

142 FERC ¶ 61,073
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

PJM Interconnection, L.L.C. and
EP Rock Springs, LLC

Docket No. ER13-488-000

ORDER ACCEPTING AND SUSPENDING TRANSMISSION RATE FILING, AND
ESTABLISHING HEARING PROCEDURES

(Issued January 31, 2013)

1. On November 30, 2012, as amended on December 7, 2012, pursuant to Section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² PJM Interconnection, L.L.C. (PJM) filed, on behalf of EP Rock Springs, LLC (Rock Springs), a proposed formula transmission rate for inclusion in the PJM Open Access Transmission Tariff (Tariff) as Attachment H-23.³ Rock Springs is a generation owner that is also a Transmission Owner under the PJM Tariff due solely to its ownership and operation of transmission facilities that interconnect its generation station with the PJM transmission system. Rock Springs seeks to recover costs applicable to its transmission facilities associated with reliability and overhead costs. For the reasons discussed below, we accept and suspend the filing for the maximum suspension period, to be effective July 1, 2013, and establish hearing and settlement judge procedures.

Background

2. Rock Springs is a wholly owned subsidiary of Essential Power, LLC. Essential Power, LLC purchased Rock Springs Generating Station as part of a portfolio of

¹ 16 U.S.C. § 824d (2006).

² 18 C.F.R. Part 35 (2012).

³ OATT Attachment H-23 EP Rock Springs Annual Transmission Rates, 0.0.0; Attachment H-23A EP Rock Springs Formula Rate, 0.0.0; and H-23B EP Rock Springs Formula Rate Implementation Protocols, 0.0.0, under PJM Intra-PJM Tariffs.

generating assets from Consolidated Edison Development Company (ConEd) in 2008. Rock Springs owns and operates two gas-fired combustion turbines totaling approximately 352 MW at the Rock Spring Station that is located in Rising Sun, Maryland. Old Dominion Electric Cooperative (ODEC) also owns two generating units at the station. ODEC and Rock Springs own an undivided, equal interest in the real estate and common facilities located at the Rock Springs Station.

3. As part of the construction of the Rock Springs Station, PJM required in the interconnection service agreement that “but for” network upgrades be built in order to safely interconnect the generating facility to the PJM transmission system. Generally, network upgrades constructed to interconnect a generating facility are built by the transmission owner and the costs of such construction are paid by the generating facility; alternatively, the generator may build the network upgrades. Under either scenario in PJM, the network upgrades are almost always turned over to the transmission owner to operate and maintain.⁴ PECO Energy Co. (PECO), the owner of the transmission facilities where the Rock Springs Station is located, was not able to build the necessary transmission network upgrades during the timeframe requested by ODEC and Rock Springs. ODEC and Rock Springs thus chose to build the network upgrades themselves. They also chose to own the network upgrades rather than turn them over to PECO.⁵ Because of its undivided ownership of the network transmission facilities constructed to interconnect the generating facility, Rock Springs signed the PJM Transmission Owners Agreement. It has also registered as a transmission owner for North American Electric Reliability Corporation (NERC) compliance matters.

⁴ PJM, Intra-PJM Tariffs, OATT at § 221.1 (Construction Obligation)(“Except to the extent otherwise provided in a Construction Service Agreement entered into pursuant to this Part VI, the Transmission Owners shall own all Attachment Facilities, Direct Assignment Facilities, Local Upgrades, and Network Upgrades constructed to accommodate New Service Requests.”).

⁵ Interconnection of Rock Springs’ and ODEC’s generating facility 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 (network upgrades or Rock Springs transmission facilities). Radial lines then connect the substation to Rock Springs Station. 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 ODEC’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.

4. When ConEd owned the Rock Springs Station, previously known as CED Rock Springs, LLC, Rock Springs and ODEC filed proposed revisions to the PJM Tariff in Docket No. ER06-491-000 seeking to implement a transmission revenue requirement to recover their share of the costs associated with constructing, owning and operating these network upgrades. The Commission denied the request, holding that Rock Springs and ODEC were responsible for the costs of the transmission facilities as network upgrades under the PJM “but for” test.⁶ The Commission found that the network upgrades were not needed but for the interconnection of the Rock Springs Station. As “but for” facilities, the costs of such facilities are properly allocated to the owners of the generating facility, regardless of whether the owners of the generating facility are transmission owners.

Filing

5. Rock Springs has filed a formula rate and associated formula rate protocols. Rock Springs proposes to recover two categories of costs associated with the Rock Springs transmission facilities through the formula rate: (i) costs for compliance with transmission-related NERC Critical Infrastructure Protection (CIP) Standards and Transmission Operations (TOP) Standards; and, (ii) costs for compliance with any future mandated PJM Regional Transmission Expansion Planning projects (RTEP Costs). The initial net annual revenue requirement to be recovered under the formula rate is approximately \$238,000. Rock Springs proposes to recover these costs from transmission customers in the PECO zone. Rock Springs explains that its formula rate is modeled after the transmission rates on file for other PJM transmission owners.

6. Rock Springs includes in the formula rate a stated rate of return on equity (ROE) of 10.5 percent. It explains that this rate is a proxy ROE that mirrors the ROE of ODEC, the joint owner of the generating facilities. Rock Springs states that the ODEC ROE is conservative in light of Rock Springs’ risk profile as a merchant generator and is lower than other proxy ROEs that Rock Springs could have pursued, including that of PECO, to whose system the Rock Springs facilities interconnect. To develop a total rate of return, Rock Springs proposes a hypothetical 50/50 capital structure and a proxy for debt costs, since Rock Springs was financed with 100 percent equity and has no long-term debt. The Rock Springs transmission rate as calculated is \$24.24 per megawatt per year. Rock Springs claims that this rate is clearly *de minimus* in comparison to PECO’s current rate of \$20,942 per megawatt per year. Rock Springs states that current Network Integration Transmission Service (NITS) customers in the PECO zone will only see a 0.1 percent increase in the cost of NITS service in the PECO zone.

⁶ *CED Rock Springs, LLC*, 114 FERC ¶ 61,285 (2006) (*CED Rock Springs*).

7. Rock Springs requests waiver of section 35.13 of the Commission's regulations requiring cost support related to Period I and Period II data.

Notice and Protest

8. Public notice of Rock Springs' filing was issued on December 3, 2012, allowing for interventions and protests to be filed on or before December 21, 2012. Pursuant to Rule 214,⁷ all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. The Indicated PJM Transmission Owners filed a protest and motion to reject the filing.⁸ On January 7, 2013, Rock Springs filed a motion for leave to answer and answer to motion and protest of the Indicated PJM Transmission Owners. On January 16, 2013, the Indicated PJM Transmission Owners filed a motion for leave to answer and answer to Rock Springs answer.

9. In its protest, the Indicated PJM Transmission Owners state that the recovery of reliability related costs for situations such as this should be addressed through the PJM

⁷ 18 C.F.R. § 385.214 (2012).

⁸ The Indicated PJM Transmission Owners are: (1) American Electric Power Service Corporation, on behalf of its affiliates, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company; (2) AEP Appalachian Transmission Company, AEP Indiana Michigan Transmission Company, AEP Kentucky Transmission Company, AEP Ohio Transmission Company, and AEP West Virginia Transmission Company; (3) Duke Energy Corporation on behalf of its subsidiaries Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.; (4) Duquesne Light Company; (5) Exelon Corporation; (6) Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, American Transmission Systems, Incorporated, Trans-Allegheny Interstate Line Company (collectively, FirstEnergy Companies); (7) Pepco Holdings, Inc., Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; (8) PPL Electric Utilities Corporation, PPL EnergyPlus, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC, PPL Ironwood, LLC, PPL Martins Creek, LLC, PPL Montour, LLC, PPL Susquehanna, LLC, Lower Mount Bethel Energy, LLC, PPL New Jersey Solar, LLC, PPL New Jersey Biogas, LLC, PPL Renewable Energy, LLC (collectively, the PPL PJM Companies); (9) Public Service Electric and Gas Company; and (10) UGI Utilities, Inc. The Indicated PJM Transmission Owner state that each of these entities have submitted a separate intervention in this proceeding.

stakeholder process and, perhaps, generally applicable amendments to the PJM OATT. Also, they recommend that the filing be rejected, but if the filing is not rejected, they request that the Commission set the rates for hearing.

10. The Indicated PJM Transmission Owners further state that the predecessor to Rock Springs provided an absolute commitment to forgo any right or claim to compensation from transmission services over the Rock Springs transmission facilities. They argue that such a commitment would include the CIP and TOP costs at issue in the Rock Springs filing. As the successor to the interests of the prior owner under the PJM Consolidated Transmission Owners Agreement (TOA),⁹ they state that Rock Springs similarly is prohibited from seeking such recovery.

11. The Indicated PJM Transmission Owners argue that under the PJM TOA, Rock Springs is a “Zero Revenue Requirement Party.” They contend that a Zero Revenue Requirement Party is a “[p]arty that is a Transmission Owner solely by virtue of Transmission Facilities used to provide transmission services within the PJM Region under the PJM Tariff for which it does not have a cost-of-service for such services.”¹⁰ Further, they argue that the PJM TOA specifies that “no revenue shall be distributed to any Party that is a Zero Revenue Requirement Party.”¹¹

12. According to the Indicated PJM Transmission Owners, Rock Springs’ status as a Zero Revenue Requirement Party is particularly significant here because it stems from a settlement of issues related to the interconnection of the Rock Springs Station and is the subject of commitments made to the Commission by the party from which Rock Springs purchased its ownership interest in the generating facility.

13. In addition, the Indicated PJM Transmission Owners state recovering the costs of CIP and TOP compliance associated with the Rock Springs transmission facilities is inconsistent with the “but for” pricing policy in PJM. The Indicated PJM Transmission Owners explain that the policy underlying the “but for” pricing structure for generation interconnection is that the costs of transmission upgrades allocated to an interconnecting generator are considered part of the investment in the generation project.¹² They claim

⁹ A copy of the TOA is available at <http://www.pjm.com/~media/documents/agreements/toa.ashx>. Both the TOA and its predecessor documents will generally be referred to herein as the “TOA.”

¹⁰ PJM Tariff, Schedules 7, 8, and Attachment H, TOA § 1.32.

¹¹ *Id.* § 7.8.

¹² *Citing PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025, at P 19 (2004) (*PJM I*), *order on reh’g*, 110 FERC ¶ 61,099 (2005) (*PJM II*).

that like the other costs of a generation project, recovery of the costs associated with interconnecting the project to the transmission grid is a business risk.¹³

14. The Indicated PJM Transmission Owners state the Commission should reject Rock Springs' proposal to establish a mechanism for recovery of possible future RTEP costs, as Rock Springs' proposal is premature and speculative. If and when Rock Springs is required to construct a transmission project in accordance with the RTEP, it may at that time file to recover the costs of that project.

15. The Indicated PJM Transmission Owners assert if the Commission does not reject that filing, it should set the entire filing for hearing and permit the parties to perform discovery on all aspect of Rock Springs' proposed formula. The Indicated PJM Transmission Owners object to Rock Springs proposed ROE and capital structure.

Answers

16. Rock Springs states that the costs at issue in this case relate to hardware, software and personnel to ensure that transmission-related Critical Cyber Assets are protected, thus, assuring the reliability of the electric system, as well as costs required to fulfill Rock Springs' role in assisting PJM in compliance with the TOP standards. It asserts that these costs are prudently incurred to comply with transmission-related Reliability Standards and are properly recoverable under sections 215 and 219 of the FPA as well as sections 35.35(f) of the Commission's regulations.¹⁴ Rock Springs states that it seeks only to recover these costs for compliance facilities – not the facilities that were required to facilitate the interconnection ten years ago.

17. Rock Springs further states that it is a full-fledged Transmission Owner in PJM under the NERC functional model, and seeks to recover transmission-related costs that arise from its transmission responsibilities. It claims that this case has nothing to do with Rock Springs' merchant power portfolio, the PJM interconnection process, or the costs that were required to interconnect the Rock Springs Station ten years ago. Rock Springs states that its designation as a Zero Revenue Requirement Party under the PJM TOA is simply a description of existing rights and responsibilities, not a limitation on rights to rate recovery. It contends that nothing in the PJM TOA denies a Zero Revenue Requirement Party the right to seek rates under the appropriate circumstances. Also, Rock Springs argues that under the PJM TOA, a transmission owner need not seek permission from other Transmission Owners, much less competing generators, before seeking recovery of prudently-incurred costs under FPA section 205.

¹³ *Id.*

¹⁴ 16 U.S.C. §§ 824o, 824s (2006); 18 C.F.R. § 35.35(f) (2012).

18. In addition, Rock Springs state that pursuant to section 215 of the FPA, all users, owners and operators of the bulk power system must comply with certain mandatory Reliability Standards.¹⁵ It notes that section 219(b)(4)(A) of the FPA requires the Commission to promulgate rules that “allow recovery of...all prudently incurred costs necessary to comply with mandatory reliability standards issued pursuant to Section 215.”¹⁶

19. Rock Springs explains in its 2006 order rejecting Rock Springs’ predecessor’s attempt to recover the costs of network upgrades, the Commission reiterated that “the reservation of a transmission owner’s right to file unilaterally under section 205 ensures that each owner may file without the consent of other owners...”¹⁷ The Commission did not bar recovery of costs in that case by operation of the TOA, because Rock Springs’ predecessor was a Zero Revenue Requirement Party. Also, Rock Springs states that its predecessor was strongly encouraged by PJM and other transmission owners to sign the TOA when it became clear it would own transmission facilities.¹⁸ Rock Springs further explains that its predecessor signed the TOA only “on the assurance from PJM that its right to seek a change in its transmission revenue requirement would not be affected by the changes in the [TOA].”¹⁹

20. The Indicated PJM Transmission Owners argue that their answer is necessary in order to rebut Rock Springs’ characterizations of the arguments in the Indicated PJM Transmission Owners’ previous filing. In this Answer, they argue that they have not taken the position that a transmission owner may recover costs related to NERC compliance only by satisfying the standards for incentive rates, but rather that their position is that Rock Springs has relied on incentive rate cases without making the showings required for incentive rates. They also reiterate that Rock Springs’ predecessor made an absolute commitment to forego any right or claim to compensation, which they argue takes precedence over Rock Springs’ tariff rights. Finally, the Indicated PJM

¹⁵ 16 U.S.C. § 824o(b)(1).

¹⁶ 16 U.S.C. § 824s(b)(4)(A).

¹⁷ *CED Rock Springs*, 114 FERC ¶ 61,285 at 19.

¹⁸ *See PJM Interconnection, LLC*, Docket No. ER02-2256, Amendment to PJM East Transmission Owners Agreement (July 3, 2002).

¹⁹ *See PJM Interconnection, et al.*, Docket No. ER06-487, *et al.*, Motion/Notice of Intervention of CED Rock Springs, LLC at 2 (Feb. 7, 2006) (“CEDRS currently has a revenue requirement of zero and initially was reluctant to enter into the [TOA]; however, CEDRS did so on the assurance from PJM that its right to seek a change in its transmission revenue requirement would not be affected by the changes in the [TOA].”).

Transmission Owners argue that the Commission already has rejected arguments that ongoing costs related to the instant facilities, including costs that must be incurred to comply with applicable regulations and tariff provisions, could not be recovered by Rock Springs' predecessor under the cost allocation structure used in the PJM Tariff. The Indicated PJM Transmission Owners reiterate that the appropriate venue for addressing such costs is a PJM stakeholder process.

Discussion

Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept the answers filed by Rock Springs and the Indicated PJM Transmission Owners because they provided information that assisted us in our decision-making process.

Commission Determination

22. In the *CED Rock Springs* order, the Commission found that ODEC and CED Rock Springs were not entitled to charge customers in the PECO Zone a transmission charge to recover the cost of building network upgrades" because under the PJM Tariff, the generator is responsible for the costs of "but for" facilities. It also recognized that CED Rock Springs as an interconnection customer could not recover network upgrade costs solely by virtue of retaining ownership of network upgrades that similarly situated generation owners could not recover because they transferred such facilities to a transmission owner. For these reasons, the costs at issue in *CED Rock Springs*, the Commission explained, were not eligible for recovery, regardless of the entity that filed for recovery.²⁰

23. The costs at issue in the instant filing, however, are different from those at issue in *CED Rock Springs*. For example, Rock Springs could potentially recover the CIP and TOP costs under section 35.35(f) of the Commission's regulations, which allows transmission owners to recover expenses necessary to comply with mandatory reliability standards.²¹ In addition, should Rock Springs be directed by PJM to build an RTEP

²⁰ *CED Rock Springs*, 114 FERC ¶ 61,285.

²¹ 18 C.F.R. § 35.35(f) (2012).

project in the future, the TOA or PJM's tariff could permit it to recover the costs of such a project.

24. Based on the current record, however, the Commission is unable to determine whether these costs are recoverable under the Commission's regulations, the TOA, or the PJM Tariff. Additionally, even if such costs are found recoverable, the filing nevertheless raises issues about the reasonableness of the costs included in the formula rate, the proposed cost allocation, and the formula rate protocols. Accordingly, we find that Rock Springs' filing raises material issues of fact, has not been shown to be just and reasonable, and may be unjust, unreasonable, and unduly discriminatory. We will therefore accept the tariff records for filing and suspend their effectiveness, subject to refund, and set them for hearing and settlement procedures as ordered below. We will grant Rock Springs request for waiver of section 35.13 of the Commission's regulations.

Hearing and Settlement Proceedings

25. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.²² If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.²³ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

Suspension

26. The Commission will accept the tariff records for filing and suspend their effectiveness, subject to further review. In *West Texas Utilities Co.*,²⁴ the Commission

²² 18 C.F.R. § 385.603 (2012).

²³ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within 5 days of the date of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

²⁴ 18 FERC ¶ 61,189 (1982) (*West Texas*).

explained that when their preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, the Commission will generally impose a five-month suspension. While *West Texas* initially defines “substantially excessive” with reference to a cost-justified rate, it further provides that the Commission “shall order a maximum suspension” even when “revenues do not appear to be excessive, but other, extraordinary factors,” counsel a maximum suspension.²⁵ In the instant proceeding, our preliminary analysis indicates that the question of whether Rock Springs may recover any rates at all is best resolved at hearing, and therefore, as stated above, we will accept and suspend the proposed formula rate for five months to become effective July 1, 2013, subject to refund and further review.

The Commission orders:

(A) Rock Springs’ proposed filing is hereby accepted for filing, suspended for the maximum period, to become effective July 1, 2013, subject to refund, and set for hearing and settlement judge proceedings.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission’s Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held in Docket No. ER13-488-000 concerning all aspects of Rock Springs’ formula rate.

(C) Pursuant to Rule 603 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within 5 days of the date of this order.

(D) Within 30 days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days

²⁵ *Id.* at 61,376.

thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 15 days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.