

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Redbud Energy L.P.

Docket No. ER04-622-001

ORDER DENYING REHEARING

(Issued November 1, 2004)

1. On June 3, 2004, Redbud Energy LP (Redbud) requested rehearing of the Commission's May 4, 2004 Order in this proceeding.<sup>1</sup> In that order the Commission rejected Redbud's proposed rate schedule to recover network upgrade costs from Oklahoma Gas and Electric Company (OG&E). For the reasons discussed below, the Commission denies Redbud's request for rehearing.

**I. Background**

2. Redbud's generation facility is located in Oklahoma and is interconnected with OG&E. Prior to the generation facility's construction, OG&E operated a 345 kV transmission line from Riverside to Arcadia. In 2001, Redbud requested access to OG&E's transmission system and, pursuant to a Commission accepted interconnection agreement (IA),<sup>2</sup> OG&E broke the pre-existing transmission line from Riverside and fed one end into the new Redbud Switchyard (Switchyard) and the other end back out to Arcadia. Additionally, Redbud asserted, OG&E constructed a new Redbud-Arcadia 345 kV line making the Redbud-Arcadia line a double circuit.

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<sup>1</sup> Redbud Energy LP, 107 FERC ¶ 61,102 (2004) (May 4 Order).

<sup>2</sup> Oklahoma Gas and Electric Company, Docket No. ER01-2987-000 (October 26, 2001) (unpublished letter order issued pursuant to delegated authority).

3. Redbud contends that these facts make the Switchyard a network transmission facility. Therefore, under section 205 of the Federal Power Act,<sup>3</sup> Redbud filed a rate schedule to charge OG&E a rate for using the Switchyard, which Redbud constructed and owns, but which OG&E controls and operates. Redbud stated that its rate proposal was designed so that Redbud could recover its costs in building the Switchyard.

4. Redbud argues that a substantial portion of the power flow from Riverside through the Redbud-owned Switchyard to Arcadia is output from OG&E's generating plants. Redbud argues that OG&E's use of the lines into and out of the Redbud-owned Switchyard is integral to OG&E's network and is required for OG&E to serve its native load.

5. Redbud explains that it has paid for and owns the Switchyard, but that OG&E operates it under its open access transmission tariff (OATT). Redbud claims that OG&E does not currently reimburse Redbud for its use of the Switchyard. Redbud asserts that typically generator-funded network upgrades are reimbursed through transmission credits. However, since the IA between Redbud and OG&E does not provide for credits, Redbud's only opportunity to recover its investment is to charge OG&E a rate for using its Switchyard. Redbud, therefore, proposed to recover its costs by billing OG&E on a monthly basis over five years so that Redbud would be in the same position it would have been if credits had been provided.

6. In the May 4 Order, the Commission rejected Redbud's proposed rate schedule, as inconsistent with the signed, Commission-accepted IA.<sup>4</sup> The Commission noted that Redbud's proper avenue for recourse was a section 206 complaint.

## **II. Request for Rehearing**

7. Redbud argues that the IA: (1) does not limit a party's right to make a section 205 filing; (2) does not preclude Redbud from charging OG&E for its use of the Switchyard; (3) only precludes OG&E from charging twice for the Switchyard, charging both Redbud and other transmission customers; and (4) only provides for the construction costs which

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<sup>3</sup> 16 U.S.C. § 824d (2000).

<sup>4</sup> The Commission noted that, while section 30.9 of the pro forma OATT specifies the Commission's current requirements for credits for customer-owned transmission facilities, Redbud had not sought credits but rather had filed a rate for transmission service.

Redbud has paid. Furthermore, Redbud argues that the IA's silence as to credits for the Switchyard, as a customer funded and owned facility that OG&E operates and controls, does not preclude Redbud from charging OG&E a rate for using the Switchyard.<sup>5</sup>

### III. Discussion

8. The Commission will deny Redbud's rehearing request. To accept Redbud's proposed rate schedule would circumvent the signed, Commission-accepted IA.

9. The IA describes the rights and obligations of the parties regarding the facilities necessary to interconnect Redbud's generation facility. This includes the Switchyard, which was built to accommodate Redbud's generation facility, and is specifically included in the list of Customer Interconnection Facilities<sup>6</sup> in section 9 of Exhibit A of the IA. The IA provides for Redbud to pay for the construction of the Switchyard, along with other Customer Interconnection Facilities, and does not provide for OG&E to reimburse any of those costs. Furthermore, in contrast, the IA provides for OG&E to reimburse Redbud for Company Interconnection Facilities<sup>7</sup> that Redbud paid to construct, but the Switchyard is not identified as Company Interconnection Facilities. The fact that the IA does not, in so many words prohibit Redbud from receiving reimbursement for the Switchyard does not mean Redbud is entitled to reimbursement.

10. Moreover, as we recognized in Order No. 2003, interconnecting generators were, and still are, able to build and own facilities which they can then lease to a transmission provider to operate for appropriate lease payments to be made by the transmission provider to the interconnecting generator.<sup>8</sup> Here the parties expressly provided for

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<sup>5</sup> Redbud also argues that the Commission erred in suggesting that section 30.9 of the pro forma OATT applied to Redbud and the Switchyard facilities. Redbud argues that section applies to a network integration transmission service customer and Redbud states it is not a network customer. However, we note that Redbud is not a network customer solely because it has not yet chosen to begin operations.

<sup>6</sup> Section 1.8 of the IA defines Customer Interconnection Facilities and incorporates those facilities designated and described in Article 9 of Exhibit A.

<sup>7</sup> Section 1.6 of the IA defines Company Interconnection Facilities and incorporates those facilities designated and described in Article 8 of Exhibit A.

<sup>8</sup> 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 (2003) *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (March 5, 2004), FERC Stats. & Regs., Regulations Preambles ¶ 31,160 (2004).

Redbud to build and own the Switchyard and for OG&E to operate those facilities – but the parties opted not to provide for any charge to be paid by OG&E to Redbud for doing so. In providing in the IA for OG&E to operate the facilities at issue here, they could have agreed to have OG&E pay Redbud for operation of the facilities, but they did not do so. Indeed, as noted above, the facilities at issue here were denominated by the parties as Customer Interconnection Facilities, and the parties agreed that their costs were not subject to reimbursement by OG&E.<sup>9</sup> Redbud cannot now, belatedly, decide that it should have negotiated a different and better deal with OG&E, and seek through a rate filing like the rate filing at issue here to impose that deal on OG&E.<sup>10</sup>

The Commission orders:

Redbud's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

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<sup>9</sup> That being said, we do not leave Redbud with no avenue to recover the costs at issue. Redbud will have an opportunity to recover the costs of the Switchyard, just as it has an opportunity to recover any other costs, when it begins selling power. That is, Redbud may include the costs of the Switchyard in the costs it considers when developing the price it seeks to charge for the power it produces.

<sup>10</sup> Southern Co. Services, Inc., *et al.*, Opinion No. 300, 43 FERC ¶ 61,003, *reh'g denied*, Opinion No. 300-A, 43 FERC ¶ 61,394 (1988).