

155 FERC ¶ 61,318  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

The Connecticut Light and Power Company

Docket No. EL16-45-000

ORDER DENYING PETITION FOR DECLARATORY ORDER

(Issued June 28, 2016)

1. On March 15, 2016, The Connecticut Light and Power Company (Connecticut Light & Power) filed a petition for declaratory order, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure,<sup>1</sup> requesting a determination to remove uncertainty as to which of two agreements between it and Dominion Nuclear Connecticut, Inc. (Dominion) controls Dominion's claims arising out of a May 25, 2014 outage of Connecticut Light & Power's transmission lines and the loss of interconnection service and transmission delivery services to Dominion's Millstone Station (Millstone). For the reasons discussed below, we decline to assert primary jurisdiction over this matter and therefore deny the petition.

**I. Background**

2. Dominion owns and operates Millstone, a nuclear generating facility, located in Waterford, Connecticut. Millstone's point of interconnection to the bulk power transmission system is in the switchyard bus at the Millstone substation, which in turn is connected to the following four 345 kV transmission lines, which are owned, operated, and maintained by Connecticut Light & Power: the Millstone to Montville 371 Line (371 Line), the Millstone to Card 345 kV 383 Line (383 Line), the Millstone to Manchester 345 kV 310 Line (310 Line), and the Millstone to Haddam/Beseck 348 Line (348 Line).<sup>2</sup>

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<sup>1</sup> 18 C.F.R. § 385.207(a)(2) (2015).

<sup>2</sup> Connecticut Light & Power Petition at 10-11.

3. Since Dominion's acquisition of Millstone in 2001, Dominion has been paying Connecticut Light & Power to own, operate, and maintain what are known as the Associated Transmission Facilities under the Transmission Support Agreement, which is on file with the Commission. Under the Transmission Support Agreement, the Associated Transmission Facilities expressly include the 310 Line, a bus extension and breakers connected to the 310 Line at the Millstone substation, and an installation of a 345 kV line position at the Manchester substation.<sup>3</sup> While the parties disagree about whether the three other lines and their related facilities are part of the Associated Transmission Facilities, both parties appear to agree with the North American Electric Reliability Corporation analysis of the May 25, 2014 outage event, which concluded that the improper configuration of the "ground to circuit relay" within the Manchester substation was one of the contributing factors of the outage.<sup>4</sup>

4. The Transmission Support Agreement contains a provision calling for mandatory arbitration of disputes before the American Arbitration Association (AAA), and, on February 25, 2016, Dominion initiated arbitration before the AAA under that provision, claiming that Connecticut Light & Power had breached the operation and maintenance requirements of the Transmission Support Agreement, and therefore must pay Dominion direct damages and lost profits due to the breach. According to Connecticut Light & Power, Dominion claims that it has sustained financial damages in the form of costs related to equipment delays, costs to buy back power pre-sold to the transmission grid, and station power costs, which Dominion estimates at \$14,224,602.<sup>5</sup>

5. On March 4, 2016, Connecticut Light & Power notified Dominion and AAA that it declined to participate in the AAA arbitration, asserting that a Standard Large Generator Interconnection Agreement (LGIA) among Connecticut Light & Power,

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<sup>3</sup> *Id.* at 11.

<sup>4</sup> In brief, on May 25, the 371 Line was out of service for scheduled maintenance to replace the line relays at the time of the event. At 7:01 am, the 383 Line experienced an electrical fault and subsequently tripped due to the failure of the Card Substation line disconnect switch. The fault also caused the 310 Line to trip due to the inadvertent operation of a ground over current relay at Manchester substation. The last remaining 345 kV line, the 348 Line, tripped as a result of unstable power swings. The outage of the four lines resulted in the disconnection of Millstone substation from the New England bulk power system. According to Connecticut Light & Power, the 348 Line was reenergized within seconds, but the breakers at the Manchester substation could not be reclosed until the operators analyzed the relays and inspected the switchyards. Power was restored to Millstone by 10:20 am. *Id.* at 12.

<sup>5</sup> *Id.* at 14.

Dominion, and ISO New England Inc. (ISO-NE), and not the Transmission Support Agreement, governs any Dominion claims regarding the loss of transmission services and interconnection service arising out of Connecticut Light & Power's operation and maintenance of the transmission facilities providing those services to Millstone. Notably, the LGIA precludes recovery of consequential damages and would bar recovery of most or all of the claimed \$14.2 million. The Transmission Support Agreement, on the other hand, does not have a limitation of liability provision barring recovery of consequential damages. Dominion agreed to a temporary deferral of arbitration proceedings to allow time for Connecticut Light & Power to seek a Commission determination of which contract governs the dispute.<sup>6</sup>

## II. Connecticut Light & Power's Petition

6. Connecticut Light & Power requests a declaratory order holding that: (1) the LGIA governs any Dominion claims and any potential liabilities relating to the operation and maintenance of the Connecticut Light & Power transmission facilities used to provide transmission delivery services for Millstone and used to provide interconnection service from Millstone to the bulk power system; and (2) the LGIA supersedes any provisions of the Transmission Support Agreement relating to the operation and maintenance of the Associated Transmission Facilities, because the operation and maintenance of these facilities, which provide transmission and interconnection service for Millstone, are subject to and covered by the LGIA.<sup>7</sup>

7. Connecticut Light & Power states that its core obligation under the LGIA is to provide interconnection services for Dominion from the point of interconnection. Connecticut Light & Power explains that the Transmission Owner's obligations to operate and maintain the transmission facilities serving Millstone would typically arise under the ISO-NE Open Access Transmission Tariff (OATT), but that Millstone is a special case because the Nuclear Regulatory Commission (NRC) imposes certain requirements on nuclear plant operators that encompass transmission facilities. Connecticut Light & Power argues that, because Dominion must comply with specific requirements under the NRC Maintenance Rule in order to operate safely, Connecticut Light & Power and Dominion negotiated terms contained in Appendix C-1 of the LGIA, which were largely adopted from an earlier 2001 Interconnection Agreement that the Commission had approved (and which the parties later cancelled).<sup>8</sup>

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<sup>6</sup> Dominion Protest at 2.

<sup>7</sup> Connecticut Light & Power Petition at 3.

<sup>8</sup> *Id.* at 17.

8. Connecticut Light & Power argues that Appendix C-1 mandates a full range of specific operation and maintenance activities with respect to the transmission facilities serving Millstone. Connecticut Light & Power asserts that these obligations “go far beyond the limited general obligations” of Connecticut Light & Power under the Transmission Support Agreement. Connecticut Light & Power argues that the Transmission Support Agreement contains only one sentence regarding Connecticut Light & Power’s obligation to maintain the 310 Line, which requires only that the Associated Transmission Facilities be operated and maintained “in accordance with good utility operating practice and conformity with any applicable rules and operating procedures . . . .”<sup>9</sup>

9. Connecticut Light & Power argues that the LGIA supersedes all conflicting terms under the Transmission Support Agreement. It contends that because the LGIA governs Connecticut Light & Power’s operations with respect to the 310 Line and the three lines allegedly not part of the Associated Transmission Facilities, the operation of those lines are within the subject matter of the LGIA. It further argues that because the LGIA governs Connecticut Light & Power’s operation and maintenance of the Associated Transmission Facilities under the terms of Appendix C-1, the LGIA, specifically the operating and maintenance standards in the LGIA, the limitations of liability precluding consequential damages, and the LGIA dispute resolution provisions, including voluntary arbitration, must govern Dominion’s claims and supersede inconsistent terms under the Transmission Support Agreement.<sup>10</sup>

10. Connecticut Light & Power argues that this matter satisfies the three-factor test for the Commission to exercise primary jurisdiction over this matter.<sup>11</sup> First, Connecticut Light & Power contends that the Commission has special expertise to interpret the ISO-NE OATT, the LGIA, and the Transmission Support Agreement, all of which involve, according to Connecticut Light & Power, complex technical and regulatory issues within the Commission’s expertise. Second, Connecticut Light & Power argues that there is need for uniformity in the interpretation of whether the LGIA supersedes inconsistent terms of pre-existing agreements that are within the subject matter of the LGIA. It contends that there may be other agreements with terms overlapping the same subject matter as the Standard LGIA. Third, it argues that asserting jurisdiction in this

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<sup>9</sup> *Id.* at 19.

<sup>10</sup> *Id.* at 20.

<sup>11</sup> These three factors are commonly referred to as the *Arkla* criteria. *Id.* at 21 (citing *Southwest Power Pool, Inc.*, 150 FERC ¶ 61,091, at P 9 (2015)); *see also* *Arkansas Louisiana Gas Co. v. Hall*, 7 FERC ¶ 61,175, at 61,322, *reh’g denied*, 8 FERC ¶ 61,031 (1979) (*Arkla*)).

matter is within the Commission's regulatory responsibilities, because the core issue here relates to the Standard LGIA, which the Commission designed to standardize terms and conditions of interconnection service.<sup>12</sup>

### **III. Notice of Filings and Responsive Pleadings**

11. Notice of Connecticut Light & Power's petition was published in the *Federal Register*, 81 Fed. Reg. 13,360 (2016), with interventions, answers, and protests due on or before April 7, 2016. ISO-NE and Dominion filed timely motions to intervene. Dominion filed a protest on April 7, 2016. On April 21, 2016, Connecticut Light & Power filed an answer to Dominion's protest. On May 2, 2016, Dominion filed an answer to Connecticut Light & Power's answer. On May 4, 2016, Connecticut Light & Power filed a response to Dominion's answer.

### **IV. Dominion's Protest**

12. Dominion argues that the Commission should deny or dismiss the petition. It contends that the Transmission Support Agreement is a filed rate that has never been amended or canceled and is the controlling contract for the parties' dispute over liability and arbitration rights for the May 25, 2014 outage. Dominion asserts that any changes or supersessions to the Transmission Support Agreement must be express, explained, and justified as just and reasonable, and, for transparency, redlined in a filing submitted to the Commission. Dominion argues that this rule is not merely a matter of administrative detail, but rather it is designed to preclude precisely the kind of "revisionism" that Connecticut Light & Power is now advocating.<sup>13</sup>

13. Dominion contends that because its payment obligations continue unabated under the Transmission Support Agreement, it is illogical for Connecticut Light & Power to argue that Dominion's claims should be brought under the LGIA. It explains that Connecticut Light & Power's position implies that the financial terms and conditions for operation and maintenance were silently divorced from each other, namely, that Dominion's payment obligation continues under the Transmission Support Agreement, but that the remedial right in event of a breach of contract is now found in a different agreement.<sup>14</sup>

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<sup>12</sup> Connecticut Light & Power Petition at 23.

<sup>13</sup> Dominion Protest at 31.

<sup>14</sup> *Id.* at 26.

14. Dominion argues that Connecticut Light & Power's claim that the LGIA pertains to transmission delivery service is contrary to the plain language of the LGIA, given that the LGIA's Article IV, Section 4.4, which is entitled "No Transmission Delivery Service," unambiguously states that execution of the LGIA "does not constitute a request for, nor the provision of, any service except for Interconnection service, including, but not limited to, transmission delivery service."<sup>15</sup> In addition, Dominion contends that Connecticut Light & Power's reliance on Appendix C-1 is misplaced because practices in unfiled documents do not rise to the level of superseding Connecticut Light & Power's obligations under the filed Transmission Support Agreement.<sup>16</sup>

15. Dominion also notes that the LGIA does not preclude Dominion from seeking damages under the Transmission Support Agreement, contending that the LGIA includes an exception to its limitation on consequential damages for damages for which a party may be liable to the other Party under another agreement.<sup>17</sup>

## V. Discussion

### A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the parties that filed them parties to this proceeding.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest or an answer unless otherwise ordered by decisional authority. We are not persuaded to accept Connecticut Light & Power's and Dominion's answers and will, therefore, reject them.

### B. Commission Determination

18. We decline to exercise primary jurisdiction over this contractual dispute and therefore deny Connecticut Light & Power's petition. In determining whether the contractual dispute between Connecticut Light & Power and Dominion is one that appropriately is resolved by the Commission or in another venue, the Commission is

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<sup>15</sup> *Id.* at 32 (quoting LGIA § 4.4, "No Transmission Delivery Service," at Original Sheet No. 17).

<sup>16</sup> *Id.* at 34.

<sup>17</sup> *Id.* at 43 (citing LGIA Article 18, "Indemnity, Consequential Damages and Insurance," at § 18.2).

guided by the *Arkla* criteria:<sup>18</sup> (1) whether the Commission possesses some special expertise which makes the case peculiarly appropriate for Commission decision; (2) whether there is a need for uniformity of interpretation of the type of question raised in the dispute; and (3) whether the case is important in relation to regulatory responsibilities of the Commission.<sup>19</sup>

19. First, although the Commission may have greater expertise than a court in interpreting technical aspects of the LGIA, the question here is which of two agreements controls, an issue that appears to turn on classic rules of contract interpretation, rather than any determination requiring the Commission's special expertise.

20. Second, whether the Transmission Support Agreement or the LGIA controls is a concern specific to Dominion and Connecticut Light & Power's dispute over financial responsibility for the May 25th outage, an issue that does not necessarily require uniform interpretation. Connecticut Light & Power states that the Transmission Support Agreement dates from the mid-1970s, that Dominion assumed the agreement in 2001, and that it pre-dates RTOs and the current wholesale markets structure. The Commission's determination as to whether the Transmission Support Agreement is superseded by the LGIA would likely have little impact beyond the parties involved in the instant proceeding.<sup>20</sup>

21. Third, Commission resolution of this issue is not necessary for the Commission to fulfill its regulatory responsibilities. The parties do not request that the Commission find that any term of the agreements is unjust and unreasonable, but only that the Commission determine whether the LGIA or the Transmission Support Agreement controls for purposes of the pending arbitration.

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<sup>18</sup> *Arkla*, 7 FERC ¶ 61,175 at 61,322.

<sup>19</sup> *Id.*

<sup>20</sup> *See, e.g., PPL Elec. Utilities Corp.*, 92 FERC ¶ 61,057, at 61,147 (2000) (“[T]here does not appear to be a need for uniformity of interpretation of the type of questions raised in the dispute, since an interpretation of this contract by the [court], even if different from other courts' interpretations of similar contracts, will not impinge significantly on the operations of public utilities across the nation; and we are not, in fact, at this point aware of any contract disputes raising similar issues within [the RTO] or in other ISOs.”); *BG Energy Merchants, LLC, v. Crosstex LIG, LLC*, 136 FERC ¶ 61,098, at P 37 (2011) (finding no need for uniformity of interpretation when there is nothing to indicate that the interpretation of certain service agreements will affect anyone other than the parties to the agreements).

22. Based upon the foregoing, we decline to assert primary jurisdiction over this matter and, accordingly, we deny Connecticut Light & Power's petition.

The Commission orders:

Connecticut Light & Power's petition for a declaratory order is hereby denied as discussed in the body of this order.

By the Commission. Commissioner LaFleur is dissenting with a separate statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Connecticut Light & Power Company

Docket No. EL16-45-000

(Issued June 28, 2016)

LaFLEUR, Commissioner *dissenting*:

In today's order, the Commission declines to assert primary jurisdiction over a contractual dispute between Connecticut Light and Power Company (Connecticut Light and Power) and Dominion Nuclear Connecticut, Inc. (Dominion) concerning whether Connecticut Light and Power breached certain obligations regarding the operation and maintenance of transmission facilities that are used to deliver power from Dominion's Millstone nuclear facility to the bulk power grid. At its core, this matter rests on which of two FERC-jurisdictional contracts – the Transmission Support Agreement and the Large Generator Interconnection Agreement – govern the dispute at issue in this case. While I recognize that the decision regarding whether the Commission should assert jurisdiction in contract dispute cases is discretionary in nature, I believe the Commission erred by failing to assert primary jurisdiction over this matter.

As set forth in *Arkla*,<sup>1</sup> the Commission considers three factors in determining whether to exercise primary jurisdiction over disputes concerning jurisdictional contracts: 1) whether the Commission possesses some special expertise which makes the case peculiarly appropriate for Commission decision; 2) whether there is a need for uniformity of interpretation of the type of question which makes the case peculiarly appropriate for Commission decision; and 3) whether the case is important in relation to the regulatory responsibilities of the Commission.

Given the Commission's role in overseeing these contracts and the associated facilities that are the subject of this dispute, I believe that the Commission has the unique expertise to determine which of these contracts govern. Moreover, Commission review of these contracts will ensure needed consistency regarding how such jurisdictional contracts will be interpreted in the future. In sum, I believe that resolution of this matter falls squarely within the regulatory responsibilities of the Commission, and I would assert primary jurisdiction in this case.

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<sup>1</sup> *Arkansas Louisiana Gas Co. v. Hall*, 7 FERC ¶ 61,175, at 61,322, *reh'g denied*, 8 FERC ¶ 61,031 (1979) (*Arkla*).

Accordingly, I respectfully dissent.

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Cheryl A. LaFleur  
Commissioner