

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
104 FERC ¶ 61,051

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

AES Warrior Run, Inc.

Docket No. EL03-55-000

v.

Potomac Edison Company
d/b/a Allegheny Power

ORDER ON RATES FOR DELIVERY OF STATION POWER

(Issued July 10, 2003)

1. On March 4, 2003, AES Warrior Run, Inc. (AES) filed what it characterized as a complaint against Potomac Edison Company d/b/a Allegheny Power (Allegheny Power), seeking an order from the Commission determining the justness and reasonableness of Allegheny Power's rates for station power services.¹ We view AES's filing as in the nature of a petition for declaratory order, and we address it as such below. More specifically, we find that there may be double recovery for delivery of station power and we also clarify our policy with respect to rates for delivery of station power. This order benefits customers by ensuring that rates for such delivery are just and reasonable.

¹AES's complaint refers to the charges imposed by Allegheny Power for "standby and maintenance generation services." The Commission understands such services to be, and we refer to such services as, "station power services."

Background

2. The Commission recently set forth its policy as to station power services in a series of orders involving PJM Interconnection, LLC (PJM).² PJM II defined "station power" as:

the electric energy used for the heating, lighting, air-conditioning, and office equipment needs of the buildings on a generating facility's site, and for operating the electric equipment that is on the generating facility's site.^[3]

3. In PJM II, we determined that in a self-supply situation, when the station power used at a particular generating station is either produced at that generating station or produced at another of its generating stations and is netted against the power produced by that station, "there is no sale (for end-use or otherwise)."⁴ However, when a generator is using energy produced at someone else's generating facilities for its station power requirements, we concluded that there was a sale of energy by that third party. Because the energy is a sale for end-use and not sold for resale, it is not a sale within our Federal Power Act jurisdiction.⁵

4. The Commission has determined, however, that "the delivery of station power on an unbundled basis might involve unbundled retail transmission, which is subject to our jurisdiction."⁶ In the latter context, we explained that:

²PJM Interconnection, LLC, et al., 94 FERC ¶ 61,251 (PJM II), clarified and reh'g denied, 95 FERC ¶ 61,333 (2001) (PJM III); PJM Interconnection LLC, 95 FERC ¶ 61,470 (2001) (PJM IV). In an earlier order, PJM Interconnection, LLC, 93 FERC ¶ 61,061 (2000) (PJM I), the Commission acknowledged questions concerning treatment of station power, but deferred its decision, consolidating PJM's proceeding with others raising the same issue.

³PJM II, 94 FERC at 61,889.

⁴Id. at 61,891.

⁵Id. at 61,891.

⁶PJM III, 95 FERC at 62,184; accord, PJM II, 94 FERC at 61,891 n.60; see also id. at 61,892 n.63.

a generator that is meeting its station power requirements through either remote self-supply or third-party supply, to the degree that it does not own or have rights to use the grid that connects its facility to the source of the station power, would need to make appropriate arrangements for transmission and/or local distribution services.^{7]}

Thus, the Commission made clear that its jurisdiction over the delivery of station power depended on the factual circumstances: such a delivery could involve transmission service subject to the Commission's jurisdiction, or local distribution service subject to state jurisdiction, or some combination thereof. Additionally, the Commission stated that its treatment of station power was fully harmonious with Order No. 888's findings with respect to state jurisdiction over local distribution service.⁸

5. Further, we have noted that "a self-supplying generator cannot be required to purchase station power under a retail tariff simply because it is a merchant generator,"⁹ so that, if a merchant generator happened to be in the service territory of a Load Serving Entity (LSE), that LSE could not compel the generator to purchase station power from it, rather than self-supplying.¹⁰

⁷PJM III, 95 FERC at 62,186. We particularly referred to the situation in a retail choice state, such as New York, where an end-user is buying unbundled retail transmission service and unbundled power supply as separate purchases, as a situation in which unbundled retail transmission service would be included. Id. at 62,185; accord, PJM II, 94 FERC at 61,891 n.60.

⁸PJM III, 95 FERC at 62,185, citing Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and 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 at 31,689-90, 31,784 (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, New York, et al. v. FERC, 535 U.S. 1 (2002).

⁹PJM II, 94 FERC at 61,893.

¹⁰We acknowledged, however, that it was an "unavoidable consequence" that
(continued...)

Pleadings

6. AES states that it owns and operates a 180-MW (net) coal-fired cogeneration facility located near Cumberland, Maryland. The commercial operation of the facility began in February of 2000 under a 30-year power purchase agreement with Allegheny Power.

7. AES asserts that from the start of commercial operation until March 31 2001, Allegheny Power provided AES with bundled station power services, *i.e.*, both the station power itself and the delivery of the station power. AES states that the station power was delivered directly to the interconnection point between its facility and Allegheny Power's transmission lines without ever traveling across Allegheny Power's local distribution lines. Nonetheless, AES asserts that Allegheny Power charged it for the delivery of station power under the state-jurisdictional bundled Alternative Generation Schedule rate (AGS rate), a rate that included "a component based on the allocated cost of [Allegheny Power's] distribution facilities."¹¹

8. AES states that, on April 1, 2001, it stopped purchasing station power from Allegheny Power; instead, NewEnergy, which at that time was an affiliate of AES, began providing station power to AES, and is still the provider. AES asserts that, as before, the station power is delivered directly to the interconnection point between AES's facility and Allegheny Power's transmission lines without ever traveling across Allegheny Power's local distribution lines. AES states that it pays NewEnergy directly both for the station power and for transmission to the Allegheny Power-AES interconnection point.¹² AES states that Allegheny Power continued and still continues, however, to charge AES an amount that is the same as the "distribution charge" component of the bundled AGS

¹⁰(...continued)

utilities which continued to be vertically integrated, and thus typically would own more than one generating facility, would be more likely to be able to self-supply than merchant generators. *Id.* at 61,893.

¹¹AES Filing at 2; see also *id.* at 6 n.11 (referring to the "full distribution component" for "wires it might use . . . and for wires that do not exist"). Our understanding is that the bundled AGS rate was not filed with this Commission, but was filed with the Maryland Public Service Commission (Maryland PSC) as a state-jurisdictional rate. See also *infra* notes 14 and 23.

¹²It appears from AES's description that NewEnergy is the transmission customer.

rate described above (which, as noted above, is based on the allocated cost of Allegheny Power's distribution facilities).¹³

9. The essence of AES's filing is that Allegheny Power is nominally purporting to impose a charge on AES for distribution service that is subject to the jurisdiction of the Maryland PSC,¹⁴ but that no physical local distribution facilities are involved. AES contends that since no physical local distribution facilities are involved, the charge must be a double charge for transmission service.¹⁵ AES also claims that the Maryland PSC does not have the authority to permit Allegheny Power to impose transmission charges on AES since transmission rates are subject to the jurisdiction of this Commission.

10. In its answer, Allegheny Power states that AES's concern is with Allegheny Power's retail rates. Allegheny Power asserts that those rates are subject to jurisdiction of the Maryland PSC, not the Commission, since the Commission has made clear that a state retains jurisdiction over retail services, including charges related to the service of delivering energy to end-users. Allegheny Power states that this is true regardless of whether the retail service requires the use of physical distribution facilities. Accordingly,

¹³We understand that this amount, the same amount as the "distribution charge" component of the bundled AGS rate, is not on file as a filed rate with this Commission. See also infra note 23.

¹⁴AES originally filed a complaint with the Maryland PSC in December 2000 (when AES was still taking bundled station power services from Allegheny Power). According to AES, one of the issues it raised in that complaint was the inclusion in the rates of a component for the use of distribution facilities where there was no such use. That complaint was dismissed by the Maryland PSC in April 2001, in light of the existence of a rate freeze, and according to AES, the merits of the complaint were never addressed by the Maryland PSC. AES sought rehearing, which the Maryland PSC denied (but the Maryland PSC subsequently instituted a hearing into the rate for state power services.) AES appealed the Maryland PSC's orders. AES Filing at 3-4.

The appeal is presently being held in abeyance pending the Maryland PSC proceeding, and the Maryland PSC proceeding, in turn, is being held in abeyance pending the resolution of the instant proceeding. Id. at 5.

¹⁵AES acknowledges the "rare use of [a] 1 MW 13.8 kV line," and AES apparently does not object to paying for that service. Id. at 7 & n.17; accord id. at 5. This order therefore does not address that usage and service or the propriety of Allegheny Power's charging for that usage and service.

Allegheny Power requests that this complaint be dismissed as outside the scope of the Commission's jurisdiction.

11. In addition, Allegheny Power asserts that there is no basis for AES having filed under Section 205 of the Federal Power Act (FPA).¹⁶ Allegheny Power avers that AES's filing raises no issues concerning an Allegheny Power rate filed under the FPA. Nor does AES contend that Allegheny Power failed to make a rate filing under the FPA. Allegheny Power also states that, since AES has failed to provide any support for its claim, there is no basis for any allegation of discrimination. Furthermore, any such claim would relate only to service under Allegheny Power's retail rates, not its Commission-jurisdictional rates.

Notice and Responses

12. Notice of the complaint was published in the Federal Register, 68 Fed. Reg. 11,814 (2003), with the answer to the complaint and all interventions, comments, or protests due by March 24, 2003.

13. Allegheny Power filed a timely answer to the complaint described above. The Maryland Office of People's Counsel (MPC) filed a timely motion to intervene with no substantive comments.

Discussion

Procedural Matters

14. MPC's timely, unopposed motion to intervene serves to make it a party to this proceeding. See 18 C.F.R. § 385.214 (2003).

Analysis

15. The Commission has held that sales of electric energy to a generator for use as station power are considered sales of power to an end-user. Such sales of unbundled

¹⁶16 U.S.C. § 824d (2000). While AES's filing does refer to Section 205 of the FPA, see AES filing at 1, the citation is to Section 206 of the FPA, 16 U.S.C. § 824e (2000), as is the citation in the answer, see Answer at 2 & n.1, and it is Section 206 of the FPA, not Section 205, that provides for complaints. In any event, as noted earlier, we view this filing as in the nature of a petition for declaratory order.

electric energy fall under state jurisdiction.¹⁷ Further, as noted in PJM II and PJM III, to the extent there may be a delivery of unbundled electric energy to the end user over local distribution facilities, the Commission has no jurisdiction over that delivery of unbundled electric energy to the end-user over local distribution facilities.¹⁸

16. Here, however, it appears that there are no local distribution facilities involved in the delivery of station power from NewEnergy to the AES facility.¹⁹ That is, only transmission facilities apparently are used in the delivery of station power from NewEnergy to AES; Allegheny Power is apparently delivering the station power exclusively over transmission (as opposed to local distribution) facilities.²⁰ Since the delivery apparently involves transmission facilities only, the Commission would have jurisdiction over the delivery and the rates for the delivery.²¹ In our view, a charge for distribution service levied by Allegheny Power for the transmission of the station power over Allegheny's transmission facilities would appear to be an impermissible double charge for transmission service.²²

17. Dictum in NU, upon which Allegheny Power relies for the proposition that it may impose charges based on the allocated cost of Allegheny Power's distribution facilities for local distribution service in this instance, even though no local distribution facilities

¹⁷Northeast Utilities Service Company v. NEG Energy, Inc., 101 FERC ¶ 61,327 at P 25 (2002) (NU); see 16 U.S.C. § 824(b)(1) (2000).

¹⁸PJM II, 94 FERC at 61,891 n.60; PJM III, 95 FERC at 62,185; see 16 U.S.C. § 824(b)(1) (2000).

¹⁹But see supra note 15.

²⁰Nowhere in its Answer does Allegheny Power claim that local distribution facilities are being used to provide the service at issue (although Allegheny Power does mention in passing that certain unidentified facts referred to at pages 2-3 of AES's filing are incorrect), and, in fact, Allegheny Power argues that the facts are not material to the resolution of this proceeding and "accepts" AES's description of the facts for purposes of its Answer. See Answer at 3; see also id. at 6-7.

²¹See PJM II, 94 FERC at 61,889 & n.60.

²²There is no indication on the record before us that the rate being charged here is intended to address stranded costs or benefits.

are involved,²³ is incorrect and is reversed. That dictum erroneously implied that a charge for local distribution service could be assessed for delivery of station power, even when no local distribution facilities were actually used in delivering the station power.²⁴ The quoted language from NU reflects a misreading of Order Nos. 888 and 888-A,²⁵ where we discussed local distribution service that would remain subject to state jurisdiction after unbundling – so that a state would be able to "assign stranded costs and benefits through a local distribution service charge."²⁶ We did not intend to suggest, as the dictum in NU implies, and as Allegheny Power argues, that the use (or, here, non-use) of local distribution facilities for delivery of station power is entirely irrelevant, no matter the circumstances, to whether a local distribution charge for delivery of station power can be assessed. Indeed, to accord Order Nos. 888 and 888-A such a reading results in rates that would be contrary to longstanding principles of cost causation. Allowing Allegheny Power to charge for retail distribution service in this circumstance would also frustrate Commission efforts to create a more level playing field with more comparable treatment between merchant generators and vertically integrated utilities.²⁷

18. Having expressed our views on the matters as issue, and having clarified our policy on rates for delivery of station power, the currently-stayed judicial and Maryland PSC cases, see supra note 14, may now go forward.

²³See, e.g., Answer at 4-6. While there is apparently a state-jurisdictional rate, i.e., the bundled AGS rate, for bundled station power services, it is not clear that there is any separate, filed, state-jurisdictional rate for local distribution service for station power (as opposed to Allegheny Power's simply billing AES an amount that tracks the retail distribution component of the state-jurisdictional bundled AGS rate).

²⁴NU, 101 FERC ¶ 61,327 at P 25 ("CL&P may impose state-approved charges on such retail deliveries [e.g., station power deliveries to an end-user] regardless of . . . whether the delivery uses no identifiable distribution facilities").

²⁵Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,781, 31,783, 31,819 n.723; Order No. 888-A, FERC Stats. & Regs. ¶ 31,049 at 30,335, 30,344-45.

²⁶Order No. 888, FERC Stats. & Regs. at 31,819 n.723; accord Detroit Edison Co., 102 FERC ¶ 61,282 at P 19 (2003).

²⁷See PJM II, 94 FERC at 61,893.

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The Commission orders:

AES's filing seeking the Commission's views on the matters discussed above is hereby granted, as discussed above.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.