

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

CED Rock Springs, LLC
Old Dominion Electric Cooperative

Docket No. ER06-491-001
Docket No. ER06-497-001
(Not Consolidated)

ORDER DENYING REHEARING

(Issued August 22, 2006)

1. On March 17, 2006, the Commission rejected proposed rate schedules that would have allowed CED Rock Springs, LLC (Rock Springs) and Old Dominion Electric Cooperative (Old Dominion) to recover, from transmission service customers, certain costs incurred in connecting Rock Springs' and Old Dominion's generation facilities to the transmission grid.¹ By the present order, the Commission denies Rock Springs' and Old Dominion's requests for rehearing. The requests have not drawn into question the underpinnings of the March 17 Order: (1) responsibility for the costs of connecting generation facilities to the grid is determined under the regional open access transmission tariff; and (2) under the tariff, Rock Springs and Old Dominion bear sole responsibility for the costs in question.

Background

2. Rock Springs and Old Dominion own generation facilities that are connected to the transmission system of PECO Energy Company (PECO). Radial facilities extend from the generation facilities to a substation. The substation is inserted into a circuit on PECO's system via 1,800 feet of transmission line; each of two, 900-foot segments of line extend from the substation to one end of a spliced transmission line on PECO's system. To reach PECO's system, electricity from the generation facilities flows over the radial facilities, through the substation and over the 1,800 feet of line, all of which are owned by Rock Springs and Old Dominion. The 1,800 feet of line were necessary to accommodate the interconnection and resulted in the replacement of a portion of a transmission line operated by PECO.

¹ *CED Rock Springs, LLC*, 114 FERC ¶ 61,285 (2006) (March 17 Order).

3. The substation and 1,800 feet of line operate as part of PECO's transmission system, such that electricity from sources other than Rock Springs' and Old Dominion's generation facilities might flow over the substation and 1,800 feet of line. The potential for bi-directional flow from multiple sources makes the substation and 1,800 feet of line "transmission" facilities. Rock Springs and Old Dominion seek to recover the costs of those facilities, but not the radial facilities, from the region's transmission service customers.

4. Under the Open Access Transmission Tariff (OATT) that is administered by PJM Interconnection L.L.C. (PJM), Rock Springs and Old Dominion could have relied upon PECO to construct and own these connection facilities (the radial facilities, substation and 1,800 feet of line). However, because Rock Springs and Old Dominion did not want to wait for PECO to construct the facilities, the parties agreed that Rock Springs and Old Dominion would construct and retain ownership of the facilities. As a result of retaining ownership, Rock Springs and Old Dominion signed transmission ownership agreements.

5. Neither Rock Springs nor Old Dominion has alleged that any of the facilities would have been constructed but for the fact that these facilities were necessary to connect the Rock Springs and Old Dominion generation facilities to PECO's system. Nor have they alleged that the facilities enabled PECO to avoid or delay the construction of other facilities. Like PECO's system, the substation and 1,800 feet of line are operated by PJM as part of the regional grid.

6. The PJM OATT establishes the terms and conditions under which generators like Rock Springs and Old Dominion connect their generating facilities to the grid. Section 37 of the PJM OATT requires generators to pay the cost of connecting to the grid unless, in the case of associated upgrades to the grid, the upgrades help avoid or delay the construction of other facilities.

7. As stated in section 37, the cost allocation provisions therein apply to "Generation Interconnection Customers." A "Generation Interconnection Customer" is an entity that asks to connect a generation facility to the "Transmission System," which is the transmission system operated by PJM.² A Generation Interconnection Customer must pay the costs of "Attachment Facilities," which are facilities that connect the generation facility to the Transmission System.³ The Generation Interconnection Customer must also pay the costs of the minimum amount of any "Local Upgrades" and "Network Upgrades" that are necessary to connect the generation facility, when those costs would not have been incurred but for the connection and with offset to reflect system benefits

² See PJM OATT §§ 1.13B, 1.13E, 1.46, 1.49.

³ See PJM OATT §§ 1.3A, 37.1.

such as accelerating, deferring or eliminating the construction of planned upgrades.⁴ “Local Upgrades” are modifications or additions that address engineering problems caused by the connection.⁵ “Network Upgrades” are modifications or additions of transmission-related facilities that are integrated with and support the transmission grid.⁶

8. In its March 17 Order, the Commission rejected Rock Springs’ and Old Dominion’s proposal to recover the costs of the substation and 1,800 feet of line from transmission service customers on the grounds that section 37 allocates those costs to Rock Springs and Old Dominion. The Commission applied section 37 because the substation and 1,800 feet of line were constructed to connect the Rock Springs and Old Dominion generation facilities to PECO’s system. The Commission found that section 37 allocated the costs of the facilities to Rock Springs and Old Dominion because those costs would not have been incurred but for connection of the Rock Springs and Old Dominion generation facilities and because no system benefits of the type referred to in section 37 had been alleged.

9. The Commission rejected the argument offered by Rock Springs and Old Dominion that section 37 is overridden here by section 2.2 of the Transmission Owners Agreement. Section 2.2 reserves for transmission owners the right to make unilateral rate filings under section 205 of the Federal Power Act, 16 U.S.C. § 824d (2000). The Commission reasoned that this reservation of right enables each owner to file under section 205 without the consent of other owners, without purporting to create or creating entitlements to recover particular costs and therefore without affecting operation of section 37.

Requests for rehearing

10. Rock Springs filed a request for rehearing on April 14, 2006. Old Dominion filed a request for rehearing on April 17, 2006. Rock Springs and Old Dominion assert: (a) that section 37 of the PJM OATT does not apply here; (b) that section 37, if applicable, does not allocate cost responsibility to Rock Springs and Old Dominion; (c) that the Commission’s decision contradicts case precedent; and (d) that to deprive Rock Springs and Old Dominion of cost recovery violates the Federal Power Act.

⁴ See PJM OATT § 37.2.

⁵ See PJM OATT § 1.17A.

⁶ See PJM OATT § 1.26.

Discussion

A. Whether section 37 applies

11. Rock Springs and Old Dominion present several arguments in support of their assertion that section 37 does not apply here, none of which is valid. First, Rock Springs argues that section 37 does not apply because the substation and 1,800 feet of line are owned by Rock Springs and Old Dominion and operate as an integrated part of the grid, *i.e.*, as transmission facilities. According to Rock Springs, the substation and 1,800 feet of line thus constitute a “transmission system.” Rock Springs asserts that section 37 does not govern connections between two transmission systems.⁷

12. A substation and 1,800 feet of line do not, in and of themselves, constitute a “transmission system.”⁸ Moreover, under section 37 of PJM’s OATT, Rock Springs and Old Dominion are the parties that must bear the cost of these facilities. The essential fact is that the substation and 1,800 feet of line were constructed to connect generation facilities to the transmission grid. Section 37 unequivocally governs cost responsibility for such connection facilities. By its terms, section 37 governs the cost responsibility for all upgrades related to an interconnection request.⁹ Moreover, section 37 determines cost responsibility based not on electrical integration (whether the facilities operate as transmission facilities) or ownership, but rather on whether the connection facilities would have been built for another purpose or enable the system to avoid certain expenditures:

A Generation Interconnection Customer shall be obligated to pay for 100 percent of the costs of the minimum amount of Local Upgrades and Network Upgrades necessary to accommodate its Generation Interconnection Request and that would not have been incurred under the Regional Transmission Expansion Plan but for such Generation

⁷ Rock Springs Request for Rehearing at 4-5, 19.

⁸ A transmission system integrates multiple sources of electricity and multiple loads. The substation here represents a single source of electricity – Rock Springs’ and Old Dominion’s generation facilities. The 1,800 feet of line connect that single source to a single “load” – PECO’s transmission system.

⁹ “A Generation Interconnection Customer shall be obligated to pay for 100 percent of the costs of the minimum amount of Local Upgrades and Network Upgrades necessary to accommodate its Generation Interconnection Request.”

Interconnection Request, net of benefits resulting from the construction of the upgrades, such costs not to be less than zero.¹⁰

The provision does not differentiate facilities based on ownership or type of electrical connection.¹¹ Indeed, Part IV of the PJM OATT applies to all “interconnection customers”¹² proposing to “interconnect a generating unit to the Transmission System” A “generation interconnection customer” is defined as “an entity that submits an interconnection request to interconnect a new generation facility”¹³ Thus, a request to build a generation interconnection by a transmission owner is covered under Part IV of the PJM OATT, including section 37. Moreover, section 8.3 of the PJM OATT makes clear that transmission owners building generation facilities are treated no differently than independent generators. It provides that each transmission owner:

Include in a separate transmission account or subaccount, costs of Attachment Facilities, Local Upgrades, and Network Upgrades that are incurred by the Transmission Owner with respect to its own Interconnection Requests under Part IV of

¹⁰ PJM OATT §37.2. *See also* PJM OATT §§ 1.3A and 37. Whether connection facilities are electrically integrated with the grid is critical under an interconnection agreement, which must address the operational effects of such integration. PECO’s treatment of the substation and 1,800 feet of line as electrically integrated facilities under the parties’ interconnection agreement is both expected and, under the PJM OATT, irrelevant. *Contrast* Rock Springs Request at 4-5.

¹¹ In our March 17 Order, we cited Order No. 2003 in explaining why we generally allocate connection costs to generators. *See* March 17 Order P.12 (citing *Standardization of Generator Interconnection Agreements and Procedures*, FERC Stats. & Regs. Regulations Preambles ¶ 31,146 (2003)). The parties suggest that we “relied” on Order No. 2003 as the basis for our decision and that such reliance was flawed because the order was issued after construction of the present facilities. *See, e.g.*, Rock Springs Request at 6, 30-34; Old Dominion Request at 19-20. To the contrary, we relied on section 37 of the PJM OATT. In Order No. 2003, we merely explained our reasons for adopting, on a nation-wide basis, the policy that was already reflected in section 37.

¹² An “interconnection customer” is defined as a “Generation Interconnection Customer and/or a Transmission Interconnection Customer.” PJM OATT § 1.14E.

¹³ PJM OATT § 1.13B.

the Tariff that are directly assigned to the Transmission Owner to accommodate its Interconnection Requests in accordance with Schedule 6A of the Operating Agreement.

Thus, the fact that Rock Springs and Old Dominion are classified as transmission owners does not entitle them to any different treatment than other transmission owners, whose generation interconnection requests are governed by Part IV and section 37 of the PJM OATT.

13. Indeed, Rock Springs and Old Dominion are only classified as transmission owners because they chose to build and own these facilities rather than wait for PECO to build them. Had PECO built the facilities, section 37 of the PJM OATT would apply to determine whether Rock Springs and PECO would have to bear the costs of the upgrades. The fact that, for business reasons, they chose a different route does not negate the applicability of section 37. Allocation of cost responsibility under section 37.2 does not depend on which party chose to build facilities, but rather on whether the facilities would have been built “but for” the generation interconnection project.

14. Rock Springs claims that, as signatories to the Transmission Owners Agreement, Rock Springs and Old Dominion incur costs that are not incurred by other generators, such as the costs of complying with the code of conduct.¹⁴ But these costs resulted from Rock Springs’ and Old Dominion’s choice to build and own these facilities. PJM’s OATT allocates costs based on whether the facilities would have been built for another purpose or would enable the system to avoid certain costs. No different treatment is provided because a party’s election to own facilities may result in certain additional costs.

15. As their second argument for why section 37 does not apply, Rock Springs and Old Dominion argue that the substation and 1,800 feet of line are neither Attachment Facilities nor Network Upgrades.¹⁵ Under Rock Springs’ and Old Dominion’s approach, there would be an unnamed class of facilities that are constructed to connect generation to the grid but whose costs are not allocated under section 37. In light of the broad definitions of Attachment Facilities, and the broad sweep of the PJM OATT, we recognize no such unnamed class of facilities. We also reject each of Rock Springs’ and Old Dominion’s specific arguments as follows.

¹⁴ See Rock Springs Request at 16, n.41.

¹⁵ Section 37 determines cost responsibility for Local Upgrades as well as for Attachment Facilities and Network Upgrades. It appears to be accepted by all parties that the substation and 1,800 feet of line do not constitute Local Upgrades.

16. In our view, the facilities built by Rock Springs and Old Dominion are network upgrades. PJM's OATT defines a network upgrade as "Modifications or additions to transmission-related facilities that are integrated with and support the Transmission Provider's overall Transmission System for the general benefit of all users of such Transmission System."¹⁶ As Rock Springs and Old Dominion recognize, the facilities they own are modifications and additions to the existing PECO transmission system. There is no distinction in the OATT between network upgrades and transmission facilities, as Old Dominion claims. Network upgrades are facilities that are added to the existing transmission system, as are the facilities built here.

17. Old Dominion argues that the substation and 1,800 feet of line are not Network Upgrades under the following reasoning: (1) section 40.1 of the PJM OATT requires a host utility to own Network Upgrades; (2) Rock Springs and Old Dominion own the substation and 1,800 feet of line; and (3) the substation and 1,800 feet of line therefore cannot be Network Upgrades.¹⁷

18. Old Dominion's reliance on section 40.1 is both misplaced and reflects an erroneous reading of that section. Section 40.1 addresses a host utility's obligation to construct facilities in response to an interconnection request. Section 40.1 provides for the host utility to own all facilities that the utility constructs in response to a request and, even in that case, contemplates that the parties may reach other ownership arrangements.¹⁸ Nothing in section 40.1 requires a host utility to own Network Upgrades (or other connection facilities) or modifies the cost allocation provisions of section 37.¹⁹

¹⁶ PJM OATT §1.26.

¹⁷ See Old Dominion Request at 9. See also Rock Springs Request at 22-23 (under section 40.1, Rock Springs' and Old Dominion's ownership of the substation and 1,800 feet of line overcomes the cost allocation provisions of section 37).

¹⁸ PJM OATT § 40.1 recognizes that parties may make other ownership arrangements without changing the applicability of the interconnection procedures: "Except to the extent otherwise provided in a Construction Service Agreement entered into pursuant to Subpart F below, the Transmission Owners shall own all Attachment Facilities, Local Upgrades, and Network Upgrades constructed to accommodate Interconnection Requests." (emphasis added).

¹⁹ Indeed, under Order No. 2003, parties to an interconnection agreement may mutually agree that customers will own the upgrades. Order No. 2003-A at P 230. But such a decision does not mean that the facilities are not considered network upgrades or that the cost allocation procedures for those network facilities are no longer applicable.

19. Rock Springs argues that the substation and 1,800 feet of line cannot be Network Upgrades because the interconnection agreement between Rock Springs and PECO did not designate the facilities as Network Upgrades.²⁰

20. It is irrelevant that the interconnection agreement did not designate the facilities as Network Upgrades. The purpose of that designation would have been to include the costs of the facilities in the Network Upgrades Charge – a charge that Rock Springs pays to PECO. To have included the costs of the substation and 1,800 feet of line in that charge would have resulted in Rock Springs paying PECO to build facilities that PECO did not in fact build, but which Rock Springs built and paid for. The interconnection agreement determined only the amounts paid to PECO, but does not determine the appropriate characterization of facilities under the PJM OATT.²¹

21. As their third argument for why section 37 does not apply here, Rock Springs and Old Dominion assert that section 37 is overridden by section 2.2 of the PJM Transmission Owners Agreement (TOA) and section 9.1(a) of the PJM OATT. Both sections reserve to owners of transmission facilities in PJM the right to file unilaterally, under section 205 of the FPA, for an increase in revenue requirement.²² Rock Springs and Old Dominion argue that this reservation of right entitles Rock Springs and Old Dominion, as owners of transmission facilities, to recover the costs of those facilities from transmission service customers notwithstanding section 37.²³

22. As observed in our March 17 Order, a right to make a unilateral filing does not confer a right to recover particular costs. It permits the utility only to submit a filing to recover costs. Whether such costs can be recovered, and from whom, depends upon an

²⁰ See Rock Springs request at 20-21. See also Old Dominion Request for Rehearing at 10.

²¹ In our March 17 Order, we treated the substation and 1,800 feet of line as Network Upgrades rather than Attachment Facilities to ensure that we had considered and rejected all bases for Rock Springs and Old Dominion to avoid cost responsibility for the facilities. Section 37 treats generators more favorably with respect to Network Upgrades as opposed to Attachment Facilities because, in the case of Network Upgrades, a generator's cost responsibility may be reduced to reflect specified system benefits. Even when the substation and 1,800 feet of line are treated as Network Upgrades, Rock Springs and Old Dominion bear sole cost responsibility under section 37 because no requisite system benefit has been alleged.

²² See TOA § 2.2 and PJM OATT § 9.1(a).

²³ See Rock Springs Request at 23-29; Old Dominion Request at 15-19.

analysis of the PJM OATT and the benefits, if any, that such costs provide to other parties. Under section 37 of the PJM OATT, network upgrade costs that are incurred only because of the generation project (*i.e.*, they do not avoid or delay the construction of other facilities) are not recoverable from other customers within PJM. It would be incongruous to permit Old Dominion and Rock Springs to recover costs from other PJM customers simply because Old Dominion and Rock Springs chose to retain ownership of the facilities in order to speed up construction when, had those facilities been constructed and owned by PECO, Old Dominion and Rock Springs would have paid for those facilities. Moreover, at the time these facilities were being planned and constructed, sections 2.2 of the PJM Operating Agreement and section 9.1 of the PJM OATT were not yet in existence, such that Old Dominion and Rock Springs could not have relied on any of these provisions as providing them with an opportunity to file to recover costs.²⁴

23. Rock Springs maintains that it has the right to have its application under section 205 considered under the same standards that the Commission applies to section 205 applications of any other PJM transmission owner.²⁵ But the Commission has applied the same standards to Rock Springs and Old Dominion as to other transmission owners. As explained earlier, the PJM OATT applies to all interconnection requests including those by transmission owners and applies the same provisions to those requests. Rock Springs concedes that since 1997 when PJM became an ISO, no PJM East Transmission Owner has constructed generation and sought to include the transmission facilities associated with such new generation in its rate base.²⁶ It then maintains that “the future outcome of such a filing by another transmission owner is purely speculative.”²⁷ The outcome, however, is not speculative. As discussed earlier, under PJM’s OATT, the same section 37 cost allocation procedure will apply to any generation interconnection request by a transmission owner. Indeed, such an outcome is necessary to avoid undue discrimination between transmission owners and independent generators.

24. In response to our analysis of sections 2.2 and 9.1(a), Rock Springs and Old Dominion turn to section 2.2.1 of the TOA, which states that each transmission owner “shall have the unilateral right to adopt a revenue requirement of zero and to forgo any

²⁴ These tariff provisions were not filed until October 3, 2003 in settlement of the issues addressed in the *Atlantic City* case. *See* Pennsylvania-New Jersey-Maryland Interconnection, 105 FERC ¶ 61,294 (2003). The generating facilities at issue here were placed into service June 1, 2003.

²⁵ Rock Springs Rehearing Request at 30.

²⁶ Rock Springs Rehearing Request at 27.

²⁷ *Id.*

right or claim to compensation for providing transmission service under the PJM Tariff or any other document.” According to Rock Springs and Old Dominion, this language indicates that Rock Springs and Old Dominion are entitled to recover a positive revenue requirement in relation to the substation and 1,800 feet of line.²⁸

25. Section 2.2.1 is no more helpful to Rock Springs and Old Dominion than sections 2.2 and 9.1(a). By its terms, section 2.2.1 enables a transmission owner unilaterally to forgo the exercise of “any” right to compensation. The word “any” indicates that section 2.2.1 is not intended to confer or recognize rights to compensation; section 2.2.1 merely ensures that each owner may decide *unilaterally* to forgo any compensation to which the owner might be entitled, notwithstanding the joint filings contemplated under the PJM agreements. The embedded provision that an owner may unilaterally elect a revenue requirement of zero similarly does not confer or recognize rights to compensation; it merely provides the mechanism by which an entity could be a transmission owner and not share in revenues generated by PJM. Rock Springs’ and Old Dominion’s interpretation – that this provision recognizes Rock Springs’ and Old Dominion’s right to recover connection costs in contradiction of section 37 – reads far more into the text of 2.2.1 than is reasonable and, moreover, erroneously assumes that the owners would have the capacity to negate a section of the PJM OATT. Section 2.2.1 does not, by its terms, confer a right to recover compensation for which a party is not otherwise eligible under section 37 of the PJM OATT.

26. Rock Springs contends the Commission has ignored extrinsic evidence it submitted, an affidavit by Steven Tessem, which, it alleges, shows that the parties always intended to permit Old Dominion and Rock Springs to recover these costs.²⁹ In the first place, extrinsic evidence cannot overcome the provisions of the PJM OATT that do not permit such recovery. Second, as pointed out in the March 17 Order, the documents submitted by Rock Springs and ODEC to the Commission specifically stated that they would “forgo any right or claim to compensation from transmission services under the PJM Tariff or any other document that utilize the Applicants’ Interconnection Facilities” and “waived any rights to revenue earned by PJM with respect to the use of such facilities.”³⁰ The Commission relied on these statements in its order (to which Rock

²⁸ See Rock Springs Request at 23-29; Old Dominion Request at 15-19.

²⁹ See Rock Springs Request for Rehearing at 9, 39 (asserting that the Commission erred in summarily rejecting Rock Springs’ and Old Dominion’s filings).

³⁰ 114 FERC ¶ 61,285, at P 27.

Springs and ODEC did not seek rehearing).³¹ These statements were unequivocal, and in no way indicated to the other parties or to the Commission that the parties had reserved any right to file to recover these costs from other PJM transmission customers.

27. Third, the affidavit by Steven Tessem states only that because Rock Springs was concerned about whether receiving revenue would compromise its status as an exempt wholesale generator, it arranged to sign an agreement that it would not receive revenue. But the affidavit never states that the other parties were ever aware of, or agreed to, Rock Springs' or Old Dominion's right to recover these costs from other transmission customers. While Rock Springs' management may well, in its own collective mind, have intended to reserve such rights, it never formalized any such agreement in writing, nor did it ever obtain agreement from other parties that these costs would be recoverable from other transmission customers.³²

28. Old Dominion also asks the Commission to infer that Rock Springs and Old Dominion are entitled to recover their connection costs based on a past statement by PJM that, by not signing the Transmission Owners Agreement, they would not be eligible to receive revenues under that agreement. Old Dominion then reasons that since it eventually signed the Transmission Owners Agreement, it must be eligible to receive revenue. But such a negative inference is not sufficient to show that the parties had agreed to permit such recovery in contravention of the PJM OATT or the parties' own recognition that they would not be able to recover such revenues. Neither the understanding nor intentions of Rock Springs or Old Dominion are sufficient to show that any agreement was reached with other parties as to the recoverability of these costs or to show that the provisions of the PJM OATT and contemporaneous commitments should be ignored.

29. Rock Springs contends that the Commission should set any material issues of disputed fact for hearing to be considered on the same basis as any other section 205 rate filing regarding recovery of costs for integrated transmission facilities.³³ As discussed

³¹ *CED Rock Springs, Inc. and Rock Springs Generation*, 101 FERC ¶ 61,325 at P3 (2002) (“when Applicants' transmission facilities provide transmission service to PJM's customers, Applicants will receive no transmission revenue”).

³² *See District-Realty Title Ins. Corp. v. Ensmann*, 767 F.2d 1018, 1023 (D.C. Cir. 1985) (even if an agreement is ambiguous, extrinsic evidence of one party's intent fails to establish that the contract as finally written and signed was intended by both parties to have that effect); *Amerada Hess v. FERC*, 117 F.3d 596 (D.C. Cir. 1997) (extrinsic evidence as to one party's subjective intent is not admissible to show parties' mutual intent).

³³ Rock Springs Request at 11, 45.

above, the issue in this case is the interpretation of PJM's tariff provisions, particularly section 37, for which a trial-type hearing is not necessary and would not be provided to any transmission owner in the PJM system. Further, Rock Springs has merely requested a hearing; it has not put forward evidence of material issues of disputed fact that cannot be resolved based on the written record submitted by the parties and requires a trial-type hearing.³⁴

B. Application of section 37

30. Rock Springs and Old Dominion suggest that they are due recovery of costs associated with substation and 1,800 feet of line even if section 37 applies. First, Old Dominion suggests that Rock Springs and Old Dominion are due recovery because the facilities are larger than necessary to accommodate connection of their generation facilities. According to Old Dominion, the size of the connection facilities indicates that the facilities were built, not merely to accommodate connection of the generation facilities, but to provide transmission service on the PJM system. Old Dominion refers to the portion of section 37 that allocates to generators the costs of only the "minimum amount" of Network Upgrades that are necessary to accommodate an interconnection request.³⁵

31. In the first place, issues about whether these facilities would have been necessary "but for" the interconnection of Old Dominion's and Rock Springs's generation and whether such facilities provide benefits to the system sufficient to warrant spreading of the costs should have been raised at the time the interconnection agreements were signed pursuant to the provisions of section 37 of the OATT. The test under section 37 of the PJM OATT is whether the facilities would have been necessary "but for" the connection of the generators and whether the facilities provide any benefits by accelerating, deferring, or eliminating other projects. Old Dominion and Rock Springs have not shown that at the time these projects were built, the requirements of section 37 were met.

32. Moreover, we do not find persuasive the after-the-fact arguments made by Old Dominion and Rock Springs at this stage of the proceeding. As a preliminary matter,

³⁴ See *Cajun Electric Power Co-Op v. FERC*, 28 F.3d 173, 177 (D.C. Cir. 1994) (mere allegations of disputed fact not sufficient mandate a hearing; hearing necessary only when there are material issues of disputed fact that cannot be resolved on the written record); *Union Pacific Fuels, Inc. v. FERC*, 129 F.3d 157, 164 (D.C. Cir. 1997) (trial-type hearing required only when motive, intent, or credibility are at issue); *City of Holyoke v. FERC*, 954 F.2d 740, 744 (D.C. Cir. 1992) (complainant must proffer evidence to support allegations before hearing is required).

³⁵ See Old Dominion Request at 10-11.

we do not doubt that the substation and 1,800 feet of line were sized to “provide transmission service,” *i.e.*, to operate as part of the grid. These facilities were required to replace an existing PECO transmission line solely in order to interconnect the Old Dominion and Rock Springs generators. If the substation and 1,800 feet of line had been unable to “provide transmission service” to the same extent as the lines being replaced, the facilities would have adversely affected the reliability of the transmission system. Further, there is no evidence that these facilities were sized to provide additional system benefits by accelerating, deferring or eliminating transmission projects necessary for PJM to reliably operate its system. The facilities, therefore, were sized as “necessary to accommodate” connection of Rock Springs’ and Old Dominion’s generation facilities and, under section 37, are the responsibility of Rock Springs and Old Dominion.

33. As a second argument for why they are due recovery even if section 37 applies, Rock Springs suggests that section 37 governs only responsibility for upfront payment, without speaking to ultimate cost responsibility.³⁶ We disagree. Section 37 says nothing to distinguish between up-front payment and ultimate cost responsibility. To make such a distinction would undermine the purpose of encouraging generators to undertake low-cost connections.

C. Case precedent

34. According to Old Dominion, Rock Springs’ and Old Dominion’s proposals are supported by the Commission’s decision in *PJM Interconnection LLC*, 94 FERC ¶ 61,295 *reh’g denied*, 95 FERC ¶ 61,217 (2001). Old Dominion suggests that there, the Commission allocated a generator’s connection costs to transmission service customers on the grounds that the connection facilities were used in providing integrated transmission service.³⁷

35. However, that case involved a 42-mile, 500 kV transmission line owned by a transmission owner and there is no indication that this line was constructed to connect a generation facility to the grid or that there was any question whether, under section 37 of the PJM OATT, these costs were recoverable. The issue was simply whether the costs of the 42-mile line should be allocated to PJM’s PPL Group Zone or to PJM’s GPU Group Zone. The Commission allocated the costs to the PPL Group Zone, even though the

³⁶ See Rock Springs Request at 22.

³⁷ See Old Dominion Request at 21-22.

owner's load was located primarily in the GPU Group Zone, because the line was integral in providing service within the PPL Group Zone.³⁸ That decision is not supportive of the applicants' arguments on rehearing.

D. Section 205

36. Rock Springs and Old Dominion claim a statutory right to recover the costs of the substation and 1,800 feet of line from transmission service customers. First, they suggest that section 205 entitles a transmission owner to compensation for use of the owner's facilities and that section 37 of the PJM OATT cannot override that statutory right.³⁹ In effect, they challenge the validity of the Commission's "but for" policy as applied to facilities that are electrically integrated with and therefore used in providing transmission service over the grid.

37. Under section 205, transmission owners can file to recover prudently incurred costs that are used and useful. But, under the Commission's traditional cost-causation principle, rates reflect to some degree the costs actually caused by the customer who must pay them.⁴⁰ Section 37 of the OATT applies a cost-causation test to determine whether the facilities built by an interconnecting generator provide benefits to other customers. Applying cost-causation principles here, the beneficiaries of the upgrades built by Old Dominion and Rock Springs are Old Dominion and Rock Springs, and not the other customers of PJM. Therefore, the costs are properly allocated.

38. Moreover, nothing in the Federal Power Act requires that we allocate connection costs to transmission service customers. If PECO had paid for the substation and 1,800 feet of line, we would have allocated those costs to Rock Springs' and Old Dominion rather than to the rest of PJM transmission service customers based on section 37. To change that result based on the fact that Rock Springs and Old Dominion own the facilities would be arbitrary and contrary to the interests of the captive customers that the Act is primarily designed to protect.

39. As their second statutory claim, Rock Springs and Old Dominion suggest that it is unduly discriminatory under section 205 to disallow Rock Springs and Old Dominion's cost recovery, because other transmission owners are recovering the costs of similar

³⁸ 95 FERC at 61,720-722.

³⁹ See, e.g., Rock Springs Request at 26-27, 29.

⁴⁰ See *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992); *Alabama Electric Cooperative, Inc. v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982).

facilities.⁴¹ Aside from *PJM Interconnection LLC*, 94 FERC ¶ 61,295 (2001), discussed previously, Rock Springs and Old Dominion offer no citations to show that there are any similarly situated projects that have been treated differently.

The Commission orders:

Rock Springs' and Old Dominion's requests for rehearing are hereby denied.

By the order of the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁴¹ See Old Dominion Request at 25; Rock Springs Request at 36, 43-44.