

151 FERC ¶ 61,091
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Buckeye Power, Inc. v. American Transmission
Systems, Incorporated

Docket No. EL11-54-003

PJM Interconnection, L.L.C. and American
Transmission Systems, Incorporated

Docket No. ER15-61-001

(not consolidated)

ORDER DENYING REHEARING AND REJECTING AS MOOT REQUEST FOR
CLARIFICATION OR IN THE ALTERNATIVE REQUEST FOR REHEARING

(Issued May 1, 2015)

1. On September 8, 2014, in Opinion No. 533, the Commission issued an order on initial decision on a complaint filed by Buckeye Power, Inc. (Buckeye) finding that American Transmission Systems, Incorporated's (ATSI) existing voltage-differentiated rates for transmission service in the ATSI Zone of PJM Interconnection, L.L.C. (PJM) had become unjust, unreasonable, unduly discriminatory, or preferential.¹ The Commission affirmed the initial decision's finding that the existing ATSI voltage-differentiated rate design should be replaced with a single zonal rate design that reflects the costs of all the zonal transmission facilities, regardless of voltage. American Municipal Power, Inc. (AMP) and Cleveland Public Power (CPP and together, AMP/CPP) request rehearing of Opinion No. 533.

2. On October 8, 2014, PJM, on behalf of ATSI submitted a compliance filing with revisions to eliminate provisions of the formula rate to eliminate the voltage-differentiated rate design (October 8, 2014 Compliance Filing). The proposed revisions

¹ *Buckeye Power, Inc. v. American Transmission Sys., Inc.*, Opinion No. 533, 148 FERC ¶ 61,174 (2014) (Opinion No. 533).

were accepted for filing.² AMP requests clarification, or in the alternative, rehearing of the December 17, 2014 Letter Order.

3. In this order, we deny AMP/PPP's request for rehearing of Opinion No. 533. In addition, we reject as moot AMP's request for clarification or, in the alternative, request for rehearing, of the December 17, 2014 Delegated Letter Order.

I. Background

4. ATSI is a wholly-owned subsidiary of FirstEnergy Corp (FirstEnergy) that owns, operates, and maintains 7,300 circuit-miles of transmission facilities that operate at 345 kV, 138 kV and 69 kV in Ohio and western Pennsylvania. ATSI provided transmission service through voltage-differentiated rates; that is, ATSI charges two different rolled-in rates:³ one rate to recover costs associated with transmission facilities that operate at 138 kV and higher (Bulk Transmission System) which is assessed to all transmission customers, and a second rate to recover costs associated with transmission facilities that operate at 69 kV (Area Transmission System) which is assessed only to transmission customers with loads connected to such facilities.⁴

5. Buckeye is a generation and transmission cooperative that produces, procures, and provides the electric capacity and energy required by its 25 member electric distribution cooperatives operating in Ohio. Buckeye and all of its member distribution cooperatives are transmission-dependent electric utilities. Buckeye is a network integration transmission service customer in the ATSI Zone of PJM, and purchases transmission service from PJM to deliver electricity to its members at delivery points operating at voltages of 138 kV or lower.

6. AMP and PPP are transmission service customers of ATSI.

² See *American Transmission Systems, Inc.*, Docket No. ER15-61-000, unpublished letter order (Dec. 17, 2014) (December 17, 2014 Delegated Letter Order).

³ ATSI's existing voltage-differentiated rates were approved as part of an uncontested settlement. *Midwest Independent Transmission System Operator, Inc. and FirstEnergy Service Company*, 111 FERC ¶ 61,301 (2005).

⁴ References throughout this order to Bulk Transmission System are to ATSI transmission facilities that operate at 138 kV and above, and references to Area Transmission System are to ATSI transmission facilities that operate at 69 kV.

II. Complaint

7. On July 18, 2011, Buckeye filed the complaint, pursuant to sections 206 and 306 of the Federal Power Act (FPA),⁵ alleging that the ATSI voltage-differentiated rates for transmission service in the ATSI Zone of PJM are unjust, unreasonable, unduly discriminatory, or preferential, and should be replaced with a single rolled-in rate reflecting the cost of all ATSI transmission facilities, regardless of voltage. Buckeye contended that there is no factual basis for a voltage-differentiated rate design because the 69 kV facilities are integrated with the 138 kV and above facilities according to the long-recognized attributes of integration.

8. The Commission established hearing and settlement judge procedures,⁶ and on January 11, 2013, the Administrative Law Judge (ALJ) issued the Initial Decision.⁷

III. Initial Decision

9. The ALJ found that ATSI's voltage-differentiated transmission rate design was unjust and unreasonable, and unduly discriminatory and preferential. The Initial Decision recognized the Commission's policy favors a roll-in of rates on integrated transmission systems, absent special circumstances.⁸ The ALJ found that ATSI's 69 kV transmission facilities are integrated with transmission facilities that operate at 138 kV and above, and that there are no special circumstances that justify a voltage-differentiated rate design.⁹ The ALJ also found that there are no factual or functional distinctions between ATSI's 69 kV and higher-voltage facilities that justify the voltage-differentiated rate design.¹⁰

⁵ 16 U.S.C. §§ 824e(a) and 825e (2012).

⁶ *Buckeye Power, Inc. v. American Transmission Sys., Inc.*, 137 FERC ¶ 61,059 (2011).

⁷ *Buckeye Power, Inc. v. American Transmission Sys., Inc.*, 142 FERC ¶ 63,007 (2013) (Initial Decision).

⁸ *Id.* P 353.

⁹ *Id.* PP 480-486.

¹⁰ *Id.* PP 487-490.

10. The ALJ further found that the ATSI voltage-differentiated rate design should be replaced with a single zonal rate design that reflects the costs of all the zonal transmission facilities, regardless of voltage. In making this finding, the ALJ found that a rolled-in rate design is consistent with Commission policy, precedent, and cost allocation requirements.

IV. Opinion No. 533

11. In Opinion No. 533, the Commission affirmed the finding of the Initial Decision that ATSI's voltage-differentiated transmission rate design is unjust and unreasonable, and unduly discriminatory and preferential. In making this finding, the Commission explained that ATSI's 69 kV transmission facilities are integrated with transmission facilities that operate at 138 kV and above, and that no special circumstances warrant an exception from the Commission's long-standing policy to roll in the costs of integrated transmission facilities. Specifically, the Commission found that the 69 kV transmission facilities were not constructed to serve specific customers, but rather operate in a parallel network with the 138 kV transmission facilities, support the reliability of higher-voltage facilities, and are used to serve all customers and transmit power on a system-wide basis.

12. In support of its findings, the Commission relied on the number of 69 kV transmission network interconnections, the number of 69 kV transmission facilities that parallel the 138 kV facilities, and the number of interconnections with neighboring control areas at voltages of 69 kV or higher. In addition, the Commission relied on Transmission Participation Factor data that showed that power flows to the 138 kV loads through the 69 kV transmission system during normal system conditions as well as the reliability of the 69 kV transmission system during emergency operations. Having found ATSI's voltage-differentiated rate design unjust and unreasonable and unduly discriminatory or preferential, the Commission found that it should be replaced with a single zonal rate design that reflects the costs of all transmission facilities, regardless of voltage.

13. The Commission addressed the contention that the Initial Decision did not give adequate consideration to cases supporting a voltage-differentiated rate design. In particular, the Commission noted that ATSI and AMP/PPP rely on *Southwest Power Pool*,¹¹ *California Indep. Sys. Operator Corp.*,¹² *PJM Interconnection*,¹³ and *Alabama*

¹¹ *Southwest Power Pool, Inc.*, 131 FERC ¶ 61,252 (2010), *order on reh'g*, 137 FERC ¶ 61,075 (2011) (*Southwest Power Pool*).

¹² *California Indep. Sys. Operator Corp.*, 106 FERC ¶ 63,026, *aff'd in part, rev'd in part*, Opinion No. 478, 109 FERC ¶ 61,301 (2004), *order on clarification and reh'g denied*, 111 FERC ¶ 61,337 (2005) (*Cal. Indep. Sys. Operator Corp.*).

*Power L.L.C., Co.*¹⁴ in support of their position that Commission precedent supports a voltage-differentiated rate design. The Commission noted that, while there may be facts that support a voltage-differentiated rate design, these cases can be factually distinguished from the instant proceeding.

14. For example, in its brief on exception, AMP/ CPP contended that, in *Alabama Power*, the Commission had approved a high voltage discount, rejecting the view that voltage level differentials are inconsistent with a full rolling in of transmission plant costs. In Opinion No. 533, the Commission noted that, in *Alabama Power*, the Commission had rejected a voltage-differentiated rate design, but that where one customer takes energy at 115 kV, perhaps purchasing its own 115/44 kV substation to enable it to do so, there is properly a high cost voltage discount. The Commission stated that the evidence in this proceeding does not show that specific customers paid for their own equipment.

V. Request for Rehearing of Opinion No. 533

15. AMP/ CPP request rehearing contending that, under *Alabama Power*, voltage differentiated rates are justified when customers pay for interconnections to higher voltage facilities. Specifically, AMP/ CPP contend that the Commission erred in finding that the evidence does not show that specific customers paid for their own equipment or provided any other justification justifying a high voltage discount and that the unchallenged record evidence demonstrates that specific ATSI transmission customers have paid for the equipment that enables them to receive service at 138 kV.¹⁵ In support of their contention, AMP/ CPP point to the testimony of AMP/ CPP witness Paul D.

¹³ *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,230 (2012), *order on reh'g* 142 FERC ¶ 61,216 (2013) (*PJM Interconnection*). ATSI also cites *PJM Interconnection, L.L.C. and Pub. Serv. Elec. and Gas Co.* 142 FERC ¶ 61,074 (2013).

¹⁴ *Alabama Power Co.*, Opinion No. 54, 8 FERC ¶ 61,083, *reh'g denied*, 8 FERC ¶ 61,320 (1979) (*Alabama Power*), *vacated and remanded sub nom. Alabama Electric Cooperative, Inc., et al. v. Federal Energy Regulatory Commission*, 684 F.2d 20 (D.C. Cir. 1982). In further proceedings to determine whether separate rate classes were needed to avoid undue discrimination, the Commission found that the specific rate of return disparity between the customer classes does not constitute undue discrimination. *Alabama Power Company*, 35 FERC ¶ 63,049 (1986), *aff'd*, Opinion No. 316, 44 FERC ¶ 61,389 (1988).

¹⁵ AMP/ CPP Rehearing Request at 5. See Ex. AC-1 (Answering Testimony of Paul D. Reising), Ex. AC-19.

Reising,¹⁶ noting that four municipal electric systems migrated their delivery systems to 138 kV. In addition, AMP/CPP refer to Ex. AC-19 to support that each of the four municipal electric systems incurred costs to establish the 138 kV delivery points. AMP/CPP contend that rejection of arguments that were supported by the omitted facts was arbitrary, capricious and an abuse of discretion.

16. AMP/CPP further state that *Alabama Power* reflects the principle that customers who have paid for the facilities that enable them to receive transmission service at high voltage should not be forced to pay 100 percent of a fully allocated rolled-in transmission rate.¹⁷ Specifically, AMP/CPP refer to the Commission's statement in *Alabama Power* that "where one customer takes energy at 115 kV, perhaps purchasing its own 115/44 kV substation to enable it to do so, there is properly a high cost voltage discount, ..." ¹⁸ AMP/CPP contend that the Commission erred in finding that the principles established in *Alabama Power*, supporting a reduction from the full rolled-in rate for customers who invest in facilities that enable them to receive high-voltage service, do not apply in this case. AMP/CPP argue that that finding is expressly premised on an erroneous reading of the record evidence.

17. In the alternative, should the Commission not grant rehearing that will allow the voltage-differentiated rate design to remain in effect, AMP/CPP request that the Commission remand the case for hearing procedures with instructions to craft an appropriate voltage-based discount or other appropriate rate design that takes into account the investments by ATSI's customers served at 138 kV.¹⁹

18. Buckeye filed an answer to the request for rehearing of Opinion No. 533.

VI. Request for Clarification or in the Alternative Request for Rehearing of December 17, 2014 Letter Order

19. AMP requests clarification that acceptance of the October 8, 2014 Compliance Filing is subject to the outcome of the AMP/CPP request for rehearing of Opinion No. 533. In the alternative, AMP requests rehearing of the December 17, 2014 Letter Order.

¹⁶ Ex. AC-1 at 59-60.

¹⁷ AMP/CPP Rehearing Request at 6-7.

¹⁸ *Id.* at 3-4, fn.3. *See Alabama Power*, 8 FERC ¶ 61,083 at 61,329.

¹⁹ AMP/CPP Rehearing Request at 7-8.

VII. Commission Determination

A. Procedural Matters

20. On October 23, 2014, Buckeye submitted an answer to the rehearing requests. Rule 713(d) of the Commission's Rules of Practice and Procedure prohibits answers to requests for rehearing.²⁰ Accordingly, Buckeye's answer is rejected.

B. Rehearing Request of Opinion No. 533

21. We deny the request for rehearing of Opinion No. 533. On rehearing, AMP/PPP maintain that customers who have paid for the facilities that enable them to receive transmission service at high voltage should not be forced to pay 100 percent of a fully allocated rolled-in transmission rate. AMP/PPP contend that the principle holds whether the reduction from the full amount of the rolled-in rate comes in the form of a voltage discount (as in *Alabama Power*) or a two-tier voltage-differentiated rate design (as in this proceeding).

22. As an initial matter, we continue to find that the Initial Decision correctly found that the record does not support a voltage-differentiated rate design for all customers. We do not consider the facts in this proceeding as warranting a voltage-differentiated rate. Instead, the facts support a fully allocated rolled-in rate design of the ATSI integrated transmission system. Specifically, the Commission found, ATSI's 69 kV transmission facilities are integrated with transmission facilities that operate at 138 kV and above, and noted that focusing solely on the type of facility to which a customer is connected does not indicate whether that customer benefits from other facilities.

23. We do not find that *Alabama Power* compels a different result. In *Alabama Power*, the Commission opined that when one customer is purchasing its own substations, that customer may be entitled to a discount.²¹ But *Alabama Power* does not support a voltage-differentiated rate design as AMP/PPP contend. We acknowledge that Opinion No. 533 incorrectly stated that the evidence did not show that specific customers had paid for their own equipment, as the record indicates that four customers did pay approximately \$13 million for facilities to connect to high voltage lines. However, we cannot find that a voltage-differentiated rate for all customers is justified by investment in

²⁰ 18 C.F.R. § 385.713(d) (2014).

²¹ The Initial Decision, noting an inherent internal inconsistency and ambiguity, accorded *Alabama Power* little weight. Initial Decision, 142 FERC ¶ 63,007 at P 589 (noting that the Commission's decision in *Alabama Power* to require rolled-in rates, but to permit a voltage differentiated discount is incongruous).

facilities when the record shows that only four customers paid for facilities to connect to high voltage lines, relative to the transmission system rate base.²²

24. In the alternative, AMP/ CPP contend the Commission must reopen the record to permit litigation on whether a voltage discount is justified for those four customers. We reject AMP/ CPP's alternative for the following reasons. First, AMP/ CPP make this alternative request for the first time on rehearing.²³ They cite no extraordinary circumstances justifying their failure to litigate this issue at the hearing and the Commission finds no basis to reopen the record to permit such litigation now.²⁴ Second, AMP/ CPP cite to no case other than *Alabama Power* supporting the use of voltage discounts for individual customers. That case, noting that a high voltage discount for a specific customer that purchases its own substations might be appropriate, does not provide persuasive precedent here.²⁵ *Alabama Power* recognized that each case depends on its facts.²⁶ Even if we were to permit voltage discounts in some cases for customers that invested in equipment to connect to higher voltage lines, we do not think the facts in this case warrant a discount. A voltage discount for customers that purchased their own

²² See Initial Decision, 142 FERC ¶ 63,007 at P 658 (citing *Alabama Electric Cooperative, Inc. v. FERC*, 684 F.2d 20, at 28 (1982) (“It would no doubt be impossible - even if desirable - to formulate a rate scheme with such precision that each customer, or even customer group, is made to bear the exact cost of service he receives”).

²³ AMP/ CPP do not contend that they raised this alternative theory during the established hearing procedures.

²⁴ The Commission has discretion as to when to reopen a record and does so only when the interest in finality of proceedings is overcome by “extraordinary circumstances” that amount to a change in core circumstance that goes to the very heart of the case. *Northwest Pipeline Corp.*, Opinion No. 396-A, 76 FERC ¶ 61,068, at 61,420 (1996) (denying a request to reopen the record, finding that the parties knew about the issue at the hearing, which was the appropriate time to consider the issue), *reh'g denied*, 78 FERC ¶ 61,289, at 62,263 (1997). In addition, the Commission looks with disfavor on parties raising issues for the first time on rehearing, in part, because other parties are not permitted to respond to a request for rehearing. See *San Diego Gas & Elec. Co.*, 130 FERC ¶ 61,183 (2010).

²⁵ *Louisiana Public Service Commission v. FERC*, 772 F.3d 1297, at 1304 (D.C. Cir. 2014).

²⁶ *Alabama Power*, 8 FERC ¶ 61,083 at 61,329. See *Southern Company Services, Inc.*, 63 FERC ¶ 61,217, at 62,597 (1993).

equipment would not be consistent with the Tariff provisions requiring customers to pay for substations and transformers that enable them to interconnect with the system.²⁷

25. Moreover, we do not find that voltage discounts are warranted for customers that may have chosen to invest in facilities to take advantage of a voltage-differentiated rate design, because the facts in this case do not show that customers had a reasonable expectation that a voltage-differentiated rate design would continue or that their investment decisions were motivated in substantial part by a desire to obtain these discounts. FirstEnergy proposed to implement a voltage-differentiated rate only for point-to-point service customers in 1996.²⁸ In that filing, FirstEnergy explained that it did not propose voltage-differentiated rate for network service owned by municipal electric systems and rural electric cooperatives because they require use of the entire transmission system.²⁹ However, a 1998 settlement then extended the point-to-point voltage-differentiation to network integration service.³⁰ In 2004, FirstEnergy sought to eliminate the voltage-differentiated rate design.³¹

26. Another settlement agreement in 2005 continued the voltage-differentiated rate design.³² Neither settlement restricted any party's ability to propose or seek to eliminate the voltage-differentiated rate design. AMP/PPP were participants in both settlement proceedings. As a result, customers did not have a reasonable expectation in making investment decisions that the voltage-differentiated rate design would necessarily continue unchanged. Moreover, AMP/PPP did not produce evidence during the hearing that the investments in question were based on an assumption that the voltage-differentiated rate design would be continued.³³ As pointed out earlier, AMP/PPP witness Paul D. Reising further conceded that such investment decisions tend to be driven

²⁷ See PJM, Intra-PJM Tariffs, OATT, 217.2 Direct Assignment Facilities (0.0.0). <http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=1731&sid=66958>.

²⁸ In 1999, FirstEnergy transferred transmission facilities to its affiliate ATSI. See *FirstEnergy Operating Companies*, 89 FERC ¶ 61,090 (1999).

²⁹ *Id.* at 12.

³⁰ *FirstEnergy Operating Companies*, 90 FERC ¶ 61,111 (2000).

³¹ ATSI (FirstEnergy) opposed the Complaint in the current proceeding.

³² *Midwest Indep. Trans. Sys. Operator, Inc. and FirstEnergy Service Co.*, 111 FERC ¶ 61,301 (2005).

³³ See Ex. AC-1 at 54-55, 58.

by a combination of factors.³⁴ Based on the record, we therefore conclude that providing a special exception to permit a voltage-based discount for those customers who connected to the high voltage system is not warranted.

C. Request for Clarification or in the Alternative Request for Rehearing of December 17, 2014 Letter Order

27. In light of our findings denying AMP/PPP's request rehearing of Opinion No. 533 as discussed above, we find that AMP's request for clarification or, in the alternative, request for rehearing of the December 17, 2014 Letter Order is rendered moot.

The Commission orders:

(A) AMP/PPP's request for rehearing is hereby denied, as discussed in the body of this order.

(B) AMP's request for clarification or, in the alternative, request for rehearing is hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³⁴ *Id.* at 53-54.