

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES)	
COMPANY AND LOUISVILLE GAS AND ELECTRIC)	CASE NO.
COMPANY TO TRANSFER CONTROL OF CERTAIN)	2012-00031
TRANSMISSION FUNCTIONS)	

O R D E R

On January 31, 2012, Kentucky Utilities Company and Louisville Gas and Electric Company (collectively "the Companies") filed a verified joint application, pursuant to KRS 278.218, seeking approval of a transfer of nearly all of the Independent Transmission Operator ("ITO") functions currently performed by the Southwest Power Pool, Inc. ("SPP") to TranServ International, Inc. ("TranServ") and its subcontractor MAPPCOR. On August 30, 2011, the Companies filed for Federal Energy Regulatory Commission ("FERC") approval of the TranServ ITO Agreement. FERC conditionally approved the Companies' application on December 15, 2011, requiring the Companies to make a compliance filing with 30 days concerning three items.¹ The Companies made the required compliance filing on January 12, 2012, and have stated that they will

¹ Louisville Gas and Electric Company and Kentucky Utilities Company, Docket Nos. ER11-4396-000; EC98-2-000 (Not Consolidated), 137 FERC ¶ 61,195 Order Conditionally Approving Tariff Revisions, December 15, 2011. The three filing compliance requirements were: 1) to state explicitly that a transmission customer will receive real-time communications regarding a curtailed schedule and the reasons for the curtailment; 2) to state in the Companies' Open-Access Transmission Tariff ("OATT") how TranServ will notify customers of curtailments that occur outside of regular business hours; and 3) to revise Appendix 5 to OATT Attachment P to state that the Companies and TranServ will split the balancing authority functions in accordance with the North American Electric Reliability Corporation ("NERC") Functional Model Version 5, not Version 2 as the filed version stated.

file with the Commission FERC's final order approving the compliance filing and the proposed ITO transition as quickly as reasonably possible following its issuance.

The Companies have stated that if the Commission approves the requested transfer, the Companies propose to perform certain of SPP's current ITO functions related to the Companies' role as a Balancing Authority. The Companies state that they believe such a transfer would be for a proper purpose and in the public interest because TranServ and MAPPCOR can perform ITO functions for the Companies in compliance with requirements to provide open access to transmission services at a lower cost to ratepayers and transmission customers. For the following reasons, the Commission will approve the joint application.

PROCEDURAL BACKGROUND

On May 31, 2006, the Commission issued an Order authorizing the Companies to withdraw from the Midwest Independent Transmission System Operator, Inc. and to transfer functional control of their transmission facilities back to themselves.² On July 6, 2006, the Commission approved the transfer of certain transmission control functions from the Companies to the Tennessee Valley Authority ("TVA") and SPP.³ That Order approved the Companies' request that TVA become the Companies' Reliability Coordinator ("RC") and that SPP become the Companies' ITO. In its role as ITO, SPP's primary responsibility is to administer the Companies' OATT and, as such, SPP grants

² Case No. 2003-00266, Investigation into the Membership of Louisville Gas and Electric Company and Kentucky Utilities Company in the Midwest Independent Transmission System Operator, Inc. (Ky. PSC May 31, 2006).

³ Case No. 2005-00471, Application of Louisville Gas and Electric Company and Kentucky Utilities Company to Transfer Functional Control of their Transmission Facilities (Ky. PSC July 6, 2006).

and denies transmission service requests pursuant to the OATT, calculates Available Transmission Capacity, performs system impact studies for all interconnections, schedules transmission, administers the Companies' Open-Access Same-time Information System, and is responsible for compliance with applicable NERC and South-East Reliability Council requirements in carrying out its ITO functions. For these services, the Companies paid SPP \$3.4 million per year under their original contract, as well as an additional \$2.27 million one-time payment under a settlement agreement with SPP.⁴ Allocating the settlement amount across the 42 months of ITO services to which it was meant to apply, the Companies state that they paid approximately \$4 million per year for SPP's ITO services.

The Original ITO agreement with SPP expired under its terms on August 31, 2010. In July 2009, the Companies state that SPP advised them that it did not desire to renew the contract or otherwise continue to offer ITO services to them. The Companies state that, on October 26, 2009, SPP provided written notice of termination of the agreement to the Companies. The Companies state that, following the verbal notice from SPP in July 2009, they sought out alternative providers of ITO services by issuing a Request for Information ("RFI") to 10 potential providers and that only one company responded with an expression of possible interest. The responding company later determined that it could not offer the services and declined to respond to a Request for Proposals ("RFP").

⁴ Southwest Power Pool, Inc., Docket Nos. EC06-4-000; EC06-4-001; ER06-20-000; ER06-20-001; and ER06-20-009; 130 FERC ¶ 61,003; Letter Order approving settlement agreement dated January 5, 2010.

In the Companies' October 30, 2009 application to the Commission in Case No. 2009-00427,⁵ they proposed to reassign to themselves the ITO functions then and now delegated to SPP. On February 2, 2010, the Commission issued an Order approving the transfer of functional control of the Companies' transmission assets from SPP to the Companies. That Order recognized that FERC approval would be necessary to effect the proposed transfer and required the Companies to file with the Commission the final Order issued by FERC concerning the Applicants' request to reacquire functional control of their ITO functions. Also on October 30, 2009, the Companies state that they filed an application with FERC seeking approval of the same transfer of control from SPP to the Companies.⁶

On June 14, 2010, the Companies filed a joint motion asking the Commission to rescind its February 10, 2010 Final Order in Case No. 2009-00427, to permit the Companies to withdraw their October 30, 2009 application, and for a declaratory order determining that no further Commission approval was required for the Companies to maintain SPP as their ITO.⁷ The Companies' motion cited intervenor opposition in the FERC proceeding to the proposal to transfer ITO functions from SPP to the Companies, and the approaching expiration of the SPP contract in support of its argument. The

⁵ Case No. 2009-00427, Application of Kentucky Utilities Company and Louisville Gas and Electric Company To Transfer Control of Certain Transmission Functions (filed Oct. 30, 2009).

⁶ E.ON U.S. LLC, Docket Nos. ER10-191-000 and EC 06-4-003, Application (October 30, 2009).

⁷ The Companies' joint motion contained the caption of Case No. 2009-00427. The Commission treated the Companies' joint motion as an application and opened a new proceeding, Case No. 2010-00237 to address the Companies' requested relief. The Companies had negotiated a two-year extension with SPP.

Companies' motion stated that they had determined that their self-provision approach was no longer reasonably achievable without unacceptable delay and uncertainty. They argued that keeping SPP as their ITO was then a pragmatic means of complying with FERC's transmission independence requirements and providing the FERC intervenors assurance that the Companies' OATTs would be impartially administered. The motion also stated that the Companies were filing that day a letter to FERC indicating their intent to withdraw their FERC application in favor of continuing to receive ITO services from SPP.

On October 27, 2010, the Commission issued an Order in Case No. 2010-00237 finding that the Companies' withdrawal of their FERC request for approval to re-acquire operational control of their ITO functions from SPP rendered moot the Commission's February 2, 2010 Order in Case No. 2009-00427, which in turn rendered moot their request to withdraw their application in that case. The Order further found that because the Companies neither re-acquired control of their transmission system from SPP nor intended to transfer any additional control to SPP that no additional Commission approval was needed under KRS 278.218 for the two-year extension. The Order also found that the Companies had committed for the two-year term of the extended agreement with SPP not to assert that the FERC jurisdiction legally pre-empts the Commission from disallowing retail rate recovery of the compensation in excess of \$4 million per year paid to SPP; but that the Companies retained the right to assert that the charges are reasonable and appropriate.

DISCUSSION

The Companies state that they issued an RFI to 19 potential ITO candidates in February 2011, requesting responses no later than March 6, 2011 in order for those potential candidates to receive a copy of the RFP.⁸ They state that six candidates asked to receive the RFP. The Companies further state that, on March 21, 2011, they distributed the RFP to the six interested candidates, including their own transmission staff.⁹ The Companies state that, on May 2, 2011, they received four bids for the ITO contract which included one from their own internal team; and that, between May 2, 2011 and July 1, 2011, they reviewed and evaluated the bids to determine which entity would most capably perform the required duties at a reasonable price. The Companies also indicate that, on July 7, 2011, they forwarded a draft ITO Agreement to TranServ to begin negotiations and that, on August 29, 2011, the Companies and TranServ executed a new ITO Agreement under which TranServ, with MAPPCOR as a subcontractor, will become the Companies' ITO beginning on September 1, 2012, contingent upon receiving Commission approval and approval from FERC.¹⁰

On April 13, 2012, a notice of Informal Conference ("IC") was issued scheduling an IC for April 19, 2012. In response to information requests outlined in the IC notice, on April 18, 2012, the Companies submitted information concerning their bid tabulations and comparative analysis utilized in their selection of TranServ and MAPPCOR. At the

⁸ Verified Joint Application, filed January 31, 2012, p. 7.

⁹ Id.

¹⁰ Id., at p. 8.

April 19, 2012 IC, the Companies outlined the selection process used in their selection of TranServ and MAPPCOR.

The Companies state that TranServ is well qualified to provide ITO services to the Companies and that MAPPCOR is well qualified to assist TranServ in providing those services. TranServ was incorporated in 2005 and is headquartered in Minneapolis, Minnesota.¹¹ TranServ is a Delaware corporation. According to the Companies, MAPPCOR was incorporated in 1990 as a not-for-profit organization, and has been providing transmission and reliability services since that time.¹² The Joint Application states that MAPPCOR is a service provider and contractor for the Mid-Continent Area Power Pool, and has provided utilities with support regarding transmission planning, operations, reliability coordination, power flow and stability analyses, and project management for transmission study initiatives.¹³ The Companies further state that TranServ and MAPPCOR have an extensive history of working together.

The Joint Application states that, for the first year of service, compensation for TranServ will be \$2,495,938. That amount will increase 2.5 percent for each contract year. The Companies will also reimburse TranServ for certain out-of-pocket costs, such as legal support and travel and lodging related to performance of the ITO services. The Companies may also pay TranServ an additional amount related to certain transmission study revenue. If TranServ does not receive at least \$225,000 in transmission study

¹¹ Id., at p. 9.

¹² Id., at p. 10.

¹³ Id.

revenue during a contract year pursuant to the Companies' OATT, subject to certain conditions, the Companies will pay TranServ the difference between \$225,000 and the amount it received.

The term of the ITO Agreement will begin on the later of September 1, 2012 or such other date as the Commission and FERC allow the agreement to go into effect. Once effective, the ITO Agreement will continue for an initial term of three years, with two additional one-year extensions. The ITO Agreement can terminate at the end of a term upon 180 days' notice by either party, on the fifth anniversary of the Agreement's effective date, immediately for cause, (such as material default, gross negligence, material misrepresentation, or bankruptcy), or under other certain circumstances such as regulatory changes or modifications to which the parties cannot agree, or an extended force majeure. Any termination requires regulatory approval before it can become effective. The ITO Agreement contemplates that, if the Companies terminate the agreement early and such termination is not for cause, the Companies will provide TranServ with compensation. If termination is for cause, only certain out-of-pocket expenses will be reimbursed.¹⁴

The Companies state that, under the ITO Agreement, the delegation of duties to TranServ as the ITO will be the same as they are to SPP with the exception of certain Balancing Authority duties. The only way in which TranServ's ITO responsibilities will differ from SPP's current ITO responsibilities is that the Companies will assume all

¹⁴ Id., at p. 11.

Balancing Authority functions.¹⁵ The Companies state that in no way will they transfer more functional control of their transmission system to TranServ than SPP currently possesses as ITO. The Companies state that they currently perform almost all of the Balancing Authority functions, but some items are delegated to SPP as the ITO. When TranServ assumes the role of the ITO, the Companies will assume responsibility for evaluating, approving, and monitoring all interchange schedules in and out of the Balancing Authority Area for purposes of ensuring reliability. This includes the responsibility to curtail interchange schedules if necessary to comply with Transmission Loading Relief procedures. The Companies indicate they do not anticipate requiring any additional staffing to perform these services, and any additional software costs that may be incurred should be minimal.

As outlined in the ITO Agreement Appendix A, as TranServ's contractor, MAPPCOR will generally be responsible for planning functions, including participation in the Companies' transmission planning process, which in turn will include reviewing and approving the Companies' annual transmission plan, reviewing and approving the Companies' models, notifying third parties of any planned transmission changes that may affect service, planning and holding semi-annual stakeholder meetings, and participating with the Stakeholder Planning Committee and associated working groups.

The Companies state that, because FERC regulations require that access to the Companies' transmission assets and services be open to all eligible customers, and because the companies are not members of a regional transmission organization that

¹⁵ *Id.*, at pp. 12-13. At FN. 13, the Companies state that they are the NERC-certified Balancing Authority for their Balancing Authority area. The Companies further explained that the former NERC term for Balancing Authority area was "control area" and the term for Balancing Authority was "control area operator."

can independently provide such open access, the RC-ITO construct is necessary. The Companies state that they and their customers can realize significant savings by transferring the role of ITO from SPP to TranServ. They state that TranServ will provide nearly all the same services as SPP at less than half the annual cost. They state that the histories of TranServ and MAPPCOR performing similar services for other entities and working well in coordination ensure that the Companies' transmission system will continue to be capably administered. They state that the proposed transfer from SPP to TranServ will not harm customers in terms of cost or service, but will create savings for the Companies and their customers.

The Companies further state that nothing about the proposed transfer will diminish or impair TVA's ability to perform its role as the Companies' RC; rather, the proposed transfer and the Companies' performance of all Balancing Authority functions should ensure that possible reliability concerns will continue to be efficiently resolved.

The Companies further state that they do not anticipate that the proposed transfer will in any way compromise or impair their ability to make off-system sales. The FERC Order conditionally approving TranServ as the Companies' new ITO confirms that the transfer of the ITO role will not affect the Companies' market-based rate authority.

KRS 278.218 states:

(1) No person shall acquire or transfer ownership of or control, or the right to control, any assets that are owned by a utility as defined under KRS 278.010(3)(a) without prior approval of the commission, if the assets have an original book value of one million dollars (\$1,000,000) or more and:

(a) The assets are to be transferred by the utility for reasons other than obsolescence; or

(b) The assets will continue to be used to provide the same or similar service to the utility or its customers.

(2) The commission shall grant its approval if the transaction is for a proper purpose and is consistent with the public interest.

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that the Companies' petition to transfer nearly all of the ITO functions currently performed by SPP to TranServ and its subcontractor MAPPCOR should be approved. The Commission also finds that such a transfer is for a proper purpose and is consistent with the public interest because TranServ and MAPPCOR can perform ITO functions for the Companies in compliance with requirements to provide open access to transmission services at a lower cost to ratepayers and transmission customers. The Commission further finds that the Companies proposal to perform certain of SPP's current ITO functions related to the Companies' role as a Balancing Authority will not require any additional staffing, is for a proper purpose, is consistent with the public interest, and should be approved.

IT IS THEREFORE ORDERED that:

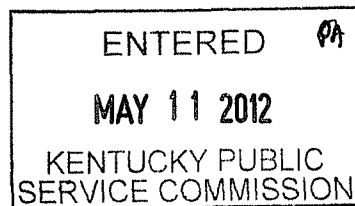
1. The Companies' request to transfer nearly all of the ITO functions from SPP to TranServ and its subcontractor MAPPCOR as described in their application and in this Order is approved.

2. The Companies' request to perform certain ITO functions related to the Companies' role as a Balancing Authority as described in their application and in this Order is approved.

3. The Companies shall file with the Commission the final order issued by FERC concerning the Companies' request to transfer nearly all of the ITO functions from SPP to TranServ and its subcontractor MAPPCOR; and for the Companies to perform certain ITO functions related to the Companies' role as a Balancing Authority.

4. Any documents filed in the future pursuant to ordering paragraph 3 herein shall reference this case number and shall be retained in each utility's general correspondence file.

By the Commission



ATTEST:



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