

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
101 FERC ¶ 61,281

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

United Illuminating Company

Docket No. ER03-31-000

ORDER ACCEPTING AND SUSPENDING INTERCONNECTION AGREEMENT,
WITH MODIFICATION, AND ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES

(Issued December 9, 2002)

1. In this order, we accept for filing, and suspend, the interconnection agreement (IA) between United Illuminating Company (UI) and Cross Sound Cable Company, LLC (CSC), subject to the modifications and conditions discussed in the body of this order, and subject to refund. We direct UI to file a revised IA consistent with the directives in this order within 30 days. We also set for hearing and settlement judge procedures, issues raised in the application and in the protest. This order benefits customers by ensuring just and reasonable rates, while encouraging innovative transmission growth in congested areas of the grid.

Background

2. On October 10, 2002, UI filed an interconnection agreement between UI and CSC¹ for the interconnection of CSC's high voltage, direct current Cross Sound Cable System,² a new submarine cable connection linking the New England Power Pool (NEPOOL) and New York Independent System Operator (NYISO) transmission systems, with UI's 345 kV transmission facilities at Shoreham, New York. UI requests an

¹CSC is a subsidiary of TransEnergie U.S. Ltd., a member of the Hydro-Quebec Group.

²The interconnecting facilities consist of a 150 foot monopole tubular steel dead-end tower and its foundation, modification of an existing lattice structure, 500 feet of transmission conductor and associated hardware, revenue metering equipment, protection and control schemes with associated telecommunications equipment, and Power Quality and Digital Fault Recorder monitoring systems.

effective date of October 1, 2002. UI states that waiver of the Commission's 60-day prior notice requirement is appropriate because the agreement is being filed no later than 30 days after commencement of service.³

Notice and Pleadings

3. Notice of UI's filing was published in the Federal Register,⁴ with interventions, protests, and comments due on or before October 31, 2002. A motion to intervene and protest was timely filed by CSC.

Discussion

4. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁵ the timely, unopposed motion to intervene serves to make CSC a party to the proceeding.

5. In its IA with CSC, UI proposes that the new interconnection facilities be classified as NEPOOL Pool Transmission Facilities (PTF Facilities), and that CSC pay for all interconnection costs.⁶ In addition, UI proposes that CSC shall pay an Annual Facilities Charge (Facilities Charge) of approximately \$303,000 to pay for operation and maintenance (O&M), and property and gross earnings taxes for the facilities. It is the calculation of the Facilities Charge that CSC protests. CSC asserts that it is willing to pay UI a reasonable maintenance charge for the facilities, but that the UI-proposed method of calculating the Facilities Charge results in a Facilities Charge that is unjust and unreasonable.⁷ As a merchant transmission company reliant upon market based rates, CSC explains that it has no captive customers and is therefore not guaranteed a return on its investment. To this end, CSC maintains that it has a competitively driven incentive to minimize life-cycle costs of the CSC project.

³18 C.F.R. § 35.3 (2002).

⁴67 Fed. Reg. 66,626 (2002).

⁵18 C.F.R. § 385.214 (2002).

⁶UI estimates these costs at \$2.5 million.

⁷Cross-Sound Cable Company, LLC's Motion to Intervene, Protest and Request for Commission Resolution of Rate Dispute at 5.

6. The Facilities Charge, as proposed by UI, is calculated by applying a formulary annual maintenance factor of 8.6548% to the overall interconnection costs, then adding estimated taxes to the resulting figure. CSC contends that the Facilities Charge is flawed in three ways. First, UI includes the full cost of the facilities when calculating the Facilities Charge, even though some of the facilities will also be used by UI for its own customers in addition to CSC.⁸ Second, UI's estimate of costs includes costs for actual facilities ("hard costs"), and costs for services other than construction performed by UI ("soft costs"), and UI incurs no maintenance costs associated with these "soft costs". Third, UI uses net depreciated plant costs to calculate the maintenance factor, but then applies the maintenance factor to the undepreciated value of the facilities (the estimated \$2.5 million). CSC argues that charging \$303,000 annually over and above what CSC has already paid for the facilities in order to maintain "a relatively trivial amount of equipment"⁹ is unreasonable on its face. Because the parties could not agree to the calculation of the Facilities Charge, they agreed to incorporate Section 6.2.2 as a means of allowing the Commission to determine the Facilities Charge.¹⁰

7. CSC requests that the Commission allow UI to directly bill CSC for all costs for each maintenance activity, similar to the billing for property taxes as outlined in Section

⁸Among these are backup facilities for which CSC has paid \$22,500. The backup facilities will be used by UI to carry on service center and laboratory functions such as metering.

⁹The equipment referred to is the pole, conductor, meters and protection and control equipment listed in footnote 2 above.

¹⁰Included in Section 6.2.2 of the IA is the following:

CSC disagrees with the Company's estimated Annual Facilities Charge and the proposed methodology and assumptions to be used in calculating the Annual Facilities Charge. CSC intends to submit the issue of the calculation of the Annual Facilities Charge to the FERC for the FERC's review. The Company [UI] and CSC agree that any Annual Facilities Charges paid to the Company prior to a final non-appealable determination by the FERC shall be without prejudice to the position of either party and shall be subject to refund.

4.1.5 of the IA.¹¹ Alternatively, CSC requests that the Commission correct the three flaws contained in the Facilities Charge calculation.

8. CSC also claims that certain new protection, control, and monitoring equipment was for pre-existing portions of Line #387. CSC argues that because this new protection, control, and monitoring equipment is being used by both CSC and UI, it is reasonable that UI ratepayers should be responsible for their fair share of the costs. Therefore, CSC argues the Facilities Charge should be based on an incremental share of costs of the upgrade, rather than the full costs. In addition, CSC maintains that it has already paid the full cost of replacing this equipment, but that under the UI calculation method, CSC is still allotted continued responsibility.

9. With respect to the new protection, control, and monitoring equipment for Line #387, we find these are network upgrades, and as such, the upgrades are not eligible for direct assignment under Commission policy.¹² In Entergy Gulf States, Inc., we determined that "the fact that these existing facilities are being reconfigured, relocated or upgraded, does not somehow transform them into non-network facilities."¹³ UI is therefore directed to reclassify these facilities as network upgrades. Further, UI is to ensure that CSC will not pay operation and maintenance costs associated with the network upgrades.¹⁴

¹¹The relevant part of Section 4.1.5 states, "that CSC shall reimburse the Company for such Taxes within thirty days following written notice from the Company that the Company has incurred and paid such Taxes."

¹² Public Service Company of Colorado, 59 FERC ¶ 61,311 (1992), reh'g denied, 62 FERC ¶ 61,013 (1993) (transmission upgrades - e.g., to relieve overloads, to remedy stability and short-circuit problems, to maintain reliability, to provide protection and service violation, or to reconfigure or relocate existing facilities - should not be directly assigned); Consumers Energy Company, 95 FERC ¶ 61,233, order on reh'g, 96 FERC ¶ 61,132 (2001) (costs for network facilities have always and continue to be impermissible for direct assignment).

¹³ Entergy Gulf States, Inc., 99 FERC ¶ 61,095 at 61,399 (2002).

¹⁴ Florida Power & Light Company, 98 FERC ¶ 61,326 at P 21 (2002); Florida Power & Light Company, 98 FERC ¶ 61,324 at P 17(2002); Florida Power & Light Company, 98 FERC ¶ 61,226 at 61,891 (2002).

10. With respect to the Facilities Charge, CSC has raised issues of material fact concerning UI's proposal that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing established below. We further find that Section 3.3 of the IA¹⁵ could result in an unreasonable recovery of costs or conflict with the NEPOOL tariff, depending on the ultimate determination of which facilities are classified as NEPOOL PTF facilities. This matter should also be addressed in the hearing established below.

11. The Commission's preliminary analysis indicates that UI's filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, the Commission will accept the proposed amendments for filing and suspend them for a nominal period, to become effective, as modified as ordered below, October 1, 2002, subject to refund, and set them for hearing, as ordered below.

12. In order to provide the parties an opportunity to resolve these matters among themselves, we will hold the hearing in abeyance and direct settlement judge procedures, pursuant to Rule 603 of the Commission's Rules of Practice and

¹⁵Section 3.3 of the IA reads as follows:

The estimated Interconnection Costs are set forth in Exhibit 3, and the estimated Annual Facilities Charge is set forth in Section 6.2. CSC shall pay the Company the total actual and documented Interconnection Costs for constructing the Interconnection Facilities in accordance with Article 6. If the Interconnection Facilities are classified as PTF and NEPOOL determines that the cost of those Interconnection Facilities may be included in the Regional Network Service rate, the Company shall have the right and obligation to reimburse CSC for the Interconnection Costs to the extent that the Company recovers the Interconnection Costs under the Regional Network Service rate. If the Company does not recover all or a portion of the Annual Facilities Charge under some other tariff or agreement, CSC shall pay the Company the total actual and documented Annual Facilities Charge or the portion thereof not otherwise recovered by the Company.

Procedure.¹⁶ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹⁷ The settlement judge shall report to the Chief Judge and the Commission within 60 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.

13. Finally, we find that Article 8 of the IA conflicts with Commission precedent on confidentiality outlined in the Commission's order in Carolina Power & Light Company.¹⁸ The Commission must be able to obtain the information necessary for it to monitor and address market power issues and ensure that rates remain just and reasonable and not unduly discriminatory or preferential. This includes the release of confidential information to the Commission. Therefore, UI is directed to modify Article 8 within 30 days of this order, to include a specific provision for the release of confidential information to the Commission or its staff.¹⁹

¹⁶18 C.F.R. § 385.603 (2002).

¹⁷If 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 five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience. (www.ferc.gov - click on Office of Administrative Law Judges).

¹⁸97 FERC ¶ 61,193 (2001); see also PJM Interconnection, L.L.C., 93 FERC ¶ 61,269 at 61,869 (2000).

¹⁹The revised IA should state:

Notwithstanding anything in this Agreement to the contrary, if the FERC or its staff, during the course of an investigation or otherwise, request information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to the FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party may, consistent with 18 C.F.R. § 388.112, request that the information be treated as

(continued...)

The Commission orders:

(A) UI is hereby directed to file, within 30 days of the date of issuance of this order, a revised IA consistent with the discussion in the body of this order.

(B) UI's proposed IA is hereby accepted for filing, as modified herein, and suspended, to become effective, subject to refund, on October 1, 2002.

(C) 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. ER03-31-000 concerning the justness and reasonableness of UI's filing as discussed in the body of this order. However, the hearing will be held in abeyance while the parties attempt to settle, as discussed in paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603, the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all the 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 in writing or by telephone within five (5) days of the date of this order.

(E) Within sixty (60) days of the date of this order, the settlement judge shall issue a report to 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

¹⁹(...continued)

confidential and non-public by the FERC and its staff and that the information be withheld from public disclosure. The Party shall notify the other Party to the Agreement when it is notified by FERC or its staff that a request for disclosure of, or decision to disclose, confidential information has been received, at which time either of the Parties may respond before such information is made public, pursuant to 18 C.F.R. § 388.112.

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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 issue a report at least every sixty (60) days thereafter, apprising the Commission and the Chief Judge of the parties' progress towards settlement.

(F) If the settlement discussions fail, and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Judge, shall convene a prehearing conference in these proceedings, to be held within approximately fifteen (15) days of the date of the presiding judge's designation, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Such 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 for in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.