

137 FERC ¶ 61,037
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Allegheny Power

Docket Nos. ER10-1152-001
ER10-1152-002

ORDER ON REHEARING AND ACCEPTING COMPLIANCE FILING

(Issued October 12, 2011)

1. In this order, we address a request for rehearing filed by Old Dominion Electric Cooperative (ODEC) of the Commission's order (June 29 Order)¹ that approved, subject to conditions, Allegheny Power's (Allegheny) proposed amendments to the PJM Interconnection, LLC's Open Access Transmission Tariff (PJM Tariff), which specified the rate to be charged for network interconnection service that would be provided for ODEC's newly acquired load (Acquired Load). For the reasons discussed below, the Commission denies ODEC's request for rehearing.

2. On July 28, 2010, Allegheny filed revised tariff sheets² in compliance with the requirements in the Commission's June 29 Order. As discussed below, the Commission accepts Allegheny's revised tariff sheets in compliance with the conditions specified in the June 29 Order, effective June 1, 2010, as requested.

I. Background

A. Settlement Agreement

3. The network integration transmission service rates and the hold harmless mechanism in Attachment H-11 of the PJM Tariff were established pursuant to a

¹ *Allegheny Power*, 131 FERC ¶ 61,278 (2010).

² PJM Interconnection, L.L.C., FERC Electric Tariff, Sixth Revised Volume No. 1, Substitute First Revised Sheet Nos. 312 and 313, filed in Docket No. ER10-1152-002.

settlement agreement in Docket No. RT01-98, *et al.*,³ when Allegheny joined PJM. In its application requesting authorization to join PJM, Allegheny proposed to convert its calculation for network transmission service rate from a load ratio share method to a unit rate method under the PJM Tariff using a 1994 test-year rate denominator.

4. On July 12, 2001, the Commission conditionally approved Allegheny's request to join PJM⁴ and directed Allegheny to submit a compliance filing proposing a mechanism to "hold existing network customers harmless from the conversion to a 1994 test-year rate denominator."⁵ The Commission also urged Allegheny to confer with its affected customers in preparation of its compliance filing to arrive at a satisfactory hold harmless mechanism.⁶ The above actions resulted in the filing of the Allegheny settlement agreement (Settlement), which was uncontested. The Commission approved this Settlement by letter order dated July 23, 2002.⁷

5. Allegheny's Settlement contained a reduction in the network service rate for all customers of Allegheny "designed to hold them harmless from the conversion from a load ratio share method to a unit rate method."⁸ Allegheny stated that the "Settlement fulfills [Allegheny's] pledge and the Commission's directive to provide a 'hold harmless' rate mechanism for [Allegheny's] existing network customers" and that the agreement did not present a case of first impression for the Commission.⁹ Attachment 1 to the Settlement established a specific credit to be applied to each of the listed wholesale customers, which reduced the rate for network integration transmission service in the AP Zone (Attachment H-11 of PJM's tariff). Attachment H-11 shows the hold harmless rate for ODEC as a credit of \$7,095 per megawatt per year, which results in an effective rate of \$10,800 per megawatt per year.

³ Allegheny Power Offer of Settlement, Docket Nos. RT01-98-002 and RT01-98-004 (May 21, 2002) (Settlement).

⁴ *PJM Interconnection, L.L.C.*, 96 FERC ¶ 61,060, at 61,221 (2001) (Allegheny Order).

⁵ *Id.*

⁶ *Id.*

⁷ *PJM Interconnection, L.L.C.*, 100 FERC ¶ 61,088 (2002).

⁸ *See* Settlement, Explanatory Statement at p 1.

⁹ *Id.*

B. Allegheny's Revised Tariff Revisions

6. Allegheny stated that it agreed to sell its Virginia electric distribution assets (i.e., Acquired Load) to two member cooperatives of ODEC, effective June 1, 2010.¹⁰ Allegheny asserted that, upon consummation of the sale, ODEC would be responsible for arranging network integration transmission service to deliver energy and capacity for the Acquired Load which Allegheny formerly served, at existing delivery points in the Allegheny Power zone (AP Zone). On April 30, 2010, Allegheny filed proposed revisions to Attachment H-11 of the PJM Tariff to specify the rate for network integration transmission service for ODEC's Acquired Load, which will receive service at existing delivery points not previously used by ODEC in the AP Zone.

7. Allegheny stated that Attachment H-11, which was established by settlement, sets forth the transmission revenue requirement and network integration transmission service rates applicable to the AP Zone of the PJM Control Area. Allegheny proposed to revise paragraphs 4(a) and 4(b) of Attachment H-11 as follows:

4(a) For Network Transmission Service in the AP Zone to each of the wholesale customers listed in this paragraph for delivery points to such customers existing on April 1, 2002, a credit will be applied, reducing the effective rate. The credit for each customer [including ODEC] and the resulting effective rate are listed in this paragraph.

...

4(b) For Network Integration Transmission Service to all other customers in the AP Zone and to customers in paragraph (a) served at delivery points formerly served by Allegheny Power prior to June 1, 2010, a credit of \$ 2,499 per megawatt per year will be applied, reducing the effective rate to \$15,396 per megawatt per year.

8. Allegheny argued that the revised paragraphs 4(a) and 4(b) of Attachment H-11 would result in the application of the existing network integration transmission service rate in paragraph 4(b) to the Acquired Load at the delivery points that the two ODEC members purchased from Allegheny. As such, Allegheny argued that the paragraph 4(a) rate would not apply, because the Acquired Load was previously served by Allegheny as a load serving entity and did not involve any load served by ODEC for which Allegheny was directed to establish a customer-specific settlement rate in the Allegheny Order. Allegheny maintained that the customers comprising the Acquired Load were not harmed

¹⁰ Allegheny Power Transmittal Letter, p 2, ER10-1152-000 (April 30, 2010).

by Allegheny's conversion to a unit rate because they were not customers of any ODEC member in calendar year 2000.

9. Finally, Allegheny contended that, although the derivation of the rates is not specified in the Settlement, the rates were based on upon each existing customer's load and revenue at the time that Allegheny joined PJM. Allegheny argued that the paragraph 4(a) rates were structured as credits from the base rate for network integration transmission service, which were specific to each customer, consistent with the customer's contribution to load and Allegheny's revenue in calendar year 2000.

10. Several parties protested Allegheny's proposed revisions. Chambersburg argued that Allegheny's proposed changes would deny Chambersburg the hold harmless rate protection if economic or reliability factors made it necessary for Chambersburg to use or add a new delivery point to serve its existing load.

11. ODEC asserted the Settlement hold harmless rates were meant to be applied on a wholesale customer specific basis for those customers covered under paragraph 4(a) of the agreement instead of a load or delivery point basis as posited by Allegheny. ODEC noted that the "Terms of Offer" in the Settlement explains:

Terms of Offer

The network service rate applicable to *current network customers* of Allegheny Power under the PJM OATT shall be revised as indicated on Attachment 1. The Attachment 1 rates are designed to implement an agreed upon hold harmless mechanism for the various wholesale customers on an individual basis.

The rates on Attachment 1 will become effective on April 1, 2002. Refunds, if any, from the rates actually applied commencing on April 1, 2002 shall be given to customers in accordance with the requirements of 18 C.F.R. § 35.19(a).

The rates on Attachment 1 shall continue to apply until such time as Allegheny files a rate change request based upon a revision to its revenue requirement. Allegheny's current rates were set on the basis of a filing which utilized a 1994 test period.¹¹

¹¹ Settlement at P 1 (emphasis provided).

ODEC contended that, if parties had intended to limit the Settlement rates to only the load or delivery points that existed at the time of the agreement, the Settlement would have so stated.

12. In the June 29 Order, the Commission accepted Allegheny's proposed tariff revisions to be effective June 1, 2010, subject to conditions. The Commission rejected ODEC's argument that the hold harmless rates were meant to be applied on a customer specific basis for those customers covered under paragraph 4(a) of the Settlement without regard to load. Instead, the Commission found that the Settlement was ambiguous with regard to which rate should be applied to the Acquired Load.¹² The Commission stated that, while ODEC maintained the contract was not ambiguous, the only specific contract provisions to which it cited were: 1) the "Terms of Offer" provision, which states the Settlement applies to "current network customers;" and 2) its applicable paragraph 4(a) hold harmless rate. The Commission reasoned, however, in the administrative context in which this Settlement arose, that it did not find this language sufficient to establish the parties' unambiguous intent with respect to the rate to be charged for load when Allegheny sells assets to a wholesale customer.¹³ Therefore, based on the language of the Settlement and its regulatory context, the Commission determined that Allegheny was correct that the Acquired Load should continue to receive the hold harmless paragraph 4(b) rate, and not the lower, ODEC-specific hold harmless paragraph 4(a) rate.¹⁴

13. The Commission also held that it agreed with Chambersburg's assertion that the customer-specific paragraph 4(a) should continue to apply in the event that an existing listed wholesale customer utilizes a new delivery point(s) to serve its existing load (including load growth). Accordingly, the Commission directed Allegheny to make a compliance filing within 30 days of issuance of the June 29 Order that clarified this distinction.¹⁵

¹² June 29 Order, 131 FERC ¶ 61,278 at P 25.

¹³ See *Columbia Gas Transmission Corp.*, 27 FERC ¶ 61,089 (1984) ("Where, however, it is evident that circumstances have changed substantially since the document was written, ambiguity may more easily arise and interpretation may then be aided by reference to the factual context surrounding the original formulation of the language").

¹⁴ June 29 Order, 131 FERC ¶ 61,278 at P 29.

¹⁵ *Id.* P 31.

II. Request for Rehearing

A. Procedural Matters

14. On July 16, 2010, ODEC filed a request for rehearing of the Commission's June 29 Order. On August 2, 2010, Allegheny filed Motion for Leave to Answer and Answer ODEC's rehearing request. Rule 713(d) of the Commission's Rules of Practice and Procedure, states the Commission will not permit answers to requests for rehearing.¹⁶ Therefore, in accordance with Rule 713(d), we deny Allegheny's motion for leave to answer ODEC's rehearing request.

B. Discussion

15. In its request for rehearing, ODEC essentially reasserts previous arguments raised during Allegheny's request to revise Attachment H-11 to clarify the hold harmless rates applicable to the Acquired Load. Specifically, ODEC contends on rehearing that, because the plain language of the Settlement sets a unique rate for each wholesale customer without regard to that customer's load (i.e. a "customer-centric" approach vs. a "load-centric" approach which ODEC contends was approved by the Commission in the June 29 Order), it is entitled to receive the paragraph 4(a) hold harmless rate for its Acquired Load. ODEC refers to provisions in the Settlement that, it believes, support this position. ODEC states that: 1) the Settlement provides that the paragraph 4(a) rates are designed to implement an agreed upon hold harmless mechanism for certain customers *on an individual basis*; 2) it is specifically identified as a wholesale customer in paragraph 4(a), which means it is entitled to a unique rate (this is in contrast to the 4(b) customers who receive a single discount applicable to the entire customer class); and 3) amendment of paragraph 4(a) alters the original intent of the Settlement because it limits the paragraph 4(a) hold harmless rates to customer delivery points as they existed on April 1, 2002.

16. As stated above, these arguments were raised during our consideration of Allegheny's initial request but they were rejected by the Commission in the June 29 Order. We similarly reject ODEC's arguments here. In the June 29 Order, the Commission approved Allegheny's proposed tariff amendment and therefore, maintained the paragraph 4(b) hold harmless rate for ODEC's Acquired Load rather than extend the ODEC-specific hold harmless paragraph 4(a) rate to this Acquired Load.¹⁷ Although ODEC contended then-as it does now-that the plain language of the Settlement mandates that it receive the lower paragraph 4(a) rate for the Acquired Load, we found that the

¹⁶ 18 C.F.R. § 385.713(d) (2011).

¹⁷ June 29 Order, 131 FERC ¶ 61,278 at P 25.

Settlement was ambiguous with regard to which rate should be applied to the load previously served by Allegheny and now served by ODEC as a result of ODEC's asset acquisition.¹⁸ We also noted that there was no language in the Settlement that dealt explicitly with the sale or transfer of assets from one wholesale customer to another wholesale customer. Moreover, because ODEC's Acquired Load fell under paragraph 4(b)'s hold harmless rate at the time of the Settlement, the Commission reasoned that this load could reasonably expect to receive the benefits of the paragraph 4(b) hold harmless rate, not ODEC's lower paragraph 4(a) rate.¹⁹

17. Nothing ODEC argues here on rehearing persuades us that this interpretation was wrong or unreasonable. Indeed, as explained in the June 29 Order, the purpose of the Commission-required hold harmless provision was to maintain the status quo rate for the existing configuration of ODEC and the other signatory wholesale customers.²⁰ The Settlement rates were based on the existing load for each listed wholesale customer, and were designed to ensure that the total amount paid by each listed wholesale customer remained the same as it was prior to the Settlement based on the load at the time. Adopting ODEC's interpretation would permit individual customers to achieve a lower rate by transferring assets to the customer with a lower rate. It also would reduce Allegheny's expected revenue requirement by reducing the rate collected from existing customers. While the settlement was designed to preserve the status quo, we do not find from the ambiguous language that the Settlement was intended to change the status quo by changing customers' existing rates or by reducing Allegheny's revenue requirement.²¹

18. ODEC also submits a new argument on rehearing: that the June 29 Order failed to consider that the effect of future load increases on unit charges and resulting revenues was also at issue in the hearing and that there were concerns raised about using the 1994

¹⁸ *Id.*

¹⁹ *Id.* P 29.

²⁰ *Id.* P 30.

²¹ *Id.* (Commission stated in June 29 Order that, in the regulatory setting here, the Settlement did not guarantee ODEC a lower rate for any load served over subsequently purchased distribution assets. The Commission also reasoned that, transferring the Acquired Load from the paragraph 4(b) rate to the lower paragraph 4(a) rate would go beyond the scope of the relief that the Commission's hold harmless requirement, and instead would, in fact, operate to reduce the rate from the rate charged before the asset acquisition.).

test-year data.²² ODEC contends that the purpose of the hearing was to resolve these concerns by setting a unit rate for each customer equivalent to what its unit rate would have been under the prior regime.²³

19. We similarly find this claim to be unpersuasive. In the Allegheny Order, the potential problems of using the 1994 data were examined by the Commission, and it was this very examination which led to the creation and proposal of the hold harmless provision.²⁴ However, the creation of the hold harmless mechanism to address the concern of the parties subject to the conversion at that time was not meant to encompass *any* increase in load that ODEC might acquire from Allegheny or other customers at some future date. As we explained in the June 29 Order, a reasonable interpretation of the settlement would apply the paragraph 4(a) rate for each customer in the event that the customer's load grows or the customer utilizes a *new* delivery point to serve its *existing* load.²⁵ But this goes beyond permitting one customer to purchase existing facilities for which Allegheny received a higher rate and convert the customers on those facilities to a lower rate. We find that extending the interpretation of load growth to apply to asset purchases goes beyond a reasonable understanding of the parties' intent at the time.²⁶

²² ODEC also contends that, because Allegheny still bases its network integrated transmission service rates on 1994 revenue requirement, its yearly revenues from the service must exceed its yearly costs for the service, and maintains that Allegheny must therefore adopt a periodic true-up rate mechanism. ODEC has not provided any data to substantiate that Allegheny's rates are unjust and unreasonable. Moreover, such an inquiry is beyond the scope of this filing.

²³ ODEC Rehearing at p 6 (*citing PJM Interconnection, L.L.C.* 98 FERC ¶ 61,072, at 61,204 (2002)).

²⁴ *See* Allegheny Order, 96 FERC ¶ 61,221 (Commission directed Allegheny to submit a compliance filing proposing a mechanism to hold existing network customers harmless from the conversion to a 1994 test-year rate denominator. The Commission also urged Allegheny to confer with its affected customers in preparation of its compliance filing to arrive at a satisfactory hold harmless mechanism.).

²⁵ June 29 Order, 131 FERC ¶ 61,278 at P 31.

²⁶ As we pointed out in the June 29 Order, under ODEC's interpretation of the Settlement, for example, the City of Hagerstown could sell the delivery points for its entire load to the Town of Thurmont and thus achieve a rate reduction of \$2,520 per MW per year by applying Thurmont's lower rate to Hagerstown's former customers. We find that the Settlement was not designed to permit such acquisitions to lower customer rates. *See id.* P 30, n. 27

III. Allegheny's Compliance Filing

A. Background

20. In the June 29 Order, the Commission directed Allegheny to refile its tariff sheets²⁷ to clarify the ambiguity in Allegheny's proposed customer-specific paragraph to state that rate in paragraph 4(a) would continue to apply in the event that an existing listed wholesale customer utilizes a *new* delivery point to serve its *existing* load (including load growth), as opposed to load acquired from Allegheny through an asset purchase.

21. In compliance with the June 29 Order, Allegheny submitted revised tariff language²⁸ clarifying that the rate in paragraph 4(a) would continue to apply in the event that an existing listed wholesale customer utilizes a new delivery point to service existing load. Allegheny states that it proposes to revise paragraphs 4(a) and 4(b) of Attachment H-11 of the PJM Tariff to clarify the distinction between the rates for network integration transmission service at new delivery points used to serve load growth and those new delivery points used to serve Acquired Load. Specifically, Allegheny proposes to add the following to its prior provision that limited the rate to the delivery points that existed on April 1, 2002: "except that the credit and the resulting effective rate for delivery points added by such customer after April 1, 2002, that were first used to serve another wholesale customer after April 1, 2002, will be the credit and effective rate applicable to such other wholesale customer listed in this paragraph or in paragraph (b) of this section 4."

B. Notice of Filing and Responsive Pleadings

22. Notice of Allegheny's compliance filing was published in the *Federal Register*, 75 Fed. Reg. 48,663 (2010), with interventions, comments and protests due on or before August 18, 2010. No objections or adverse comments were filed.

C. Discussion

23. We find that Allegheny's compliance filing clarifies the ambiguity in the settlement agreement with regard to what hold harmless rate would apply to ODEC's Acquired Load; and in accordance with the June 29 Order, the revised language creates a

²⁷ PJM Interconnection, L.L.C., FERC Electric Tariff, Sixth Revised Volume No. 1, First Revised Sheet Nos. 312 and 313, filed in Docket No. ER10-1152-000 on April 30, 2010.

²⁸ *Supra*, Substitute First Revised Sheet Nos. 312 and 313.

distinction between the rates for network integration transmission service at new delivery points used to serve load growth and those new delivery points used to serve Acquired Load. We, therefore, accept Allegheny's proposed revisions to Attachment H-11 of PJM's tariff, to become effective June 1, 2010, as requested.

IV. eTariff Filing

24. Pursuant to Order No. 714,²⁹ Allegheny is required to make a compliance filing, within 30 days of the date of this order, through the Commission's eTariff system to reflect the revised Attachment H-11 in PJM's electronic tariff.³⁰

The Commission orders:

(A) The proposed tariff revisions are hereby accepted, to be effective June 1, 2010, as requested.

(B) ODEC's rehearing request that Allegheny's proposed tariff revisions be rejected is denied.

(C) Allegheny is required to make a compliance filing within 30 days of the date of this order, as discussed in the body of the order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁹ *Electronic Tariff Filings*, Order No. 714, 73 FR 57,515 (Oct. 3, 2008) FERC Stats. & Regs. ¶ 31,276 at P 93(2008).

³⁰ In making this filing, Allegheny should follow the procedures outlined in the May 21, 2010 Notice in Docket No. RM01-5-000 regarding filing of tariff provisions that pre-date the effective date of a baseline filing.

<http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12351254>.

