

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

CED Rock Springs, LLC  
Old Dominion Electric Cooperative

Docket No. ER06-491-000  
Docket No. ER06-497-000  
(Not Consolidated)

ORDER REJECTING RATE FILINGS

(Issued March 17, 2006)

1. On January 17, 2006, CED Rock Springs, LLC (Rock Springs) and Old Dominion Electric Cooperative (Old Dominion) filed proposed revisions to the PJM Interconnection L.L.C. Open Access Transmission Tariff (PJM OATT) to recover revenue requirements for jointly owned transmission facilities that connect their generation facilities to the PJM transmission system. The Commission rejects the filings because under the PJM OATT, Rock Springs and Old Dominion are not entitled to recover the costs of these facilities through transmission charges from PJM transmission customers.

**Background**

2. Rock Springs and Old Dominion individually own generating facilities at a site in Rising Sun, Maryland. The generating facilities are connected to the transmission system of PECO Energy Company (PECO) through interconnection facilities that include a 500 kV substation and two 900-foot, 500 kV transmission lines.<sup>1</sup> Rock Springs and

---

<sup>1</sup> Interconnection of Rock Springs' and Old Dominion's generating facilities to PECO's transmission system was accomplished by, in effect, looping two 900-foot lines from the Rock Springs substation to an existing 500 kV transmission line on PECO's system. Radial lines then connect the substation to Rock Springs' and Old Dominion's generating facilities. As a result of this configuration, the substation and 900-foot lines operate as an electrically integrated part of PECO's transmission system; all electricity flowing on PECO's transmission system, regardless of the source, potentially flows through the substation and 900-foot lines. Rock Springs' and Old Dominion's remaining interconnection facilities (such as the radial lines between the substation and the generating facilities) are not electrically integrated with the grid in this manner.

Old Dominion hold undivided ownership shares in and have paid the full construction and operating costs of the interconnection facilities.

3. PJM operates Rock Springs' and Old Dominion's interconnection facilities, along with PECO's transmission system, as part of a regional, interconnected transmission grid (PJM Transmission System). The PJM Transmission System is composed of the facilities of several electric utilities, which have turned over operation of their facilities to PJM consistent with the Commission's policies favoring unbundled transmission and generation services. PJM operates the system as an independent system operator under tariffs and agreements that have been approved by the Commission. The PJM OATT establishes the rates, terms and conditions of service for transmission services over the PJM Transmission System, including the terms by which generators connect their facilities to the system.

4. In addition to being governed by the PJM OATT, Rock Springs and Old Dominion are parties to PJM's Transmission Owners' Agreement (Transmission Owners' Agreement or TOA). The Transmission Owners' Agreement is an agreement among the transmission owners on the PJM Transmission System whereby the owners have agreed to participate in certain collective undertakings. Rock Springs and Old Dominion were added as signatories to the Transmission Owners' Agreement effective April 29, 2003, by virtue of their ownership of the substation and 900-foot lines that are the subject of this proceeding.

5. At issue in this proceeding is whether the PJM OATT and agreements entitle Rock Springs and Old Dominion to recover, from other customers on the PJM Transmission System, a portion of the costs that Rock Springs and Old Dominion incur in connecting to the system. Rock Springs has proposed in Docket No. ER06-491-000 a revenue requirement that would equal Rock Springs' share of the costs associated with its substation and 900-foot lines and that would be allocated, through transmission service charges, to all customers in PJM's PECO Zone.<sup>2</sup> Old Dominion has made a parallel proposal in Docket No. ER06-497-000. The two dockets therefore raise the same threshold issue regarding generators' entitlement to recover interconnection costs from other users of the regional grid.<sup>3</sup>

---

<sup>2</sup> See Rate filing by Rock Springs dated January 17, 2006 (Rock Springs Filing).

<sup>3</sup> The filings in Docket No. ER06-491-000 and Docket No. ER06-497-000 differ in the specific revenue requirement proposed by Rock Springs and Old Dominion. For this reason, we have not consolidated the two dockets.

6. On January 17, 2006, Rock Springs filed revised Schedule 7, Schedule 8 and Attachment H-7 to the PJM OATT in Docket No. ER06-491-000.<sup>4</sup> Also on January 17, 2006, Old Dominion filed a revised Attachment H-3 to the PJM OATT in Docket No. ER06-497-000.<sup>5</sup> The purpose of the revisions is to include Rock Springs' and Old Dominion's transmission revenue requirements in the PECO Zone and Delmarva Zone, respectively, in the PJM control area.

7. Rock Springs and Old Dominion assert that they are entitled to allocate to others the costs associated with the substation and 900-foot lines as a result of the use to which those facilities are put. They contend that the substation and 900-foot lines, like the PECO circuit into which those facilities were inserted, operate as an electrically integrated part of the regional grid. They further argue that, as a result of this electrical integration, the substation and 900-foot lines are potentially used in providing transmission services to others on the grid. According to Rock Springs and Old Dominion, the fact of electrical integration is dispositive and permits them to recover their costs from customers in the PECO zone; they note that they are not seeking to recover the costs of their interconnection facilities that are not electrically integrated with PECO's system and therefore are not potentially used by others.<sup>6</sup> As support for their position, Rock Springs and Old Dominion rely on section 2.2.1 of the Transmission Owners Agreement, which reserves to individual transmission owners on the PJM Transmission System the right to make unilateral rate filings under section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2005).<sup>7</sup>

### **Filings, Interventions and Motions**

8. On February 7, 2006, the following parties moved to intervene in the two dockets and to reject Rock Springs' and Old Dominion's filings: PJM, Exelon Corporation; the FirstEnergy Companies including Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company; PPL Electric Utilities Corporation; and PSEG Companies. A separate motion to intervene and protest was filed by PHI Companies including Potomac Electric Power Company, Delmarva Power & Light

---

<sup>4</sup> Schedule 7 contains rates for long-term firm and short-term firm point-to-point transmission service; Schedule 8 contains rates for non-firm point-to-point transmission service and Attachment H-7 contains PECO's annual rates for network integration transmission service.

<sup>5</sup> Attachment H-3 contains Delmarva's annual rates for network integration transmission service.

<sup>6</sup> See Rock Springs Answer dated February 17, 2006 at 10.

<sup>7</sup> See Rock Springs Filing at 6.

Company and Atlantic City Electric Company. The PHI Companies protest Old Dominion's inclusion of its proposed revenue requirement in rates for PJM's Delmarva Zone but do not protest Rock Springs' filing. Old Dominion also moved to intervene in Docket No. ER06-491-000, without protest.

9. On February 17, 2006, Rock Springs and Old Dominion filed answers to the motions to reject. Their answers expand on the arguments that Rock Springs and Old Dominion made in their initial filings. The Commission's rules generally prohibit answers to protests unless permitted by the decisional authority.<sup>8</sup> We will accept Rock Springs' and Old Dominion's answers regardless of the category into which they fall because the answers help us resolve this matter without further proceedings.

10. While Rock Springs and Old Dominion focus on the use of their facilities, the protesters contend that PJM's OATT precludes Rock Springs and Old Dominion from recovering their interconnection costs through transmission service charges. They assert that Rock Springs and Old Dominion bear sole cost responsibility for all of their interconnection facilities, including the substation and 900-foot lines, because these facilities were built solely to interconnect the Rock Springs/Old Dominion generation facilities, and these facilities would not have been constructed "but for" interconnection of the generating facilities. According to the intervenors, the PJM OATT and the Commission's policies provide for the costs of such "but for" facilities to be allocated solely to the interconnecting generator.

### **Discussion**

11. We find that, under the PJM OATT and agreements, Rock Springs and Old Dominion are not entitled to charge customers in the PECO Zone a transmission charge to recover the costs of building network upgrades. Under the PJM OATT, the allocation of costs for transmission upgrades associated with generation interconnection projects is determined exclusively by the provisions of section 37, which provides that the generator is responsible for upgrades that would not have been necessary but for the generation project and that do not provide benefits to the transmission grid. This allocation of interconnection costs to generators is unaffected by the provision in the Transmission Owners' Agreement that reserves to individual owners the right to make unilateral rate filings under the section 205 of the FPA. That reservation of right does not purport to and does not create entitlements to recover particular costs.

12. Our analysis begins with section 37 of the PJM OATT, which defines the allocation of costs of network upgrades associated with interconnections to the PJM transmission grid. Under section 37, a generator must pay 100% of the costs of local and network upgrades that would not have been incurred under PJM's Regional Transmission

---

<sup>8</sup> See 18 C.F.R. § 385.213(a)(2) (2005).

Expansion Plan (RTEP) but for the generation request, net of benefits resulting from the construction of the upgrade.<sup>9</sup>

### 37 Cost Responsibility for Necessary Facilities and Upgrades

37.1 Attachment Facilities: A Generation Interconnection Customer shall be obligated to pay for 100 percent of the costs of the Attachment Facilities necessary to accommodate its Generation Interconnection Request.

37.2 Local and Network Upgrades: 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 Interconnection Request, net of benefits resulting from the construction of the upgrades, such costs not to be less than zero. Such costs and benefits shall include costs and benefits such as those associated with accelerating, deferring, or eliminating the construction of planned Local Upgrades and Network Upgrades, the construction of Local Upgrades and Network Upgrades resulting from modifications to the Regional Transmission Expansion Plan to accommodate the Generation Interconnection Request, or the construction of other Local Upgrades and Network Upgrades that are not and do not formally become part of the Regional Transmission Expansion Plan.

The allocation of interconnection costs under section 37 applies regardless of whether the interconnection customer is also a transmission owner. Section 37 applies to every “Generation Interconnection Customer,” which is defined without limitation as “an entity that submits an Interconnection Request to interconnect a new generation facility or to increase the capacity of an existing generation facility interconnected with the Transmission System in the PJM Region.”<sup>10</sup>

---

<sup>9</sup> See *FPL Energy Marcus Hook, L.P. v. FERC*, 430 F.3d 441 (D.C. Cir. 2005) (remanding the issue of the definition of benefits under section 37).

<sup>10</sup> PJM OATT § 1.13B. *See also id.* § 8.33 (referring to transmission owners’ “own Interconnection Requests”); *id.* Art. IV preamble; Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003-A, 106 FERC ¶ 61,220 at P 52 (2004) (RTOs’ rules apply to “all interconnections” on the system).

13. The allocation of interconnection costs under section 37 also applies regardless of the use to which particular interconnection facilities might be put, as evidenced by the express allocation to generators of the costs of Network Upgrades, net of benefits. Network Upgrades are, by definition, electrically integrated with the transmission grid and therefore might be used by transmission service customers other than the interconnecting generator:

Network Upgrades: 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.<sup>11</sup>

By allocating to generators the costs of Network Upgrades, subject only to a credit for specified benefits, section 37 contradicts Rock Springs' and Old Dominion's position that generators may recover the costs of interconnection facilities through transmission charges merely on the basis that those facilities are used by others.

14. Rock Springs and Old Dominion do not contend they are eligible for a credit for their interconnection costs under section 37, *i.e.*, that their substation and 900-foot lines constitute Local Upgrades or Network Upgrades that have provided benefits to the system.<sup>12</sup> In any case, a credit for benefits under section 37 would not be realized through a transmission service rate as proposed here by Rock Springs and Old Dominion; such costs are realized through a credit as provided in section 37 of the PJM OATT.

15. Rock Springs and Old Dominion suggest that a generator's obligation to pay interconnection costs is merely an up-front obligation, *i.e.*, that the generator, having initially paid the interconnection costs, may later recover those costs through transmission service rates.<sup>13</sup>

16. Rock Springs and Old Dominion have failed to identify any provision of the PJM tariffs and agreements that supports their interpretation. Their interpretation also contradicts the provisions of PJM's tariff which provide, as discussed above, that generators must bear the costs of Network Upgrades that would not have been necessary "but for" the generation project, net of benefits provided by the upgrades. The

---

<sup>11</sup> PJM OATT § 1.26.

<sup>12</sup> The substation and lines they built merely replaced an existing section of PECO's transmission system.

<sup>13</sup> Rock Springs Answer at 6, 11.

Commission permitted regional transmission organizations to adopt “but for” pricing in Order No. 2003 in order to promote efficient interconnection and enhance overall economic efficiency.<sup>14</sup> This policy would be undermined by requiring generators initially to pay their interconnection costs and allowing generators then to allocate those costs to transmission service customers. It would defeat the purpose of Order No. 2003 to treat generation interconnections built by transmission owners differently from other generation interconnections.<sup>15</sup>

17. Under different logic, Rock Springs and Old Dominion suggest that the express allocation of costs under section 37 is overridden by section 2.2 of the Transmission Owners Agreement.<sup>16</sup> We find however that section 2.2 of the Transmission Owners’ Agreement does not affect the application of section 37 of the PJM OATT. Through the Transmission Owners’ Agreement, the transmission owners on the PJM Transmission System agreed to engage in coordinated operation and planning and to distribute PJM’s transmission service revenues among themselves based on each owner’s proportional share of PJM’s total revenue requirement.<sup>17</sup> Section 2.2 of the agreement reserves certain rights for the individual owners notwithstanding their collective participation in these undertakings:

Notwithstanding any other provision of this Agreement, or any other agreement or amendment made in connection with the restructuring of PJM, each individual Party shall retain all of the rights set forth in this Section 2.2; provided, however, that such rights shall be exercised in a manner consistent with a Party’s obligations under the Federal Power Act and the FERC’s rules and regulations thereunder.

18. The rights that are specifically reserved to individual owners under section 2.2 include an owner’s right to protect its facilities from physical damage, an owner’s right to buy and sell transmission facilities and other assets, and an owner’s right to take steps to comply with local, state and federal law.<sup>18</sup> As emphasized by Rock Springs and Old Dominion, the rights retained in section 2.2 also include an individual owner’s right to

---

<sup>14</sup> Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, FERC Stats. & Regs. Regulations Preambles ¶ 31,146, at P 695 (2003).

<sup>15</sup> Order No. 2003-A at P 52.

<sup>16</sup> Rock Springs Filing at 7.

<sup>17</sup> See TOA §§ 4 and 5.3.

<sup>18</sup> TOA § 2.2.

file unilaterally, under section 205 of the FPA, for a change in the revenue requirement applicable to that owner. Section 2.2.1 of the Transmission Owners' Agreement provides:

Each party shall have the right at any time unilaterally to file pursuant to Section 205 of the Federal Power Act to change the revenue requirements underlying its rates for providing services under the PJM Tariff. Each Party shall have the unilateral right to adopt a revenue requirement of zero and to forgo any right or claim to compensation for providing transmission services under the PJM Tariff or any other document.

19. We find nothing in section 2.2 to support Rock Springs' and Old Dominion's proposed recovery of interconnection costs. By its terms, section 2.2 is merely a reservation of rights, used to ensure that the parties to the agreement, by executing the agreement, are not waiving particular rights that existed prior to execution. Because the Transmission Owners' Agreement imposes on the transmission owners certain obligations to act in concert, section 2.2 focuses on pre-existing rights that are retained by individual transmission owners. For example, the reservation of a transmission owner's right to file unilaterally under section 205 ensures that each owner may file without the consent of the other owners, *i.e.*, that, by agreeing to certain collective undertakings in the Transmission Owners Agreement, an owner has not waived its statutory right to file unilaterally under section 205.

20. This reservation of rights does not purport to create entitlements to recover particular costs. Rather, section 2.2 contemplates that the merits of a transmission owner's filing would be governed by applicable law; under section 2.2, the rights reserved thereunder "shall be exercised in a manner consistent with a Party's obligations under the Federal Power Act and the FERC's rules and regulations thereunder."

21. According to Rock Springs and Old Dominion, the "notwithstanding" phrase establishes the supremacy of section 2.2 in overriding the cost allocation provisions in the PJM OATT.<sup>19</sup> In effect, under Rock Spring's and Old Dominion's view, the transmission owners in a few words agreed to render inapplicable core provisions of the PJM OATT as well as the Commission's underlying policies.

22. Section 2.2, however, does not have such a broad application. The "notwithstanding" phrase merely accomplishes the parties' stated purpose of reserving particular, pre-existing rights. To use again the example of unilateral filings, section 2.2.1

---

<sup>19</sup> Rock Springs Filing at 7.

reserves to individual transmission owners the right to file unilaterally “notwithstanding” any other provision of the PJM tariffs and agreements that might be interpreted as contradicting that right. Section 2.2 explicitly indicates that any reservation of rights must be exercised in a manner consistent with a transmission owner’s obligations under the FPA and the Commission’s rules and regulations, so that by its own terms it does not overrule other provisions of the OATT, such as section 37, which establish the conditions under which costs can be recovered.

23. In another attempt to rely on section 2.2 of the Transmission Owners’ Agreement, Rock Springs and Old Dominion cite the portion thereof that expressly allows a transmission owner to elect a revenue requirement of zero. Rock Springs and Old Dominion seem to extrapolate from this language an entitlement to elect a positive (non-zero) revenue requirement and, in particular, an entitlement to allocate a generator’s interconnection facilities to transmission service customers.<sup>20</sup>

24. This provision, however, only reflects the right of a transmission owner to request a zero transmission rate. It does not imply that a transmission owner is entitled to obtain a non-zero rate when such a filing is in violation of the PJM OATT.

25. Thus, section 2.2 only preserves a Transmission’s Owners right to file a request for a rate under section 205; it does not establish or guarantee that the transmission owner is entitled to recover any particular cost. Rock Springs and Old Dominion have availed themselves of their rights as transmission owners to make the instant filing. In this case, however, we find that the zonal rates proposed by Rock Springs and Old Dominion are not just and reasonable, because the recovery of costs for transmission upgrades associated with generation interconnection projects, if any, is determined by section 37 of the PJM OATT, not through filings for a transmission cost-of-service rate.

26. Rock Springs maintains that at the time it became a PJM transmission owner it elected a zero revenue requirement because of regulatory concerns with its Exempt Wholesale Generation status, but that it always reserved the right to seek a revenue requirement for these facilities. As discussed above, while Rock Springs has the right to submit a filing, it is not permitted by section 37 of the PJM OATT to recover its costs for interconnection facilities through a transmission charge assessed to the customers in the PECO zone pursuant to section 37 of the PJM OATT.

27. Moreover, even if the PJM OATT were not clear on this issue, there is no reasonable suggestion that Old Dominion and Rock Springs thought, when they built these facilities, that they could collect the costs of the facilities through transmission service charge. Statements made by Rock Springs and Old Dominion in 2002 indicate

---

<sup>20</sup> *Id.* See also Rock Springs Answer at 18.

that they recognized that they would not recover the costs of these facilities. In their filing in Docket No. OA02-9-000, Rock Springs states:

Furthermore, as part of their arrangement with PJM, Applicants will not receive any transmission revenue if the Applicants' Interconnection Facilities will be used to provide transmission service.

Furthermore, Applicants will adopt a revenue requirement of zero and forgo any right or claim to compensation from transmission services under the PJM Tariff or any other document that utilize the Applicants' Interconnection Facilities.

As such, Applicants will not maintain their own rate schedule as other PJM transmission owners currently do. In fact, under the TOA, the Applicants have waived any rights to revenue earned by PJM with respect to use of such Facilities.<sup>21</sup>

These representations are absolute and do not reserve any right to collect transmission revenue in violation of section 37 of the PJM OATT. In its order, the Commission accepted this commitment: "When Applicants' transmission facilities provide transmission service to PJM's customers, Applicants will receive no transmission revenue."<sup>22</sup> Had Rock Springs and Old Dominion sought to reserve a right to collect revenue for these facilities, they should have explicitly done so in the various agreements they executed.

28. Finally, Rock Springs and Old Dominion contend that it would be unduly discriminatory to preclude their recovery of costs through transmission service charges because, according to Rock Springs and Old Dominion, other transmission owners have included, in their revenue requirements, the costs of facilities "of the same type" as the present substation and 900-foot lines.<sup>23</sup>

---

<sup>21</sup> Old Dominion's and Rock Springs' Request for Expedited Order Confirming Compliance with Order Nos. 888 and 889, Docket No. OA02-9-000 (filed August 30, 2002) at 3, 11 and 12.

<sup>22</sup> *CED Rock Springs, Inc. and Rock Springs Generation*, 101 FERC ¶ 61,325 at P3 (2002).

<sup>23</sup> Rock Springs Answer at 26.

29. As discussed previously, the PJM OATT treats all interconnection customers the same, regardless of whether or not they are transmission owners. If utilities are improperly allocating the costs of interconnection facilities, the proper approach is to remove the improper allocation in a proceeding under section 206 of the FPA, 16 U.S.C. § 824e (2005), rather to allow Rock Springs and Old Dominion similarly to violate the PJM OATT.

The Commission orders:

Rock Springs' and Old Dominion's filings are hereby rejected.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.