

164 FERC ¶ 61,015
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

PJM Interconnection, L.L.C.

Docket No. ER17-419-002

ORDER DENYING REHEARING

(Issued July 6, 2018)

1. Transource Pennsylvania, LLC (Transource Pennsylvania) and Transource Maryland, LLC (Transource Maryland) (collectively, Transource or the Companies) filed a request for rehearing and clarification of the Commission's January 31, 2017 order in this proceeding. That order concerns Transource's formula rate proposal and incentive rate requests relating to the competitive elements of the PJM Interconnection, L.L.C. (PJM) Market Efficiency Project 9A (Project).¹ On October 2, 2017, the parties to this proceeding submitted an Offer of Settlement (Settlement) on issues that were set for hearing, which the Commission conditionally approved on January 18, 2018.² As part of the Settlement, the Companies agreed to withdraw the components of their request for rehearing and clarification of the January 2017 Order related to the risk-based return on equity (ROE) adder for the Project. In this order, we deny Transource's remaining requests for rehearing of the January 2017 Order. These requests pertain to Transource's requested abandonment incentive and a provision in Transource's formula rate protocols permitting single-issue rate filings.

I. Background

2. The Companies are transmission developers that have been assigned the responsibility to develop, own, and operate the Project. On November 28, 2016, as supplemented on December 5, 2016, PJM submitted, on behalf of American Electric Power Service Corporation and Transource, a tariff filing consisting of (i) a request for authorization to implement a transmission formula rate template (Formula Rate) and

¹ *PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,089 (2017) (January 2017 Order).

² *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,032 (2018) (accepting settlement subject to submission of a compliance filing that removes an attachment from the filed rate).

formula rate implementation protocols (Protocols) to recover the costs of investments in transmission facilities located in PJM for each of the Companies and (ii) a request for authorization to utilize certain incentive rate treatments for the Project.

3. In the January 2017 Order, the Commission conditionally accepted Transource's filing and suspended it for a nominal period, subject to refund pending the outcome of hearing and settlement judge procedures with respect to Transource's base ROE³ and the zone of reasonableness applicable to the ROE.⁴ The Commission directed Transource to make a compliance filing to address certain issues related to the Formula Rate and to eliminate a provision of the Protocols permitting single-issue rate filings because it improperly attempts to define the scope of future Federal Power Act (FPA) section 205 filings.⁵ The Commission also authorized, with one exception, the requested transmission incentive rate treatments, and it specified that the abandoned plant incentive—which allows Transource to recover 100 percent of prudently incurred costs if all or part of the Project must be abandoned for reasons beyond Transource's control—would apply to costs expended on or after January 31, 2017, i.e., the date the Commission issued the January 2017 Order. The Commission denied Transource's request for a 50 basis point incentive ROE adder based on the Project's risks and challenges.

II. Rehearing Request

4. Transource seeks (i) rehearing and clarification of the Commission's denial of the risk-based 50 basis point incentive ROE adder for the Project, (ii) rehearing of the Commission's finding that the abandoned plant incentive applies only to prudently incurred costs expended on or after January 31, 2017, and (iii) rehearing of the Commission's requirement that, on compliance, it eliminate a provision of the Protocols permitting single-issue rate filings. As discussed above, Transource withdrew the first of these requests on February 16, 2018 pursuant to the Commission's conditional acceptance of the Settlement, leaving the second and third requests to be addressed here.

5. Regarding application of the abandoned plant incentive to only those prudently incurred costs expended on or after the date the January 2017 Order was issued, Transource states that it is not unusual for the Commission to approve an abandoned plant incentive that allows recovery of costs incurred prior to the issuance of the order

³ January 2017 Order, 158 FERC ¶ 61,089 at P 85.

⁴ *Id.* P 72.

⁵ 16 U.S.C. § 824d (2012).

granting the incentive.⁶ Transource notes that the Commission recently rejected a request for abandoned plant cost recovery for costs predating a Commission order on the incentive, but Transource argues that there are important differences between that case and this proceeding.⁷ Specifically, Transource states that in *SDG&E* the applicant did not seek the abandoned plant incentive until four years after incurring nearly \$31 million in costs.⁸ Transource notes that, in contrast, it is seeking incentive rate treatments promptly after executing the Designated Entity Agreement that assigned the Project to the Companies.⁹

6. With respect to the Commission's finding that Transource must remove the proposed provision of the Protocols permitting single-issue rate filings because it improperly seeks to define the scope of future FPA section 205 filings, Transource states that the Commission has routinely accepted provisions that allow for single-issue section 205 filings for specific types of formula rate modifications. It states that the provision at issue here is narrowly drafted to allow single-issue section 205 filings only for changes to specified stated values in the Formula Rate, corrections of obvious errors or omissions, and certain regulatory-driven changes. Transource states that this provision allows for efficient implementation of the Formula Rate, and it contains language that is the same or similar to language that the Commission has accepted in other cases.¹⁰

III. Discussion

7. We deny rehearing of the Commission's determination that the abandoned plant incentive applies only to prudently-incurred project costs expended on or after the date

⁶ Rehearing Request at 13-14 (citing *Citizens Energy Corp.*, 129 FERC ¶ 61,242, at PP 13-19 (2009); *NextEra Energy Transmission West, LLC*, 154 FERC ¶ 61,009, at PP 26-27 (2016)).

⁷ *Id.* at 15 (citing *San Diego Gas & Electric Co.*, 154 FERC ¶ 61,158, *reh'g denied*, 157 FERC ¶ 61,056 (2016) (*SDG&E*)).

⁸ *Id.* (citing *SDG&E*, 154 FERC ¶ 61,158 at P 20).

⁹ *Id.*

¹⁰ Rehearing Request at 17 (citing *South Central MCN, LLC*, 153 FERC ¶ 61,099 (2015), *reh'g denied*, 154 FERC ¶ 61,271 (2016); *PJM Interconnection, L.L.C.*, 156 FERC ¶ 61,030, *reh'g denied*, 157 FERC ¶ 61,193 (2016); *PJM Interconnection, L.L.C.*, 152 FERC ¶ 61,180 (2015)).

that the January 2017 Order was issued.¹¹ The Commission has explained that the date an order is issued under Order No. 679¹² represents the dividing line between the period in which an applicant is entitled to the full abandoned plant incentive authorized under FPA section 219 and 50 percent recovery under Opinion No. 295's cost sharing policy.¹³ Full recovery is available from the date of the order. Prior to that point, recovery is available under Opinion No. 295's cost sharing policy.¹⁴

8. Transource states that the Commission has reached a contrary result in a number of cases, which it describes as "not unusual" and thus as representing a common Commission practice.¹⁵ Transource discusses only one case, *NextEra Energy Transmission West, LLC*.¹⁶ In *NEET West*, the applicant sought recovery of 100 percent

¹¹ In accepting the filing in the January 2017 Order subject to conditions, the Commission stated that Transource "is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing." January 2017 Order, 158 FERC ¶ 61,089 at P 2, n.7. While Transource requests rehearing on the ground that the conditions are not necessary for its filing to be just and reasonable, it did not withdraw its filing and, indeed, proceeded with the hearing and entered into the Settlement of the cost-of-service issues set for hearing. Nor does Transource argue that the imposition of the conditions is beyond the Commission's authority under FPA section 205. We therefore will address the rehearing requests on their merits, but we find Transource has waived any objection to the Commission's ability to impose such conditions in this filing by failing to raise that issue on rehearing or withdraw its filing.

¹² *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

¹³ *New England Power Co.*, Opinion No. 295, 42 FERC ¶ 61,016, *reh'g granted in part and denied in part*, 43 FERC ¶ 61,285 (1988).

¹⁴ See *DesertLink, LLC*, 156 FERC ¶ 61,118, at P 29 (2016); *Pacific Gas and Electric Company*, 160 FERC ¶ 61,018, at P 63 (2017); *SDG&E*, 157 FERC ¶ 61,056 at P 12 (citing *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,156, at P 52 (2013) (*PJM Interconnection*)).

¹⁵ Rehearing Request at 14.

¹⁶ 154 FERC ¶ 61,009 (2016) (*NEET West*). The only other case that Transource cites in this connection is *Citizens Energy Corp.*, 129 FERC ¶ 61,242 (2009) (*Citizens*). *Citizens* made the applicant eligible to recover 100 percent of prudently incurred costs, with a requirement that the justness and reasonableness of recovery be demonstrated in a subsequent filing under FPA section 205. The question of whether the incentive would

of prudently incurred costs, including costs incurred prior to the date of filing, in the event of abandonment. The Commission granted the incentive, but it made no express determinations regarding the effective date when doing so. As the Commission subsequently noted when commenting on *NEET West*, this silence “cannot be read as overruling” express determinations regarding effective dates in other cases that reached a contrary result.¹⁷ *NEET West* therefore does not support Transource’s position here.

9. The Commission reviews incentive requests on a case-by-case or fact-specific basis to determine whether a request should be granted.¹⁸ The Commission has made clear that of recovery costs in excess of 50 percent for the period preceding the issuance of an order under Order No. 679 is an exception to the rule.¹⁹ More generally, a common feature of Commission policy on recovery under both Order No. 679 and Opinion No. 295 is that departures from the applicable policy are “atypical” and based on the specific circumstances of the case.²⁰

10. For example, in *Southern California Edison Co.*,²¹ which concerns policy under Opinion No. 295 and was issued prior to Order No. 679, the Commission granted pre-approval for 100 percent abandonment recovery, which exceeded the 50 percent recovery allowed under the applicable cost sharing policy set forth in Opinion No. 295. The Commission found that the facts presented warranted a departure from the applicable policy because Southern California Edison’s management did not control the decision to

apply to costs incurred prior to the date of the order was not presented, and it appears that neither the applicant nor the Commission raised or considered the issue. The applicant stated that financing of its investment was dependent on a Commission declaratory order approving its requested incentives. The applicant did not discuss the costs, if any, that would be incurred prior to the issuance of the declaratory order. *See* Citizens Energy Corp., Petition for Declaratory Order, Docket No. EL10-3-000, at 6 (filed Oct. 9, 2009).

¹⁷ *SDG&E*, 157 FERC ¶ 61,056 at P 24.

¹⁸ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 164; *accord Conn. Dep’t of Public Util. Control v. FERC*, 593 F.3d 30, 33 (D.C. Cir. 2010).

¹⁹ *SDG&E*, 157 FERC ¶ 61,056 at PP 10-14.

²⁰ *See PJM Interconnection*, 142 FERC ¶ 61,156 at P 54 (describing Commission practice under both Order No. 679 and Opinion No. 295 as following similar principles and finding that the Order No. 679 incentive at issue was available only from the effective date of the order granting the incentive).

²¹ 112 FERC ¶ 61,014, at PP 57, 60-61 (2005).

develop or abandon the wind generation facilities in question, its shareholders do not share the earnings associated with these new wind resources, and Southern California Edison developed the project pursuant to an order from the California Public Utilities Commission. The Commission has expressly invoked the general principle of fact-specific review found in *Southern California Edison Co.* when considering departures from its policy under Order No. 679 of allowing recovery of 100 percent of prudently incurred costs expended on or after the date the order approving the incentive.²²

11. The facts of this case do not warrant such anomalous treatment. In this case, Transource justified its request for 100 percent recovery of future abandoned plant, but it provided no special circumstances or justification for expanding the incentive to costs it incurred prior to the order granting the incentive. The costs that Transource incurred prior to issuance of that order are subject to the 50 percent recovery authorized under Opinion No. 295's cost sharing policy. Transource could not reasonably have expected a greater recovery, as a number of cases made clear that the 100 percent abandonment incentive applied only to costs incurred after the Commission granted the incentive.²³ We therefore find Transource has not provided sufficient justification here for retroactively applying the 100 percent abandonment incentive to costs incurred prior to the approval of that incentive.

12. In its request for rehearing of the Commission's determination regarding single-issue rate filings, Transource cites several cases that it asserts authorize such filings in this context, and it views these cases as demonstrating that acceptance of such filings is a routine matter.²⁴ Transource fails, however, to point to any discussion of this issue in the cases it cites, and we are unable to identify any such discussion. Commission orders that have addressed the issue have followed a general policy of rejecting tariff provisions that contemplate single-issue filings. For instance, in a recent case involving Transource's affiliate Transource Kansas, LLC, the Commission stated:

We also disagree with Transource Kansas' assertion that the Commission has "routinely" accepted limited-issue section 205 provisions in other formula rate protocols. To the contrary, the Commission has directed that these types of

²² *PJM Interconnection*, 142 FERC ¶ 61,156 at P 54.

²³ *See id.*; *DCR Transmission, LLC*, 153 FERC ¶ 61,295, at P 42 (2015); *SDG&E*, 157 FERC ¶ 61,056 at PP 10-14.

²⁴ Rehearing Request at 17, n. 57 (citing *South Central MCN, LLC*, 153 FERC ¶ 61,099 (2015), *reh'g denied*, 154 FERC ¶ 61,271 (2016); *PJM Interconnection, L.L.C.*, 156 FERC ¶ 61,030, *reh'g denied*, 157 FERC ¶ 61,193 (2016); *PJM Interconnection, L.L.C.*, 152 FERC ¶ 61,180 (2015)).

provisions be removed in a number of recent cases. The fact that the Commission may have at times accepted a provision for filing does not necessarily mean that the Commission approved of that provision. Instead, “the Commission’s regulations expressly provide that acceptance for filing does not constitute approval of rate schedules or any part thereof.” Going forward, our policy will be to reject provisions in formula rate protocols that purport to limit the scope of Commission review of future filings under section 205 of the FPA in the absence of special circumstances that warrant departure from that policy on a case-by-case basis. Transource Kansas has provided no persuasive basis to depart from that general policy here.²⁵

Transource has likewise provided no persuasive basis to depart from the general policy in this proceeding.

13. We therefore deny Transource’s rehearing request regarding single-issue rate filings. Transource may make subsequent section 205 filings regarding changes to its formula, and, as indicated in the January 2017 Order, the scope of any future section 205 filing will be addressed when the filing is made.²⁶

The Commission orders:

Transource’s request for rehearing is denied, as discussed in the body of this order.

By the Commission. Chairman McIntyre is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁵ *Transource Kansas, LLC*, 163 FERC ¶ 61,176, at P 16 (2018) (quoting *Midwest Indep. Transmission Sys. Operator, Inc.*, 103 FERC ¶ 61,282, at P 25 (2003) (other internal citations omitted)). See also *Transource Wisconsin, LLC*, 154 FERC ¶ 61,010, at P 13 (2016); *ATX Southwest, LLC*, 152 FERC ¶ 61,193, at P 85 (2015).

²⁶ January 2017 Order, 158 FERC ¶ 61,089 at P 96.