

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Old Dominion Electric Cooperative

v.

Docket No. EL05-117-000

Potomac Edison Company,
d/b/a Allegheny Power

ORDER SETTING COMPLAINT FOR HEARING, ESTABLISHING HEARING
AND SETTLEMENT JUDGE PROCEDURES AND REFUND EFFECTIVE DATE

(Issued July 22, 2005)

1. On May 23, 2005, Old Dominion Electric Cooperative (ODEC) filed a complaint against Potomac Edison Company, d/b/a Allegheny Power (Allegheny), contending that Allegheny's subtransmission/distribution service charges¹ to ODEC, which were developed based on a direct assignment methodology, are unjust and unreasonable. ODEC's complaint asks the Commission to direct Allegheny to replace these charges with ones developed using a rolled-in methodology. In this order, we establish hearing and settlement judge procedures to address ODEC's complaint, because we find that the complaint raises issues of material fact. We also will establish a refund effective date pursuant to the provisions of section 206 of the Federal Power Act (FPA), 16 U.S.C. § 824e (2000).

Background

2. ODEC states that, from January 2002 until Allegheny's integration into PJM Interconnection L.L.C. (PJM) in April 2002, ODEC received subtransmission/distribution service from Allegheny under a bilateral agreement with Allegheny at an "Other Supporting Facilities Service" charge of \$42,565 per month.

¹ The distribution service at issue in this proceeding is wholesale distribution service.

Since April 2002, the service has been provided under the PJM Open Access Transmission Tariff (PJM OATT), rather than under the bilateral agreement between ODEC and Allegheny,² and ODEC has continued to pay the same rate for this service.

3. ODEC states that under its current service agreement it pays for subtransmission/distribution service for the following delivery points, at the following voltages:

Delivery Point	Voltage
Baker	12.5 (primary voltage)
Lost River	12.5 (primary voltage)
McDowell	12.5 (primary voltage)
Hazel	34.5 (low voltage)
Wolftown	34.5 (low voltage)
Moorefield	34.5 (low voltage)

ODEC's complaint argues that the charge for subtransmission/distribution service for these delivery points is no longer just and reasonable. It offers three reasons for this conclusion. First, ODEC cites the Commission's recent decisions involving Allegheny, which ODEC argues, show that Allegheny's use of the direct assignment methodology for these kinds of facilities may be inappropriate. *See Allegheny Power*, Opinion No. 469, 106 FERC ¶ 61,241, *reh'g denied*, Opinion No. 469-A, 108 FERC ¶ 61,151 (2004), *appeal pending*, No. 04-1340 (D.C. Cir.).

4. Second, ODEC argues that the Commission's policy is that, absent special circumstances, the costs of subtransmission lines should be treated on a rolled-in basis where the subtransmission facilities are part of an integrated transmission system and serve a transmission function. *See Niagara Mohawk Power Corporation*, Opinion No. 296, 42 FERC ¶ 61,143 at 61,533 (1988) (*Niagara Mohawk*). ODEC argues that,

² PJM filed an executed service agreement covering this service in Docket No. ER02-1441-000; the service is designated by PJM as a "Network Integration Transmission Service." The rates charged to ODEC, however, remain the same as the rates ODEC paid under the prior bilateral agreement between Allegheny and ODEC.

under this policy, its subtransmission/distribution service charges should be developed on a rolled-in basis.

5. Finally, ODEC argues that, even if the use of a direct assignment methodology is appropriate for these facilities, the particular methodology used by Allegheny to develop these charges was improper and the resulting rates should be revised.

6. Notice of ODEC's filing was published in the *Federal Register*, 70 Fed. Reg. 32,313 (2005), with answers, protests and interventions due on or before June 14, 2005. Allegheny filed a timely answer arguing that ODEC's complaint lacks merit and should be dismissed.

Arguments

ODEC's Complaint

7. As explained above, ODEC argues that Allegheny should calculate its subtransmission/distribution service charges on a rolled-in basis, rather than on a direct assignment basis, as is currently done. ODEC argues that, if Allegheny had developed the charges on a rolled-in, rather than direct-assignment basis, this would result in a charge to ODEC that would be roughly half of its current charge for this service (*i.e.*, approximately \$21,200 per month, compared to its current charge of \$42,565 per month).

8. In support of its contention that its current rate is not just and reasonable, ODEC points to the Commission's precedents in *Niagara Mohawk* and in Opinion Nos. 469 and 469-A. ODEC argues that, together, these cases establish that, absent special circumstances, the costs of subtransmission lines should be treated on a rolled-in basis where the subtransmission facilities are part of an integrated transmission system and serve a transmission function. In addition, ODEC cites the Commission determination in Opinion Nos. 469 and 469-A that Allegheny's charges for subtransmission/distribution service to another cooperative customer, Allegheny Electric Cooperative, should be developed on a rolled-in as opposed to a direct assignment basis and argues that the same factors (*i.e.*, that the subject facilities were part of an integrated network) may well be present here and dictate a similar result here (*i.e.*, that Allegheny's charges to ODEC for subtransmission/distribution service should be developed on a system average basis).

9. ODEC concedes that it does not have access to the Allegheny system maps and load flow analyses necessary to demonstrate precisely how the ODEC delivery points are interconnected with Allegheny's facilities or how the load flows. Instead, ODEC relies on Allegheny's submittal on March 2, 1998, in Docket No. ER98-2048-000, which states that:

all customers benefit from the reliability built into the facilities. At 25 kV, [Allegheny Power] customers have alternative service paths that either operate automatically or require switching. At primary voltages, typically 12 kV for [Allegheny Power], the added reliability comes from alternative feeds that require switching. All customers benefit from the capacity built into the systems to provide higher levels of reliability and should be charged an allocated share of the distribution costs.

10. ODEC also argues, alternatively, that, if the Commission declines ODEC's request to direct Allegheny to calculate these charges on a rolled-in basis, it should still adjust Allegheny's charges to ODEC because Allegheny's monthly direct assignment charge to ODEC was developed using a 1996 fixed charge rate that assumes that the facilities were the same age and had the same relative amount of accumulated depreciation as the operating company average for all low voltage or primary voltage facilities as of 1996, regardless of when the facility was actually installed. ODEC argues that this is inappropriate because the very purpose of direct assignment is to assign to customers who benefit from facilities the specific costs for those facilities. ODEC argues that it is unreasonable to use a direct assignment methodology based on estimated or average costs, as has been done by Allegheny. ODEC argues that if its bills were recalculated to correct for this, the monthly direct assignment charge to ODEC of \$42,565 would be reduced by at least 24 per cent, to \$32,349 per month. ODEC also argues that the 1996 fixed charge rate was based on an 11.5 percent rate of return on common equity (ROE) and the Commission found 10.59 percent to be the appropriate ROE to be used in calculating the charges for Allegheny's subtransmission/distribution service to AEC in Opinion No. 469. Applying the Commission's standard ROE updating methodology, ODEC states that the more current ROE for Allegheny should be 10.36 percent or 114 basis points below the 11.5 percent ROE reflected in the existing monthly charge.

Allegheny's Answer

11. Allegheny argues that ODEC's complaint should be dismissed because ODEC has failed to provide sufficient factual evidence to establish that use of its direct assignment methodology was inappropriate. Allegheny argues that ODEC has failed to meet its burden under section 206 of the FPA to establish that its current rates are not just and reasonable.

12. Allegheny argues that ODEC may not rely on Allegheny's testimony in Docket No. ER98-2048-000, because this evidence was dismissed and the parties eventually agreed to settle (and agreed on direct assignment cost allocation). Further, Allegheny argues that Opinion Nos. 469 and 469-A are not relevant here, because they dealt with a different set of facilities and a different customer.

13. Allegheny further argues that rolled-in treatment is “atypical” for sub-transmission and distribution facilities and argues that, of the six facilities at issue, five are served from radial lines and one is normally operated in an open configuration and, thus, should also be considered radial. Allegheny argues that this shows that ODEC has failed to demonstrate that the facilities serving ODEC are part of a larger, integrated low-voltage network. Thus, Allegheny argues, the contention that the charges for these facilities should be developed on a rolled-in basis is without merit.

14. Finally, Allegheny argues that, even though some of the facilities used by ODEC are now fully depreciated, the cost of maintaining them remains high (in fact, Allegheny claims this cost is close to \$51,000 per month).

Discussion

15. We find that the issues raised in ODEC’s complaint and in Allegheny’s answer thereto raise material issues of fact as to the reasonableness of the rates that we cannot resolve on the record before us. Accordingly, we will set the complaint for investigation and a trial-type evidentiary hearing under section 206 of the FPA.

16. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle the dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.³ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁴ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

17. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires that the Commission

³ 18 C.F.R. § 385.603 (2005).

⁴ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of issuance of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov - click on Office of Administrative Law Judges).

establish a refund effective date that is no earlier than 60 days after the filing of the complaint, but no later than five months subsequent to the expiration of the 60-day period. Consistent with our general policy,⁵ we will set the refund effective date 60 days after the date of the filing of this complaint, *i.e.*, July 22, 2005.

18. Section 206 (b) also requires that, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state the best estimate as to when it reasonably expects to make such a decision. Ordinarily, to implement that requirement, we would direct the judge to provide a report to the Commission in advance of the refund effective date. Here, given that the refund effective date will soon pass, the Commission cannot follow its normal procedure.

19. Although we do not have the benefit of a judge's report, based on our review of the record we expect that a presiding judge would be able to issue an initial decision within approximately seven months of the commencement of hearing procedures, or, if hearing procedures were to commence immediately, by February 28, 2006. If hearing procedures were to commence immediately, and if the presiding judge was able to render a decision within that time, and assuming the case did not settle, we estimate that we would be able to issue our decision within approximately three months of the filing of briefs on and opposing exceptions, or, assuming the case goes to hearing immediately, by July 31, 2006.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Allegheny's subtransmission/distribution service charges to ODEC, as discussed in the body of this order. As discussed in the body of this order, we will hold the hearing in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (B) and (C) below.

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of

⁵ See, e.g., *Seminole Electric Cooperative, Inc. v. Florida Power & Light Company*, 65 FERC ¶ 61,413 at 63,139 (1993); *Canal Electric Company*, 46 FERC ¶ 61,153 at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(C) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(D) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

(E) The refund effective date established pursuant to section 206(b) of the Federal Power Act is July 22, 2005.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.