

144 FERC ¶ 61,103
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

FirstEnergy Generation Corp.
American Transmission System, Incorporated

Docket No. EC12-119-001

ORDER GRANTING CLARIFICATION

(Issued August 5, 2013)

1. On December 20, 2012, the Commission issued an order authorizing a proposed transaction under section 203(a)(1) of the Federal Power Act (FPA),¹ involving the transfer by FirstEnergy Generation Corp. (FEGenCo) to its affiliate American Transmission Systems, Incorporated (ATSI) of certain generation assets in order to facilitate their conversion to synchronous condensers.² FEGenCo and ATSI (together, Applicants) filed a motion for clarification and, in the alternative, limited request for rehearing to the December 2012 Order. As discussed below, we will grant the motion for clarification.

Background

2. On July 26, 2012, Applicants submitted an application requesting authorization under section 203(a)(1) of the FPA to transfer certain generation assets from FEGenCo to ATSI for conversion into synchronous condensers. Applicants indicated that the synchronous condensers will provide dynamic reactive voltage support to the transmission system.

3. In the December 2012 Order, the Commission authorized the proposed transaction as consistent with the public interest.³ The Commission found that the proposed transaction did not raise horizontal or vertical market power concerns, did not impair

¹ 16 U.S.C. § 824b (2006).

² *FirstEnergy Generation Corp.*, 141 FERC ¶ 61,239 (2012) (December 2012 Order).

³ *Id.* P 1.

state or federal regulation, and did not result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company. With respect to the effect on rates, the Commission found that, based upon evidence in the record, including approval of the proposed conversion by PJM and the reliability benefits that would result from the transaction, the proposed transfer did not have an adverse effect on rates.⁴ The Commission further stated that it made no determination as to whether the purchase price of the assets or any future costs are or will be prudently incurred or whether any transmission rates to be proposed by ATSI are just and reasonable.⁵ The Commission also stated in P 29:

Nevertheless, we disagree with Applicants' suggestion that the purchase price and conversion costs of the facilities at issue can be included in rates through the annual update process contained in ATSI's *currently approved formula rate*. ATSI's current formula rate does not include any accounts or components that would allow for recovery of the costs at issue. If ATSI wishes to recover in its transmission formula rates the purchase price, conversion costs, environmental remediation costs or ground lease costs related to the Transferred Assets, then ATSI must first make a filing with the Commission under section 205 of the FPA.⁶

4. On January 22, 2013, Applicants filed a motion for clarification and, in the alternative, limited request for rehearing of the December 2012 Order. Applicants state that they do not challenge any finding or ruling in the December 2012 Order approving their proposed transaction, but request clarification or rehearing solely with respect to the Commission's statement in P 29 of the December 2012 Order that ATSI's current formula rate does not include the accounts and components that would allow for recovery of the costs of acquiring the Transferred Assets and converting them to synchronous condensers and that ATSI must make a filing under FPA section 205 in order to recover these costs. Applicants argue that the statement was not necessary for the Commission's ruling and is beyond the proper scope of the proceeding. Additionally, Applicants state that the statement is factually incorrect, as ATSI's formula rate does include elements that allow for the recovery of the costs of the synchronous condensers.

⁴ *Id.* P 26.

⁵ *Id.* P 28.

⁶ *Id.* P 29.

5. Applicants note that the Commission found in the December 2012 Order that the eventual rate treatment of the transferred assets was beyond the scope of the proceeding.⁷ Applicants argue that the Commission's statement regarding formula rate recovery in P 29 is inconsistent with Commission policy and its other findings in the order. Applicants state that whether the costs associated with the transaction flow through ATSI's existing formula rate or whether the formula rate must be modified has no bearing on any factor relevant to the Commission's FPA section 203 analysis. Additionally, Applicants note that no party raised the issue of whether the costs involved could be recovered in ATSI's formula rates. Applicants state that therefore the Commission should clarify its statement in P 29 of the December 2012 Order to make clear that the question of how the costs of the transaction will be recovered is to be decided when ATSI seeks recovery of those costs.

6. Applicants also argue that the Commission's statement in P 29 is factually incorrect. Applicants state that ATSI's purpose is to convert the transferred assets into synchronous condensers to serve a transmission purpose, and ATSI's formula rate currently includes components that enable the recovery of these costs. Applicants state that ATSI's formula rate is based on amounts recorded in its FERC Form No. 1. Applicants note that the formula rate calculates a rate base using the year-end transmission plant in service value recorded on Page 207 of ATSI's FERC Form No. 1. This value is in turn the sum of a number of categories for transmission plant in service, including Account 353 of the Uniform System of Accounts, which includes, among other items, a public utility's investment in fixed and synchronous condensers.⁸ Applicants note that the cost of each synchronous condenser will be included in Account 353 as they are brought into service, and those costs will be incorporated in ATSI's formula rate subject to review and challenge under the annual update process.

Discussion

7. Upon further review, we agree that the issue of whether the cost of the transferred facilities and any conversion costs could be included in ATSI's formula rates is more appropriately addressed during ATSI's yearly formula rate update process. Accordingly, we grant Applicants' motion for clarification. We note that ATSI's customers may challenge the inclusion of any costs related to this transaction in ATSI's rates under

⁷ Applicants' Motion at 8-9 (citing *FirstEnergy Generation Corp.* (December 2012 Order), 141 FERC ¶ 61,239 at PP 28, 31, 32).

⁸ *Id.* at 11 (citing FERC Form No. 1, page 207, line 50).

ATSI's formula rate protocols, which provide for a process for discovery and challenge of any disputed concerns.⁹

The Commission orders:

Applicants' motion for clarification is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁹ See PJM Tariff, Attachment H-21B.