

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell

PJM Interconnection, L.L.C.

Docket No. Docket No. ER03-194-002

Allegheny Power

Docket Nos. Docket Nos. ER03-309-001
and ER03-309-002

ORDER ON COMPLIANCE AND REHEARING

(Issued July 29, 2003)

1. On March 10, 2003, Allegheny Power (Allegheny) filed a request for rehearing of the Commission's February 7, 2003 order (February 7 Order). On the same day, Allegheny made a compliance filing implementing the modifications ordered by the Commission in the February 7 Order. As discussed below, the Commission accepts Allegheny's compliance filing, subject to conditions, and denies its request for rehearing. This order benefits the public because it assures that the terms, conditions and rates of interconnection agreements are just and reasonable, and promotes increased power supply and improved reliability.

Background

2. On November 19, 2002, PJM Interconnection, L.L.C. (PJM) submitted for filing an executed interconnection service agreement (ISA) between PJM and Duke Energy Fayette, LLC (Duke Energy). PJM asserted that the ISA was necessary to accommodate Duke Energy's request for the interconnection of a 620 MW generating facility located near the borough of Masontown in Fayette County, Pennsylvania (Duke Facility) to the PJM transmission system. PJM contended that, pursuant to the ISA, Duke Energy was granted 620 MW of Capacity Interconnection Rights located at the Ronco substation. The project included the construction of a 500 kV interconnection switching station, a loop line into the station and protective relays (Ronco substation project facilities).

3. Subsequently, on December 10, 2002, PJM submitted for filing an amended unexecuted ISA (Amended ISA) between PJM and Duke Energy. PJM asserted that the Amended ISA corrected the classification of the charges in the specifications to the ISA

to properly include the charges as Attachment Facilities Charges instead of as Network Upgrade Charges.

4. On December 19, 2002, in Docket No. ER03-309-000, Allegheny submitted for filing the Allegheny-Duke Agreement which set forth the terms and conditions governing the interconnection of the Duke Facility to Allegheny's transmission system, including the reimbursement by Duke Energy of Allegheny's interconnection costs. Allegheny contended that the Allegheny-Duke Agreement obligated Duke Energy to reimburse Allegheny for the actual cost of any future capital additions to the interconnection facilities. Allegheny further submitted that the Allegheny-Duke Agreement set forth Duke Energy's responsibilities for the costs of the interconnection facilities including Duke Energy's responsibility for the operation and maintenance (O&M) costs of the interconnection facilities.

5. Allegheny conditionally protested the ISA in Docket No. ER03-194-000 asserting that the Commission should clarify that incorrect use of the term "Network Upgrades" in the ISA does not prejudice cost responsibility for the Ronco substation project facilities when Allegheny files an interconnection agreement between itself and Duke Energy.¹

6. Duke Energy protested the Amended ISA, indicating that the Amended ISA incorrectly recharacterized certain facilities as Attachment Facilities. Specifically, Duke Energy contended that a newly-constructed substation folded into a transmission provider's transmission system was properly classified as a network facility, notwithstanding that the new substation would not have been installed "but for" the interconnection of a particular generating facility. Duke Energy asserted that the point of interconnection for it should be the point where the radial 500 kV transmission line from the Duke Energy switchyard connected to the bus at the Ronco substation, and all Ronco substation project facilities at or beyond this point should be deemed network facilities.

7. In its answer to Allegheny's conditional protest regarding the ISA, PJM asserted that the Amended ISA addressed Allegheny Power's concerns regarding the incorrect characterization of certain facilities as Network Upgrades. In its answer to Duke Energy's protest, PJM asserted that the issue which Duke Energy sought to pursue regarding the Amended ISA – whether the facilities to be built to accommodate the interconnection of the Duke Facility with PJM were incorrectly classified as "Attachment Facilities" as opposed to "Network Facilities" – was irrelevant to the ISA that was before the Commission. PJM contended that it is its standard practice to classify facilities such as

¹That agreement was subsequently filed on December 19, 2002 in Docket No. ER03-309-000.

the Allegheny facilities as Attachment Facilities. PJM submitted that it filed the Amended ISA to conform the ISA to this standard practice of PJM.

8. Duke Energy filed a protest in Docket No. ER03-309-000 asserting that the Allegheny-Duke Agreement should be modified to identify the Ronco substation project facilities located at or beyond the point of interconnection as network upgrades and to reflect related charges. Duke Energy submitted that the Commission should reject Allegheny's proposed O&M charges as inconsistent with Commission precedent. It contended that Commission policy as well as the PJM OATT did not provide for the direct assignment of O&M charges for network upgrades.

9. The February 7 Order found the Ronco substation project facilities to be Network Facilities. The Commission found that the new substation was looped into the existing 500 kV line and as such was an integral part of Allegheny Power's transmission system. The Commission further held that it was not necessary that such new facilities add transmission capacity, only that they are an essential part of the transmission system. The Commission cited Tampa Electric Company in holding that "even if the customer causes the addition of a grid facility, (that is, the facility would not be needed "but for" the customer's request for service), the addition is a system expansion that benefits all users."²

Request for Rehearing

10. On rehearing, Allegheny argues that the Commission failed to address Allegheny's arguments that the Ronco Substation facilities are Attachment Facilities and that the cost of operating and maintaining these facilities should be borne by Duke. It contends that the Commission's decision relied upon inapplicable precedent, and casually ignored precedent squarely holding that generators interconnecting to the PJM grid are directly responsible for the full cost of grid expansion facilities that would have been built "but for" the generators request for interconnection service. Allegheny further argues that the Commission's decision is inconsistent with participant funding of economic transmission expansions as set forth in the SMD NOPR. Finally, Allegheny contends that the Commission's decision may improperly result in Allegheny's shareholders being saddled with "trapped costs."

11. On March 11, 2003, PJM filed comments in response to Allegheny's request for rehearing. PJM asserts that its standard practice was to classify facilities such as the Ronco Substation facilities as Attachment Facilities, not Network Upgrades. PJM

² Tampa Electric Co., 99 FERC ¶ 61,192 (2002).

contends that this classification is appropriate because facilities such as these are required only to accommodate the proposed interconnection, rather than for any network purpose.

12. On March 25, 2003, Duke Energy filed an answer to Allegheny's request for rehearing and PJM's comments. Duke Energy asserts that the Commission's decision does not create the risk that Allegheny's shareholders will be exposed to trapped costs. Specifically, it contends that there can be no trapped costs with respect to rates for unbundled retail transmission service that are under the exclusive jurisdiction of the Commission. In addition, Duke Energy submits that neither the Commission's precedent nor the PJM OATT imposes O&M costs associated with Network Facilities directly upon interconnecting generators. It also submits that the Commission's participant funding proposal, as set forth in the SMD NOPR, does not address O&M costs associated with Network Facilities and cannot be construed as modifying current Commission policy. Finally, Duke Energy asserts that PJM's classification of facilities similar to the Ronco substation project facilities as Attachment Facilities is not relevant to the Commission's determination that the facilities in question are Network Facilities.

13. On April 7, 2003, Allegheny filed a reply to Duke Energy's answer. Allegheny asserts that the Commission's decision in this case cannot be reconciled with its recent decision in PJM Interconnection, L.L.C.,³ where the Commission specifically permitted O&M costs for network upgrades to be assigned to merchant transmission providers. Allegheny contends that there is no justification for adopting a policy to give merchant generators in a regional transmission organization a free ride on the O&M costs associated with facilities built to serve them (whether these are "network" facilities or otherwise) when merchant transmission providers must pay full O&M costs associated with the same type of facilities.

Discussion

Procedural Matters

14. The Commission's Rules of Practice and Procedure do not permit answers to requests for rehearing (18 C.F.R. § 385.213 (a)(2)(2003)). However, the Commission finds good cause to admit Duke Energy's answer as well as Allegheny's reply since they will not delay the proceeding, will assist the Commission in understanding the issues raised, and will insure a complete record upon which the Commission may act.

³102 FERC ¶ 61,277 (2003).

Analysis

15. Allegheny has not presented any new arguments which would compel the Commission to reconsider its previous position. Accordingly, Allegheny's request for rehearing is denied.

16. PJM's tariff provides for participant funding for the cost of facilities needed for generator interconnection, whether these facilities are considered Attachment Facilities or Network Upgrades. Accordingly, the costs of the facilities required to interconnect Duke Energy to Allegheny are directly assigned to Duke Energy.

17. The only issue in this proceeding is whether the O&M costs for the Ronco Substation facilities should be directly assigned to Duke Energy under PJM's tariff. Section 60.1(d) of PJM's tariff provides that only O&M costs for Attachment Facilities are directly assigned. PJM defines Attachment Facilities as "[t]he facilities necessary to physically connect a Customer Facility to the Transmission System or interconnected distribution facilities."⁴ The tariff defines Network Upgrades as "[m]odifications 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."⁵

18. Although the distinction between Attachment Facilities and Network Upgrades is not particularly clear, based on the PJM tariff's definition of Network Upgrades, it appears that the Ronco Substation facilities are Network Upgrades. These facilities, which consist of a new three-breaker switching station, line looping and protective relays, are an essential part of Allegheny's transmission system. The existing transmission line has been broken and the new switching station has been looped into and has become part of Allegheny's transmission system.⁶

⁴PJM OATT at § 1.3A

⁵PJM OATT at § 1.26

⁶Treating these facilities as Network Upgrades is also consistent with the Commission's definition of network upgrades in a non-RTO context. The Commission has described the integrated transmission grid as a single piece of equipment, a cohesive network whose expansion benefits all users of the grid. See Consumers Energy Company, 96 FERC ¶ 61,132 at 61,561 (2001) and Public Service Company of Colorado, 62 FERC ¶ 61,013 at 61,061 (1993). The Ronco substation facilities would fit this definition, as they improve and enhance the entire network.

19. Although PJM initially characterized these facilities as Network Upgrades, it subsequently claimed that its standard practice is to classify facilities of this type as Attachment Facilities. But PJM provided no examples of other facilities so classified or described the criteria by which it defines facilities as Attachment Facilities as opposed to Network Upgrades. As discussed above, because these facilities fit the PJM tariff definition of Network Upgrades, the Commission will deny rehearing.

20. The Commission is not persuaded by Allegheny's arguments that the Commission's decision is inconsistent with participant funding of economic transmission expansions as set forth in the SMD NOPR or that it may improperly result in Allegheny's shareholders being saddled with "trapped costs." PJM's tariff generally provides for participant funding for facility costs. The issue here, however, is limited only to the treatment of O&M costs under PJM's tariff, and, as stated above, PJM's tariff does not support classifying these facilities as Attachment Facilities.

21. Finally, Allegheny asserts that the Commission's February 7 Order cannot be reconciled with its recent decision in PJM Interconnection, L.L.C.,⁷ Docket No. ER03-405-000, where the Commission specifically permitted O&M costs for network upgrades to be assigned to merchant transmission providers. PJM's tariff does appear to provide for different treatment of O&M costs for network upgrades associated with AC merchant transmission providers as opposed to upgrades for generator interconnects.⁸ In its merchant transmission filing, PJM stated that its proposal tracked its provisions with respect to generator interconnects.⁹ The Commission is concerned that the treatment of O&M costs for merchant transmission projects differs from that of generator interconnects. The Commission has pending both rehearings and compliance filings in ER03-405, and finds that the treatment of O&M costs for merchant upgrades is most appropriately, and will be, considered in those proceedings.

⁷102 FERC ¶ 61,277 (2003).

⁸Specifically, Sections 54.2 and 55.2 of the PJM OATT specify that the transmission owner that owns transmission system facilities to which any Merchant Network Upgrades are connected shall operate and maintain such Merchant Network Upgrade on behalf and at the expense of the interconnection customer that constructed or caused construction of the pertinent Merchant Network Upgrades.

⁹See Pages 3 and 7 of the transmittal letter to PJM's filing in Docket No. ER03-405-000.

Compliance Filing

22. On March 10, 2003, Allegheny made a filing to comply with the Commission's February 7 Order. Specifically, Allegheny submits revised tariff sheets modifying the Allegheny-Duke Agreement to revise its charges to reflect the Commission's determination that the Ronco Substation Project facilities are Network Facilities and to provide that the revised charges do not include O&M expenses associated with Network Facilities.

23. On March 31, 2003, Duke Energy filed a protest to Allegheny's compliance filing requesting that the Commission require Allegheny to modify its compliance filing to make clear that (1) the Ronco Substation Project facilities are Network Upgrades located at or beyond the point of interconnection, and (2) Duke Energy bears no operating and maintenance cost responsibility for these facilities. Duke Energy asserts that Allegheny's compliance filing does not recognize the Ronco Substation Project facilities as Network Upgrades and instead continues to refer to them as Interconnection facilities. Moreover, Duke Energy asserts that certain revisions made by Allegheny go beyond the scope of the February 7 Order. Specifically, Duke Energy asserts that Allegheny deleted from Section 7.1(c) of the Allegheny-Duke Agreement language which set forth Allegheny's responsibility with respect to designing, constructing, owning, repairing, replacing and maintaining interconnection facilities.

24. On April 11, 2003, Allegheny filed an answer¹⁰ asserting that the changes sought by Duke Energy were not mandated by the February 7 Order, which was limited to requiring that Allegheny revise its charges to eliminate O&M expense. Allegheny contends that Duke Energy's protest amounts to a collateral attack on the February 7 Order.

25. The Commission finds that Allegheny's compliance filing does not recognize the Ronco Substation Project facilities as Network Upgrades and instead continues to refer to them as Interconnection facilities, and makes certain revisions that go beyond the scope of the February 7 Order. Accordingly, the Commission accepts the revised tariff sheets subject to Allegheny's modifying them in accordance with Duke Energy's protest.

¹⁰The Commission similarly finds good cause to admit Allegheny's answer since it will not delay the proceeding, will assist the Commission in understanding the issues raised, and will insure a complete record upon which the Commission may act.

The Commission orders:

- (A) Allegheny's request for rehearing is denied.
- (B) Allegheny's compliance filing is accepted, effective December 22, 2002, subject to the conditions set forth herein. Allegheny is directed to file, within thirty (30) days of the date this order issues, the tariff revisions discussed herein.
- (C) PJM is directed to make a filing, within thirty (30) days of the date this order issues, as requested in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.