA should not be forced to provide transmission service to EKPC in the first place.

16. TVA also argues that the interconnections requested are not truly interconnections. TVA argues that a true interconnection between transmission systems will allow for bi-directional flows between the systems, while in EKPC's case the requested interconnections will not be capable of bi-directional flows.

17. TVA maintains that, if the Commission orders the interconnections, it will deviate from existing Commission policy and federal law. TVA notes that section 210(c) requires that the Commission determine that certain types of efficiency, conservation, or reliability improvements are realized through the proposed interconnection before issuing an order directing interconnection. TVA points out that, absent transmission service being provided through the physical facility, an interconnection is of no real, legitimate benefit, and therefore fails to meet the standard set in section 210(c).

18. TVA further argues that, in order to meet the standard set in section 210(c), the Commission would have to do a much more thorough cost benefit analysis than the record in this case permits. TVA argues that costs incurred by TVA and its ratepayers outweigh any purported benefit of the proposed interconnection. TVA points out that EKPC's proposal will decrease TVA's transfer capability by over 700 MW initially and that this loss of capability will increase as Warren's load grows. TVA argues further that restrictions on the capability to transfer power between and among control areas would, it argues, impact regional reliability.

19. TVA argues that the Commission's interconnection policy recognizes that interconnection by itself conveys no right to delivery service.¹⁹ TVA maintains that the Commission's decision to direct the interconnections in this case, in effect, reverses that policy by rebundling the physical interconnection with delivery service.

¹⁸ Citing *AEP II* and *Southern Company Services Inc.*, 60 FERC ¶ 61,273 at 61,928 (1992) (*Southern*).

¹⁹ Citing *Tennessee Power Co.*, 90 FERC ¶ 61,238 at 61,761 (2000), *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*).

20. TVA next argues that it cannot provide the coordination services requested by EKPC. TVA states that, if it were required to provide such voltage support and backup services, it would need to dedicate generating capacity and transmission facilities to the production of reactive power in order to satisfy this obligation to EKPC. According to TVA, the Commission can order TVA to provide such service under neither section 210, which applies only to interconnections, nor section 211, because of the limitations on the Commission's authority to order transmission service under section 212(j). TVA also argues that, if the Commission requires TVA to provide such support, it would violate TVA's obligations under a Consent Judgment in *Alabama Power Co. v. TVA*.²⁰

21. In responding to EKPC's May 31 Brief, TVA argues that its Existing IA should not be amended as proposed by EKPC to add the new interconnection points, because such an amendment would materially change previously negotiated terms and conditions in the IA.²¹ Additionally, TVA contends that the Commission lacks the authority to require amendment of an existing agreement between two non-jurisdictional utilities.

22. Finally, TVA requests the Commission either vacate the Proposed Order and issue a final order dismissing EKPC's application for interconnection or set the matter for an evidentiary hearing.

III. Discussion

A. TVA's Arguments Regarding the Proposed Order

23. As the Commission explained in the Proposed Order, section 210 requires that, in order for the Commission to order an interconnection, it must find that the interconnection is in the public interest and that the proposed interconnection will meet at least one of the three specified criteria, *i.e.*, it will encourage conservation of energy or capital, optimize efficiency of facilities and resources, or improve the reliability of any electric utility system to which the order applies. The Commission found in the Proposed Order that EKPC met these criteria for an order directing the interconnection and, accordingly, directed it. However, our decision directing the proposed interconnection in the Proposed Order was based solely on section 210 of the FPA. We were not and are

²⁰ Civil Action No. CV-97-C-0885-S (N.D. Ala.) (July 29, 1997) (Consent Judgment).

²¹ In its brief, EKPC proposes amendments to an existing IA as well as modifications to the physical interconnections proposed in its initial Application.

not acting under section 211;²² 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.

24. TVA conflates 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 note 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.²³ Thus, we see no basis to adopt TVA's reading of section 212(j) and to extend the limitations on Commission authority beyond the expressly-stated "order issued under section 211." TVA also errs in claiming that our action here rebundles interconnection and delivery service. We recognize the distinction between interconnection and delivery, and will order only the former here.

25. We disagree with TVA's contention that a "true" interconnection must be capable of bi-directional flow. The *National Rural* case cited by TVA to support this contention dealt with the question of whether a unidirectional contract path should be sufficient to deem two areas as "interconnected" for purposes of merger review by the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935, not whether the contract path itself should be considered an interconnection under section 210 of the FPA.

26. We also disagree with TVA's interpretation of *AEP II* as supporting the argument that a power flow must necessarily be intermittent in order to be considered loop flow. Rather, when *AEP II* uses the word "sometimes," it refers to the fact that loop flow is a

²² With respect to the numerous TVA arguments concerning their claim that the interconnection required in the Proposed Order results in transmission, we note that, in accordance with *Laguna* and *Corona*, cited by TVA, we are not directing TVA to provide EKPC with transmission in this case, but merely to provide interconnection.

²³ 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.

problem that we “sometimes” encounter, not that loop flow is necessarily intermittent in nature. Some instances of loop flow are intermittent (for example, loop flow associated with intermittent transactions); however, other types of loop flow are ongoing. We note that there is loop flow associated with all interconnections between systems, a product of today’s integrated electric grid.²⁴

27. Moreover, inadvertent loop flows are not unique to the TVA system, and TVA is not without recourse to address this issue. The Commission’s policy on unauthorized power flows is clear. For example, in *AEP I*, the Commission denied a request for a technical conference stating:

Inadvertent or unauthorized power flows are an unavoidable consequence of interconnected utility operations. Interconnected utilities must, and do, work closely to ensure that the operation of one system does not jeopardize the reliability of a neighboring system, nor diminish the neighbor’s ability to utilize its system in the most economical manner. This coordination is accomplished by direct day-to-day communications and the establishment of operating committees, as well as the participation in power pools.... It is

²⁴ In this regard, we note that TVA’s arguments regarding inadvertent power flows associated with the EKPC interconnection are analogous to the inadvertent power flows associated with the “contract path” transmission pricing method used in the electric industry. A contract path is simply a path that can be designated to form a single continuous electrical path between the parties to an agreement. Because of the laws of physics, it is unlikely that the actual power flow will follow that contract path. In Order No. 888, the Commission recognized that there may be difficulties in using a traditional contract path approach in a non-discriminatory open access transmission environment. At the same time, however, the Commission noted that contract path pricing and contracting is the longstanding approach used in the electric industry and it is the approach familiar to all participants in the industry. *See 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 31,668 (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, 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).

in the first instance, for the interconnected parties as the owners and operators of utility systems to establish mutually acceptable operating practices.²⁵

28. In *Southern*, the Commission quoted its loop flow policy from *AEP I* and went on to state: “TVA is not a jurisdictional public utility and cannot take advantage of the second option, *i.e.*, cannot file with the Commission a transmission rate for unauthorized flows” should negotiations with the affected parties in that case “not produce an agreeable result.”²⁶ The Commission also noted that “TVA does have the ability to seek compensation” from the affected parties in that case, “using whatever other recourse may be available to it (such as seeking compensation in a court of competent jurisdiction)” should negotiations fail.²⁷ However, we have re-evaluated our past determinations in light of the facts presented and have determined that, should TVA be unable to negotiate compensation with EKPC, we can and should allow TVA the opportunity to seek compensation, through the section 210 IA being ordered below, for loop flow it incurs as a result of EKPC’s proposed interconnection. Because TVA as a non public utility cannot file a transmission rate at the Commission for unauthorized flows (which would be the normal vehicle for a public utility to seek cost recovery), and because the costs of such flows will occur as a result of a Commission-ordered interconnection, we believe cost recovery should be permitted through the IA rather than TVA having to go to another forum to seek recovery.

29. Regarding TVA’s arguments about coordination services, we note that section 210(a)(1)(C) expressly provides that the Commission may issue an order requiring “such sale or exchange of electric energy or other coordination, as may be necessary” to carry out a directed interconnection. Moreover, FPA section 212(j) does not restrict our authority to require TVA to provide these services, since section 212(j) limits our authority only under section 211. TVA may seek to recover any costs associated with these coordination services in the interconnection agreement we are directing it to file, below.

30. Regarding TVA’s argument concerning the requirement of *El Paso* to consider foreseeable consequences, we recognize that inadvertent loop flow may be a consequence from the interconnection we are ordering here. However, we are not ignoring the

²⁵ *AEP I*, 49 FERC at 62,381.

²⁶ 60 FERC at 61,928.

²⁷ *Id.*

reliability concerns TVA has raised. 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.”²⁸ After we receive the revised System Impact Studies we are directing below (where we expect all reliability issues to be addressed), we will, of course, evaluate the proposed interconnections to ensure that reliability is not impaired.

31. Finally, we disagree with TVA that the settlement in the Consent Judgment limits our ability to act under section 210. The focal point of the litigation and the Consent Judgment is to ensure that TVA does not sell power inappropriately outside the “fence;” here, the supply of power is for Warren, inside the fence. More importantly, parties to a settlement of litigation in which the Commission is not participating cannot limit the authorities given to us by Congress (except by waiving their own rights to invoke those powers). We must respect limits imposed by Congress. Other entities cannot, as parties to a settlement in which we have no role, further restrict our powers provided by Congress.

32. For the reasons discussed above, we affirm our conclusion in the Proposed Order, and reject TVA’s arguments to the contrary.

B. System Impact Studies

33. In its May 31 Brief, EKPC notes that it made four modifications to the proposed physical interconnections first outlined in its Application, including: (1) lengthening the line of the Barren County-Magna 161 kV line to more accurately reflect the siting of that line; (2) including a 161 kV power circuit breaker between two Warren-owned transformers at the East Bowling Green Substation; (3) constructing additional facilities at the Memphis Junction Substation to provide it with two sources of power independent of TVA in the Memphis Junction area; and (4) relocating the interconnection originally proposed at Franklin Substation to Salmons. EKPC notes that, in addition to these four modifications, it plans to make additional modifications to the Warren 69 kV distribution system and the Barren County-Magna 161 kV line to reflect further engineering considerations associated with the upgrade of certain Warren distribution facilities and siting issues. We continue to believe that this interconnection would encourage the conservation of energy and capital and benefit native load customers, by providing Warren with access to more economical sources of power and that, as the result of this interconnection, Warren and its customers would be able to purchase power at lower rates than they pay TVA.

²⁸ See Proposed Order at P 38.

34. TVA challenges the physical interconnection modifications arguing that EKPC apparently viewed the Proposed Order as authorizing three interconnections, the location of which could be determined at will without proper study and review. TVA notes that the three interconnections requested in EKPC's Application are not the same points of interconnection identified by EKPC in the Proposed Amendments. TVA points out that EKPC dropped its request for an interconnection point at Franklin and substituted a new interconnection point at Salmons. According to TVA, the impact of this change is unknown because neither TVA nor Commission Staff have studied the effect of this new interconnection point. TVA points out that the Commission did not include the Salmons interconnection point in the Proposed Order. TVA proposes that, if the Commission directs the interconnection, discovery and an evidentiary hearing are warranted in order to determine whether the Proposed Amendments or a new agreement should be used for EKPC's interconnections and, if so, the terms and conditions that should be included in either agreement.

35. The Commission finds that EKPC did not include data in its May 31 Brief to support its contention that its modifications of the physical interconnections in the initial Application will not change the System Impact Study findings. EKPC's modifications make it difficult to rely on the System Impact Studies submitted as part of the filings made at the time of EKPC's initial Application, as supplemented by the parties' responses to Commission's data request. As TVA recognizes, the Commission is unable, at this time, to evaluate the impact of these modifications to EKPC's initial Application on the System Impact Studies that served as the basis of the Commission's Proposed Order. Therefore, the Commission directs EKPC to file its modified System Impact Study reflecting the modifications of the physical interconnections in its initial Application, as well as any other modifications not specifically identified, with the Commission, and to serve it on TVA, within fifteen (15) days of the date of issuance of this order. The Commission directs TVA to file a modified System Impact Study, including the relevant Critical Energy Infrastructure Information (CEII) information, with the Commission and to serve it on EKPC, within 30 days of EKPC's filing. EKPC will then have fifteen (15) days from the date of TVA filing the modified System Impact Study to submit a response to TVA's modified study.

36. TVA has raised several arguments claiming that issues of fact remain that should be addressed in a hearing. We find that a hearing is premature at this stage of the proceeding in light of the fact that we are ordering the submission of revised System Impact Studies, as described above. Absent such information, we cannot evaluate whether there are material facts in dispute warranting an evidentiary hearing.

C. Submission of Proposed Interconnection Agreement

37. The Commission rejects EKPC's submission of a modified existing IA to establish the rates, terms and conditions for the interconnections in its May 31 Brief. EKPC's use of the Existing IA in this case is inappropriate. We note, further, that TVA did not include any documentation regarding the rates, terms and conditions in its May 31 Brief. TVA appears to have misunderstood our direction, in the Proposed Order, that it file its "final position . . . accompanied by any necessary supporting data"²⁹ on the appropriate rates, terms, and conditions for interconnection. Consequently, we cannot now determine the appropriate rates, terms, and conditions under which interconnection should be effectuated.

38. Accordingly, we direct TVA to file an Interconnection Agreement containing the rates, terms, and conditions under which it will interconnect with EKPC's system, as well as provide coordination services necessary for EKPC to deliver energy to Warren, within 30 days of the date of this order. EKPC will then have 15 days to respond to that filing. As with the System Impact Study, a Commission determination on whether there should be a hearing on rates, terms and conditions is premature until TVA files an Interconnection Agreement with its proposed rates, terms and conditions, and EKPC responds.

39. Pursuant to section 212(c)(1), this order shall not be reviewable or enforceable in any court. In addition, we clarify that, consistent with Rule 713 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713 (2005), this is an interlocutory order not subject to requests for rehearing. The proper time for the parties to seek rehearing is after the Commission issues a final order under section 210.³⁰

The Commission orders:

(A) TVA is hereby directed to file an Interconnection Agreement containing rates, terms, and conditions for interconnection with EKPC, as discussed in the body of this order, within 30 days of the date of issuance of this order, with EKPC's response due within 15 days of the date of TVA's filing.

²⁹ Proposed Order at P 44.

³⁰ *Florida Municipal Power Agency v. Florida Power & Light Co.*, 65 FERC ¶ 61,372 at 63,013 (1993).

(B) EKPC is hereby directed to file with the Commission and serve on TVA a revised System Impact Study reflecting all of its modifications to its initial Application, as discussed in the body of this order, within fifteen (15) days of the date of issuance of this order.

(C) TVA is hereby directed to file its revised System Impact Study with the Commission and to serve it on EKPC, as discussed in the body of this order, within 30 days of EKPC's filing, as provided in Ordering Paragraph (B).

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.