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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

OPINION NO. 474

Northeast Texas Electric Cooperative, Inc.,
Rusk County Electric Cooperative, Inc.,
Upshur-Rural Electric Cooperative, Inc., and
Wood County Electric Cooperative, Inc.

Docket No. EL01-73-002

ORDER AND OPINION AFFIRMING INITIAL DECISION

Issued: July 29, 2004

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Appearances

William H. Burchette, Esq., A. Hewitt Rose, Esq., and Katie T. Mulville, Esq. on behalf of Northeast Texas Electric Cooperative, Inc., Rusk County Electric Cooperative, Inc., Upshur-Rural Electric Cooperative, Inc., and Wood County Electric Cooperative, Inc.

Clark Evans Downs, Esq. and Kenneth B. Driver, Esq. on behalf of Southwestern Electric Power Company.

James A. Pepper, Esq. and Diane Schratwieser, Esq. on behalf of the Federal Energy Regulatory Commission.

I. Background

2. On behalf of three member distribution cooperatives⁴ who anticipated serving additional customers, the Northeast Texas Electric Cooperative, Inc. (NTEC) entered into letter agreements with SWEPCO under which SWEPCO would construct, maintain, operate and own facilities improving transmission service reliability at the three distribution cooperatives' points of delivery. The letter agreements provided for NTEC to pay the construction costs at the outset. Because the parties were unable to agree on which of them should pay for the facilities, the letter agreements reserved the parties' rights to raise before the Commission whether the costs should be rolled into AEP West's cost of service⁵ or directly assigned to NTEC.

3. Responding to NTEC's petition for declaratory order, the Commission found that the AEP-West open access transmission tariff (OATT) governs who should pay for these facility upgrades. However, because the parties had offered differing descriptions of the purpose and effect of the new facilities, the Commission could not determine from the existing record whether the facilities are non-grid facilities of a type that the Commission has permitted to be directly assigned to the transmission customer, or transmission system upgrades of a type for which direct assignment has been prohibited. The Commission therefore set the matter for settlement procedures and hearing.⁶ Settlement procedures proving unsuccessful,⁷ the Presiding Judge conducted a hearing. The parties filed Post-Hearing Briefs and Reply Briefs.⁸

⁴ Rusk County Electric Cooperative, Inc. (Rusk County), Upshur-Rural Electric Cooperative, Inc. (Upshur-Rural) and Wood County Electric Cooperative, Inc. (Wood County).

⁵ Because of the merger into AEP, SWEPCO now provides transmission services under the AEP-West Zone Open Access Transmission Tariff (AEP-West OATT). See note 2, *supra*.

⁶ Northeast Texas Electric Cooperative, Inc., *et al.*, 96 FERC ¶ 61,278 at 62,059-60, *reh'g denied*, 97 FERC ¶ 61,313 (2001) (*2001 Order*).

⁷ Settlement Judge's Report to the Commission, Northeast Texas Electric Cooperative, Inc., *et al.*, 97 FERC ¶ 63,003 (2001).

⁸ Initial Decision at P 9.

4. The Rusk County facilities at issue, located at the existing Carthage tap point, are a new power circuit breaker and a motor-operated switch, installed in-line on SWEPCO's looped⁹ 138 kV Rockhill-Logansport-Tenaha line. These facilities are in a new SWEPCO transmission switchyard within the transmission line right-of-way. Their purpose is to isolate the Carthage tap point from faults on the line segments between that tap and SWEPCO substations. Should a fault occur, the new facilities will enable restoration of service to the Carthage tap point without the faulted segment first being returned to service.

5. The Upshur-Rural facilities at issue, located at the new Camp County point of delivery, are two in-line 138 kV circuit breakers, four 138 kV 2000 amp switches, meter facilities, transmission and bus differential relaying panels, and a remote telemetering unit. These new facilities connect to SWEPCO's looped, 138 kV Pittsburg to Petty transmission line via a 138 kV tubing bus. They protect service to Upshur-Rural customers served from the Camp County point of delivery by providing a dual feed to that point of delivery. Should either the Petty- Camp County or the Pittsburg-Camp County line segment suffer a permanent fault, service will continue from the line segment that is not faulted.

6. The Wood County facilities at issue, located at the Mt. Vernon point of delivery, replace taps at three existing metering points. The new facilities are a 69 kV tap structure with a three-way, manually-operated Group Operated Air Break 69 kV switch and associated tap structures located on a 69 kV radial line owned by SWEPCO. The radial line connects, at a tap point, to SWEPCO's 69 kV Winfield-Winnsboro transmission line. The radial line would be looped except for a motor-operated switch, which SWEPCO normally operates "open," located 1.7 miles from the new Mt. Vernon Point of delivery. Should the Winfield-Winnsboro line have an extended outage, the new facilities allow restoration of service to the Wood County load by isolating the faulted line segment.¹⁰

II. Initial Decision

7. At hearing, the parties requested resolution of four issues: (1) what criteria should be applied to determine whether the costs of the new facilities should be directly assigned to NTEC or rolled into the AEP-West transmission cost of service; (2) under the identified criteria, should the costs of any of the new facilities be directly assigned to NTEC or rolled into the AEP-West transmission cost of service; (3) should undue

⁹ A loop is a closed path over which power flows.

¹⁰ A more detailed description of the three sets of new facilities can be found in the Initial Decision at P 12-17 and in SWEPCO's Brief on Exceptions at 5-15.

discrimination or comparability be issues in this case or AEP's next transmission rate case; and (4) whether principles related to undue discrimination or comparability require that the costs of the new facilities be rolled into the AEP-West transmission cost of service.¹¹ Additionally, the Presiding Judge directed the parties to brief a question related to the parties' second issue, "Assuming that each facility is not 'presently integrated' into Swepeco's transmission system, whether each facility could, at anytime in the future, become 'integrated' into Swepeco's transmission system?"¹²

8. The Presiding Judge concluded that the Commission's traditional test for determining whether facilities are integrated with the transmission provider's integrated transmission network is appropriate for determining whether these facilities' costs should be rolled in or directly assigned.¹³ Applying this test, she found that the three sets of facilities at issue are part of the integrated SWEPCO network, and that their costs therefore should be rolled into the SWEPCO transmission cost of service.¹⁴ The Presiding Judge made no findings as to the issues concerning undue discrimination or comparability because the Commission's 2001 Order had narrowly limited the hearing's scope to determining the facilities' costs allocation.¹⁵

A. Issue 1: Criteria to Determine Direct Assignment or Roll-In of Costs

9. In determining the criteria that govern this proceeding, the Presiding Judge first discussed Commission precedent. She focused on the Commission's long-standing preference for rolled-in pricing of transmission facilities on a fully integrated grid, based on the presumption that such facilities are integrated with the network and thereby benefit

¹¹Initial Decision at P 8.

¹²Presiding Judge's May 23, 2002 Order Directing Scope of Trial Briefs in Docket No. EL01-73-002.

¹³ Initial Decision at P 50. Transmission facilities are presumed to be part of the integrated network and thus should be rolled in unless there is a special circumstance (such as lack of a fully integrated network, facilities so isolated from the network that they are and will remain non-integrated, or customer-specific distribution facilities that are not supportive of the network).

¹⁴ *Id.* at P 91, P 93, P 95.

¹⁵ *Id.* at P 102-103.

all customers.¹⁶ She stated that the key to this question is whether a transmission system and the new facilities are “fully integrated.” She cited the Commission’s definition of an integrated system as one that operates as an integrated, cohesive network that moves electric energy in bulk, and is designed and constructed to achieve maximum efficiency and reliability at minimum cost on a system-wide basis.¹⁷ She cited also the Commission’s public policy rationale that all customers should share in all costs of the integrated grid without regard to which customer caused the construction because all grid additions benefit all customers.¹⁸

10. The Presiding Judge cited Commission orders holding that in “exceptional circumstances,” some transmission facilities should not be considered part of an integrated grid because they are so isolated from the grid that they are and will remain non-integrated,¹⁹ and that customer-specific distribution facilities not integral to or supportive of the grid can also fall into the “special circumstances” category.²⁰

¹⁶ *Id.* at P 31, *citing* Otter Tail Power Company, Opinion No. 93, 12 FERC ¶ 61,169 at 61,420 (1980) (*affirming* 4 FERC ¶ 63,046 (1978) (*Otter Tail*) (“Commission precedent strongly favors use of the rolled-in method of transmission allocation”). This consistent policy has been affirmed repeatedly by the courts. *See, e.g.,* Western Massachusetts Electric Co. v. FERC, 165 F.3d 922, 927 (D.C. Cir. 1999) (enhancements to integrated system presumed to benefit the entire system).

¹⁷ Initial Decision at P 31, *citing* Alabama Power Company, Opinion No. 54, 8 FERC ¶ 61,083 at 61,329, *reh’g denied*, 8 FERC ¶ 61,320 (1979), *remanded on other grounds*, 684 F.2d 20 (D.C. Cir. 1982).

¹⁸ Initial Decision at P 31, *citing* Western Massachusetts Electric Company, Opinion No. 409, 77 FERC ¶ 61,268 at 62,120 (1996), *aff’d*, Western Massachusetts Electric Co. v. FERC, 165 F.3d 922, 927 (D.C. Cir. 1999) (*aff’g and rev’g* 64 FERC ¶ 63,028 (1993) .

¹⁹ Initial Decision at P 33 & n.55, *citing, inter alia,* Public Service Company of Colorado, 59 FERC ¶ 61,311, *reh’g denied*, 62 FERC ¶ 61,013 (1993) (*Public Service*) and Niagara Mohawk Power Corporation, 42 FERC ¶ 61,143 (1988).

²⁰ Initial Decision at P 33 & nn.56-57, *citing* Appalachian Power Company, 63 FERC ¶ 61,151, *order on reh’g*, 64 FERC ¶ 61,012, *order vacating in part*, 64 FERC ¶ 61,327 (1993).

11. The Presiding Judge next cited *Entergy Gulf States*,²¹ a generator interconnection case. There, the Commission reiterated its long-standing view of integrated or network facilities by holding that: (1) the transmission grid is a single piece of equipment whose use can be priced on either an average or incremental investment cost basis, but not by way of direct assignment; (2) network facilities include all those facilities at or beyond the point where the customer or generator connects to the grid; and (3) it does not matter that network facilities are upgraded to accommodate an interconnection, those facilities are still considered part of the integrated grid and the associated costs cannot be directly assigned.²²

12. The Presiding Judge also discussed various other tests and factors that could be used to determine whether the facilities should be directly assigned to NTEC or rolled into SWEPCO's rates. She discussed the test used in *Consumers Energy*,²³ a proceeding arising under Order No. 888,²⁴ to determine integration in the context of credits for customer-owned facilities, a test that SWEPCO and Trial Staff urged be used for this proceeding. In *Consumers Energy*, the subject was whether the customer was entitled to

²¹ Entergy Gulf States, 99 FERC ¶ 61,095 (2002) (*Entergy Gulf States*).

²² Initial Decision at P 32, citing *Entergy Gulf States*, 99 FERC at 61,399.

²³ Consumers Energy Company, 86 FERC ¶ 63,004 (1994), *aff'd in relevant part*, Opinion No. 456, 98 FERC ¶ 61,333 (2002) (*Consumers Energy*).

²⁴ Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom.* Transmission Access Policy Study Group, *et al.* v. FERC, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom.* New York v. FERC, 535 U.S. 1 (2002).

Section 30.9 of the *pro forma* tariff says that a customer is eligible for credits against its transmission bills where the customer demonstrates that its transmission facilities are integrated into the transmission provider's plans or operations serving the transmission provider's power and transmission customers. Order No. 888-A, ¶ 31,048 at 30-533-34.

credits against its transmission bill for customer-owned facilities.²⁵ That proceeding's presiding judge used four elements that must be satisfied (Consumers Energy Elements).²⁶ He also listed four items, stating that the Commission had provided these items to give guidance as to what will not satisfy the integration standard (Consumers Energy Items).²⁷

²⁵ The presiding judge determined that the customer-owned facilities, although essentially interconnected with the grid, performed functions that almost exclusively benefitted the customer. Thus, they were not integrated into the plans and operations of the transmission provider to serve all of its power and transmission customers. 86 FERC at 65,016-017.

²⁶ The Consumers Energy Elements are: (1) the network customer must demonstrate that the facilities for which it seeks credits are integrated into the plans and operations of the transmission provider to serve its power and transmission customers; (2) the transmission provider is able to provide transmission service to itself or other transmission customers over the network customer's facilities; (3) actual use of a network customer's facilities by the transmission provider to provide service to the network customer or other parties; (4) to be eligible for a credit, the network customer must not only demonstrate that its facilities are integrated into the plans and operations of the transmission provider to serve its power and transmission customers, but must also show that its facilities provide additional benefits to the transmission grid in terms of capability and reliability, and are relied upon for coordinated operation of the grid. *Consumers Energy*, 86 FERC at 65,016.

²⁷ The Consumers Energy Items are: (1) interconnection of a network customer's facilities with those of the transmission provider alone is not enough to prove integration; (2) the fact that the network customer's facilities serve a transmission function on the customer's side of the interconnection point is not enough to prove integration; (3) the fact that a network customer's line constitutes a parallel path and is subject to parallel loop flows does not compel a conclusion that the line operates as part of an integrated network; and (4) unnecessary redundancy provided by a customer's facilities cannot qualify for a credit. *Consumers Energy*, 86 FERC at 65,016.

13. The Presiding Judge discussed also the Commission's affirmation of the Initial Decision in *Mansfield*,²⁸ concerning allocation of the costs of transmission provider-owned radial transmission lines serving a single wholesale customer.²⁹ In *Mansfield*, the presiding judge used a five-part test (Mansfield Test), all parts³⁰ of which had to be satisfied to find that the facilities at issue were transmission system upgrades.³¹

14. The Presiding Judge found that the Consumers Energy Elements are very similar to the five-part test that Staff had proposed for use here and in any similar proceeding, with the requirement that all parts must be satisfied for facilities to qualify as system upgrades (Staff Test):

(1) whether the new facility additions would improve service to existing system load (other than the load that requested it);

(2) whether the additional facilities, that have been demonstrated to be the most cost-efficient alternative, are needed to maintain the reliability of the existing transmission system;

²⁸ *Mansfield Municipal Electric Department et al. v. New England Power Company*, 94 FERC ¶63,023, *aff'd*, Opinion No. 454, 97 FERC ¶ 61,134 (2001), *reh'g denied*, Opinion No. 454-A, 99 FERC ¶ 61,14 (2002) (*Mansfield*).

²⁹ *Mansfield* concerned facilities located on radial lines that were not pool transmission facilities and did not provide parallel capability to the transmission grid. *See* Initial Decision at P 35 and n.59. The Commission affirmed the Initial Decision's finding that this was a special circumstance, that the facilities were not integrated with the rest of the network and that their costs should be directly assigned. *Mansfield*, 97 FERC at 61,615.

³⁰ The Presiding Judge in this proceeding, like the Presiding Judge and the Commission in the *Mansfield* proceedings, refers to the five parts of the Mansfield Test as "factors." We also will refer to each part of the Mansfield Test as a factor.

³¹ The five Mansfield Factors are: (1) whether the facilities are radial, or whether they loop back into the transmission system; (2) whether energy flows only in one direction, from the transmission system to the customer over the facilities, or in both directions; (3) whether the transmission provider is able to provide transmission service to itself or other transmission customers over the facilities; (4) whether the facilities provide benefits to the transmission grid in terms of capability or reliability, and whether the facilities can be relied on for coordinated operation of the grid; and (5) whether an outage on the facilities would affect the transmission system. 94 FERC at 65,170; 97 FERC at 61,613-15.

- (3) whether the new facilities are mandatory requirements for a load interconnection to satisfy a utility's planning criteria, or whether they far exceed what those criteria require;
- (4) whether customers other than the customer that requested the facilities would experience a degradation in service if installation of the new facilities at issue were not undertaken; and
- (5) whether the facilities are integrated with the rest of the transmission system, and provide integrated benefits to the overall transmission grid.³²

Trial Staff had argued, under this test, that the facilities at issue are interconnection facilities constructed for the sole benefit of NTEC, and that they are not system upgrades and are not integrated with the SWEPCO transmission system.³³

15. The Presiding Judge next discussed whether to apply any of these various tests here. She emphasized that *Consumers Energy* involved whether the customer should get transmission credits under Order No. 888 for transmission facilities owned by the customer, not from the Commission's line of cases resolving roll-in versus direct assignment issues. She rejected SWEPCO's and Trial Staff's argument that, when determining whether facilities are integrated, the lines between roll-in/direct assignment precedent for transmission provider-owned facilities and Order No. 888/transmission credits precedent for customer-owned facilities should be blurred.³⁴ She concluded that no precedent exists for using them in a proceeding where the issue is determining whether a facility is integrated into a transmission system for purposes of rolling-in or directly assigning costs.³⁵ She pointed out that, when affirming the presiding judge's conclusions in *Consumers Energy*, the Commission could have, but did not, relate its affirmation to its thirty years of precedent regarding roll-in versus direct assignment cases. Thus, the Commission refused to blur or mix lines of reasoning that have developed over the years to determine integration under different legal theories. She declined to simplify the Commission's theories and reconfigure their application³⁶

³² See Initial Decision at P 29-30, Trial Staff's May 28, 2002 pretrial brief at 708, and Exh. S-1 at 30-31.

³³ Initial Decision at P 29.

³⁴ *Id.* at P 45.

³⁵ *Id.* at P 49.

³⁶ *Id.* at P 50.

16. The Presiding Judge also considered whether to adopt the Mansfield Factors in lieu of the Commission's thirty years of precedent. She decided that while the Commission had approved the use of the five Mansfield Factors in *Mansfield*, the Commission did not intend those factors to replace the thirty years of pre-*Mansfield* precedent.³⁷ Rather, the Commission referred to its long-standing policy that transmission rates are assessed on a rolled-in basis absent a showing that particular facilities are not integrated with the transmission system as a whole.³⁸ In *Mansfield*, the presiding judge had found that the facilities were not part of an existing integrated transmission system and were not likely to become integrated with the system. The conclusion therefore was that there was a "special circumstance," *i.e.*, a facility so isolated from the grid that it is and is likely to remain non-integrated.³⁹

17. The Presiding Judge concluded that the Mansfield Factors should not be used for deciding roll-in/direct assignment of the facilities in this case,⁴⁰ saying that the Mansfield Factors are more appropriate, in line with the Commission's thirty years of precedent, for determining whether "special circumstances" justify direct assignment of facilities.⁴¹ She pointed out that when the Commission affirmed the Initial Decision in *Mansfield*, the Commission explicitly stopped short of endorsing the presiding judge's reliance on Order No. 888.⁴²

³⁷*Id.* at P 37. The Commission affirmed the judge's conclusions but not all of his reasoning. *See Mansfield*, 97 FERC at 61,613.

³⁸ Initial Decision at P 36. *See Mansfield*, 97 FERC at 61,613 (where the Commission has authorized direct assignment, the "special circumstances" have generally been the lack of a fully integrated system).

³⁹Initial Decision at P 36. *See Mansfield*, 97 FERC at 61,614 (affirming presiding judge's finding that facilities were not integrated because there was no evidence that they could serve other loads).

⁴⁰ Although declining to adopt the Mansfield Factors as controlling, the Presiding Judge found credible NTEC's testimony that the Carthage and Camp County facilities met all five of the Mansfield Factors while the Mt. Vernon facilities met three of the factors. Initial Decision at P 78.

⁴¹ *Id.* at P 52-53.

⁴² *Id.* at P 46, *citing Mansfield*, 97 FERC at 61,614 n.7. There, the Commission rejected as irrelevant to determining whether facilities are integrated the presiding judge's reliance on Order No. 888's seven-factor test for identifying non-jurisdictional "local distribution" facilities.

18. The Presiding Judge examined whether the Staff Test should be adopted, as Trial Staff had proposed, to determine the roll-in/direct assignment issue. She found no statements in Commission orders indicating that the Staff Test should be adopted as a newer and wiser characterization of the Commission's thirty years of precedent.⁴³ She concluded that the appropriate criterion to use here is the Commission's historic presumptive integration test.⁴⁴

B. Issue 2: Application of Presumptive Integration Test

19. The Presiding Judge turned next to determining, under the Commission's presumptive integration test, whether the three sets of facilities at issue are integrated into the SWEPCO transmission grid.

20. The Presiding Judge found to be convincing two statements by an NTEC witness, that the function of transmission is to deliver bulk power from generating resources to loads, and that because "distribution" facilities are not integrated with the transmission system, the line between transmission and "distribution" should be drawn at the interconnection point between the transmission system and the distribution system.⁴⁵ The Presiding Judge found that SWEPCO failed to impeach testimony by NTEC that SWEPCO's pre-existing fault relay equipment on the lines connecting the Carthage point of delivery to the transmission system was subject to inordinate delays 73 percent of the time.⁴⁶

21. Focusing on whether the facilities are likely to become integrated (assuming for the sake of argument that they are not now integrated), the Presiding Judge discussed SWEPCO's testimony that it projects system growth only on the basis of ten-year plans. She commented that a ten-year plan does not provide for unexpected developments, and cited SWEPCO testimony that it makes plans to upgrade or expand a section of its transmission system only when it has a firm commitment from a customer. She cited NTEC testimony that most cooperatives operate on two-year plans, because planned expansions by large retail customers are closely guarded until they are ready to move on final plans. Therefore, the Presiding Judge discounted the testimony of SWEPCO witnesses who argued against the possibility that the facilities at issue would become more integrated into the SWEPCO system as loads in these areas, where SWEPCO has

⁴³ Initial Decision at P 52 & P 54.

⁴⁴ *Id.* at P 55.

⁴⁵ *Id.* at P 73.

⁴⁶ *Id.* at P 74. The new facilities can help to locate faults on those lines.

its own wholesale and retail customers, increase.⁴⁷ She stated that although she did not believe the Mansfield Factors are the controlling legal criteria for this case, she found credible NTEC testimony that the Carthage and Camp County facilities met all five of the Mansfield Factors, while the Mt. Vernon facilities met three factors.⁴⁸

22. The Presiding Judge found inconsistent with the substantial weight of evidence in this proceeding or with Commission precedent testimony by a SWEPCO witness concerning facilities that provide swifter transmission restoration after an outage. The witness had disputed that a facility providing quicker restoration of a transmission line after a service outage provides a transmission function, and that if there were interplay between a breaker installed on a transmission line for NTEC and a breaker installed on the same transmission line for SWEPCO, the NTEC breaker served a network function.⁴⁹ She cited *Public Service*,⁵⁰ as stating the Commission's policy that the costs of facilities that help to maintain reliability on a transmission system should be rolled in.⁵¹ Quicker restoration of transmission service is an integral part of system reliability. Therefore, the facilities at issue here are part of the integrated grid and provide a network function.⁵² She observed further that a transmission system is designed to have alternate courses of flow, and that reliability is a key requirement of an integrated system. She concluded therefore that facilities performing a reliability function are performing an integrated network function.⁵³

23. The Presiding Judge found that the Staff Test did not recognize that the facilities at issue were located on integrated transmission lines, and concluded that the Staff Test is inapposite to this proceeding. The Presiding Judge disagreed with Trial Staff's position that integration should be evaluated the same way in every case, even in different types of

⁴⁷ *Id.* at P 75-76.

⁴⁸ *Id.* at P 78.

⁴⁹ *Id.* at P 79-80.

⁵⁰ *Public Service*, 62 FERC at 61,061).

⁵¹ Initial Decision at n.98.

⁵² *Id.* at P 80.

⁵³ *Id.* at P 82.

cases, *i.e.*, credits, direct assignments, or points of delivery and generating facilities. She disagreed with Staff's position that the most important thing to look at was the principal benefit of the facilities and that these facilities are non-grid facilities because they were built to isolate NTEC loads. She disagreed with Staff that the facilities could never be considered integrated unless someone other than NTEC received a benefit from them.⁵⁴

24. The Presiding Judge came to eight general conclusions about the facilities at issue:

(1) SWEPCO's transmission system is designed to function as a fully integrated, looped system.

(2) None of the facilities at issue are "interconnection facilities."

(3) NTEC is connected to SWEPCO's integrated transmission system at multiple points.

(4) The facilities at issue are part of the "get power to the customer" function, not the "get the power distributed to the end user" function. In other words, the facilities at issue are part of a transmission system.

(5) Protecting redundant transmission on a fully integrated looped system is a benefit.

(6) Reliability is a transmission function; limiting the extent and duration of service interruptions on an integrated transmission line is a key element of providing reliable service.

(7) There is no Commission precedent for declaring that it is mandatory (or even appropriate) to analyze the function of the facilities at issue to determine if they provide any non-redundant benefit to other transmission users. . . . On an integrated transmission system designed and built to supply redundant transmission service to its users, a redundant benefit is a benefit for all purposes.

(8) To intimate that facilities located on integrated transmission lines are not integrated facilities is a specious argument.⁵⁵

⁵⁴ *Id.* at P 82, 86-88.

⁵⁵ *Id.* at P 89.

25. The Presiding Judge made these following specific findings about the new facilities. The Carthage and the Camp County facilities are located on looped transmission lines that are part of the integrated AEP transmission grid. Energy flow is bi-directional on the transmission lines at these facilities. The Carthage facilities provide a reliability benefit to the transmission grid by allowing faster restoration of outages at the Carthage point of delivery, and on the Rockhill, Logansport and Tenaha lines, on which SWEPCO depends to provide transmission service to customers other than NTEC. The Camp County facilities provide a reliability benefit to the transmission grid by allowing faster restoration of outages on the Pittsburg-Petty line. The points of delivery facilities located near the Carthage and Camp County facilities are sized to carry the power needs of all SWEPCO loads.

26. The Mt. Vernon facilities are located on a SWEPCO transmission line, part of the integrated AEP transmission grid, that can be operated looped or radially, depending on whether SWEPCO opens or closes a switch. The feed on the transmission line is radial when the switch is closed, but the direction of the feed can be reversed by closing the switch. The Mt. Vernon facilities provide a reliability benefit to the transmission grid by allowing faster restoration of outages on the Winfield to Mobile-Texoma to Hopewell lines. Like Carthage and Camp County, the point of delivery facilities located near the Mt. Vernon facilities are sized to carry the power needs of all SWEPCO loads.⁵⁶

27. Accordingly, the Presiding Judge found, under the Commission's long-standing presumption that transmission facilities on a fully integrated system are integrated with that system and provide benefits to all customers, that the costs of the new facilities should be rolled into SWEPCO's transmission cost of service.⁵⁷

III. Parties' Arguments

28. SWEPCO, NTEC and Trial Staff filed Briefs on Exceptions and Briefs Opposing Exceptions. In addition, the parties made filings pertaining to lodging with the Commission the court opinion in *Entergy Services, Inc. v. FERC*, 319 F.3d 536, *reh'g denied (per curiam)*, (D.C. Cir. 2003) (Court Opinion).⁵⁸

⁵⁶ *Id.* at P 90-94 & n.114.

⁵⁷ *Id.* at P 95.

⁵⁸ The court denied the petition for review of Entergy Services, Inc., 95 FERC ¶ 61,437, *reh'g denied*, 96 FERC ¶ 61,311 (2001) (in context of generator interconnection, credits required for network upgrades to remedy short-circuit or stability problems).

A. SWEPCO

29. SWEPCO argues first that the Initial Decision errs by not applying the AEP OATT, which the Commission has said governs the question of who pays the costs of the new facilities.⁵⁹ The AEP OATT states, at section 34, that the network customer shall pay for any direct assignment facilities, and, as defined by section 1.15 of the AEP OATT, direct assignment facilities are those that are constructed for the sole use or benefit of the particular transmission customer. SWEPCO says that the facilities at issue are such direct assignment facilities.

30. Second, SWEPCO says that the Initial Decision errs in claiming to apply thirty years of precedent that establishes a presumptive integration test because the Initial Decision does not explain the test or discuss how the test is to be used. SWEPCO argues that the Commission has never held that facilities that connect a wholesale point of delivery and isolate it from faults on nearby transmission lines are network upgrades rather than directly assignable. Rather, the Commission developed its preference for rolling in costs of integrated network facilities in the context of radial line additions, and the preference is applied only after a determination that the lines in question are integrated with the transmission network.

31. Third, SWEPCO criticizes the Initial Decision's application of the presumptive integration test, saying that the Initial Decision makes a bright line at the point of delivery and characterizes any transmission provider-owned facilities located at or on the transmission provider's side of the point of delivery as part of the integrated transmission network. Whether a particular delivery point protection and control facility is integrated is a question of fact that should not be presumed. In deciding who should bear the costs of the facilities, the Commission should determine what the facilities do, whom they benefit, and what would happen were they not there.

32. SWEPCO states that the Commission's previous decisions establish that the cost of exclusive use facilities should be directly assigned, and argues that recent generator interconnection cases do not require a different result here. It contends that the Presiding Judge erroneously applied the test in *Entergy Gulf States* for determining network facilities, "where the customer or the generator connects to the grid," a holding that does not apply in this case, which concerns local delivery facilities. *Entergy Gulf States* treats generator interconnection, not delivery point protection.

⁵⁹ See 2001 Order, 96 FERC at 62,059.

33. Fourth, SWEPCO says that the Initial Decision errs by failing to follow or to distinguish *Entergy Services*,⁶⁰ and *Alabama Power*⁶¹ and other cases in which the Commission approved the direct assignment of costs for facilities located on a pre-existing integrated transmission line when the facilities' function was to connect or protect a point of delivery to a wholesale customer.

34. Fifth, SWEPCO says that the record has no basis for the Initial Decision's finding that the facilities at issue provide a reliability benefit to the SWEPCO system by allowing faster restoration of service; the facilities benefit only the Carthage, Camp County, and Mt. Vernon Points of Delivery, and these transmission lines segments serve only NTEC loads. Moreover, the Initial Decision erroneously focuses on whether the facilities at issue are on a looped transmission line. No evidence supports the conclusion that the new facilities would shorten the duration of interruption of even looped service. SWEPCO says that its system is already designed to operate when any one line segment is out of service, so the facilities' benefit is not significant. Additionally, a switch at the delivery point benefits only one point of delivery. SWEPCO objects to the Initial Decision's reliance on speculation about future expansion of the transmission system since SWEPCO stated it does not plan to change its facilities. SWEPCO also says that the Initial Decision fails to explain how the facilities could benefit other customers in the future.

35. Sixth, SWEPCO urges adoption of the five Mansfield Factors or the Staff Test to determine integration of facilities located on transmission lines. It contends that the Initial Decision erred by disregarding *Mansfield*.

36. Seventh, SWEPCO predicts that requiring the rolling in of costs associated with point of delivery facilities on the transmission provider's side of a point of delivery will cause customers to request "gold-plated" facilities, *i.e.*, high-cost equipment that will secure them reliability benefits at the expense of all other transmission system users who receive no benefit from this equipment.

⁶⁰ *Entergy Services, Inc.*, 89 FERC 61,079 (1999) (*Entergy Services*).

⁶¹ *Alabama Power Co.*, 63 FERC ¶ 61,309 (1993) (*Alabama Power*).

B. Trial Staff

37. First, Trial Staff says that the Initial Decision transforms the Commission's preference for rolled-in pricing into a virtually irrebutable presumption of integration for any facility attached to an integrated transmission line. Instead, Commission precedent rolls in the cost of facilities up to the point of sole use, and a facility is not integrated merely because it is interconnected with an integrated system.

38. Second, Trial Staff discusses the Initial Decision's reliance on *Entergy Gulf States* and distinguishes that order's holdings favoring a finding of integration. It points out that *Entergy Gulf States* concerned generator interconnection, and that the facilities there were upgrades to existing facilities. Trial Staff says that different considerations apply to generator and load point of delivery interconnections because the former provide clear benefits to a transmission system, *e.g.*, additional capacity, reactive power and congestion relief, while the latter do not provide such benefits and can degrade system reliability.

39. Third, Trial Staff disputes the Initial Decision's distinction between integration in the context of roll-in/direct assignment cases (involving who pays for transmission provider-owned facilities) and integration in the context of Order No. 888 transmission credit cases (involving customer-owned facilities). Trial Staff urges that Order No. 888 and the Standard Market Design rulemaking proceeding⁶² changed the Commission's philosophy from favoring rolled-in pricing (which was aimed at vertically integrated utilities providing generation, transmission and distribution) to preferring pricing based on the policy of cost causation, which is suited to independent generators, open access transmission, and competitive electricity markets. Trial Staff says that the Initial Decision does not make clear why integration analysis in roll-in/direct assignment cases and transmission credits cases should differ, or why Order No. 888 integration analysis is limited to customer transmission credits disputes.

40. Fourth, Trial Staff says that the Initial Decision errs in not recognizing that the facilities at issue present "special circumstances" because they are customer-specific, sole use load interconnection facilities that serve only to protect the local distribution load. The facilities are not integrated, do not perform a transmission function, and provide no system benefits to support the SWEPCO transmission network. Trial Staff emphasizes that the proper inquiry is into the function of a facility to determine whether it operates as a transmission facility.

⁶² Standard Market Design Notice of Proposed Rulemaking, 100 FERC ¶ 61,138, 67 Fed. Reg. 58,751, FERC Stats. & Regs. ¶ 32,563 at 34,277 (2002)

41. Fifth, Trial Staff urges use of the five-part Staff Test to determine whether the facilities at issue are integrated, saying that Commission precedent requires that all five parts must be satisfied for a facility to be deemed a transmission system upgrade whose costs should be rolled into transmission rates. The last part (whether the facilities are integrated with the rest of the transmission system and provide integrated benefits to that system) should be examined by using the five Mansfield Factors. Trial Staff says that the Presiding Judge mis-applied the Mansfield Factors, and that just because energy can flow over facilities does not mean that the facilities are integrated with the rest of the transmission system.

42. Sixth, Trial Staff objects that rolling in the cost of the new facilities will encourage other customers to request gold-plated, sole use facilities beyond what is necessary to provide transmission service. Such requests allow gold-plated facilities to raise SWEPCO's rates to all network customers, and will make these rates higher than other rates throughout the markets that exclude sole use facilities. Transmission providers generally will have incentive to provide only those facilities and upgrades required by their reliability criteria and to build delivery points far outside their networks so that the facilities will clearly be directly assignable, distribution facilities.

C. NTEC

43. NTEC complains that the Initial Decision failed to address NTEC's contention that SWEPCO discriminates against the member cooperatives in favor of SWEPCO retail customers and certain wholesale customers both in the direct assignment tests that SWEPCO uses and in the way that SWEPCO administers these tests. NTEC says that the Commission's 2001 Order included this issue when setting the controversy for settlement or hearing.

IV. Discussion

A. Procedural Matter

44. NTEC argues in its March 5, 2003 motion to lodge the Court Opinion why the Court Opinion is relevant to this proceeding. SWEPCO's and Trial Staff's opposing motions object only to those arguments, not to the Commission taking notice of the opinion. Trial Staff comments that the opinion is irrelevant to the instant proceeding. NTEC's answer says that it was merely explaining how the Court Opinion relates to the issues in this proceeding.

45. We will reject as unnecessary NTEC's motion to lodge the Court Opinion. The Commission is aware of it. Discussion of how that opinion supports or does not support the issues in this proceeding is simply re-argument of the parties' positions.

B. Roll-in or Direct Assignment

46. Despite the parties' arguments and their requests that the Commission address various issues, this proceeding is of limited scope. It arose from the differing descriptions by NTEC and SWEPCO of the facilities' purposes and functions. The Commission could not determine from the then-existing record whether the facilities are transmission system upgrades. This limited question was the only issue set for hearing.⁶³

47. We affirm the Initial Decision's conclusion that these are network facilities that cannot be directly assigned to the customer. It is still our policy, as it has been for many years, to prohibit the direct assignment of network facilities. Due to the integrated nature of the transmission network, network facilities benefit all network users. It does not matter whether the facilities were installed to meet a particular customer's request for service.⁶⁴ The Commission allows direct assignment to the customer of only non-grid facilities, such as radial lines and generator interconnection facilities (on the generator's side of the point of interconnection with the grid) that do not serve a system-wide function.⁶⁵

48. On the question of how to determine whether a facility is a network facility, the Commission has stated that a showing of any degree of integration is sufficient.⁶⁶ After

⁶³ See 2001 Order at 62,060 and Ordering Paragraph (B).

⁶⁴ See San Diego Gas & Electric Co., 98 FERC ¶ 61,332 at 62,408 (2002); Consumers Energy Co., 96 FERC ¶ 61,132 at 61,561 (2001); *Public Service*, 62 FERC at 61,061.

⁶⁵ See *Entergy Services*, 89 FERC at 61,235-36.

⁶⁶ See American Electric Power Service Corp., Opinion No. 311, 44 FERC ¶ 61,206 at 61,748, *reh'g denied*, Opinion No. 311-A (1988), *reh'g denied*, Opinion No. 311-B, 46 FERC ¶ 61,382 (1989). In this regard, we note that SWEPCO states, "NTEC assumes that the new facilities would minimize interruptions of 'looped' transmission service, *i.e.*, the redundant transmission service (from two or more power sources) that is available to nearby SWEPCO customers when the SWEPCO transmission system is in its "prefault" condition. This is not a significant benefit to SWEPCO's other customers or to the SWEPCO system. SWEPCO's system has been designed to operate for hours or days while any one line segment in the area is out of service. Even if the presence of a switch at a delivery point could play a significant role in restoring the line to which it is attached, that is not a network system benefit if it only benefits one [point of delivery]." SWEPCO's Brief on Exceptions at 20. Thus, SWEPCO acknowledges that the NTEC facilities do benefit other customers, albeit to a small extent, and can

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reviewing the record, we affirm the Initial Decision's finding that the new facilities at the three points of delivery are network facilities. Therefore, we affirm the Initial Decision's conclusion that the costs of constructing these facilities must be rolled into the AEP-West transmission rates.

49. We disagree with SWEPCO's characterization of the facilities as being similar to interconnection and protection facilities whose costs the Commission allows to be directly assigned.⁶⁷ The facilities here operate in-line with the transmission network and perform a switching function to maintain the reliability of service over the network transmission lines. The Commission has specifically found that such facilities are part of an integrated network. In *Otter Tail*, the Commission approved roll-in of the costs of circuit breakers and line sectionalizing switches located at "distribution" substations or on either side of "distribution" loads. It found that the facilities are on transmission lines and serve a transmission function, even though they are located in "distribution" substations.⁶⁸

permit faster restoration of transmission service to NTEC.

⁶⁷ Generator interconnection cases are a special sub-category of transmission pricing cases. There is special need to ensure that transmission-owning utilities do not use their control over transmission to unduly discriminate against the generators with which these utilities must compete by delaying interconnection of these generators. Because of this need, the Commission, in its case law and in Order No. 2003, decided to adopt a simple test for whether a facility is a network facility: if it is "at or beyond" the point where the generator interconnects to the grid, it is a network facility. See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 at P 21 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs., Regulations Preambles ¶ 31,160 (2004); *Ohio Power Co.*, 104 FERC ¶ 61,243 at P 8 & n. 2 (2003).

⁶⁸ *Otter Tail*, 12 FERC at 61,424. SWEPCO argues that the Initial Decision erred by failing to follow or to distinguish *Alabama Power* and *Entergy Services*. In *Alabama Power*, the Commission permitted the direct assignment of costs incurred under certain agreements because the transmission provider had demonstrated that the delivery and interconnection facilities constructed under those agreements were not part of its integrated transmission grid, but served only the wholesale customers. However, the Commission suspended another agreement, pending further action, because that agreement covered facilities used by and benefitting all grid users, like the facilities at issue in this proceeding. 63 FERC at 63,129, 63,131-32. In *Entergy Services*, the Commission permitted direct assignment of the costs associated with re-routing the

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50. Nor are we persuaded that these facilities are not network facilities by SWEPCO's avowal that it needs neither these facilities nor the line segments on which they are located to restore service to non-NTEC loads after an outage because its system already has other protection equipment and sufficient redundancy. As noted above, the transmission network cannot be "dismembered" in this manner; it is a "cohesive network moving energy in bulk" that operates "as a single piece of equipment." This is true even if the facilities would not currently be needed but for a particular customer's service.⁶⁹ It is also unchallenged that the facilities at issue switch existing network facilities in order to maintain continuation of service over those network facilities in the event of a fault on the adjacent lines. We also agree with the Presiding Judge's conclusion that the facilities here can allow faster restoration of looped transmission lines, thereby benefitting other loads. Thus, the facilities are integrated with SWEPCO's fully integrated transmission network and perform a system-wide function.

51. We will not use the Staff Test to determine whether the facilities at issue are integrated with the rest of the SWEPCO transmission network. The antecedents of the Staff Test – the Consumers Energy Elements and Items – were used to determine whether to require transmission service credits in cases involving customer-owned transmission facilities. The five-factor Mansfield Test was used to determine whether the radial lines at issue exhibited *any* degree of integration. Thus, the lines' negative showing with respect to all five factors established there were "exceptional circumstances" that merited direct assignment of their costs. In this proceeding, Trial Staff and SWEPCO would have us require that facilities meet all five parts of the Staff Test to merit rolled-in treatment. This contradicts the Commission's policy that costs should be rolled in when any degree of integration has been shown.

52. Even were we to apply here the customer credits test for customer-owned facilities, we would still find that the facilities are integrated into SWEPCO's fully integrated grid. That is, if NTEC owned these facilities, we would find that their costs should be rolled into SWEPCO's rates because the facilities operate in-line with

transmission provider's 115 kV line in and out of a new substation, because it found that the modifications were not system upgrades or system reinforcements serving a system-wide function. 89 FERC at 61,235-36. Upon revisiting the facts of *Entergy Services*, we conclude that the order may have erred. The concrete structures used to support the transmission line in and out of the new substation may well be network facilities benefitting all grid users.

⁶⁹ See *Alabama Power Co.*, 8 FERC ¶ 61,083 at 61,329 (1979); *Public Service*, 62 FERC at 61,061; *Florida Power & Light Co.*, 99 FERC ¶ 61,197 at P 12 & n.9 (2002).

SWEPCO's transmission network and can perform a switching function to maintain the reliability of service over SWEPCO's network transmission lines.

53. SWEPCO and Trial Staff argue that the facilities fail the customer credit test because the benefits to other loads are redundant. However, the test of redundancy was used in the context of claims for credits for customer-owned transmission lines that formed a parallel path with the transmission provider's transmission facilities. In contrast, the facilities at issue in this proceeding complete a circuit on the transmission provider's system. They perform a transmission switching function that maintains reliable service over SWEPCO's transmission circuit and provide system-wide benefits. Thus, they satisfy the Commission's requirement, in customer credit cases, that for customer-owned facilities to be integrated and entitled to credits, the transmission provider must be able to provide transmission service to itself or other transmission customers over these facilities.⁷⁰

54. We conclude that SWEPCO and Trial Staff exaggerate the danger of a transmission provider being required to install gold-plated facilities if the costs of the equipment are not directly assigned to the customer. The Commission's pricing policy, which allows the transmission provider to charge the higher of incremental cost for network upgrades or the rolled-in rate, protects the transmission provider and other customers from rate increases due to a particular customer's request for service. Moreover, this argument operates also in the reverse: a transmission provider might overstate the need for high cost equipment when a customer will pay for it.

55. We see no conflict between the Initial Decision and the AEP OATT. The facilities at issue are clearly not facilities constructed for the sole use or benefit of NTEC, and so do not qualify as direct assignment facilities.

56. Because we affirm the Initial Decision, we find it unnecessary to address NTEC's contentions that SWEPCO is treating its member cooperatives discriminatorily. We point out that Presiding Judge did not err by limiting the Initial Decision to the issue posed by the Commission and declining to expand the scope of the hearing.

⁷⁰ See, e.g., Southern California Edison Co., Opinion No. 445, 92 FERC ¶ 61,070 at 61,255 (2000), *reh'g denied*; 108 FERC ¶ 61,085 (2004), Florida Municipal Power Agency v. Florida Power & Light Company, 74 FERC ¶ 61,006 at 61,010 (1996), *reh'g dismissed and denied* 96 FERC ¶ 61,0130 (2001), *aff'd*, 315 F.3d 362 (D.C. Cir. 2003).

The Commission orders:

(A) The Initial Decision in this proceeding is hereby affirmed, as discussed in the body of this order.

(B) Northeast Texas Electric Cooperative's March 5, 2003 motion is hereby denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.