

114FERC ¶ 61,027
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

East Texas Electric Cooperative, Inc.

v.

Docket No. EL98-66-002

Central and South West Services, Inc.,
Central Power and Light Company,
West Texas Utilities Company,
Public Service Company of Oklahoma, and
Southwestern Electric Power Company

OPINION NO. 475-A
ORDER DENYING REHEARING

(Issued January 17, 2006)

1. In this order we deny the requests for rehearing filed by East Texas Electric Cooperative, Inc. (ETEC) and jointly by American Electric Power Service Corporation (AEPSC), AEP Texas Central Company, AEP Texas North Company, Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (collectively, AEP)¹ of the Commission's Opinion and Order Affirming Initial Decision

¹ Central and South West Services, Inc. was named as a respondent in the complaint that initiated this proceeding based on its role as agent for the public utility operating companies of the former Central and South West Corporation system: AEP Texas Central Company (formerly know as Central Power and Light Company), PSO, SWEPCO and AEP Texas North Company (formerly known as West Texas Utilities Company). As a result of the merger of Central and South West Corporation and American Electric Power Company, Inc., AEPSC now acts as the agent for those companies, as well as the other public utility operating companies of the AEP system.

(continued...)

issued on July 28, 2004.² In the Initial Decision,³ a presiding administrative law judge found that ETEC was not entitled to credits under section 30.9 of CSW's Open Access Transmission Tariff (OATT) for various transmission facilities that ETEC claims are integrated with the CSW transmission system. In Opinion No. 475, the Commission affirmed the Initial Decision. As discussed below, neither ETEC nor AEP have raised arguments in their requests for rehearing that warrant granting rehearing of Opinion No. 475.

I. Background

2. The factual background of this proceeding is more fully set forth in the Initial Decision and in Opinion No. 475. A brief summary follows.

3. On July 27, 1998, ETEC⁴ filed a complaint asserting that CSW violated section 30.9 of its OATT by denying ETEC credits for certain transmission facilities.⁵ The

AEPSC is therefore seeking rehearing on behalf of AEP Texas North Company, AEP Texas Central Company, PSO and SWEPCO. In this order, for the convenience of the reader, we will refer to the companies as CSW, as we did in our prior order.

² *East Texas Electric Cooperative, Inc. v. Central and South West Services, Inc.*, Opinion No. 475, 108 FERC ¶ 61,077 (2004).

³ *East Texas Electric Cooperative, Inc. v. Central and South West Services, Inc.*, 89 FERC ¶ 63,005 (1999) (Initial Decision).

⁴ ETEC is a generation and transmission (G&T) cooperative whose member/owners are G&T cooperatives. ETEC's three member owners are Northeast Texas Electric Cooperative (NTEC), Sam Rayburn G&T Cooperative, Inc. and Tex-La Electric Cooperative of Texas, Inc. (Tex-La).

⁵ The facilities that ETEC claims for credit were described in the Initial Decision and are restated here:

- Three 138 kV transmission line segments owned by Wood County, the high voltage portion of six substations owned by Wood County that function as points of delivery from ETEC to Tex-La for the benefit of Wood County loads, and a switching station owned by Wood County;

(continued...)

Commission, in an order dated September 17, 1998,⁶ set for hearing the issue of whether, and to what extent, the facilities in question warrant a credit under CSW's OATT.

A. Initial Decision

4. As initial matters, the presiding administrative law judge found that ETEC is not entitled to credits for facilities that it does not own (*i.e.*, transmission line segments, a switching station, and the high-voltage portion of substations that are owned by its distribution cooperative member, Wood County).⁷ The judge also rejected CSW's contention that the credits were barred by the terms of the Power Supply Agreement (PSA) between SWEPCO and ETEC.⁸

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- The high voltage portion of substations connected to the South Loop that function as points of delivery from ETEC to Tex-La for the benefit of Houston County Electric Cooperative, Inc. (Houston County) loads or to Tex-La for the benefit of Cherokee County Electric Cooperative Association (Cherokee County) loads;
 - Five 138 kV transmission line segments owned by ETEC that are part of the North Loop;
 - Two ETEC-owned 138 kV radial transmission line segments attached to the South Loop that enable ETEC to deliver power to Houston County loads; and
 - The remaining 138 kV transmission line segments owned by ETEC that are part of the South Loop

⁶ *East Texas Electric Cooperative, Inc. v. Central and South West Services, Inc.*, 84 FERC ¶ 61,233 (1998).

⁷ Initial Decision at 65,007-08.

⁸ *Id.* (“The silence of the PSA and Amendment No. 1 on the subject of customer credits cannot operate to deprive ETEC of the Commission-given right to seek credits before it.”).

5. In the Initial Decision, the judge explained that CSW's OATT addresses crediting in section 30.9, tracking section 30.9 of the *pro forma* tariff in Order No. 888-A.⁹ Section 30.9 of CSW's OATT provides:

Network Customer Owned Transmission Facilities: The Network Customer that owns existing transmission facilities that are integrated with the Transmission Provider's Transmission System may be eligible to receive consideration either through a billing credit or some other mechanism. In order to receive such consideration the Network Customer must demonstrate that its transmission facilities are integrated into the plans or operations of the Transmission Provider to serve its power and transmission customers. For facilities constructed by the Network Customer subsequent to the Service Commencement Date Under Part III of the Tariff, the Network Customer shall receive credit where such facilities are jointly planned and installed in coordination with the Transmission Provider. Calculation of the credit shall be addressed in either the Network Customer's Service Agreement or any other agreement between the Parties.

6. The judge described the Commission's policy; integration requires more than mere interconnection with a transmission provider's system.¹⁰ The judge also noted that a customer's facilities "must not only be integrated with the transmission provider's system, but must also provide additional benefits to the transmission grid in terms of capability and reliability, and be relied upon for the coordinated operation of the grid."¹¹

⁹ *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, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), *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 Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000) (*TAPS*), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

¹⁰ Initial Decision at 65,009 (citing Order No. 888, FERC Stats. & Regs. at 31,743).

¹¹ *Id.* at 65,009 (citing Order No. 888-A, FERC Stats. & Regs. at 30, 271).

7. The judge agreed with Trial Staff and CSW that the Commission has an established test to determine whether a customer is entitled to credits and rejected alternative approaches put forward by ETEC.¹²

8. Following a detailed analysis of the facilities for which ETEC claimed a credit,¹³ the judge concluded:

The record before me in this case demonstrates that ETEC's facilities on the North and South Loop are not integrated into CSW's plans or operations to serve CSW's power and transmission customers. Accordingly, I find that ETEC is not entitled to credits from CSW for its interconnected transmission facilities and that CSW did not violate section 30.9 of its [OATT] by denying such credits.¹⁴

B. Opinion No. 475

9. In Opinion No. 475, the Commission stated that the exceptions to the Initial Decision raised three issues:

(1) whether the PSA barred ETEC from seeking credits; (2) whether ETEC should receive a credit for facilities it does not own, *i.e.*, the facilities owned by Wood County; and (3) whether ETEC's facilities for which it claims a credit are integrated into the plans or operations of CSW so as to qualify for a credit.¹⁵

10. The Commission affirmed the judge's finding that the PSA does not bar ETEC from seeking credits.¹⁶ The Commission also affirmed the judge's finding that ETEC

¹² *Id.* at 65,008-10.

¹³ *See id.* at 65,010-17.

¹⁴ *Id.* at 65,017.

¹⁵ Opinion No. 475, 108 FERC ¶ 61,077 at P 16.

¹⁶ *Id.* at P 17-20.

may not claim credits for facilities owned by others.¹⁷ Finally, the Commission found that the integration test used by the judge was consistent with Commission and judicial precedent, and affirmed the judge's finding that ETEC's facilities are not integrated into the plans or operations of CSW.¹⁸

II. Requests for Rehearing

11. AEP filed a request for rehearing of Opinion No. 475. AEP argues that Commission erred in affirming the judge's finding that the PSA does not bar ETEC from seeking credits.

12. ETEC also filed a request for rehearing of Opinion No. 475. ETEC argues that the Initial Decision and Opinion No. 475: (1) wrongly approve denial of transmission credits if there is a limitation of liability clause in the transmission customer's power supply agreement with the transmission provider; (2) wrongly hold that substations can never be integrated facilities; (3) wrongly approve the use of load flow studies that deny credits if the grid can operate reliably without the transmission customer's facilities and load; (4) wrongly rewrite the *pro forma* tariff to require integration in both the plans *and* operations of the transmission provider; (5) wrongly demand a level of proof that makes it impossible to prove that a transmission provider has integrated customer-owned facilities into its plans; and (6) wrongly do not apply the same test to determine whether to compensate for both transmission provider facilities and transmission customer facilities. ETEC further contends that the Commission's affirmance of the judge's finding that ETEC may not claim credits for facilities owned by others reads too much into the "plain language" of Order No. 888-A and thus is in error.¹⁹

III. Discussion

13. In summary, ETEC's arguments relate primarily to whether ETEC's facilities are integrated into CSW's plans, while AEP's arguments relate to shifting of cost responsibility under the PSA. Nothing raised by AEP or ETEC on rehearing warrants our

¹⁷ *Id.* at P 21-23.

¹⁸ *Id.* at P 24-34.

¹⁹ ETEC request for rehearing at 31.

granting rehearing. Therefore, we are denying rehearing on all issues as discussed in more detail below.

A. Whether PSA Bars ETEC From Seeking Credits

1. AEP Rehearing

14. AEP requests that the Commission grant rehearing of Opinion No. 475 and rule that ETEC's request for credits is barred by the PSA because Opinion No. 475 adopted its finding that credits were not barred by the PSA with little discussion and without addressing arguments raised by AEP in its brief on exceptions. AEP explains that ETEC agreed in the PSA to be responsible for the costs associated with constructing the ETEC-owned portions of the facilities needed to transfer distribution loads located in ERCOT to the alternating current transmission lines in the Southwest Power Pool (SPP). They further state that, in an amendment to the PSA, the parties expressed the clear intent to preserve the pre-Order No. 888 division of cost responsibilities described in the PSA. Therefore, AEP believes that ETEC, through its claim for credits, improperly seeks to shift the cost responsibility for these facilities in direct contravention of the terms of the PSA. AEP also claims that ETEC should be prohibited from accepting the benefits of a transaction and then subsequently taking an inconsistent position to avoid corresponding obligations.

2. Commission Determination

15. The Initial Decision found, and the Commission affirmed in Opinion No. 475, that the PSA did not bar ETEC from seeking credits.²⁰ We reaffirm that determination here. The judge explained that the PSA, which was signed in 1993, is understandably silent on the issue of customer credits because the Commission did not announce its policy on credits until 1994. Thus, neither ETEC nor SWEPCO in 1993 could have contemplated that credits might be available in the future. The judge further reasoned that the fact that ETEC agreed to build and pay for certain facilities does not bar ETEC from later claiming credits for the investment it made.

16. In any event, given our determination herein denying credits on other grounds, AEP's argument regarding whether the PSA bars ETEC from seeking credits is moot.

²⁰ Opinion No. 475, 108 FERC ¶ 61,077 at P 17-20.

B. Limitation of Liability Clause

1. ETEC Rehearing

17. ETEC argues that the Initial Decision and Opinion No. 475 found that a limitation of liability clause in the PSA bars transmission credits; the clause at issue holds each party responsible for electricity on its own side of a point of delivery. According to ETEC, the Initial Decision found that, since ETEC's four points of delivery are at the respective ends of the North and South Loops, the clause bars transmission credits to ETEC.

18. ETEC explains that the Commission, in affirming the judge's conclusions, relied on the PSA's limitation of liability clause to repeal *pro forma* tariff section 30.9. ETEC states that this is not a standard found in *pro forma* tariff section 30.9. ETEC points out that, since almost all power supply agreements contain such a clause, including those in existence at the time Order Nos. 888 and 888-A were issued, this new standard effectively says that the Commission issued *pro forma* tariff section 30.9 knowing that it did not apply to those existing power supply agreements. ETEC states that is an implausible interpretation of both the regulation and the power supply agreements. Therefore, ETEC argues that a limitation of liability clause in a power supply agreement cannot be interpreted to effectively repeal the *pro forma* tariff's section 30.9.

2. Commission Determination

19. ETEC's argument that the Initial Decision and Opinion No. 475 found that a limitation of liability clause in the PSA bars transmission credits misrepresents both the Initial Decision and Opinion No. 475, and provides no basis to grant rehearing.

20. In the Initial Decision, the judge pointed to the limitation of liability clause, section 12.2 of the PSA, in explaining that CSW is contractually responsible only for making sure that power is transmitted to certain points of delivery.²¹ On the same page, in the very next sentence, the judge went on to state that whether ETEC facilities, in fact, provide "significant support" to the CSW system can be shown by load-flow studies.²² Thus, ETEC misreads the Initial Decision; the judge did not find that the limitation of

²¹ Initial Decision at 65,014.

²² *Id.*

liability clause barred transmission credits. Rather, the purpose of the reference in the Initial Decision to the limitation of liability clause, as noted, was simply to lend support to the proposition that CSW was responsible only to deliver power to certain points of delivery.²³ The judge ultimately based her findings - that ETEC's facilities were not integrated into CSW's plans or operations to serve CSW's power and transmission customers - on an analysis of the plans and operations of CSW's system, including load flow studies. And the Commission properly affirmed those findings.

C. Whether Substations Are Integrated Facilities

1. ETEC Rehearing

21. ETEC avers that the Initial Decision further diminishes *pro forma* tariff section 30.9 by ruling that substations can never be integrated facilities. ETEC states that, while it requested transmission credits for the high side of five dual function substations on the South Loop, Opinion No. 475 affirmed the judge and rejected credits for ETEC on grounds that *Northern States*²⁴ erects a *per se* rule rejecting credits for substations, even if the high side is connected to an integrated line in a "run-through" fashion. Based on its interpretation of *Northern States*, ETEC believes *Northern States* is wrongly decided and should be reversed because it erects a standard not found in *pro forma* tariff section 30.9 and is unreasonable because there is nothing inherent in the operation of the high side of a substation that prevents it from being integrated into the plans or operations of the transmission provider. ETEC also states that this interpretation of *Northern States* as a *per se* ban on the integration of substations is inconsistent with the Commission's ruling in *Northeast Texas*,²⁵ in which the Commission found transmission provider circuit breakers and switches, the key components of a substation, to be integrated facilities.

22. ETEC states that the Commission reads too much into *Northern States*, and that cases that do not explain their rationale and do not cite precedent are not binding on the Commission. ETEC further argues that *Northern States* applied to a company that had generation behind the meter at the substation. Since ETEC and Wood County own no generation behind their meters, ETEC believes *Northern States* is irrelevant to this case.

²³ *Id.*

²⁴ *Northern States Power Co.*, 87 FERC ¶ 61,121 (1999) (*Northern States*).

²⁵ *Northeast Texas Electric Cooperative, Inc.*, 108 FERC ¶ 61,084 (2004).

2. Commission Determination

23. We deny rehearing. ETEC misses the heart of the matter; its substations are not integrated with and, indeed, are not even directly connected with CSW's system. ETEC has not demonstrated that its substations are used by CSW to provide transmission service to ETEC or any other party; nor has ETEC demonstrated that the substations are used to transmit CSW power to non-ETEC customers.²⁶ In the Initial Decision, in fact, the judge found that the substations are not even directly connected to the CSW system, but are located at the delivery points from the ETEC system to Wood County, Houston County, and Cherokee County distribution systems; there is no direct connection between the ETEC portion of the substations and CSW's system. Thus, ETEC does not meet the integration test.

24. Finally, neither the judge nor the Commission stated that substations can never be integrated facilities and in no way established a *per se* rule to be applied to every substation. The Commission's decision in *Northern States* was specific to the facts of that case, just as our decision here is based on the facts here. Our policy was and is to review each request for transmission credits on a case-by-case basis to make a determination on a case-by-case basis whether a substation is integrated and eligible for credits.²⁷ We also note that the suggestion that we overturn *Northern States*' supposed *per se* rule is misplaced. *Northern States* imposed no such rule, but rather made a finding based on the facts presented in that proceeding. Hence, there is no basis for overturning it in this proceeding.

D. Load Flow Studies

1. ETEC Rehearing

25. ETEC states that the key fault of the Initial Decision and Opinion No. 475 is that all of the criteria of section 30.9 are collapsed into a single criterion: *Entergy*-style load

²⁶ Initial Decision at 65,016-17; *accord id.* at 65,015-16. *See Northern States*, 87 FERC at 61,488 (denying credits to Blue Earth Light and Water Department on the same basis).

²⁷ Initial Decision at 65,016-17 & n. 119; *accord TAPS*, 225 F.3d 667, 726; Order No. 888, FERC Stats. & Regs. at 31,142-43 ("credits are more appropriately addressed on a case-by-case basis").

flows.²⁸ ETEC states that the Commission defends the *Entergy*-style load flow as the sole way to measure that facilities provide additional benefits in terms of capability and reliability, are relied upon for the coordinated operation of the grid, and are integrated into the transmission provider's plans. ETEC avers that relying on this criterion repeals section 30.9 by adjudication.

26. ETEC also interprets the Commission as finding that a facility is not integrated if a redundant transmission grid can still be operated reliably if all of a customer's facilities and load are removed from the grid in order. ETEC states that no transmission facilities can meet this test because a redundant transmission system is designed to be operated reliably despite the loss of any element. According to ETEC, the Commission therefore bars credits for all customer-owned transmission facilities.

27. Finally, ETEC argues that the Commission found that certain ETEC facilities were not integrated on the basis of load flow studies, and that had the Commission applied a different test, *Consumers*,²⁹ the Commission would have determined these facilities to be integrated because the critical facility in this case "is a 138 kV looped line extending 85 miles between two substations of SWEPCO."

2. Commission Determination

28. In *Entergy*, the Commission addressed how to demonstrate integration, or lack of integration. The Commission approved the use of load flow studies to determine whether facilities are integrated and should be awarded credits. Specifically, Entergy performed a base load flow study of its system under normal and contingency conditions and then examined how those same studies would change if Entergy's system were not connected to the customer facilities in question.³⁰ Section 30.9 provides that network transmission customers with integrated transmission facilities may be eligible to receive credits – but only if they can demonstrate that their transmission facilities are, in fact, integrated. Use of such load flow studies does not repeal section 30.9, but is merely a tool to test for integration in order to demonstrate eligibility for credits under section 30.9. And, as previously stated, eligibility for credits is determined on a case-specific basis.

²⁸ See *Entergy Services, Inc.*, 85 FERC ¶ 61,163 (1998), *reh'g denied*, 91 FERC ¶ 61,153. (2000) (*Entergy*).

²⁹ *Consumers Energy Co.*, 86 FERC ¶ 63,004 at 65,016-17 (1999), *aff'd in part and rev'd in part*, 98 FERC ¶ 61,333 at 62,410 (2002) (*Consumers*).

³⁰ *Entergy*,. 85 FERC at 61,649.

29. Load flow studies that were performed in conformance with *Entergy* demonstrated that the reliability parameters are within normal ranges when ETEC's South Loop facilities and load are both removed.³¹ Another such load flow study demonstrated that there was actually a reduction of loading on CSW's transmission system when the North Loop load and facilities were removed.³² For both the South Loop and the North Loop, the record supports a finding that these facilities are not integrated.

30. We note that, in addition to performing studies that conformed to *Entergy*, Trial Staff performed a second set of load flow studies, removing ETEC's facilities but including ETEC load, which is an easier test to meet for operational integration. The judge stated that these tests and other tests demonstrated that "ETEC's facilities failed to make any necessary contribution to the CSW system."³³ In contrast, ETEC's own studies that included the customer load were found to either: (1) not demonstrate a violation CSW's reliability criteria, or (2) to be based on unrealistic premises (*e.g.*, the South Loop being operated in an open configuration).

31. ETEC asks that the Commission analyze its facilities applying the four factors identified in *Consumers*³⁴ to judge integration. As noted elsewhere in this order, we address the question of integration case-by-case. Here the record – especially the

³¹ Initial Decision at 65,015-16

³² *Id.* at 65,015 (footnote omitted).

³³ *Id.* at 65,014-15.

³⁴ *Consumers*, 86 FERC at 65,016. *I.e.*, (1) the network customer must demonstrate that the facilities for which it seeks credits are integrated into the transmission provider's plans and operations; (2) the transmission provider is able to provide transmission service to itself or other transmission customers over the network customer's facilities; (3) the transmission provider actually uses the network customer's facilities to provide service to the network customer or other parties; and (4) the network customer must demonstrate that its facilities provide additional benefits to the transmission grid in terms of capability and reliability and are relied upon for coordinated operation of the grid. *See id.* In fact, as explained elsewhere in this order, the Commission has considered these same factors here and concluded that on the record before us the customer-owned transmission facilities are not integrated into CSW's plans or operations and do not otherwise warrant the Commission concluding that credits would be in order.

Entergy-style load flow studies – supports a finding of lack of integration. In contrast, in *Consumers*, based on the record there—which did not include any *Entergy*-style load flow studies – we found the facilities at issue to be integrated. In addition, we note that, for the South Loop facilities, the judge found that ETEC’s facilities are not directly connected to the CSW system at the Jacksonville switching station; rather the connection is with Rayburn Country Electric Cooperative facilities. As to the North Loop, these facilities operate as an open circuit and CSW can not operate ETEC’s North Loop facilities even under the contingencies suggested by ETEC. Moreover, as *Consumers* also makes clear in its discussion of what will *not* satisfy integration, mere interconnection is not enough, and the fact that the facilities may serve a transmission function on the customer side of an interconnection or constitute a parallel path or provide redundancy are not enough.³⁵

E. Integration into Plans or Operations

1. ETEC Rehearing

32. ETEC contends that the Initial Decision and Opinion No. 475 essentially rewrite *pro forma* tariff section 30.9 to require integration in both the plans *and* operations of the transmission provider, contrary to the express terms of Order No. 888-A.

33. While Order No. 888 used the word “or” such that facilities must be “integrated into the plans *or* operations of the Transmission Provider to service its power and transmission customers,”³⁶ ETEC claims that Opinion No. 475 unlawfully inserts “and” between “plans” and “operations,” thus requiring ETEC to prove integration into both the plans of SWEPCO *and* the operations of SWEPCO. ETEC states that there are two legitimate, but different, ways to show facilities are eligible for a credit, and that if a customer’s transmission facilities were intended by the parties to be operated as facilities integrated into the grid, but subsequently are not used in an integrated fashion, the facilities should still receive a credit. In this case, ETEC contends that it provided evidence of facilities being integrated into the plans of SWEPCO, demonstrating that (1) under the PSA, SWEPCO expressly reserved the continuing right to use ETEC’s South Loop facilities for the purpose of interconnecting and serving SWEPCO’s non-ETEC wholesale and retail load, and (2) SWEPCO originally planned the South Loop in

³⁵ *See id.*

³⁶ Order No. 888-A, FERC Stats. & Regs. at 30,271 (emphasis added).

order to keep open the possibility of serving new loads. However, the Initial Decision dismissed ETEC's evidence on the grounds that neither of the options had been exercised. Thus, ETEC states that the result is to improperly repeal the planning criterion as a possible way to prove integration.

2. Commission Determination

34. As to planning, ETEC first argues that the Commission has read planning out of the test for integration, and then faults the judge's express findings concerning planning and the Commission's affirmance of those findings. We (and the judge) did not ignore planning, but expressly recognized that section 30.9 references planning.³⁷ In fact, the judge made detailed findings on the factual issue of whether ETEC's facilities were integrated into CSW's plans.³⁸

35. The judge found, among other things,³⁹ that the North Loop was designed to operate in a normally open switch configuration and Wood County alone made this decision. The judge found that "SWEPCO had no plans ... for operating the North Loop closed [circuit] and CSW has never discussed with ETEC the possibility of closing the North Loop...."⁴⁰ Regarding the South Loop, the judge addressed an ETEC argument that CSW had a conditional right to extend lines to and interconnect with certain ETEC 138 kV lines to serve any SWEPCO customers. She properly found that the mere fact that at one time CSW considered and then rejected the possibility of using ETEC facilities to serve a potential customer was "insufficient to show planning to integrate ETEC facilities into the CSW system."⁴¹ Accordingly, we find unconvincing ETEC's

³⁷ Opinion No. 475, 108 FERC ¶ 61,077 at P 7, 10-11, 16, 24.

³⁸ Initial Decision at 65,011-14.

³⁹ The judge also stated, e.g., that "there is no evidence of joint planning for any purpose other than connecting ETEC to the less expensive SWEPCO power," *id.* at 65,012, and that "CSW never took part in the selection of the route the North Loop was to follow" and the North Loop "was also designed to consist and does consist solely of radial lines." *Id.* at 65,013.

⁴⁰ *Id.* at 65,013.

⁴¹ *Id.* at 65,014. The judge also found that radial taps coming off the South Loop were just that, *i.e.*, radial, *id.* at 65,013, and that the evidence as to the South Loop "does
(continued...)"

contentions that the Commission did not consider whether ETEC's facilities were integrated into CSW's plans, and unconvincing its arguments that the judge's conclusions were in error.

36. As to operations, the judge found ample evidence that CSW uses the North and South Loops only to supply power to ETEC, and that ETEC in turn supplies that power to ETEC customers.⁴² And, as previously described, load flow studies show that ETEC's facilities failed to make the necessary contribution to the CSW system.⁴³ In short, the Initial Decision properly found and the Commission properly affirmed that the facilities in question were not integrated into CSW's operations.

37. Although it was determined that ETEC did not meet the integration criteria, we note that other factors also were considered in making the case-specific determination that ETEC did not qualify for credits, *i.e.*, whether the facilities provided additional benefits to the grid in terms of capability and reliability, and whether the facilities must be relied upon for the coordinated operation of the grid.⁴⁴ Even if the Commission had done what ETEC argues it did, *i.e.*, replace "or" with "and" (which we do not concede⁴⁵), ETEC's argument is moot because our determination that credits are not warranted would still be the same.

F. Standard for Customer-Owned Facilities

1. ETEC Rehearing

38. ETEC contends that the Commission adopts different and non-comparable integration tests for determining the integration of transmission provider and transmission customer facilities. ETEC points out that the integration test for transmission provider facilities is the traditional, presumptive roll-in test that can be overcome only by showing the exceptional circumstances of facilities so isolated from the grid that they are and will

not rise to the level of evidence showing planning to integrate ETEC's facilities with CSW's system." *Id.* at 65,014.

⁴² *Id.* at 65,015-16.

⁴³ Initial Decision at 65,015 (footnote omitted).

⁴⁴ Opinion No. 475, 108 FERC ¶ 61,077 at P 30.

⁴⁵ *See id.* at P 26.

likely remain non-integrated. ETEC states that the integration test for transmission customer facilities is a new test that in reality applies only the *Entergy*-style load flow criterion that deems all transmission facilities to be non-integrated.

39. Furthermore, ETEC argues that Opinion No. 475 wrongly insists that it is using the same integration test for transmission provider (SWEPCO) and transmission customer (ETEC) facilities, and thus the Commission has followed a consistent policy when considering the merits of customer credit claims. ETEC holds that the Commission applies different tests – one for transmission providers and one for transmission customers. ETEC also disputes the suggestion in Opinion No. 475 that the District of Columbia Circuit approved such treatment. ETEC states that Opinion No. 475's conclusion on comparability is unsupported because the Court did not address comparability in *Florida Municipal Power Agency v. FERC*, 315 F.3d 362 (D.C. Cir. 2003) or in *East Texas Electric Cooperative, Inc. v. FERC*, 331 F.3d 131 (D.C. Cir. 2003).

40. ETEC goes on to suggest that Opinion No. 475 inconsistently rejects using the same integration test for transmission provider and transmission customer. ETEC avers that if AEP owned the ETEC and Wood County facilities, the facilities would be deemed integrated and their cost rolled in to the AEP transmission cost of service; however, since it is ETEC and Wood County that own the facilities, the Commission deems the facilities to be not integrated, and therefore the integration standards are not comparable. In addition, the transmission provider SWEPCO owns the Jacksonville substation, which is connected to the CSW grid solely through Rayburn Country and ETEC transmission lines. ETEC states that the CSW witness considered the Jacksonville switching station to be integrated into the operations of the CSW system, but considered both the Rayburn Country and ETEC lines to not be integrated into the operations of the CSW system. ETEC thus claims that such integration, leaping over non-integrated facilities, is not possible if the same integration standard is to be applied to transmission provider and transmission customer facilities.

2. Commission Determination

41. We deny rehearing. The issue here is when is a transmission customer entitled to credits for its own transmission facilities. The approach that the Commission (and the judge) took here for determining when customers are entitled to credits for their own transmission facilities is consistent with the approach that the Commission has traditionally taken for determining when customers are entitled to credits for their own

transmission facilities.⁴⁶ We are not persuaded that the approach we have taken is improper.

42. When a transmission *provider* may recover in its rates the costs of its transmission facilities is a different matter than when a transmission customer is entitled to credits in the transmission provider's rates for the costs of the transmission customer's transmission facilities. In *Northeast Texas Electric Cooperative, Inc.*,⁴⁷ the Commission addressed essentially the same matter at issue here, and the Commission declined to apply the line of cases involving credits in the transmission provider's rates for *customer-owned* transmission facilities to cases involving whether or not to roll into the transmission provider's rates the costs of facilities *owned by the transmission provider*.⁴⁸ The reason for this distinction is that customer-owned facilities are generally constructed to serve that individual customer's needs; before their costs may be assigned to all users (which is what a credit effectively does), it must be demonstrated that those facilities are relied upon by the transmission provider to provide service to its transmission customers. By contrast, the transmission provider-owned system is planned, constructed and owned, from the very beginning, by the transmission provider to meet its obligation to its customers.⁴⁹ The Commission explained that use of a different standard is appropriate for customer-owned facilities because they involve not just a determination of whether facilities are part of a single transmission system (in a sense, virtually all transmission facilities are part of a single transmission system because they are all physically interconnected, but that has never warranted a customer automatically receiving a credit⁵⁰), but also whether the customer's and the transmission provider's systems should be considered separate systems or an integrated transmission system.⁵¹ There is nothing wrong with adopting different tests for these different circumstances.

⁴⁶ *Id.* at P 25-34.

⁴⁷ 111 FERC ¶ 61,189 (2005).

⁴⁸ *Id.* at P 15.

⁴⁹ *Id.* at P 17.

⁵⁰ *TAPS*, 222 F.3d 667, 726-27; Order No. 888-A, FERC Stats. & Regs. at 30,271; Order No. 888, FERC Stats. & Regs. at 31,742-43.

⁵¹ *NTEC*, 111 FERC ¶ 61,189 at P 16.

G. Whether ETEC May Claim Credits For Facilities Owned By Others**1. ETEC Rehearing**

43. ETEC states that Opinion No. 475 summarily concludes that ETEC offered no convincing reasons for ETEC receiving transmission credits for Wood County owned facilities. ETEC maintains it is Opinion No. 475 that offered no reasons for its ruling and the Commission should have provided findings of fact and reasons supporting its decision. ETEC states that, when the Commission drafted *pro forma* tariff section 30.9, it did not consider or discuss a situation where the party owning the transmission facilities is not the same as the party securing network transmission for the party owning transmission facilities, and did not have in mind a bar to transmission credits from members of so-called G&T cooperatives and joint action agencies.

2. Commission Determination

44. ETEC raises nothing new or more persuasive concerning whether ETEC should receive a credit for facilities it does not own; we deny rehearing on this issue. It was fully addressed in the Initial Decision and Opinion No. 475.

The Commission orders:

The requests for rehearing filed by AEP and ETEC are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.