

UNITED STATES OF AMERICA_104 FERC ¶ 61, 255
FEDERAL ENERGY REGULATORY COMMISSION

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

Alternate Power Source, Inc.

v.

Docket No. EL03-9-001

Western Massachusetts Electric Company
and Northeast Utilities System

ORDER ON REHEARING

(Issued September 10, 2003)

1. On November 29, 2002, Alternate Power Source, Inc. (APS) sought rehearing of the Commission's November 25, 2002 order issued in this proceeding.¹ For the reasons discussed below, we will deny rehearing.

Background

2. On December 10, 1999, APS entered into a one-year bilateral supply agreement (Supply Agreement) with Western Massachusetts Electric Company (WMECO), pursuant to the electric restructuring laws of the State of Massachusetts. Under the Supply Agreement, APS served a portion of WMECO's Standard Offer Service (SOS) and Default Service (DS) load by providing a wholesale supply service to WMECO. WMECO, in turn, was a network transmission customer of the New England Power Pool (NEPOOL) and was responsible for distribution and related retail services.

3. In a complaint filed by APS on October 8, 2002, APS alleged that WMECO's actions pursuant to the Supply Agreement, specifically its pass-through to APS of certain wholesale congestion charges assessed to WMECO by NEPOOL and WMECO's calculation of line losses, violated the spirit and intent of: (1) the NEPOOL open access transmission tariff (NEPOOL OATT); and (2) the unbundling requirements of Order No.

¹ Alternate Power Source, Inc. v. Western Massachusetts Electric Company, et al., 101 FERC ¶ 61,236 (2002) (November 25 Order). An amended rehearing request was timely-filed by APS on December 20, 2002, i.e., within 30 days of the date of the Commission's order.

888.² APS further alleged that the Supply Agreement, as interpreted by WMECO in calculating line losses payable by APS, constituted a discriminatory preference in favor of WMECO's affiliate, Select Energy, Inc. (Select Energy), whose line loss obligation under a separate supply arrangement with WMECO was less.

4. In the November 25 Order, we denied APS' complaint. We noted that APS' contract interpretation claims relating to the Supply Agreement were currently being pursued by APS in two state court proceedings filed by APS and that APS had not asked us to rule on these state law claims. We also found that WMECO had not violated the NEPOOL OATT or any other Commission rule or regulation when it allocated to a power supplier such as APS, in a bilateral arrangement, the costs and expenses initially assessed to WMECO directly under the NEPOOL OATT. Finally, we found no undue preference in WMECO's line loss calculations or any evidence of undue discrimination in WEMCO's billing of line losses.

APS' Request for Rehearing

5. APS asserts that the November 25 Order erred in its determination that APS could be held responsible for paying congestion charges under the NEPOOL OATT and for paying line losses in the amount calculated by WMECO. APS asserts, in this regard, that WMECO was barred from assigning away its own obligation to pay congestion charges pursuant to the regulatory scheme envisioned by Order No. 888, the NEPOOL OATT, and the Commission's regulations. In addition, APS asserts that the Commission erred in its determination that there was no preferential treatment accorded by WMECO in its calculation of APS' line loss charges and in holding that these line losses were properly calculated.

APS's Motion to Lodge

6. On May 16, 2003, APS filed a motion to lodge testimony presented by WMECO's affiliate, Connecticut Light and Power (CL&P), before the Connecticut Department of

² 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, FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, 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 part and rev'd in part sub nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002).

Public Utility Control. APS states that this testimony relates to CL&P's congestion and line loss allocations in its standard offer agreements which, APS asserts, are similar in nature to WMECO's rights and obligations as set forth in the Supply Agreement. In an answer filed by Northeast Utilities Service Company (NUSCO) on June 3, 2003, NUSCO points out that the CL&P agreements and the Supply Agreement are not substantially similar because the CL&P agreements address the recovery, by CL&P, of congestion charges and line losses associated with the implementation of new market design rules by ISO New England, Inc. NUSCO further submits that tariff violations and other Commission rule violations, not the issue of cost responsibility under CL&P's agreements or the SOS Agreement, are the relevant issues in this case. On June 6, 2003, APS filed an answer to NUSCO's answer.

Discussion

Procedural Matters

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure³ prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept APS's answer and therefore will reject it.

8. We will deny APS' motion to lodge. NUSCO asserts (and we agree) that the contract interpretation issues presented by APS' motion to lodge are not at issue in this case for the reasons previously discussed by the Commission in the November 25 Order. In the November 25 Order, we noted that APS' contract claims are currently being pursued in two state court proceedings filed by APS and that APS did not request that we address these issues here. Accordingly, the evidence APS seeks to add to this record on rehearing has no relevance to the issues presented here.

Analysis

9. We will deny APS' request for rehearing. The alleged wrong-doings attributed to WMECO in this case were undertaken, if at all, pursuant to the parties' bilateral agreement. While APS steadfastly insists that it is not asking the Commission to interpret or enforce APS' rights and obligations under the Supply Agreement (given the pendency of these issues in state court actions already filed by APS), APS is doing just that. Specifically, it is the Supply Agreement not the NEPOOL OATT or the Commission's rules that address whether and to what extent APS is required to pay for the NEPOOL congestion charges associated with APS' service to WMECO. Similarly, it

³ 18 C.F.R. § 385.213(a)(2) (2003).

is the Supply Agreement that must be looked to in deciding whether WMECO's calculation of line losses was appropriate.

10. While APS seeks to rely on the NEPOOL OATT and our open access rules, APS' arguments are, at best, confused. APS assumes without citation or support, for example, that the Federal Power Act and the NEPOOL OATT prohibit WMECO, as a network customer, from assigning to a third party, such as APS, costs for which WMECO may be initially responsible under the NEPOOL OATT. APS, however, is simply mistaken in this regard. There is neither a statutory mandate nor a rule nor even a reason to prohibit such an assignment. Nor does the NEPOOL OATT govern (or limit) the ultimate allocation or calculation of line losses as between WMECO and APS. Our open access rules and the NEPOOL OATT govern the provision of transmission service by a public utility transmission provider (NEPOOL) to a network customer (WMECO). These provisions do not address and were not intended to restrict a network customer's bilateral arrangements with third parties.

11. Finally, we find APS' assertions regarding WMECO's alleged unduly discriminatory preference of its affiliate, Select Energy, to be baseless. APS was responsible under the Supply Agreement for meeting a portion of WMECO's SOS requirements and was subject to a line loss calculation based on that status – as were each of the suppliers relied upon by WMECO to satisfy WMECO's SOS requirements. Select Energy, by contrast, provided interruptible supplies to eight of WMECO's metered retail customers pursuant to a state-monitored contract bidding procedure. Given the significant distinctions between these two services, as discussed by WMECO in its answer to APS' complaint, we find no support for APS' claim that WMECO engaged in any unduly preferential conduct in this case.

The Commission orders:

APS' request for rehearing is hereby denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.