

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

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

Grid Assurance LLC

Docket No. EL16-20-001

ORDER GRANTING CLARIFICATION AND DENYING REHEARING

(Issued July 8, 2016)

1. On March 25, 2016, the Commission issued an order granting, in part, a petition for a declaratory order filed by Grid Assurance LLC (Grid Assurance) that sought a number of regulatory findings for the benefit of prospective subscribers to the spare transmission equipment service that it plans to offer (sparing service).¹ Grid Assurance filed a timely request for clarification or, in the alternative, rehearing of the March 25 Order and American Municipal Power, Inc. (American Municipal) also filed a timely request for rehearing. For the reasons discussed below, the Commission grants Grid Assurance's request for clarification and denies American Municipal's request for rehearing.

I. Background

2. In the March 25 Order, the Commission found that a transmission owner's decision to participate as a Grid Assurance subscriber by entering into a Subscription Agreement and to acquire spare equipment at Grid Assurance's original cost upon the occurrence of a Qualifying Event is prudent.² The Commission noted that, if a jurisdictional public utility seeks to recover the costs associated with those decisions, it must do so in a filing pursuant to section 205 of the Federal Power Act (FPA).³

¹ *Grid Assurance LLC*, 154 FERC ¶ 61,244 (2016) (March 25 Order).

² *Id.* P 30.

³ *Id.* PP 35, 52 (citing 16 U.S.C. § 824d (2012)).

3. In the March 25 Order, the Commission also granted a waiver of the affiliate pricing restrictions under section 35.44(b)(2) of the Commission's regulations with respect to the pricing of sparing service and spare equipment purchased by Grid Assurance subscribers. That waiver, however, was conditioned upon Grid Assurance providing annual informational reports containing (1) its audited financial statements and information regarding costs of the sparing service and (2) a listing of all sales showing a piece of equipment's original cost and the price at which it was sold, along with any additional information that assists in justifying that affiliate issues do not exist.⁴ The Commission noted that its regulations permit filers to request privileged treatment of information that the filer claims is exempt from the mandatory public disclosure requirements of the Freedom of Information Act.⁵

4. On April 25, 2016, Grid Assurance sought clarification or, in the alternative rehearing, of the Commission's statements regarding the need for jurisdictional entities to make a section 205 filing to recover Grid Assurance-related costs. Grid Assurance states that, while transmission owners with stated rates would need to file a new section 205 filing to recover Grid Assurance costs, no such filing should be necessary for transmission owners with formula rates – provided that such formula rates already accommodate the recovery of such costs without modification.⁶ Grid Assurance asks the Commission to clarify that it did not intend to impose a separate section 205 filing obligation on Grid Assurance subscribers with formula transmission rates on file with the Commission.⁷ Grid Assurance explains that the Commission's intended limitation on the requested prudence declaration (i.e., that the Commission makes no finding with respect to the justness and reasonableness of future costs incurred by Grid Assurance subscribers as a component of jurisdictional transmission rates) would still apply to Grid Assurance subscribers with formula rates even without a separate section 205 filing.⁸

5. American Municipal also filed a timely request for rehearing claiming that the Commission erred by “inviting Grid Assurance to seek permission . . . to avoid public disclosure of the contents of Grid Assurance's annual informational report.”⁹ American

⁴ *Id.* P 52.

⁵ *Id.* P 52 n.105 (citing 18 C.F.R. § 388.112(b)(1) (2015)).

⁶ Grid Assurance April 25, 2016 Request for Rehearing at 5.

⁷ *Id.* at 6-8.

⁸ *Id.* at 7-8.

⁹ American Municipal April 25, 2016 Rehearing Request at 2.

Municipal asserts that, in directing Grid Assurance to the privilege provisions in the Commission's regulations, the March 25 Order "presumes the existence of a valid exemption" and "effectively precludes examination by interested parties of the cost and financial information in those filings."¹⁰

II. Commission Determination

A. Grid Assurance Subscribers With Formula Rates

6. We grant Grid Assurance's request for clarification. We clarify here that the Commission did not intend to impose a separate section 205 obligation on Grid Assurance subscribers with formula transmission rates on file, provided such formula rates already incorporate the accounts to which Grid Assurance-related charges will be booked. Again, the Commission is not prejudging the justness and reasonableness of any such charges incurred by Grid Assurance subscribers with existing formula rates. To the extent Grid Assurance-related costs are included in a formula rate, the Commission retains the authority to review the reasonableness of such costs.¹¹ Interested parties are similarly able to review and challenge those costs through the annual formula rate update process.¹² Thus, to the extent that a jurisdictional Grid Assurance subscriber has a formula rate on file with the Commission that incorporates the accounts to which Grid Assurance-related charges will be booked, the jurisdictional utility need not make a separate section 205 filing in connection with its efforts to recover such charges.

¹⁰ *Id.* at 5, 6.

¹¹ See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149, at 62,026 (2013) ("We reject the arguments made by certain parties that, after its initial review, the Commission has no authority under section 205 of the FPA to review a formula rate or the formula rate inputs, as well as the arguments that it is beyond the Commission's authority to require informational filings, additional audits, etc"); *PJM Interconnection, LLC*, 110 FERC ¶ 61,053, at P 120 n.105 (2005) ("the costs used in applying the formula rate ... may be challenged by customers and other entities").

¹² See, e.g., *Pub. Serv. Co. of Colorado*, 155 FERC ¶ 61,028, at P 38 (2016) ("Golden Spread may challenge the actual inputs when the annual update of the formula rate is filed."); *City of Osceola, Arkansas*, 154 FERC ¶ 61,099, at P 39 (2016) ("the Commission's longstanding precedent allows participants to challenge formula rate input or implementation errors whenever the participants discover them").

B. Grid Assurance's Informational Filing

7. We deny American Municipal's request for rehearing. In the March 25 Order, the Commission did not "presume" or prejudge that any information contained in Grid Assurance's annual informational report would be deemed privileged and exempt from disclosure. The Commission merely noted the existence of procedures pursuant to which privileged treatment may be requested. Given the underlying objective of Grid Assurance's program – i.e., the rapid restoration of electric service in the event of certain emergency situations – it is possible that these informational reports could contain information related to national security or other matters exempt from disclosure under the Freedom of Information Act. Accordingly, the Commission noted that "[s]ection 388.112 of the Commission's regulations permits any person filing a document with the Commission to request privileged treatment for some or all of the information contained in the document that the filer claims is exempt from the mandatory public disclosure requirements of the Freedom of Information Act."¹³

8. To obtain privileged treatment, the filer must (1) include a justification for requesting privileged treatment, (2) designate the document as privileged, and (3) submit a public version of the document with the information that is claimed to be privileged material redacted, to a practicable extent.¹⁴ Grid Assurance would bear the burden of justifying any request for privileged treatment.¹⁵ American Municipal or other interested entities may challenge such justifications and seek disclosure of the underlying information.

The Commission orders:

(A) Grid Assurance's request for clarification is granted, as discussed in the body of this order.

¹³ March 25 Order, 154 FERC ¶ 61,244 at P 52 n.105.

¹⁴ 18 C.F.R. § 388.112(b).

¹⁵ *ANR Pipeline Co.*, 65 FERC ¶ 61,280, at 62,306 (1993) ("The regulation places the burden of justifying the request for privileged treatment on the person seeking such treatment.").

(B) American Municipal's request for rehearing is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.