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November 25, 2015

Jeff Derouen
Executive Director
Public Service Commission of Kentucky
211 Sower Boulevard
Frankfort, Kentucky 40602

RE: Case No. 2015-00267

Dear Mr. Derouen:

Louisville Gas and Electric Company and Kentucky Utilities Company have now filed their Answer to East Kentucky Power Cooperative, Inc.'s ("EKPC") Complaint in the pending FERC action that was mentioned at the November 4, 2015 hearing and in the post-hearing data requests to EKCP. I've enclosed a copy of that Answer here for inclusion in the record, as well as a copy of the Answer filed by TransServ. I've also included eleven (11) additional copies of this letter and both Answers.

Please have the extra copy of this letter file-stamped as received and returned to me in the enclosed envelope.

If you have any questions or if you need additional information, please do not hesitate to contact me.

Sincerely,

Sara Veeneman

Enclosures

cc: Counsel of Record

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PUBLIC SERVICE
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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

East Kentucky Power Cooperative, Inc.)	
)	
)	Docket No. EL16-8-000
v.)	
)	
Louisville Gas & Electric/Kentucky Utilities)	
)	

**ANSWER OF LOUISVILLE GAS AND ELECTRIC COMPANY AND
KENTUCKY UTILITIES COMPANY**

Pursuant to Rules 206(f) and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or the “Commission”)¹ and the Notice of Complaint issued November 3, 2015, Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively, “LG&E/KU”) hereby submit this Answer to the October 30, 2015 complaint filed in the above-referenced docket by East Kentucky Power Cooperative, Inc. (“EKPC”) (the “Complaint”).

For the reasons stated below, the Complaint is without merit and should be summarily rejected. EKPC fails to support its request for a Network Integration Transmission Service Agreement (“NITSA”) that deviates significantly from the provisions of the LG&E/KU Open Access Transmission Tariff (“OATT”)² and long-standing Commission policy in a manner that would unduly restrict efficient operation of the LG&E/KU Transmission System. LG&E/KU

¹ 18 C.F.R. §§ 385.206(f), 385.213 (2015).

² The LG&E/KU OATT is currently located under LG&E’s “Transmission” title in eTariff, and may be found here: <http://etariff.ferc.gov/TariffBrowser.aspx?tid=794>. Capitalized terms not otherwise defined shall have the meaning in Section 1 of the LG&E/KU OATT.

have acted in accordance with the provisions of their OATT and the requirements of Order Nos. 888³ and 890.⁴

I. EXECUTIVE SUMMARY

Two days after submitting a transmission service request related to Bluegrass,⁵ EKPC filed a Complaint that attaches a proposed NITSA amendment, predicated on the formation of a fictitious “load” point named after a generating station (the “Bluegrass Delivery Point”) that would serve to support any occasional energy imbalance between Bluegrass generation and EKPC’s Network Loads on LG&E/KU’s Transmission System. LG&E/KU submit that:

- EKPC’s requested service would be a clear violation of the terms of the OATT and longstanding Commission precedent;

³ See *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *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 Pol’y 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).

⁴ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁵ See Attachment 1 Affidavit of Christopher Balmer at PP 3-4. EKPC submitted an original Request for NITS service for units 1 & 2 on November 26, 2014. This request was granted on June 11, 2015 (limited to serve load on the LG&E/KU Transmission System). On April 29, 2015, EKPC filed a request for NITS service for unit 3. This request, with the same limitation, was approved on October 5, 2015. On October 28, 2015, EKPC submitted two additional TSRs with the following comments:

- (1) 81823340 for 283MW from 1-1-2016 to 5-1-2019 with this comment - To make BLGR 1 and 2 DNRs for EK load on the EK system. EKPC is designating an interface delivery point that represents the hourly difference between the output of these units and EK load on the [LG&E/KU] system. 283 MW is the max difference projected; and
- (2) 81823354 for 476MW from 5-1-2019 to 5-1-2024 with this comment - To make BLGR 1,2,& 3 DNRs for EK load on the EK system. EKPC is designating an interface delivery point that represents the hourly difference between the output of these units and EK load on the [LG&E/KU] system. 476 MW is the max difference projected.

- EKPC has failed to support its burden to modify the OATT, as its request would result in preferential service and impair efficient operation of the LG&E/KU Transmission System;
- EKPC has not fully represented lower cost service options; and
- EKPC has failed to meet the requirements for a waiver.

A. The OATT Requires Designation of Discrete Load, Not Generator Imbalance

Section 1.25 of the LG&E/KU OATT states that “[a] Network Customer may elect to designate less than its total load as Network Load but may not designate only part of the load at a discrete Point of Delivery.” Under Section 31.3 of the LG&E/KU OATT, a Network Customer may nominate load outside the LG&E/KU Transmission System as Network Load if *and only if* the customer elects “to include the entire load as Network Load for all purposes under Part III of the Tariff and designating Network Resources in connection with such additional Network Load.” The choice is binary – either all of a discrete load can be included and served by NITS, or all of a discrete load can be excluded from NITS and the load ratio share-based charges that would otherwise apply and be served under a separate arrangement. EKPC’s request clearly violates this directive – intermittent, positive energy imbalances do not equate to a nomination of discrete load for purposes of the OATT.

In an order issued in June of this year, the Commission reemphasized that a customer’s “request to designate less than its entire load as network load violates both [the] OATT and longstanding Commission policy, which require network customers to designate their entire load as network load to receive network service.”⁶ As correctly explained to EKPC by LG&E/KU,⁷

⁶ *Ariz. Pub. Serv. Co.*, 151 FERC ¶ 61,191 at P 26 (2015).

⁷ Balmer Affidavit at P 19.

EKPC has two options to deliver output of the Bluegrass unit over and above the current amount of designated Network Load:

- (1) purchase Point-to-Point service; or
- (2) designate additional discrete load points within EKPC's system as LG&E/KU Network Load to increase EKPC's minimum designated load to equal the output of Bluegrass, and be billed for that load under the EKPC NITSA with LG&E/KU on a coincident peak demand basis.

These approaches were specifically endorsed by the Commission in Order No. 888-B.⁸

EKPC, on the other hand, states that it intends the positive imbalance of Bluegrass to serve EKPC's load connected to the EKPC transmission facilities in PJM.⁹ But its proposed "use [of] its NITSA with [LG&E/KU] to integrate Bluegrass with East Kentucky's load"¹⁰ is inconsistent with the OATT. First, EKPC has not identified discrete portions of its load in PJM that would be identified as Network Load under the LG&E/KU OATT. Second, there are no proposed limitations that would prevent PJM from dispatching Bluegrass to serve demand elsewhere in PJM. Section 28.6 of the LG&E/KU OATT prohibits the use of NITS to support energy transfers outside of "discrete" physical load identified as Network Load under the LG&E/KU OATT.¹¹ Permitting NITS to serve non-discrete loads outside the Transmission Provider's system would set a new precedent applicable to other Transmission Providers and Transmission Customers beyond the specific case of EKPC.

⁸ *Supra* n. 3.

⁹ Complaint at 8.

¹⁰ *Id.*

¹¹ Section 28.6 provides, "[t]he Network Customer shall not use Network Integration Transmission Service for (i) sales of capacity and energy to non-designated loads, or (ii) direct or indirect provision of transmission service by the Network Customer to third parties."

What EKPC plainly seeks is the firmness of NITS with the flexibility and hourly pricing of non-firm Point-to-Point Transmission Service, a combination of pricing options not sanctioned by the OATT. To the contrary, the Commission has clearly stated, “[t]he concept of allowing a “split system” or splitting a discrete load is antithetical to the concept of network service” and would create “the potential for a customer to “game the system” thereby evading some or all of its load-ratio cost responsibility for network services.”¹² EKPC’s primary support for its Complaint is a non-precedential letter order issued by delegated authority that cannot be used to overturn the plain language of the OATT.¹³

Furthermore, the example of Arkansas Electrical Cooperative Corporation (“AECC”) cited by EKPC supports LG&E/KU’s understanding of the OATT requirements. AECC and the Midcontinent Independent System Operator (“MISO”) agreed that AECC’s NITS service in the Southwest Power Pool (“SPP”) could not be used to both serve AECC’s load in the SPP system and simultaneously support transfers to MISO.¹⁴

¹² Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,259 (1997) (citations omitted). The Commission also found,

NRECA and TDU Systems, however, argue that network customers located in multiple control areas should not have to pay for any additional point-to-point transmission service to make sales to non-designated load located in a separate control area. We disagree. Because the additional transmission service to non-designated network load outside of the transmission provider's control area is a service for which the transmission provider must separately plan and operate its system beyond what is required to provide service to the customer's designated network load, it is appropriate to have an additional charge associated with the additional service.

Id. at 30,255.

¹³ *E.g.*, *Westar Energy, Inc.*, 124 FERC ¶ 61,057 at P 26 (2008); *Norwalk Power, LLC*, 122 FERC ¶ 61,273 at P 25 (2008). The Commission has explained that “actions taken by its staff pursuant to delegated authority do not constitute Commission precedent binding the Commission in future cases and the exercise of . . . delegated authority cannot serve to supplant the policies [the Commission has] established in [its] decisions and regulations.” *Mid-Continent Area Power Pool*, 97 FERC ¶ 61,038 at 61,184 n.10 (2001) (citing *Phoenix Hydro Corp.*, 26 FERC ¶ 61,389, at 61,870 (1984), *aff'd*, 775 F.2d 1187, 1191 (D.C. Cir. 1985)) (internal quotations omitted).

¹⁴ As stated by SPP,

All of the AECC resources within SPP have been designated by AECC to serve AECC loads within SPP . . . but not AECC loads within EAI . . . Therefore, SPP would clarify that the SPP NITSA is not currently structured to serve AECC load within EAI, nor does the SPP NITSA recognize that AECC designated resources may be utilized for AECC load located outside of SPP.

EKPC's requested service is a clear violation of LG&E/KU's OATT and Commission precedent. EKPC's complaint, therefore, should be summarily rejected.

B EKPC Has Failed To Satisfy Its Burden To Modify the OATT

To grant EKPC's requested service would require a determination that the Commission's *pro forma* OATT provisions are unjust and unreasonable;¹⁵ yet it remains clear that the Commission's OATT provisions are entirely just and wholly reasonable. In fact, if LG&E/KU were to grant EKPC's request, EKPC would be receiving discriminatory, preferential treatment to the detriment of other LG&E/KU Transmission Customers in several ways.

First, to ensure the firmness of EKPC's NITS service to the non-discrete, non-load based Bluegrass Delivery Point, LG&E/KU would be required to reserve firm transmission capacity over the relevant flowgates every hour of every day up to the potential total amount of Bluegrass Generating Station ("Bluegrass") output – even if by EKPC's own admission, the facility is environmentally restricted to run only 7% of the hours in a year with most of the output during those hours being devoted to serve Network Load on the LG&E/KU Transmission System.¹⁶

LG&E/KU have opposed EKPC's proposal because it would impair efficient utilization of the LG&E/KU Transmission System, decreasing Available Transfer Capability ("ATC") that would and should be available to other Transmission Customers, improperly restricting access of

Midcontinent Indep. Sys. Operator Inc., Docket No. ER14-684-000, Motion of Southwest Power Pool, Inc. to Accept Comments Out of Time and Comments at 5 (Jan. 23, 2014). Further, "AECC and MISO aver[red] that the proposed NITSA is not intended to affect the terms and conditions of existing SPP service." *Midcontinent Indep. Sys. Operator Inc.*, Docket No. ER14-684-000, Arkansas Electric Cooperative Corporation's Answer to Motion to File Comments Out of Time and Comments of Southwest Power Pool, Inc. at 3 (Feb. 7, 2014). Accordingly, the Commission's acceptance was "without prejudice to any necessary arrangements AECC must make with SPP regarding the pseudo-tie or any transmission service on SPP's transmission system." *Midcontinent Indep. Sys. Operator Inc.*, 146 FERC ¶ 61,094 at P 45 (2014).

¹⁵ *Coalition of Eastside Neighborhoods for Sensible Energy, et. al., v. Puget Sound Energy, et. al.*, 153 FERC ¶ 61,076 at P 61 (2015) ("Complainants have not met their burden of proof under section 206 of the FPA to demonstrate that the Respondents' actions . . . have violated any applicable requirement or are otherwise unjust, unreasonable, or unduly discriminatory, or preferential.").

¹⁶ See Complaint at Attachment 2, Affidavit of David Crews at P 12.

other Transmission Customers to the PJM Interconnection LLC (“PJM”) market (to the benefit of EKPC’s generation physically located in PJM). As explained in the affidavit of Christopher Balmer, LG&E/KU already have an annual firm Point-to-Point Transmission Service request from a third party Transmission Customer for export capacity into PJM over these affected facilities.¹⁷

Second, EKPC’s proposal that its “Bluegrass Delivery Point” deliveries be calculated on an after-the-fact basis complicates the ability to release the unused firm transmission for non-firm use, due to a lack of customer-supplied load forecasts for the delivery point, necessary for the release of transmission for non-firm use. Third, EKPC’s request compromises effective planning of the LG&E/KU system due to the unprecedented level of variability in load, for which LG&E/KU would need to plan. In accordance with Section 28.2 of the OATT, LG&E/KU are responsible for planning their transmission system to meet the needs of their Network Customers.¹⁸ EKPC’s request would require LG&E/KU to somehow plan for a 476 MW potential imbalance service that can appear, in whole or in part, in any hour over the course of a given year. Unlike physical load that is predicated on historical usage patterns and meteorological conditions, EKPC could vary the imbalance amounts exported off the LG&E/KU

¹⁷ Balmer Affidavit at P 16.

¹⁸ Section 28.2 provides,

The Transmission Owner will plan (subject to regional plans and coordination), construct, operate and maintain the Transmission System in accordance with Good Utility Practice and its planning obligations in Attachment K in order to make available to the Network Customer Network Integration Transmission Service over the Transmission Owner’s Transmission System. The Transmission Owner, on behalf of its Native Load Customers, shall be required to designate resources and loads in the same manner as any Network Customer under Part III of this Tariff. This information must be consistent with the information used by the ITO to calculate available transfer capability. The Transmission Owner shall include the Network Customer’s Network Load in the Transmission System planning and shall, consistent with Good Utility Practice, endeavor to construct and place into service sufficient transfer capability to deliver the Network Customer’s Network Resources to serve its Network Load on a basis comparable to the Transmission Owner’s delivery of its own generating and purchased resources to its Native Load Customers.

Transmission System based on its use of its portfolio of Network Resources. Such unprecedented “loads” would wreak havoc on sound transmission planning.

C. EKPC Has Not Fully Represented Lower Cost Service Options

EKPC offers an unsupported and exaggerated price for compliance with the Commission’s requirements. Based on LG&E/KU’s review of EKPC’s actual load (connected to the LG&E/KU Transmission System) for the period July 1, 2014 to June 30, 2015, LG&E/KU identified the highest 600 hours of load in the winter months (December, January, and February), which are the periods most likely to require the services of a peaking resource such as Bluegrass. The 600 hours were spread across 64 unique days. When these hourly loads are compared to the maximum Bluegrass generation, the difference is a maximum of 39 MW for both the initial two units and then 231 MW when the third unit is added.

Therefore, for illustrative purposes, if EKPC were to request and utilize Point-to-Point Transmission Service for an assumed total of 39 MW of excess output above their discrete load on the LG&E/KU transmission system, it would cost \$179,244 for three months of monthly firm Point-to-Point Transmission Service. For a 231 MW reservation, the price would be \$1,061,676 for three months of monthly firm Point-to-Point Transmission Service.¹⁹ Obviously, the rates for daily firm and non-firm service would be even less. While these examples are only illustrative, if EKPC chose to use the OATT services to meet the limited needs EKPC asserts that it has, its transmission costs could be well below the \$10,000,000 cited by EKPC.²⁰

¹⁹ Balmer Affidavit at P 21-22.

²⁰ *Id.* LG&E/KU’s authorized rates are \$1,532/MW for monthly firm Point-to-Point Transmission Service; \$71.00/MW for daily firm Point-to-Point Transmission Service, and \$4.44/MWh for non-firm service.

D. EKPC Has Failed To Meet the Requirements for a Waiver

EKPC seeks to impose this preferential treatment over the almost twenty-year term of the NITSA. Given that EKPC's request will impose significant harm to third parties, particularly with respect to the determination of ATC, and is not of limited scope, EKPC has not met the Commission's long-standing criteria for a waiver.²¹

Accordingly, EKPC has failed to support its Complaint that LG&E/KU violated the OATT, that these provisions of the OATT are not just and reasonable, or that EKPC qualifies for a waiver. The Complaint should be denied.

II. COMMUNICATIONS

All correspondence and communications in this proceeding should be addressed to the following persons.²²

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III. BACKGROUND

LG&E and KU are both public utilities and are wholly-owned subsidiaries of LG&E and KU Energy LLC, a public utility holding company and a wholly-owned subsidiary of PPL Corporation ("PPL"). PPL is headquartered in Allentown, Pennsylvania. LG&E is an electric and natural gas utility based in Louisville, Kentucky. LG&E currently serves customers in Louisville and 16 surrounding counties. KU is an electric utility based in Lexington, Kentucky,

²¹ See, e.g., *Sw. Pub. Serv. Co.*, 150 FERC ¶ 61,128 at P 33 (2015).

²² 18 C.F.R. § 385.2010 (2015).

servicing 77 Kentucky counties and five counties in Virginia. LG&E/KU operate a combined Commission-approved OATT based on the requirements of Order Nos. 888 and 890.

EKPC is an electric generation and transmission cooperative that owns and purchases 2,794 MW of net summer generating capability and 3,009 MW of net winter electric generating capability to serve approximately 525,000 homes, businesses, and industries in 87 Kentucky counties through its 16 member distribution cooperatives. EKPC is a transmission-owning member of PJM, owning 2,938 miles of electric transmission lines. A portion of EKPC's load, however, is served off of LG&E/KU's transmission system using a NITSA executed under the LG&E/KU OATT.

The Bluegrass unit is a presently-operational 495 MW (summer capability) gas-fired generating station located in Oldham County, Kentucky, and consists of three units: Bluegrass Unit 1, Bluegrass Unit 2, and Bluegrass Unit 3. On June 26, 2015, EKPC executed an agreement to purchase Bluegrass from Bluegrass Generating Company, LLC, the facility's current owner. EKPC has expressed to LG&E/KU its intention to use the Bluegrass Units as Network Resources to serve portions of EKPC's load that are interconnected to the LG&E/KU transmission system.

LG&E/KU are in the process of preparing for filing an amendment to the EKPC NITSA in connection with EKPC's pending acquisition of Bluegrass after which EKPC will be able to use Bluegrass as a designated Network Resource ("DNR") to serve EKPC load interconnected to the LG&E/KU transmission system. The amendment will also specify cost responsibility for necessary upgrades at the Bridgeport #2 service point; clarify responsibility for the provision of ancillary services; and delineate EKPC's responsibility for any redispatch charges under the terms of the LG&E/KU OATT.²³

²³ The last substantive modification to the EKPC NITSA was made in Docket No. ER14-2968-001, which was accepted on January 6, 2015. LG&E/KU filed a re-collation filing on January 23, 2015 in Docket No. ER15-

IV. ANSWER

A. LG&E/KU Have Properly Interpreted Their OATT Consistent with Order No. 888

On June 26, 2015, East Kentucky executed an agreement with Bluegrass Generating Company, LLC to purchase the Bluegrass facility, an existing three-unit, 495 MW (summer capability) gas-fired generating station located in Oldham County, Kentucky and interconnected to the LG&E/KU Transmission System.²⁴ EKPC states that it will use output from Bluegrass “chiefly” to serve Network Load that is connected to the LG&E/KU Transmission System.²⁵ There is no dispute between EKPC and LG&E/KU with respect to the designation of Bluegrass as a Network Resource to serve these discrete Network Loads.²⁶

EKPC notes, however, that there may be some hours, primarily after May 2019, during which the combined output of the Bluegrass units exceeds the amount of Network Load EKPC has on the LG&E/KU system.²⁷ In these hours, EKPC seeks to deliver the additional supply off the LG&E/KU Transmission System to the PJM system using its NITS service rather than a separate Point-To-Point Transmission Service reservation.²⁸ In other words, EKPC is proposing to take any hourly positive energy imbalance on the LG&E/KU Transmission System and deem it “load” at the border between the LG&E/KU and EKPC systems. As stated by EKPC,

This Delivery Point (“Bluegrass Delivery Point”) shall be the point at which output from Bluegrass in excess of Transmission Customer’s Network Load on the Transmission Owner’s system shall be delivered to Transmission Customer’s Network Load on Transmission Customer’s system. The Network Load at the

898-000. There were no substantive changes to the NITSA. The Commission accepted the entire re-collation filing on March 24, 2015.

²⁴ Complaint at 7-8.

²⁵ *Id.* at 8.

²⁶ *Id.* at 9.

²⁷ *Id.* at 9 and 11. *See also* Crews Affidavit at P 15.

²⁸ Complaint at 9.

Bluegrass Delivery Point will be a calculated value (on an integrated hourly basis) for flows into the Transmission Customer's system at the Bluegrass Delivery Point.²⁹

The "Bluegrass load" is not based on any physical customer demand for electricity but simply represents a positive imbalance between EKPC's Bluegrass Network Resources and its physical Network Loads.³⁰ According to EKPC,

The minimum value for the Network Load for the Bluegrass Delivery Point shall be zero. The maximum value of the Bluegrass Load during a calendar month shall not exceed the higher of: (1) the amount of Transmission Customer Network Load located in the LG&E/KU Balancing Authority Area, excluding the load associated with the Bluegrass Delivery Point; or (2) the total output of the Bluegrass Facility.³¹

In accordance with Section 28.3 of their OATT, LG&E/KU make available firm transmission service over the LG&E/KU Transmission System to the Network Customer for the delivery of capacity and energy from the Network Customer's designated Network Resources to service the Network Customer's Network Loads "on a basis that is comparable to the Transmission Owner's use of the Transmission System to reliably serve its Native Load Customers." No customer is to obtain preferential use of the Transmission System.

In its Complaint, EKPC seeks customer-specific transmission service that violates the requirements of the OATT and adversely impacts the provision of non-discriminatory transmission service to other LG&E/KU Transmission Customers. Accordingly, LG&E/KU have acted reasonably in opposing EKPC's proposed form of hybrid service. The Commission has recognized that the provision of services beyond those required by Order No. 888 and 890 is voluntary, not required, on the part of transmitting utilities.³²

²⁹ *Id.* at Attachment 1, Proposed EKPC NITSA at Section 4.0.

³⁰ *Id.* ("Bluegrass Load = Bluegrass Resource Energy less LG&E/KU BAA Network Load").

³¹ *Id.*

³² *Carolina Power & Light Co.*, 123 FERC ¶ 61,291 at P 20 (2008).

1. EKPC’s Requested Service Is Barred by the OATT – Network Customers Must Identify Discrete Network Loads Not Residual Imbalances

In order to utilize NITS, the Transmission Customer must identify discrete Network Load at a Point of Delivery. The Customer does not have to identify all of its load but must include the entire load associated with the Point of Delivery. The Commission explained in Order No. 888-A:

The concept of allowing a “split system” or splitting a discrete load is antithetical to the concept of network service. A request for network service is a request for the integration of a customer’s resources and loads. Quite simply, a load at a discrete point of delivery cannot be partially integrated – it is either fully integrated or not integrated. Furthermore, such a split system creates the potential for a customer to ‘game the system’ thereby evading some or all of its load-ratio cost responsibility for network services.³³

Thus, under Section 28.1 of the LG&E/KU OATT, “Network Integration Transmission Service is a transmission service that allows Network Customers to efficiently and economically utilize their Network Resources (as well as other non-designated generation resources) to serve their Network Load located in the Balancing Authority Area and any additional load that may be designated pursuant to Section 31.3 of the Tariff.” Network Load, under Section 1.25 of the LG&E/KU OATT, must include the entire load at “discrete” Points of Delivery.

A Network Customer may elect to designate less than its total load as Network Load but may not designate only part of the load at a discrete Point of Delivery. Where an Eligible Customer has elected not to designate a particular load at discrete points of delivery as Network Load, the Eligible Customer is responsible for making separate arrangements under Part II of the Tariff for any Point-To-Point Transmission Service that may be necessary for such non-designated load.³⁴

³³ Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,259 (1997) (citations omitted); *see also* *Transmission Access Pol’y Study Group v. FERC*, 225 F.3d 667, 726 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002) (affirming the Commission’s findings on behind-the-meter generation).

³⁴ LG&E/KU OATT, Section 1.25.

Section 31.3 of the LG&E/KU OATT addresses Network Load not physically interconnected with the LG&E/KU Transmission System and states:

This section applies to both initial designation pursuant to Section 31.1 and the subsequent addition of new Network Load not physically interconnected with the Transmission Owner. To the extent that the Network Customer desires to obtain transmission service for a load outside the Transmission Owner's Transmission System, the Network Customer shall have the option of (1) electing to include the *entire* load as Network Load for all purposes under Part III of the Tariff and designating Network Resources in connection with such additional Network Load, or (2) excluding that *entire* load from its Network Load and purchasing Point-To-Point Transmission Service under Part II of the Tariff. To the extent that the Network Customer gives notice of its intent to add a new Network Load as part of its Network Load pursuant to this section the request must be made through a modification of service pursuant to a new Application.³⁵

According to EKPC, "Section 31.3 permits East Kentucky to designate, as part of its Network Load under a modified NITSA with [LG&E/KU], its member load that is not directly connected to the [LG&E/KU] system."³⁶ LG&E/KU agree with this statement. EKPC, however, goes on to state, "[t]he only condition to doing so is that East Kentucky must designate one or more Network Resources for that load, which East Kentucky has satisfied by identifying Bluegrass as that designated Network Resource."³⁷ This statement is not correct. EKPC ignores the requirement to designate the *entire* Network Load at that new service point.

To be clear Section 31.3 requires:

- (1) the identification of a discrete, metered and measurable load; and
- (2) that the *entirety* of the load be served under the Transmission Provider's NITS.

EKPC's proposal fails both of these requirements. EKPC seeks to serve an undefined portion of its load on the PJM system based on occasional hourly positive energy imbalances resulting from the difference in the output of a designated Network Resource located on the

³⁵ *Id.* at Section 31.3 (emphasis added).

³⁶ Complaint at 14.

³⁷ *Id.*

LG&E/KU Transmission System and physical Network Loads served from the LG&E/KU Transmission System. Energy imbalance located on an adjacent transmission system is not a discrete load in another transmission system. To utilize NITS for the additional potential output of Bluegrass, beyond the currently existing levels of Network Load, EKPC will have to identify an additional Point of Delivery or Points of Delivery that can be separately metered.

EKPC states that Section 31.3 “was defined in this manner to prevent customers from combining Network and Point-to-Point service at a single, discrete delivery point (*e.g.*, a customer utilizing behind-the-meter generation).”³⁸ EKPC’s reading of the provision is too narrow and directly contrary to the Commission’s express holding in Order No. 888. The requirement to designate all or none of a customer’s actual physical load at a discrete Point of Delivery is clearly applicable to customers with loads in multiple systems. The Commission addressed this issue in Order No. 888 as follows:

As to the concerns raised by AEC & SMEPA and NRECA about pancaked rates for network service provided to load served by more than one network service provider, we have stated that if a customer wishes to exclude a particular load at discrete points of delivery from its load ratio share of the allocated cost of the transmission provider’s integrated system, it may do so. Customers that elect to do so, however, must seek alternative transmission service for any such load that has not been designated as network load for network service. This option is also available to customers with load served by “behind the meter” generation that seek to eliminate the load from their network load ratio calculation.³⁹

EKPC reads “also available” as “only available.” There is no difference in the requirement to identify all or none of the load at a discrete point whether the load is served from another transmission system or from behind-the-meter.

³⁸ *Id.* at 15.

³⁹ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,736 (1996).

In accordance with the OATT, EKPC cannot operate its designated Network Resources above their designated Network Load on the LG&E/KU Transmission System using NITS.⁴⁰ Accordingly, LG&E/KU have explained to EKPC that it has two options to deliver output of the Bluegrass unit over and above the current amount of designated Network Load:

- (1) request and purchase Point-to-Point service in any desired amount sufficient to deliver the desired level of output of the Bluegrass Units; or
- (2) designate any number of additional load points within EKPC's system as LG&E/KU Network Load to increase EKPC's minimum designated load to equal the desired level of output of Bluegrass, and be billed for that load under NITS.⁴¹

EKPC cites the heavily-integrated nature of the EKPC and LG&E/KU systems and that only a portion of Bluegrass output would be delivered from the LG&E/KU Transmission System to EKPC's loads in PJM.⁴² These statements may be correct but do not undermine the requirements of the OATT. The clear requirements of the Commission's *pro forma* OATT do not impose "artificial restrictions that produce unjust and unreasonable results," as alleged by EKPC.⁴³ As explained by the Commission, "allowing services and rates unique to every customer would undercut the primary goal of Order No. 888 of providing for non-discriminatory open access transmission."⁴⁴

⁴⁰ See LG&E/KU OATT, Section 30.4.

⁴¹ Balmer Affidavit at P 19. In Order No. 890-B, the Commission clarified:
to the extent necessary, that there is no *per se* prohibition on a transmission customer using both point-to-point and network transmission service, but that any use of point-to-point service by a network customer does not decrease the size of the network customer's load for purposes of calculating its load ratio share payment obligations except to the extent the discrete load being served has been excluded in its entirety from network service.⁴¹

Order No. 890-B, 123 FERC ¶ 61,299 at P 219 (2008).

⁴² Complaint at 14–15.

⁴³ *Id.* at 15.

⁴⁴ *Fla. Power & Light Co.*, 116 FERC ¶ 61,012 at P 14 (2006).

2. EKPC Misapplies Order No. 888 and 888-A

EKPC argues that its proposal is consistent with the Commission's directives in Order Nos. 888, 888-A, and 888-B. EKPC's arguments do not withstand scrutiny. In Order No. 888-A, the Commission held that "splitting a discrete load is antithetical to the concept of network service."⁴⁵

In discussing Order No. 888-A, EKPC notes that,

[t]he Commission rejected the argument that a customer receiving Network Service in control area A should be able to serve load in control area B without that load being designated as additional Network Load in control area A. In so ruling, the Commission stated that, "[b]ecause the additional transmission service to non-designated network load outside of the transmission provider's control area is a service for which the transmission provider must separately plan and operate its system beyond what is required to provide service to the customer's designated network load, it is appropriate to have an additional charge associated with the additional service."⁴⁶

EKPC states it meets this test because

Whenever East Kentucky uses [LG&E/KU] transmission service to serve the East Kentucky Network Load on the [PJM] system with Bluegrass output, which only will be during the hours when Bluegrass output exceeds the amount of East Kentucky load connected to [LG&E/KU's] system, the "Network Load" value for the amount of Bluegrass output delivered to the East Kentucky-connected load will be included in the determination of East Kentucky's coincident peak for billing under East Kentucky's NITSA with [LG&E/KU].⁴⁷

The Commission, however, never intended load ratio share to be a measure of positive generation imbalance. Rather it is based on the requirements of the physical demand at discrete metered points. EKPC's determination to only be charged based on generator imbalances within

⁴⁵ Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,259.

⁴⁶ Complaint at 17.

⁴⁷ *Id.* at 18.

its control is the type of gaming the Commission sought to prevent by requiring all load at discrete points be designated.⁴⁸

EKPC notes that when adopting the *pro forma* tariff, the Commission stated, “[we] did not intend for a transmission provider to receive two payments for providing service to the same portion of a transmission customer’s load. Any such double recovery is unacceptable and inconsistent with cost causation principles.”⁴⁹ EKPC omits the next sentence of Order No. 888-A which states, “[n]either did the Commission intend to allow a transmission customer to designate less than its total load as network load at a discrete point of delivery even though a portion of that load is served under a pre-existing contract.”⁵⁰

What EKPC fails to address is that the service it is requesting was specifically rejected by the Commission in Order No. 888-B.⁵¹ In response to a comment that a network customer can integrate loads and resources in multiple control areas only by purchasing network service in each control area and point-to-point service for transmission between the control areas, the Commission discussed the options available to a customer desiring to serve load in two control areas:

- In this regard, we also disagree with TDU Systems’ assertion that we have required a network customer to assign a designated network resource to a single control area and limit the scheduling of such resources to serve load in a single control area. Tariff sections 30.6 and 31.3 allow for the designation of both network resources and network loads that are not physically interconnected with the transmission provider. Under the *pro forma* tariff, a network customer that seeks network service for all of its loads in multiple control areas may designate all such loads as network loads. By designating all of its loads as network loads, such network customer will receive comparable service in each control area and

⁴⁸ Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,259 (a split system (with only part of the load designated) “creates the potential for a customer to “game the system,” thereby evading some or all of its load-ratio cost responsibility for network services”).

⁴⁹ Complaint at 18 (*referring to* Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,261-262 (1997)).

⁵⁰ Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,262 (1997).

⁵¹ See Order No. 888-B, 81 FERC ¶ 61,248 at 62,095-96 (1997).

will have the ability to schedule the output of network resources between and among control areas, just as a transmission provider or other network customer would need to do to serve load in an adjacent control area.⁵²

- Alternatively, a network customer with resources and load in multiple control areas may elect to designate only such load that is located in a single control area as its designated network load and separately arrange for transmission service (e.g., point-to-point service) to serve load in adjacent control areas from generation resources located in the control area in which it designated its network load. Here too the network customer would be receiving comparable transmission service because a transmission provider or any other network customer seeking to serve load in an adjacent control area would also have to arrange for point-to-point transmission service to make the service possible.⁵³

These are in fact the exact two options LG&E/KU have offered to EKPC, but which EKPC continues to find objectionable. Instead, EKPC insists on a third option, that of designating a fictitious “load” other than an entire discrete load. In an order this year, the Commission found the customer’s “request to designate less than its entire load as network load violates both [the] OATT and longstanding Commission policy, which require network customers to designate their entire load as network load to receive network service.”⁵⁴ EKPC’s Complaint should be rejected for the same reason.

3. EKPC’s Request also Violates the OATT Restrictions on Use of NITS for Off-System Transactions

Section 28.6 of the LG&E/KU OATT prohibits the use of NITS to support energy transfers outside of “discrete” physical load identified as Network Load under the LG&E/KU

⁵² *Id.*

⁵³ *Id.* at n. 157.

⁵⁴ *Ariz. Pub. Serv. Co.*, 151 FERC ¶ 61,191 at P 26 (2015); *see also Fla. Municipal Power Agency v. Fla. Power & Light Co.*, 65 FERC ¶ 61,125, *reh’g dismissed*, 65 FERC ¶ 61,372 (1993), *final order*, 67 FERC ¶ 61,167 (1994), *clarified*, 74 FERC ¶ 61,006 (1996), *reh’g denied*, 96 FERC ¶ 61,130 (2001), *aff’d*, *Fla. Municipal Power Agency v. FERC*, 315 F.3d 362 (D.C. Cir. 2003), *cert. denied*, 540 U.S. 946 (2003); *Fla. Power & Light Co.*, 105 FERC ¶ 61,287 (2003), *order on reh’g*, 106 FERC ¶ 61,204 (2003), *remanded*, *Fla. Municipal Power Agency v. FERC*, 411 F.3d 287 (D.C. Cir. 2005), *order on remand*, 113 FERC ¶ 61,290 (2005), *order on reh’g*, 116 FERC ¶ 61,012 (2006); *Ameren Servs. Co. v. Prairieland Energy, Inc.*, 131 FERC ¶ 61,125 (2010); *Consumers Energy Co.*, 86 FERC ¶ 63,004 at 65,032 (1999), *aff’d*, Opinion No. 456, 98 FERC ¶ 61,333 (2002).

OATT.⁵⁵ EKPC states that it intends the positive imbalance of Bluegrass to serve EKPC's load in PJM connected to the EKPC transmission facilities.⁵⁶ There are two problems with this statement. First, EKPC has not identified discrete portions of its load in PJM that would be identified as Network Load under the LG&E/KU OATT. Stated another way, EKPC's load served off of the PJM system is Network Load under the PJM Tariff. It is not Network Load under the LG&E/KU OATT.

Second, there are no proposed limitations that would prevent PJM from dispatching Bluegrass to serve demand elsewhere in PJM. There is no assurance that the winter peaking need identified by EKPC⁵⁷ is consistent with PJM as a whole.⁵⁸ Permitting NITS to serve non-discrete loads outside the Transmission Provider's system in this manner is a violation of the *pro forma* Section 28.6 and would sanction an unprecedented practice applicable to other Transmission Providers and Transmission Customers beyond the specific case of EKPC.

B. EKPC's Request to Modify the OATT Should Be Rejected

EKPC states that to the extent the Commission finds that LG&E/KU have acted in accordance with the OATT, the Commission should find the OATT "unjust and unreasonable as applied to [EKPC]."⁵⁹ This request is without merit. The Commission should deny any attempt

⁵⁵ Section 28.6 provides:

The Network Customer shall not use Network Integration Transmission Service for (i) sales of capacity and energy to non-designated loads, or (ii) direct or indirect provision of transmission service by the Network Customer to third parties. All Network Customers taking Network Integration Transmission Service shall use Point-To-Point Transmission Service under Part II of the Tariff for any Third-Party Sale which requires use of the Transmission System.

⁵⁶ Complaint at 8.

⁵⁷ *Id.* at 12.

⁵⁸ Assuming that EKPC bids Bluegrass into the PJM capacity and energy markets, the unit can be dispatched by PJM in any of up to 613 hours to meet needs outside of EKPC's own zone. (According to the Complaint at Attachment 2, Affidavit of David Crews at P 12, Bluegrass is environmentally restricted to run 7% or 613 of the 8,760 hours in a year).

⁵⁹ Complaint at 25.

to modify the OATT to permit the proposed extremely inefficient use of the LG&E/KU Transmission System.

1. Good Cause Supports the Requirement to Designate Actual Load

As a Transmission Provider under the OATT, LG&E/KU must, *inter alia*, calculate and post ATC, release unscheduled firm transmission service for non-firm use, and plan their system to support the needs of Network Customers as well as Native Load. EKPC's request will create inefficiencies and complications for each of these important responsibilities.

As explained in the affidavit of Christopher Balmer, EKPC's proposed service request would require LG&E/KU to set aside ATC on the applicable flowgates.⁶⁰ The NERC MOD-030 standards covering the AFC calculation methodology do not contemplate this type of "hybrid" transmission service. MOD-030, R6.1, the standard pertaining to the calculation of Existing Transmission Commitments, states that the impact of firm Network Integration Transmission Service, including the impacts of generation to load, should be based on load forecast for the time period being calculated and the unit commitment and dispatch order.⁶¹ Since EKPC is not designating load as required under the OATT for NITS, a reliable load forecast will not be available for the proposed Bluegrass Delivery point.

EKPC's request would, for example, restrict transfer capacity from LG&E/KU to PJM, first by up to 283 MW and, after May 2019, by up to 476 MW to support any potential positive energy imbalance EKPC would have between its Network Resources and Network Load in that hour.⁶² NITS is a firm service. To ensure potential deliverability, prevent oversubscription of firm transmission service, and limit reliance on transmission loading relief procedures, this

⁶⁰ Balmer Affidavit at P 14-15.

⁶¹ *Id.* at P 14.

⁶² *Id.* at P 15.

transmission capacity would be withheld from use by other potential customers even though, by EKPC's own admission, Bluegrass is environmentally restricted to run only 7% of the hours in a year.⁶³ Furthermore, during many of those hours, Bluegrass will be used, in whole or in large part, to support EKPC's Network Load on the LG&E/KU Transmission System.⁶⁴ Nevertheless, EKPC confirmed that what it is requesting is for ATC to be held to serve to PJM from the Bluegrass "maxed out" for all hours.⁶⁵

By withholding valuable transfer capacity into PJM and elsewhere on the LG&E/KU Transmission System, EKPC's proposal limits access to the PJM energy market to the benefit of EKPC's other generation located physically within PJM. As Mr. Balmer explains, LG&E/KU already have third party requests for transmission over the interface with PJM.⁶⁶

Moreover, EKPC proposes that its "Bluegrass Delivery Point" deliveries be calculated on an after-the-fact basis, which complicates the ability to release this predominately unused transmission capacity for non-firm use. In accordance with NERC reliability criteria MOD-030, R6.2, NITS reservations are effectively "released" in the Available Flowgate Capacity process

⁶³ See Complaint at Attachment 2, Affidavit of David Crews at P 12.

⁶⁴ EKPC states,

For the first few years of East Kentucky's ownership, only two of the three Bluegrass units will be available for East Kentucky's use because the output of the third unit is committed under a power purchase contract with [LG&E/KU] until May 1, 2019. During that time, it is unlikely that the Bluegrass output will exceed the East Kentucky load on the [LG&E/KU] system at the time of [LG&E/KU]'s system peak. East Kentucky expects the same will be true during a majority of the off-peak hours as well.

Complaint at 11. EKPC also writes,

After May 1, 2019, all three Bluegrass units will be available to East Kentucky. However, by then, East Kentucky forecasts that its peak load on the [LG&E/KU] system may exceed 600 MW. Because of this increase in demand on the [LG&E/KU] system, and because of the peaking nature of the plant and NOx restrictions, the Bluegrass output will likely exceed East Kentucky's [LG&E/KU]-connected load during only a limited number of hours each year.

Complaint at 12.

⁶⁵ Balmer Affidavit at P 6.

⁶⁶ *Id.* at P 16.

by the use of the customer forecasted loads and block dispatch of designated Network resources for the time period being calculated.⁶⁷ Since EKPC is not designating load as required under the OATT for NITS, a reliable load forecast will not be available for the proposed Bluegrass Delivery point. Moreover, the dispatch signal to Bluegrass may be associated with needs on the PJM system within or outside of the EKPC Zone. Thus, it is harder to determine the non-firm AFC.

Furthermore, in accordance with Section 28.2 of the OATT, LG&E/KU are responsible for planning their transmission system to meet the needs of their Network Customers. Mr. Balmer demonstrates the problems EKPC's proposal presents for LG&E/KU's transmission planning process.⁶⁸ EKPC would have LG&E/KU account for a 476 MW of potential imbalance service that can appear, in whole or in part, in any of a limited number of hours over the course of a given year. Unlike physical load that is predicated on historical usage patterns and meteorological conditions, EKPC could vary the imbalance amounts exported off the LG&E/KU Transmission System based on its use of its portfolio of Network Resources.⁶⁹ This variability compromises effective planning of the LG&E/KU system.

As a complainant, EKPC bears the burden of proof to show that a rate, or in this case LG&E/KU's approved version of the Commission's *pro forma* OATT, is unjust and unreasonable.⁷⁰ EKPC has not met its burden. In particular, EKPC's Complaint fails to identify the harms its preferential treatment would impose on other Transmission Customers and LG&E/KU as the non-discriminatory Transmission Provider. EKPC's request would set a new

⁶⁷ *Id.* at P 17.

⁶⁸ *Id.* at P 18.

⁶⁹ *Id.*

⁷⁰ 16 U.S.C. § 824e(b) (2013).

precedent for Transmission Providers and other Transmission Customers whereby NITS service could be used to support transactions outside of service to discrete Network Loads. The Commission should reject the Complaint.

2. EKPC Statements as to Potential Costs Do Not Withstand Scrutiny

EKPC makes the statement that it will be forced to spend an additional \$10 million in Point-to-Point Transmission Service charges or purchase “several hundreds of megawatts of additional network service.”⁷¹ But EKPC’s \$10 million estimate for Point-to-Point Transmission Service charges does not fairly represent EKPC’s options, and EKPC provides no support for the purported amount of necessary additional network service. Moreover, EKPC has misstated the scope and substance of its discussions with LG&E/ KU.

In particular, EKPC claims that LG&E/KU “insists that EKPC either: (1) reserve and pay for several hundreds of megawatts of excessive and duplicative Point-to-Point service that would increase [LG&E/KU]’s annual transmission charges to East Kentucky from approximately \$7 million to approximately \$17 million; or (2) purchase several hundreds of megawatts of additional Network Service.”⁷² Neither statement is correct. To be clear, as described in the affidavit of Christopher Balmer, LG&E/KU have presented options and have not suggested any particular course.⁷³ EKPC can submit a request to the Independent Transmission Operator (“ITO”) for the desired amount of Point-To-Point transmission capacity from LG&E/KU to PJM and go through the OATT process to procure and pay for the requested service. EKPC may reserve any amount of Point-To-Point Transmission Service on a long-term, yearly, monthly or daily basis or even non-firm hourly Point-To-Point Transmission Service.

⁷¹ Complaint at 2.

⁷² *Id.*

⁷³ Balmer Affidavit at P 7.

With respect to the potential cost of utilizing additional Point-to-Point Transmission Service, LG&E/KU reviewed EKPC's actual load (connected to the LG&E/KU Transmission System) for the period July 1, 2014 to June 30, 2015 and identified the highest 600 hours of load in the winter months (December, January, and February), the periods most likely to require the services of a peaking resource such as Bluegrass.⁷⁴ These 600 hours were spread across 64 unique days.⁷⁵ LG&E/KU then compared these hourly loads to the maximum Bluegrass generation for both the initial two units (which resulted in a maximum difference of 39 MW) and then the addition of the third unit (which resulted in a maximum difference of 231 MWs).

For illustrative purposes, if EKPC utilizes Point-to-Point Transmission Service for an assumed total of 39 MW of excess output above their discrete load on the LG&E/KU Transmission System, it would cost \$179,244 for three months of monthly firm Point-to-Point Transmission Service; \$177,216 for 64 days of daily firm Point-to-Point Transmission Service; and \$37,429 for 8,430 MWhs of hourly non-firm service.⁷⁶ For 231 MW of transmission service, the prices increase to \$1,061,676 for three months of monthly firm Point-to-Point Transmission Service; \$1,049,664 for 64 days of daily firm Point-to-Point Transmission Service; and \$510,254 for 114,922 MWhs of hourly non-firm service.⁷⁷ Regardless of the exact calculations, the above example serves to illustrate clearly that the cost to EKPC for transmission service could, at EKPC's choosing, be significantly less than the additional \$10 million EKPC claims in its Complaint.

⁷⁴ Balmer Affidavit at P 21-22.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

Use of additional network service is also straightforward. EKPC can apply for service with the ITO and define the additional discrete EKPC points of delivery in PJM to be designated as additional Network Load and go through the OATT process to procure the service. All designated Network Loads, including the added discrete EKPC load in PJM, would be metered at the load points and billed at the LG&E and KU coincident monthly peak OATT rate.

With regard to the option of designating additional Network Load points, EKPC has stated:

EKPC understands that it must designate “load” associated with the service it seeks, which is to deliver incremental output from Bluegrass Station to EKPC load within the EKPC transmission system. However, EKPC interprets load differently than LG&E/KU, such that EKPC could designate an interface point to receive the incremental output from Bluegrass Station on an hourly basis and this would be considered designated Network Load. Regardless, EKPC has no problem with designating specific loads within the EKPC transmission system as Network Loads, but is not in agreement that EKPC should be billed for NITS on the LG&E/KU system when EKPC is not actually using the LG&E/KU transmission system to deliver energy to these loads.⁷⁸

LG&E/KU do not understand this response. In accordance with Section 34.2 of the OATT, NITS customers are charged based on their monthly Network Load “including its designated Network Load not physically interconnected with the Transmission Owner under Section 31.3” coincident with the Transmission Owner’s Monthly Transmission System Peak. Thus, there is a usage-based component of the NITS rate based on the actual measurement of the real load being integrated. What EKPC cannot do is fail to identify and measure and pay based upon the entire, discrete EKPC load in PJM associated with the delivery point. There is no ability under the Tariff to use NITS to deliver excess energy not associated with identified, real Network Loads.

⁷⁸ Kentucky PSC Case No. 2015-00267, Response to Supplemental Response 1a to LG&E/KU Supplemental Request for Information filed October 28, 2015.

EKPC also argues that paying for Point-To-Point Transmission Service to deliver power from Bluegrass to EKPC loads external to the LG&E/KU Transmission System while also having NITS service for EKPC loads internal to LG&E/KU is paying for service twice. EKPC is in error. These are two distinctly separate services under the OATT and recognized by the Commission as different services. As the Commission stated in Order 888-A,

NRECA and TDU Systems, however, argue that network customers located in multiple control areas should not have to pay for any additional point-to-point transmission service to make sales to non-designated load located in a separate control area. We disagree. Because the additional transmission service to non-designated network load outside of the transmission provider's control area is a service for which the transmission provider must separately plan and operate its system beyond what is required to provide service to the customer's designated network load, it is appropriate to have an additional charge associated with the additional service.⁷⁹

Directly contrary to EKPC's arguments, the Commission has determined in Order 888-A that in this exact situation, in which service across multiple control areas is implicated, it is appropriate to have an "additional charge associated with the additional service."

As the Commission concluded in Order No. 890-A, Transmission Customers "ultimately must evaluate the financial advantages and risks and choose to use either network integration or firm point-to-point transmission service to serve load."⁸⁰ The Transmission Provider, LG&E/KU, has presented options to EKPC based on the OATT requirements. EKPC's Complaint does not accurately portray these options, many of which can be implemented at costs substantially below the amount cited by EKPC.

3. EKPC Cannot Use a Voluntary Arrangement Accepted by Delegated Authority as Precedent to Support Its Preferential Service

⁷⁹ Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,255 (1997) (citations omitted).

⁸⁰ Order No. 890-A, 121 FERC ¶ 61,297 at P 970 (2008).

EKPC notes that in 2012, the Commission accepted for filing an amended Network Service Agreement between Southern Company Services, Inc. (“Southern”) and Southern Mississippi Electric Power Association (“SMEPA”).⁸¹ In Docket No. ER12-1724-000, the Commission accepted by delegated authority an uncontested arrangement in which Southern voluntarily agreed that SMEPA could use NITS for deliveries at the Purvis Substation calculated as the positive imbalances from its other Network Resources and Network Loads up to a monthly cap.⁸² EKPC states, “[n]otably, for the SMEPA-Southern arrangements, no waiver of the Southern Tariff was sought or required, meaning that the arrangements contained in the NITSA were proposed and accepted as being consistent with and conforming to the provisions of the Tariff.”⁸³ EKPC presumes too much. Delegated letter orders are not precedential.⁸⁴ There is no Commission precedent that would warrant overturning the plain language of the OATT.

Later in its pleading, EKPC cites the MISO NITSA with AECC in support of its waiver request. While, as discussed below, that proceeding did not even involve a waiver,⁸⁵ closer examination reveals that the example of AECC supports LG&E/KU’s position and directly contradicts EKPC’s proposed use of NITS to export from the LG&E/KU Transmission System. When MISO filed the AECC agreement, the SPP intervened and stated:

⁸¹ Complaint at 20.

⁸² See *Ala. Power Co.*, Docket No. ER12-1724-000, Letter Order Accepting Tariff Filing of Alabama Power Company (Jun. 4, 2013); *Ala. Power Co.*, Docket No. ER12-1724-000, Tariff Filing of Alabama Power Company (May 2, 2013).

⁸³ Complaint at 24. EKPC states that in 2013, the Commission accepted similar arrangements between SMEPA and MISO in connection with SMEPA’s integration into MISO Docket No. ER13-2008. Complaint at 21. The MISO NITSA did not contain the imbalance arrangement reflected in SMEPA’s NITSA with Southern.

⁸⁴ See, e.g., *Wolverine Power Supply Coop., Inc.*, 135 FERC ¶ 61,165 at P 15 & n.22 (2011) (“The Commission has explained that actions taken by its staff pursuant to delegated authority ‘do not constitute Commission precedent binding on the Commission in future cases’ and the ‘exercise of . . . delegated authority cannot serve to supplant the policies [the Commission] has established in [its] decisions and regulations.’”) (internal quotations omitted); *PacifiCorp*, 143 FERC ¶ 61,167 at n.10 (2013) (“A delegated letter order does not constitute legal precedent that is binding on the Commission.”); *Westar Energy, Inc.*, 124 FERC ¶ 61,057 at P 26 (2008).

⁸⁵ *Midcontinent Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,094 (2014).

All of the AECC resources within SPP have been designated by AECC to serve AECC loads *within SPP* . . . but not AECC loads within EAI. . . . Therefore, SPP would clarify that the SPP NITSA is not currently structured to serve AECC load within EAI, nor does the SPP NITSA recognize that AECC designated resources may be utilized for AECC load located outside of SPP. MISO's claim that AECC's loads are indistinguishable from all its Native Load is not consistent with AECC's current arrangement with SPP. In its transmission service arrangements with SPP, AECC has clearly delineated designated resources for its SPP load and these arrangements do not provide service for AECC's native load requirements within EAI. Likewise, AECC's load existing within EAI's footprint is served by AECC resources located within EAI, and SPP has no direct involvement with the arrangements between AECC and EAI.⁸⁶

SPP's comments emphasize that AECC's SPP NITSA is used only to serve load in SPP.

This is the same position LG&E/KU have explained to EKPC. In its Order, the Commission noted,

AECC states that it does not intend to convert designated network resources in SPP to designated network services in MISO, and AECC acknowledges that its existing transmission service arrangements within SPP were not designed to address transmission services needs in the Entergy Arkansas Local Balancing Authority area.⁸⁷

Indeed, "AECC and MISO aver[red] that the proposed NITSA is not intended to affect the terms and conditions of existing SPP service."⁸⁸ Accordingly, the Commission's acceptance was "without prejudice to any necessary arrangements AECC must make with SPP regarding the pseudo-tie or any transmission service on SPP's transmission system."⁸⁹ EKPC's example of AECC fails to support its Complaint.

An uncontested letter order issued under delegated authority cannot be used to reverse longstanding precedent regarding the permissible uses of NITS. The Commission has

⁸⁶ *Midcontinent Indep. Sys. Operator Inc.*, Docket No. ER14-684-000, Motion of Southwest Power Pool, Inc. to Accept Comments Out of Time and Comments at 5 (Jan. 23, 2014) (emphasis in original).

⁸⁷ *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,094 at P 36 (2014).

⁸⁸ *Midcontinent Indep. Sys. Operator Inc.*, Docket No. ER14-684-000, Arkansas Electric Cooperative Corporation's Answer to Motion to File Comments Out of Time and Comments of Southwest Power Pool, Inc. at 3 (Feb. 7, 2014).

⁸⁹ *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,094 at P 45 (2014).

recognized that transmission providers are not required to offer service beyond the OATT requirements.⁹⁰ LG&E/KU have acted reasonably and in accordance with Good Utility practice in not agreeing to a request that, while it would benefit that particular customer, would create inefficiencies on the LG&E/KU Transmission System.

C. EKPC Has Not Met the Requirements for a Waiver

As an alternative form of relief, EKPC requests “waiver of Section 31.3 of the [LG&E/KU] Tariff” and acceptance of their proposed non-conforming agreement.⁹¹ In evaluating waiver requests, the Commission considers whether: (1) the applicant was unable to comply with the tariff provision at issue in good faith; (2) the waiver is of limited scope; (3) a concrete problem will be remedied by granting the waiver; and (4) the waiver would not have undesirable consequences, such as harming third parties.⁹² A waiver must meet all four criteria. EKPC’s request fails these requirements.

As explained previously, EKPC’s request for a preferential, non-conforming NITSA would have a profound negative effect on other Transmission Customers and impair efficient utilization of the LG&E/KU Transmission System. The Commission must not countenance granting a waiver that will result in this harm.

With respect to the limited scope requirement, the Commission considers whether the request is for a limited duration. For example, in *Southwest Power Pool, Inc.*,⁹³ the Commission determined that Southwest Power Pool, Inc.’s request for a limited waiver to delay

⁹⁰ *Carolina Power & Light Co.*, 123 FERC ¶ 61,291 at P 20 (2008) (“We accept Progress Energy’s proposal to eliminate Network Contract Demand Service effective June 14, 2008, which is after 60 days notice. Progress Energy voluntarily offered Network Contract Demand Service. That service is not required by the Commission under Order Nos. 888 or 890. Therefore, Progress Energy is entitled to no longer make Network Contract Demand Service available (beyond its customers currently receiving that service).”).

⁹¹ Complaint at 25.

⁹² *Sw. Pub. Serv. Co.*, 150 FERC ¶ 61,128 at P 33 (2015).

⁹³ *Southwest Power Pool, Inc.*, 144 FERC ¶ 61,223 (2013).

implementation of systematic and automated curtailment rules in its tariff for the period from March 19, 2013 to June 1, 2013 was “of limited scope and duration.”⁹⁴ Similarly, in *New York Independent System Operator, Inc.*,⁹⁵ the Commission found that the New York Independent System Operator, Inc.’s request for limited waiver of sections of its tariff that apply a formula for calculation of congestion payments was “limited in scope and duration in that it is limited solely to the month of January 2014.”⁹⁶ In contrast, the Commission found that Allegheny Generating Station LLC’s request for temporary waiver of a tariff provision setting forth how to calculate unforced capacity was not limited in scope when it covered three consecutive Capability Periods spanning eighteen months, stating “[w]e question whether a waiver in this context – covering three capability periods – is truly limited in scope.”⁹⁷

In this case, EKPC is seeking a waiver of Section 31.3 of the LG&E/KU OATT to adopt the amended NITSA as a non-conforming agreement.⁹⁸ Under the unexecuted amended NITSA attached to the Complaint, the termination date of the agreement is 2026.⁹⁹ Unlike the limited waivers in *Southwest Power Pool, Inc.* and *New York Independent System Operator, Inc.*, which lasted several months, EKPC’s waiver would be in effect for eleven years, far exceeding the eighteen month waiver rejected by the Commission in *Allegheny Generating Station LLC*. Because the requested waiver is not limited in scope, the Commission should deny EKPC’s request for waiver of Section 31.3 of the LG&E/KU OATT.

⁹⁴ *Id.* at P 51.

⁹⁵ *N.Y. Indep. System Operator, Inc.*, 147 FERC ¶ 61,138 (2014).

⁹⁶ *Id.* at P 13.

⁹⁷ *Allegheny Generating Station LLC*, 147 FERC ¶ 61,147 at P 19 (2014).

⁹⁸ Complaint at 25.

⁹⁹ *See* Complaint, Attachment 1.

In support of its waiver request, EKPC cites *Midcontinent Independent System Operator Inc.*¹⁰⁰ This case, however, was not decided on waiver grounds. The Commission accepted the non-conforming NITSA because:

While section 31.3 of MISO's Tariff is an approved deviation from the Commission's *pro forma* open access transmission tariff (OATT), section 31.3 of the *pro forma* OATT provides the option of designating Network Load that is not physically interconnected with the transmission provider's system. Thus, we find that the inclusion of SMEPA's pseudo-tied load in the NITSA is just and reasonable because it is consistent with the flexibility provided under section 31.3 of the *pro forma* OATT.¹⁰¹

The Commission accepted the non-conforming NITSA and reaffirmed the *pro forma* version of OATT Section 31.3 – the same provision currently reflected in the LG&E/KU OATT. Stated another way, the Commission did not “waive” LG&E/KU's version of Section 31.3 but rather accepted a NITSA based on it. Indeed, the only use of “waiver” in the letter order is in reference to the requested effective date.

As noted above, EKPC also cites to the MISO NITSA with AECC in support of its waiver request. Again, the proceeding involved acceptance of a non-conforming NITSA and not the granting of a waiver¹⁰² and LG&E/KU have already explained how SPP protested any exports of AECC Network Resources under SPP's tariff to MISO and how MISO and AECC acceded to SPP's position.¹⁰³

EKPC has failed to support its request for a waiver of Section 31.3 of the LG&E/KU OATT. EKPC seeks preferential and improper use of a NITSA that would negatively affect other customers through a reduction of ATC. The arrangement is not limited in duration but

¹⁰⁰ *Midcontinent Indep. Sys. Operator Inc.*, 145 FERC ¶ 61,242 (2013).

¹⁰¹ *Id.* at P 11.

¹⁰² *Midcontinent Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,094 (2014).

¹⁰³ See *Midcontinent Indep. Sys. Operator Inc.*, Docket No. ER14-684-000, Arkansas Electric Cooperative Corporation's Answer to Motion to File Comments Out of Time and Comments of Southwest Power Pool, Inc. at 3 (Feb. 7, 2014).

proposed to be in place for decades. The precedent cited by EKPC does not involve requests for waivers and, upon closer examination, supports LG&E/KU's reasonable interpretation of the OATT. Accordingly, EKPC's request should be denied.

D. EKPC Should Have Requested LG&E/KU to File an Unexecuted Amended NITSA

As explained in the Affidavit of Christopher Balmer, EKPC submitted an original Request for NITS service for Bluegrass Units 1 and 2 on November 26, 2014.¹⁰⁴ This request was granted on June 11, 2015 (limited to serve load on the LG&E/KU Transmission System).¹⁰⁵ On April 29, 2015, EKPC filed a request for NITS service for Unit 3.¹⁰⁶ This request, with the same limitation, was approved on October 5, 2015.¹⁰⁷ On October 28, 2015, *two days prior to filing the Complaint*, EKPC submitted two additional TSRs:

- (1) 81823340 for 283MW from 1-1-2016 to 5-1-2019 with this comment - To make BLGR 1 and 2 DNRs for EK load on the EK system. EKPC is designating an interface delivery point that represents the hourly difference between the output of these units and EK load on the [LG&E/KU] system. 283 MW is the max difference projected; and
- (2) 81823354 for 476MW from 5-1-2019 to 5-1-2024 with this comment - To make BLGR 1,2,& 3 DNRs for EK load on the EK system. EKPC is designating an interface delivery point that represents the hourly difference between the output of these units and EK load on the [LG&E/KU] system. 476 MW is the max difference projected.¹⁰⁸

¹⁰⁴ Balmer Affidavit at P 3.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at P 4.

Under Section 29.1 of the OATT, the Transmission Customer is to make a request. If the request is denied, the appropriate remedy is to request the service agreement to be filed unexecuted.¹⁰⁹ EKPC has ignored this process.¹¹⁰

The Commission has stated,

When we stated in Order Nos. 888 and 888-A that we would consider alternative proposals for allocating the cost of network integration and would evaluate those alternatives on the merits on a case-by-case basis, we intended those alternative proposals to come from the utilities who we were directing, in those rulemakings, to file open access transmission tariffs; if a transmission provider believed that an alternative arrangement made more sense for its system... However, we did not intend for each and every customer of a transmission provider to have the opportunity to demand that the transmission provider create alternative services which benefit that particular customer, *i.e.*, we did not intend to create the option of separate and individual customer-by-customer transmission services and rates.¹¹¹

EKPC's Complaint is a transparent demand that LG&E/KU as the Transmission Provider "create alternative services which benefit that particular customer." EKPC has failed to sustain its burden that LG&E/KU have violated their OATT, that the OATT is unjust or unreasonable,¹¹² or that it meets the requirements for a waiver.¹¹³ Whether by means of denying this Complaint filed under Section 206 or by means of denying an EKPC protest to the filing of an unexecuted

¹⁰⁹ LG&E/KU OATT, Section 29.1 ("Subject to the terms and conditions of Part III of the Tariff, the Transmission Owner will make available Network Integration Transmission Service to any Eligible Customer, provided that . . . the Eligible Customer executes a Service Agreement pursuant to Attachment F for service under Part III of the Tariff or requests in writing that the Transmission Owner file a proposed unexecuted Service Agreement with the Commission.") (emphasis added).

¹¹⁰ In accordance with Rule 206(b)(6), EKPC states that the specific matters raised in this Complaint are not pending before the Commission in any docket. While correct as of this moment, EKPC knows that LG&E/KU is planning on filing the amended NITSA to add Bluegrass this month.

¹¹¹ *Fla. Power & Light Co.*, 113 FERC ¶ 61,290 at P 6 (2005); *see also Id.* at P 7 ("That customer, however, is not permitted to craft a transmission service unique to its circumstances, but which is not offered by the transmission provider.").

¹¹² 16 U.S.C. § 824e(b) (2013).

¹¹³ *Sw. Pub. Serv. Co.*, 150 FERC ¶ 61,128 at P 33 (2015).

NITSA by LG&E/KU under Section 205, the Commission should reject the preference requested by EKPC.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, LG&E/KU respectfully request that the Commission deny EKPC's Complaint.

Respectfully submitted,

Jennifer Keisling
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/s/ David B. Rubin
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thomas.devita@troutmansanders.com

Counsel for LG&E/KU

Dated: November 23, 2015
Washington, DC

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of November, 2015, I have served a copy of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Thomas S. DeVita

Thomas S. DeVita

TROUTMAN SANDERS LLP

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**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**LOUISVILLE GAS AND ELECTRIC/)
KENTUCKY UTILITIES COMPANY)
)
)**

Docket Nos. EL16-8-000

AFFIDAVIT OF

CHRISTOPHER D. BALMER

**LOUISVILLE GAS AND ELECTRIC
KENTUCKY UTILITIES COMPANY**

Filed: November 23, 2015

AFFIDAVIT OF CHRISTOPHER D. BALMER

1. My name is Christopher Balmer. I am the Director of Transmission Strategy and Planning for LG&E/KU. As part of my duties, I am responsible for administration of LG&E/KU's responsibilities as the Transmission Owner under the LG&E/KU Joint *Pro Forma* Open Access Transmission Tariff ("OATT"). My business address is 220 West Main Street, Louisville, Kentucky, 40202. A complete statement of my education and work experience is attached to this affidavit as Exhibit No. 1.

2. LG&E and KU each own transmission facilities in Kentucky. Since LG&E and KU merged in 1998, their facilities have been operated as a single integrated transmission system. The rates, terms, and conditions of service over the combined LG&E/KU Transmission System are governed by the LG&E/KU OATT on file with the Federal Energy Regulatory Commission ("FERC" or the "Commission"). The LG&E/KU OATT generally follows the *pro forma* OATT promulgated by the Commission in Order Nos. 888 and 890. LG&E/KU are the Transmission Owner under their OATT, and they have delegated certain transmission-related functions to TranServ International, Inc. as the Independent Transmission Organization ("ITO"), and the Tennessee Valley Authority ("TVA") as the Reliability Coordinator. Broadly speaking, TVA is responsible for compliance with the North American Electric Reliability Corporation ("NERC") reliability standards applicable to Reliability Coordinators. The ITO is responsible for evaluating transmission service requests, processing applications, and conducting system impact studies. LG&E/KU as the Transmission Owner are responsible for operating the Transmission System and providing transmission service.

EKPC Transmission Service Requests for Bluegrass

3. On November 26, 2014, EKPC requested to add Bluegrass Units 1 and 2 as designated Network Resources under its existing Network Integration Transmission Service Agreement (“NITSA”). EKPC submitted a similar request for Bluegrass Unit 3 on April 29, 2015. Transerv, acting as LG&E/KU’s ITO, received, studied, and granted Network Service from the Bluegrass units solely to serve EKPC load on the LG&E/KU Transmission System. Approval for Bluegrass Units 1 and 2 was granted on June 11, 2015, and approval for Bluegrass Unit 3 was granted on October 5, 2015.
4. On October 28, 2015, EKPC submitted new transmission service requests related to Bluegrass:
 - 81823340 for 283MW from 1-1-2016 to 5-1-2019 with this comment - To make BLGR 1 and 2 DNRs for EK load on the EK system. EKPC is designating an interface delivery point that represents the hourly difference between the output of these units and EK load on the [LG&E/KU] system. 283 MW is the max difference projected.
 - 81823354 for 476MW from 5-1-2019 to 5-1-2024 with this comment - To make BLGR 1,2,& 3 DNRs for EK load on the EK system. EKPC is designating an interface delivery point that represents the hourly difference between the output of these units and EK load on the [LG&E/KU] system. 476 MW is the max difference projected.

These requests are currently under review by the ITO.

Other Meetings Between LG&E/KU and EKPC Concerning Bluegrass

5. Representatives from EKPC have had several communications with LG&E/KU related to EKPC’s desire to have additional transmission service for those occasions when Bluegrass generation might exceed EKPC’s load on the LG&E/KU Transmission System. For example, on August 25, 2015, LG&E/KU participated in a conference call with EKPC and the ITO. On September 8, 2015 a meeting was held between EKPC,

LG&E/KU, and the ITO. On September 29, 2015, LG&E/KU and EKPC had another conference call, and on October 8, 2015, LG&E/KU and EKPC held a meeting, joined by their respective legal counsels, who shared their interpretation of the OATT and FERC Order Nos. 888 & 890.

6. During these discussions, EKPC confirmed it was requesting firm capacity to be available to PJM from Bluegrass (maxed out) for all hours. LG&E/KU concluded that accepting a non-conforming OATT transmission arrangement, as EKPC proposed, would be inconsistent with the OATT, result in unacceptable negative impacts to other customers, and impair efficient operation of the Transmission System. LG&E/KU expressed these sentiments to EKPC. EKPC stated that what it was requesting “conformed” to the OATT. LG&E/KU informed EKPC that they disagreed with this interpretation but if EKPC believed its proposal was conforming, then EKPC should submit its proposal to the ITO as the Administrator of the LG&E/KU OATT.
7. During the meetings with EKPC, LG&E/KU presented options to EKPC. LG&E/KU never insisted on a particular type of service or quantity of service. LG&E/KU provided explanations as to what requests would be consistent with the OATT requirements.

Non-Conforming Nature of EKPC’s Request

8. Under the OATT, Transmission Customers may request Firm and Non-Firm Point-To-Point Transmission Service for the receipt of capacity and energy at designated Point(s) of Receipt, and the transfer of capacity and energy to designated Point(s) of Delivery. Transmission Customers may also request Network Integration Transmission Service (“NITS”) to deliver capacity and energy from designated Network Resources to serve

discrete Network Loads. Transmission Customers may file transmission service requests with the ITO at any time.

9. "Network Load" under Section 1.25 of the LG&E/KU OATT, must include the entire load at "discrete" Points of Delivery.

A Network Customer may elect to designate less than its total load as Network Load but may not designate only part of the load at a discrete Point of Delivery. Where an Eligible Customer has elected not to designate a particular load at discrete points of delivery as Network Load, the Eligible Customer is responsible for making separate arrangements under Part II of the Tariff for any Point-To-Point Transmission Service that may be necessary for such non-designated load.

10. Section 31.3 of the LG&E/KU OATT addresses Network Load not physically interconnected with the LG&E/KU Transmission System and states:

This section applies to both initial designation pursuant to Section 31.1 and the subsequent addition of new Network Load not physically interconnected with the Transmission Owner. To the extent that the Network Customer desires to obtain transmission service for a load outside the Transmission Owner's Transmission System, the Network Customer shall have the option of (1) electing to include the *entire* load as Network Load for all purposes under Part III of the Tariff and designating Network Resources in connection with such additional Network Load, or (2) excluding that entire load from its Network Load and purchasing Point-To-Point Transmission Service under Part II of the Tariff. To the extent that the Network Customer gives notice of its intent to add a new Network Load as part of its Network Load pursuant to this section the request must be made through a modification of service pursuant to a new Application.

11. EKPC's request for the creation of a new point of service, the "Bluegrass Delivery Point," is not based on a physical customer demand for electricity (i.e., there is no real, discrete load associated with the "Bluegrass Delivery Point"), but simply represents a positive imbalance between EKPC's Bluegrass Network Resources and its physical Network Loads on the LG&E/KU Transmission System. According to EKPC,

The minimum value for the Network Load for the Bluegrass Delivery Point shall be zero. The maximum value of the Bluegrass Load during a calendar month shall not exceed the higher of: (1) the amount of Transmission Customer Network Load located in the LG&E/KU Balancing Authority Area, excluding the load associated with the Bluegrass Delivery Point; or (2) the total output of the Bluegrass Facility.

12. EKPC seeks to serve an undefined portion of its load on the PJM system or to make sales into the PJM market based on occasional hourly positive energy imbalances resulting from the differences in the output of designated Network Resources and physical Network Loads served from the LG&E/KU Transmission System. EKPC states on page 8 of its Complaint that it intends the positive imbalance of Bluegrass to serve EKPC's load in PJM. First, EKPC has not identified discrete portions of its load in PJM that would be identified as Network Load under the LG&E/KU OATT. Second, there are no proposed limitations that would prevent PJM from dispatching Bluegrass to serve demand elsewhere in PJM. Section 28.6 of the LG&E/KU OATT prohibits the use of NITS to support energy transfers outside of "discrete" physical load identified as Network Load under the LG&E/KU OATT. It provides:

The Network Customer shall not use Network Integration Transmission Service for (i) sales of capacity and energy to non-designated loads, or (ii) direct or indirect provision of transmission service by the Network Customer to third parties. All Network Customers taking Network Integration Transmission Service shall use Point-To-Point Transmission Service under Part II of the Tariff for any Third-Party Sale which requires use of the Transmission System.

13. Energy imbalance is not a discrete load. To utilize NITS for the additional potential output of Bluegrass, beyond the currently-existing levels of Network Load, EKPC will have to identify an additional discrete Point of Delivery or Points of Delivery that can be separately metered.

Negative Impacts of EKPC's Non-Conforming Requests

1. Impairment of Available Transfer Capability

14. The NERC MOD-030 standards that cover the Available Flowgate Capability (“AFC”) calculation methodology do not contemplate the type of “hybrid” transmission service requested by EKPC. MOD-030, R6.1 of the standard pertaining to the calculation of Existing Transmission Commitments (“ETC”) states that the impact of firm NITS, including the impacts of generation to load, should be based on load forecast for the time period being calculated and the unit commitment and dispatch order. Again, since EKPC is not designating load as required under the OATT for NITS, a reliable load forecast will not be available for the proposed Bluegrass delivery point.
15. EKPC’s request would, for example, restrict transfer capacity from LG&E/KU to PJM, first by up to 283 MW and, after May 2019, by up to 476 MW to support any potential positive energy imbalance EKPC would have between Bluegrass generation and its Network Load on the LG&E/KU Transmission System in that hour. NITS is a firm service. LG&E/KU would need to ensure potential deliverability, prevent oversubscription of firm transmission service, and limit reliance on transmission loading relief procedures. Thus, this capacity would be withheld from use by other potential customers even though, by EKPC’s own admission, Bluegrass is environmentally restricted to run only 7% of the hours in a year. By withholding valuable transfer capacity into PJM and elsewhere on the LG&E/KU Transmission System, EKPC’s proposal limits access to the PJM energy market, impairs efficient utilization of the Transmission System, and doesn’t provide compensation for the reservation to PJM which reduces transmission cost for other Transmission Customers.

16. Other LG&E/KU OATT customers currently purchase (or are requesting) long-term firm Point-to-Point Transmission Service in addition to NITS for off the LG&E/KU Transmission System deliveries, including deliveries to PJM. For example, Kentucky Municipal Power Agency requested 120 MWs of firm Point-to-Point Transmission Service to PJM on October 6, 2015. The existing transmission planning processes and ATC calculations are in place to incorporate modeling inputs from these types of conforming OATT services and not non-conforming arrangements.

2. Impairment of Non-Firm Transmission Service

17. EKPC's proposal, that its "Bluegrass Delivery Point" deliveries be calculated on an after-the-fact basis, complicates the ability to release the unused transmission capacity for non-firm use. Under NERC MOD-030, R6.2, NITS reservations are effectively "released" in the AFC process by the use of the customer-forecasted loads and block dispatch of designated Network Resources for the time period being calculated. Since EKPC is not designating load as required under the OATT for NITS, a reliable load forecast will not be available for the proposed Bluegrass delivery point.

3. Impairment of Transmission Planning

18. In accordance with Section 28.2 of the OATT, LG&E/KU are responsible for planning their transmission system to meet the needs of their Network Customers. EKPC's proposal would have LG&E/KU account for 476 MW of potential imbalance service that can appear, in whole or in part, in any of a limited number of hours over the course of a given year. Unlike physical load that is predicated on historical usage patterns and meteorological conditions, EKPC could vary the imbalance amounts exported off the LG&E/KU Transmission System based on its use of its portfolio of Network Resources.

This variability compromises effective planning of the LG&E/KU system. Without designating Network Load or requesting long-term firm Point-to-Point service under existing OATT offerings, it is unclear what LG&E/KU should plan for in their transmission planning process and how to appropriately calculate ATC.

Options Consistent with the OATT

19. LG&E/KU have explained to EKPC that EKPC has two options to deliver the output of Bluegrass over and above the current amount of designated Network Load: (1) purchase Point-to-Point service in any desired amount sufficient to deliver the desired level of output of the Bluegrass units; or (2) designate any number of additional discrete load points within EKPC's system as LG&E/KU Network Load to increase EKPC's minimum designated load to equal the desired level of output of Bluegrass and be billed for that load under the EKPC NITSA with LG&E/KU on a coincident peak demand basis.
20. It is completely within EKPC's own discretion what amount, if any, of Point-to-Point service to request, which additional discrete loads points within EKPC's system, if any, to designate as network load under its LG&E/KU OATT NITS service, and what level of output of Bluegrass to accommodate through transmission service under LG&E/KU's OATT.
21. But for purposes of assessing the potential cost of utilizing additional Point-to-Point Transmission Service, LG&E/KU reviewed EKPC's actual load (connected to the LG&E/KU Transmission System) for the period July 1, 2014 to June 30, 2015 and identified the highest 600 hours of load in the winter months (December, January, and February), the periods most likely to require the services of a peaking resource such as Bluegrass. These 600 hours were spread across 64 unique days. LG&E/KU then

compared these hourly loads to the maximum Bluegrass generation for both the initial two units and then the addition of the third unit, assuming maximum output of Bluegrass units was desired. The results are summarized below for monthly firm, daily firm, and hourly non-firm service.

Based on 2 Units @ Bluegrass (Max = 384MW)				Based on 3 units @ Bluegrass (Max = 576MW)			
8,430 MWhrs of Max BG Gen > load				114,922 MWhrs of Max BG Gen > load			
39MW maximum excess BG generation				231MW maximum excess BG generation			
	Monthly Firm for 3 Months	Daily Firm for 64 Days	Hrly NF		Monthly Firm for 3 Months	Daily Firm for 64 Days	Hrly NF
Volume	39	39	8430	Volume	231	231	114922
XM Rate	\$1,532	\$71.00	\$4.44	XM Rate	\$1,532	\$71.00	\$4.44
Periods	3	64		Periods	3	64	
Cost	\$179,244	\$177,216	\$37,429	Cost	\$1,061,676	\$1,049,664	\$510,254

22. If, for example, EKPC were to utilize Point-to-Point Transmission Service for an assumed total of 39 MW of excess output above EKPC's discrete load on the LG&E/KU Transmission System it would cost \$179,244 for three months of monthly firm Point-to-Point Transmission Service; \$177,216 for 64 days of daily firm Point-to-Point Transmission Service; and \$37,429 for 8,430 MWhs of hourly non-firm service. For a 231 MW reservation, the prices increase to \$1,061,676 for three months of monthly firm Point-to-Point Transmission Service; \$1,049,664 for 64 days of daily firm Point-to-Point Transmission Service; and \$510,254 for 114,922 MWhs of hourly non-firm service. These costs are well below the \$10,000,000 cited by EKPC. If less than maximum output of the Bluegrass units were desired, the amounts would, of course, be even less.
23. This concludes my affidavit.

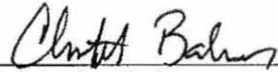
UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

LOUISVILLE GAS AND ELECTRIC/)
KENTUCKY UTILITIES COMPANY)
)
)

Docket Nos. EL16-8-000

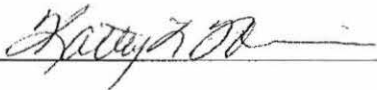
County of Jefferson
State of Kentucky

I, Christopher Balmer, being first duly sworn, hereby certify that the foregoing affidavit has been prepared by me, with the assistance of others working under my direction and supervision, and is true and accurate to the best of my knowledge, information, and belief.



Christopher Balmer

SUBSCRIBED AND SWORN to me, this 23rd day of November, 2015.



Notary Public

My Commission expires on: Jan. 22, 2017



Exhibit No. 1

Christopher D. Balmer

Director, Transmission Strategy & Planning
LG&E and KU Energy, LLC
220 West Main Street
Louisville, Kentucky 40202
(502) 627-4578

Education

Indiana University Southeast, B.S. in Business - 1988

Professional Experience

LG&E and KU Energy, LLC
2011-present – Director, Transmission Strategy & Planning
2011-2011 – Manager, Fuels Risk Management
2001-2010 – Trading Manager

LG&E Energy Marketing, Louisville, Kentucky
1998-2000 – Trading Manager
1997-1998 – Product Manager

PennUnion Energy Services, Houston, TX
1996-1997 – Manager, Structuring & Optimization

Tenneco Energy Marketing Co., Houston, TX
1993-1996 – Manager, Midwest Trading, Senior Account Executive, Supervisor, Operations

EnTrade Corporation, Louisville, KY
1990-1993 – Market Strategist, Transportation Specialist

Citizens Fidelity Bank, Louisville, KY
1989-1990 – Assistant Supply Manager

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

East Kentucky Power Cooperative, Inc.)	
)	
v.)	Docket No. EL16-8-000
)	
Louisville Gas & Electric/ Kentucky Utilities)	
)	

ANSWER OF TRANSERV INTERNATIONAL TO COMPLAINT

TranServ International, Inc. (“TranServ”) submits this answer to the October 30, 2015 complaint filed by East Kentucky Power Cooperative, Inc. (“EKPC”) against Louisville Gas & Electric and Kentucky Utilities (“LKE”).¹ The complaint asks the Commission to direct LKE to accept EKPC’s identification of a new Network Load² associated with the existing network integration transmission service that it currently obtains from LKE in order to serve its load connected to LKE’s system. EKPC intends to use this new Network Load to transmit energy from the Bluegrass facility, an existing gas-fired generating station connected to LKE’s transmission system, to EKPC’s native load customers directly connected to EKPC’s transmission system during those hours when the output of the Bluegrass facility exceeds EKPC’s network load on LKE’s transmission system.

TranServ answers this complaint in order to make two points. First, TranServ wishes to correct the record as to its communications with EKPC regarding EKPC’s

¹ TranServ submits this answer pursuant to Rules 206(f) and 213 of the Commission’s Rules of Practice and Procedure (18 C.F.R. §§ 385.206(f), 385.213).

² Unless otherwise specified, capitalized terms are used herein as defined in LKE’s Open Access Transmission Tariff.

request to add a new Network Load at a delivery point representing the difference between the Bluegrass output and EKPC's LKE-connected load. Contrary to EKPC's implication, TranServ, in its role as the Independent Transmission Organization ("ITO") for LKE, has not simply ceded to LKE responsibility for processing EKPC's request. Rather, TranServ has handled EKPC's request in a manner consistent with the procedures set forth in the LKE's Open Access Transmission Tariff ("LKE OATT") for processing and evaluating transmission service requests. Second, TranServ disagrees with EKPC's assertion that its proposal is consistent with the provisions of LKE's OATT. It is clear from the plain language of LKE's OATT that the service requested by EKPC would be non-conforming in nature.

I. Background

As described in EKPC's complaint, EKPC is currently in the process of purchasing the Bluegrass generating facility, a 495 MW gas-fired generating station interconnected to LKE's transmission system. EKPC states that it intends to primarily utilize Bluegrass to serve its load connected to LKE transmission facilities. However, to the extent that the output of Bluegrass exceeds the amount of EKPC load on LKE's system during a particular hour, EKPC wishes to use this additional output to serve EKPC load connected to its own transmission system. In order to facilitate this outcome, EKPC has proposed to designate a new Network Load at a delivery point that would in each hour be the difference between the output of Bluegrass and EKPC's LKE-connected load. The sum of the delivery point requirements in each hour would be the basis for determining EKPC's monthly coincident peak on the LKE system, which is the demand used for billing for network service under the LKE OATT. EKPC just recently submitted

an application for transmission service to TranServ reflecting this proposal to designate a new Network Load based on a “virtual” delivery point.

II. Motion to Intervene

TranServ moves to intervene in the above-captioned proceeding and to be granted full party status. TranServ is the ITO for Louisville Gas & Electric and Kentucky Utilities pursuant to the terms of the ITO agreement between LKE and TranServ dated August 29, 2011 (“ITO Agreement”) and Attachment P of the LKE OATT. As part of its ITO functions, TranServ is responsible for evaluating transmission service requests under LKE’s OATT, including processing applications and conducting system impact studies. Accordingly, TranServ has a direct and substantial interest in the outcome of this proceeding that cannot be adequately represented by any other party.

All service of pleadings and documents and all communications regarding this proceeding should be addressed to the following:

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III. Answer

A. TranServ has Appropriately Responded to EKPC's Request in Accordance with its Responsibilities as the Independent Transmission Organization for LKE's Transmission System.

In its complaint, EKPC states that when it approached TranServ regarding its proposal to designate a new Network Load representing the difference between the output of the Bluegrass facility and EKPC's LKE-connected load, TranServ "simply referred [EKPC] to LKE."³ This statement mischaracterizes the interactions between EKPC and TranServ. EKPC first informed TranServ of its proposal in the context of discussions that took place this summer regarding EKPC's request to designate Bluegrass as a new Network Resource to serve EKPC's load connected to the LKE transmission system. After completion of the study relating to this request, EKPC presented LKE and TranServ with a proposed amended Network Integration Transmission Service Agreement ("NITSA") that would not only include Bluegrass as a new Network Resource, but would also add a new Network Load representing the delivery to EKPC's transmission system of any output from Bluegrass that exceeded the demand from EKPC's LKE-connected load. TranServ and LKE had two discussions with EKPC in order to better understand the nature of EKPC's request. Subsequently, TranServ also had a meeting with EPKC without LKE participating at which TranServ indicated that the appropriate course of action would be for EKPC to submit an application for a new Network Load in accordance with Sections 29.2 and 31.2 of the LKE OATT.⁴

³ EKPC Complaint at 10.

⁴ Section 29.2 of the LKE OATT sets forth the application procedures for Network Integration Transmission Service. Section 31.2 states that a transmission customer wishing to add a new Network Load must submit a new application in accordance with Section 29.2.

In late October, EKPC submitted applications for a new Network Load.⁵ Consistent with the procedures set for in Section 29.2, TranServ acknowledged the receipt of EKPC's applications and after reviewing the application, contacted EKPC and informed them that it was deficient in two respects.⁶ First, EKPC's application did not include a description of the Network Loads at discrete points of delivery on LKE's transmission system, including substation and voltage information, as required under Section 29.2(iii) of the LKE OATT. Second, EKPC's ten year load forecast, as required by that same Section, did not comply with LKE's transmission study application, which requires that customers provide off-peak load data based on a temperature of 70-80 degrees. TranServ informed EKPC that they should resubmit their applications with the appropriate information.⁷ On November 20, EKPC submitted revised applications to TranServ with updated off-peak load data, but without descriptions of Network Load at discrete points of delivery.

As explained below, TranServ does not agree with EKPC that its request to include a new Network Load representing the difference between the output of the Bluegrass facility and its LKE-connected load is consistent with the provisions of the LKE OATT. TranServ has appropriately declined to opine on whether a non-conforming amendment should be made to the existing NITSA between EKPC and LKE in order to

⁵ On October 30, 2015, EKPC submitted two applications to modify its existing Network Integration service with LKE, one for service during the period 2016-2018 and the other for service commencing in 2019.

⁶ Section 29.2 requires the ITO to acknowledge a request for transmission service within ten days of receipt and notify the customer within 15 days of receipt if the application fails to meet any of the requirements of Section 29.2, specifying the reasons for such failure.

⁷ See LKE's current network service application, available at http://www.oasis.oati.com/LGEE/LGEEdocs/LGEE_Network_Service_Application_07172015.xls

provide EKPC with such service. Pursuant to the ITO Agreement and the LKE OATT, TranServ's responsibilities include processing and evaluating all requests for transmission service made under the LKE OATT, consistent with the provisions thereof. TranServ has fully, and independently, met those responsibilities in the context of EKPC's request. LKE retains the responsibility for tendering, entering into and filing transmission service agreements, as well as sole authority for filing with the Commission any changes to its tariff.⁸ Therefore, although TranServ does not agree with EKPC's assertion that the service it is requesting is contemplated under the existing provisions of LKE's OATT, it is LKE's obligation to determine whether an agreement for non-conforming service and/or request for waiver of its OATT should be filed with the Commission.⁹

B. The Service Requested by EKPC is Not Within the Scope of Transmission Service Available Under LKE's Existing OATT.

EKPC argues that its proposal for designating under its existing LKE NITSA a new Network Load based on the hourly difference between the output of the Bluegrass facility and EKPC's LKE-connected load is consistent with LKE's OATT.¹⁰ However, the relevant language in LKE's existing OATT does not support EKPC's position. The key provision in the LKE OATT (per the Commission's pro forma OATT) is Section 31.3, which provides that a network customer that wishes to designate Network Load that is not physically interconnected to the transmission owner's transmission system may do

⁸ See LKE OATT, Attachment P at Sections 3.2.5, 5.3, Appendix 1.

⁹ Consistent with its obligation to administer the LKE OATT independently, TranServ would not hesitate to express any concerns it had with such a proposal, particularly in terms of the potential for discriminatory impact to other customers.

¹⁰ EKPC Complaint at 13.

so pursuant to two options: (1) including the entire load as Network Load and designating Network Resources in connection with such load; or (2) excluding the entire Network Load and purchasing Point-to-Point Transmission Service to serve that load. EKPC, however, seeks to utilize what would, in effect, be a third option by defining a new “Network Load” so as to include only that load on EKPC’s system that is being served by Bluegrass during a particular hour. As EKPC acknowledges, Section 31.3 must be read in conjunction with the definition of Network Load in the LKE OATT:

The load that a Network Customer designates for Network Integration Transmission Service under Part III of the Tariff. The Network Customer’s Network Load shall include all load served by the output of any Network Resources designated by the Network Customer. A Network Customer may elect to designate less than its total load as Network Load but may not designate only part of the load at a discrete Point of Delivery. Where an Eligible Customer has elected not to designate a particular load at discrete points of delivery as Network Load, the Eligible Customer is responsible for making separate arrangement under Part II of the Tariff for any Point-To-Point Transmission Service that may be necessary for such non-designated load.

EKPC’s proposal is plainly inconsistent with this language. Significantly, in its applications for Network Service, EKPC fails to identify Network Load at discrete “Point(s) of Delivery,” which is defined as a point or points on the transmission system where capacity and energy transmitted will be made available to the Receiving Party.¹¹ Instead, EKPC proposes what amounts to a “virtual” point of delivery between the LKE and EKPC systems that represents the hourly difference (when positive) between the output of the Bluegrass facility and the amount of EKPC load directly connected to the LKE system.

¹¹ See LKE OATT, Definition of “Point(s) of Delivery.”

Despite the discrepancies between its proposal and the actual language of the LKE OATT, EKPC contends that Commission precedent supports a broader reading of Section 31.3 and the definition of Network Load. However, none of the precedent cited by EKPC supports reading the LKE OATT in the manner EKPC suggests. First, EKPC argues that its proposal is consistent with the Commission's underlying purpose in defining Network Load so as to prohibit partial designation. EKPC claims that the Commission intended to prevent customers from combining Network and Point-to-Point service at a single, discrete delivery point, such as a customer utilizing behind-the-meter generation. EKPC states that this limitation should not apply to it because it "is not a transmission-dependent wholesale customer with behind-the-meter generation" but rather an "interconnected utility with its own transmission system and fleet of generating resources."¹² However, the Commission has never stated that the limit on partial designation only applies to "transmission-dependent wholesale customers" as opposed to "interconnected utilities."¹³ The rule against partial designation of Network Load applies to EKPC in the same manner as it does to all other transmission customers.

EKPC also argues that its proposal is consistent with Section 31.3 because the Commission, in Order No. 888-A, stated that a customer receiving Network Service in a control area A should be able to serve load in control area B for an "additional charge," and EKPC proposes to pay an "additional charge" for any difference between the

¹² EKPC Complaint at 15.

¹³ In Order No. 888-A, the Commission used the example of a "municipal power agency" that wished to exclude a portion of the load of a member city with generation behind the meter. A municipal power agency could obviously be a transmission-owning utility in its own right. See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,261, n.249 (1997).

Bluegrass output and its LKE-connected load.¹⁴ However, it is clear from Order No. 888-A that the Commission used the term “additional charge” to specifically refer to the charge associated with a transmission customer obtaining point-to-point transmission service to serve its external load, and not some alternative pricing option.¹⁵ This approach is directly reflected in Section 31.3 of the OATT which, as described above, provides transmission customers with only two options for obtaining transmission service for an external load: either designating the external load as a Network Load, or excluding the entire load from its Network Load and obtaining point-to-point transmission service for such load. There is no third option of the sort proposed by EKPC for service based on the hour-to-hour difference between its internal load and the output of a specific Network Resource such as Bluegrass. As such, there is no merit to EKPC’s suggestion that LKE should be compelled, pursuant to the terms of the existing tariff, to provide EKPC transmission service on such terms.

Finally, in support of its proposal, EKPC points to two network service agreements accepted by the Commission that EKPC claims reflect the same solution that EKPC wishes to include in its NITSA with LKE: 1) an amended NITSA between Southern Company and the Southern Mississippi Electric Power Association (“SMEPA”); and 2) a NITSA between SMEPA and the Midcontinent Independent System Operator (“MISO”).¹⁶ The SMEPA/Southern agreement was accepted for filing by the Commission through a delegated letter order, which does not represent a

¹⁴ EKPC Complaint at 17-18.

¹⁵ Order No. 888-A at 30,255 (finding that a transmission customer could exclude a discrete Network Load located in another control area “and to serve such load using point-to-point transmission service”).

¹⁶ EKPC Complaint at 20-24.

Commission finding of justness and reasonableness. The proceeding involving the SMEPA/MISO NITSA did not even address the type of arrangement proposed by EKPC, but rather simply involved the Commission granting MISO's proposal to allow a customer to designate Network Load that is not physically connected with its transmission system, per Section 31.3 of the *pro forma* OATT.¹⁷ These examples do not support EKPC's argument that LKE must provide EKPC the requested service under the terms of LKE's OATT.

For these reasons, EKPC's claim that its proposal to designate a new Network Load representing the difference between the output of the Bluegrass facility and EKPC's LKE-connected load represents a service already contemplated under LKE's OATT is without merit, and the Commission should reject it.

¹⁷ *Midcontinent Independent System Operator, Inc.*, 145 FERC ¶ 61,242 at P 11 (2013). At the time of this proceeding, Section 31.3 of MISO's tariff stated that all Network Load must be physically interconnected with a MISO transmission owner or ITC within the geographic region in which facilities subject to the MISO tariff are located.

IV. Conclusion

TranServ respectfully requests that the Commission grant it party status in this proceeding and act on EKPC's complaint consistent with the comments provided herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the above-referenced proceeding, pursuant to the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C. this 23rd day of November, 2015.

/s/ Michael Kunselman
Michael Kunselman