

107 FERC ¶ 61,102  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Redbud Energy LP

Docket No. ER04-622-000

ORDER REJECTING RATE SCHEDULE

(Issued May 4, 2004)

1. In this order, the Commission rejects Redbud Energy LP's (Redbud) proposed rate schedule to recover costs for network upgrades from Oklahoma Gas and Electric Company (OG&E). This order benefits customers because it ensures that the terms, conditions, and rates for interconnection service filed with the Commission are enforced as written.

**Description of Filing**

2. On March 5, 2004 Redbud filed, under section 205 of the Federal Power Act, 16 U.S.C. § 824d (2000), a rate schedule to assess rates to OG&E. Redbud proposes to recover the costs of a 345 kV switchyard, which Redbud constructed and owns and OG&E operates and utilizes, through these rates.

3. Redbud is a 1,200 MW combined cycle generation facility located in Oklahoma County, Oklahoma and is interconnected with OG&E. Prior to Redbud's construction, OG&E operated a 345kV transmission line from Riverside to Arcadia. In 2001, Redbud requested access to OG&E's transmission system and, pursuant to a Commission accepted interconnection agreement (IA),<sup>1</sup> OG&E broke the pre-existing transmission line from Riverside and fed one end into the new Redbud Switchyard and the other end back out to Arcadia. Additionally, Redbud asserts, OG&E constructed a new Redbud-Arcadia 345kV line making the Redbud-Arcadia line a double circuit.

4. Redbud asserts these facts make the Redbud Switchyard a network transmission facility. Redbud states a substantial portion of the power flow from Riverside through the Redbud-owned Switchyard to Arcadia is output from OG&E's generating plants.

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<sup>1</sup>Oklahoma Gas and Electric Company (Docket No. ER01-2987-000 October 26, 2001) (unpublished letter order issued pursuant to delegated authority).

Redbud argues OG&E use of the lines into and out of the Redbud-owned Switchyard is integral to OG&E's network and is required for OG&E to serve its native load. In this filing Redbud seeks to recover its investment in the Switchyard through its proposed rates.

5. Redbud asserts it paid for and owns the Switchyard, but OG&E operates it under its open access transmission tariff. Redbud claims OG&E does not currently reimburse Redbud for its use of the Switchyard. Redbud argues generator-funded network upgrades are typically reimbursed through transmission credits, however, the IA between Redbud and OG&E does not provide for transmission credits. Redbud's only opportunity for recovering its investment, according to Redbud, is to charge OG&E a rate for using the Switchyard. Redbud proposes to recover its costs of \$19,356,533 by billing OG&E on a monthly basis over five years. Redbud states this would place Redbud in the same position as it would have been in if credits had been provided.

### **Notice and Protests**

6. Notice of Redbud's filing was published in the Federal Register, 69 Fed. Reg. 12,313 (2004), with interventions or protests due on or before March 26, 2004. OG&E filed a timely motion to intervene and protest.

7. OG&E argues Redbud's proposal violates their IA. OG&E argues that, under the signed and Commission-accepted IA, Redbud agreed to pay for the Switchyard and OG&E is not obligated to reimburse or credit Redbud the cost of the facilities.<sup>2</sup> OG&E argues that Redbud is attempting to rewrite the IA to require OG&E to reimburse Redbud for the cost of the Switchyard.

8. OG&E states section 8.2 of the IA restricts the parties' ability to unilaterally modify the contract.<sup>3</sup> OG&E argues Redbud's attempt to use this section 205 filing to change the terms of the IA is improper. OG&E states Redbud's proper remedy is to file a

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<sup>2</sup> OG&E notes that Redbud did not protest the original filing of the interconnection agreement and, since it was accepted by the Commission, the arrangement was just and reasonable. Protest at 5.

<sup>3</sup> Section 8.2 of the IA provides:

No amendment or modification to this Agreement or waiver of a Party's rights hereunder shall be binding unless it shall be in writing and signed by the Party against whom enforcement is sought.

Federal Power Act section 206, 16 U.S.C. § 824e (2000), complaint, which would be subject to the Mobile-Sierra public interest standard of review.<sup>4</sup>

### Discussion

9. Pursuant to Rule 214 of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motion to intervene serves to make OG&E a party to this proceeding.

10. While section 30.9 of the pro forma OATT (Network Customer Owned Transmission Facilities) specifies our current requirements for credits for customer-owned facilities, Redbud has sought to charge a rate for transmission service instead of seeking a credit under section 30.9. Redbud states that its purpose in making this filing is to recover its investment in the Switchyard from OG&E, and would collect these costs over five years through its proposed rate. However, while the Switchyard arguably may be a network upgrade,<sup>5</sup> the parties, in fact, agreed in the IA that the Switchyard would be classified as a "customer interconnection facility"<sup>6</sup> and did not provide for Redbud to receive credits for such facilities under the IA.<sup>7</sup>

11. Therefore, Redbud's proposed rate at issue in this section 205 filing is inconsistent with the signed, Commission-accepted IA and will be rejected. To seek recovery for its investment in the Switchyard under the IA, Redbud is limited to a section 206 complaint

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<sup>4</sup> United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956); FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (Mobile-Sierra); see also Atlantic City Electric Co. v. FERC, 295 F.3d 1 (D.C. Cir. 2003); Town of Norwood v. FERC, 587 F.2d 1306 (D.C. Cir. 1978).

<sup>5</sup> OG&E concedes that the Switchyard "arguably" could be considered a network upgrade; however, this issue is not before the Commission at this time.

<sup>6</sup> Section 9 in Exhibit A of the IA includes the Redbud Switchyard in the list of "Customer's Interconnection Facilities."

<sup>7</sup> Section 3.1(b) of the IA expressly provides for Redbud to reimburse OG&E for "Company Interconnection Facilities," as designated in section 8 of Exhibit A; and section 3.1(d) of the IA expressly provides for OG&E to refund to Redbud any amount that Redbud paid to OG&E in the first place for "Company Interconnection Facilities" if OG&E has included such amount in its transmission cost of service. However, the IA does not require OG&E to reimburse Redbud for any "Customer Interconnection Facilities" costs that Redbud incurred.

to change the IA. However, the Commission notes the parties agreed in section 8.2 of the IA to limit their rights to modify the IA, and also cautions that the fact that the IA may have become an unfavorable bargain for Redbud is not, by itself, a sufficient justification to change the IA to require OG&E to pay for the Switchyard under that agreement.<sup>8</sup>

The Commission orders:

Redbud's section 205 filing is hereby rejected.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

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<sup>8</sup> See, e.g., Southern Co. Services, Inc., et al., Opinion No. 300, 43 FERC ¶ 61,003, reh'g denied, Opinion No., 300-A, 43 FERC ¶ 61,394 (1988).