

105 FERC ¶ 61, 092
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

United Illuminating Company

Docket Nos. ER03-31-001, and
ER03-31-002

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued October 22, 2003)

1. In this order, the Commission grants rehearing of its order issued December 9, 2002, in this proceeding.¹ In that order, the Commission accepted for filing and suspended an interconnection agreement between United Illuminating Company (UI) and Cross Sound Cable Company, LLC (CSC). On January 10, 2003, UI has filed a request for clarification of the December 9 Order, and on May 8, 2003, UI filed a supplement to its request for clarification.² On January 9, 2003, UI also made a filing to comply with the December 9 Order. For the reasons discussed below, the Commission will grant rehearing. This order benefits customers by upholding the integrity of the New England Power Pool (NEPOOL) Tariff provisions providing transparency for merchant transmission interconnections within the NEPOOL territory.

I. Background

2. On October 10, 2002, UI filed an interconnection agreement between UI and CSC for the interconnection of CSC's high voltage direct current Cross Sound Cable System³ with UI's 345 kV transmission facilities at Shoreham, New York. UI proposed that the new merchant transmission interconnection facilities be classified as a NEPOOL Pool

¹101 FERC & 61,281 (2002) (December 9 Order).

²Although UI's pleading is titled as a request for clarification, for purposes of this order it is treated as a request for rehearing. On September 23, 2003, UI and CSC jointly filed a request that the Commission promptly act to resolve this case.

³The Cross Sound Cable System is a new submarine cable connection linking the New England Power Pool (NEPOOL) and New York Independent System Operator (NYISO) transmission systems.

Transmission Facilities (PTF) and that CSC pay for all interconnection costs. In addition, UI proposed that CSC pay an Annual Facilities Charge (Facilities Charge) of approximately \$303,000 for operation and maintenance, and property and gross earnings taxes for the facilities. The Commission accepted and suspended the interconnection agreement with modification and established hearing and settlement judge procedures.

3. The Commission found that the new protection, control, and monitoring equipment for Line #387 was a network upgrade and were thus not eligible for direct assignment. With respect to the Facilities Charge, the Commission found that CSC had raised issues of material fact that could not be resolved based on the record before the Commission and established hearing procedures.

II. Rehearing

A. Arguments

4. UI observes that all of the facilities that UI constructed to interconnect the CSC have been designated as Pool Transmission Facilities (PTF) as defined in the restated NEPOOL Agreement, and as a result are already classified as network upgrades, and thus should be included in the Regional Network Service Rate (RNS Rate) under the NEPOOL Open Access Transmission Tariff (NEPOOL OATT). UI maintains that the Commission has made it clear that the costs of all PTF or network upgrades that UI constructed to interconnect CSC, not just those identified in the December 9 Order, should be recovered in the RNS Rate. Interpreted in this manner, UI asserts that the December 9 Order is consistent with Commission precedent. It says that if the costs of these upgrades are not included in the RNS Rate, UI will have to establish a separate transmission rate in order to recover the costs. In a supplement filed on May 8, 2003, UI further requests that the Commission specify in its order that, as agreed by UI and CSC in Section 3.3 of the IA, UI is not required to reimburse CSC for the cost of the facilities until the upgrades are operational and NEPOOL approves the recovery of the cost of the network upgrades by UI through the RNS rate.

B. Discussion

5. The issue raised by UI is how it will recover the costs associated with the CSC interconnection. The essence of UI's concern is that if the CSC costs cannot be recovered through the RNS Rate, UI will have to establish a separate transmission rate in order to recover those costs.

6. However, as UI points out, the facilities are PTF under the NEPOOL Tariff. Schedule 11 and Schedule 12 of the NEPOOL Tariff specifically addresses how merchant transmission interconnection-related upgrade costs are treated. Schedule 12 of the NEPOOL Tariff provides that all costs associated with merchant transmission upgrades will be treated the same as Category C interconnection projects.⁴ Schedule 11 of the NEPOOL Tariff provides that the treatment of generator interconnection costs depends on whether the project is classified as a Category A, B, or C Project. Schedule 11 (1) (a) defines a Category A Project as one whose generator owner committed to pay for upgrade costs on or after October 1, 1998 and prior to October 29, 1998.

7. Schedule 11 (1) (b) defines a Category B Project as one whose generator owner committed to pay for upgrade costs on or after October 29, 1998 and prior to June 22, 1999, as evidenced by the filing of either an executed or unexecuted service agreement. In addition, a Category B Project includes any one on which the generator owner who has spent at least \$45,000,000, as of June 22, 1999.

8. Schedule 11 (1) (c) defines a Category C Project as any project which is not a Category A or B Project. For Category C costs, the generator owner is obligated to pay all the costs associated with the Minimum Interconnection Standard upgrades and applicable tax gross-ups that would not have been incurred "but for" the interconnection. Under the NEPOOL Tariff, the CSC interconnection is a Category C Project. Consequently, the costs associated with the CSC Tariff are to be directly assigned. This is consistent with prior Commission rulings for applying regionally uniform treatment for merchant transmission interconnections as generation interconnections, except where physical differences between transmission and generation facilities dictate otherwise.⁵ As a result, there is no need for UI to seek to recover these costs under the NEPOOL RNS Rate, or to establish a separate transmission rate under the UI Tariff to recover them.

⁴ See New England Power Pool's FERC Electric Tariff Fourth Revised Volume No. 1, Schedule 12 (1): "All costs associated with Upgrades for the interconnection of Merchant Transmission Facilities shall be treated in the same fashion and subject to the same rights and obligations as Generator Interconnection Related Upgrade Costs for Category C Projects under Schedule 11 of this Tariff..."

⁵ PJM Interconnection, L.L.C., 102 FERC ¶ 61,227 at 61,864 (2003). See also New England Power Pool, 99 FERC ¶ 61,338 (2002) in which the Commission ordered that the CSC facilities be governed pursuant to the terms and conditions of the NEPOOL OATT.

9. We erred in the December 9 Order by applying our generally applicable interconnection policy, which forbids direct assignment of network upgrades, since NEPOOL has an approved alternative treatment. Our intention is not to abrogate the Commission-accepted interconnection policies of the NEPOOL OATT. Our findings here are consistent with the findings in the Standardization of Generator Interconnection Agreements and Procedures⁶ final rule, in that the interconnection agreement is grandfathered pursuant to paragraph 911 of the final rule.

10. Accordingly, we will grant rehearing of our December 9 Order and allow the costs to be directly assigned to CSC. UI is directed to file a revised interconnection agreement reflecting the direct assignment of costs.

11. In the December 9 Order, we had set matters concerning the Annual Facilities Charge for hearing, held the hearing in abeyance and directed settlement judge procedures. We point out that the rehearing request granted herein does not negate the obligation for these settlement and hearing proceedings to continue without modification.

III. UI's Compliance Filing

A. December 9 Order

12. The December 9 Order directed UI to treat the new protection, monitoring, and control equipment as network upgrades not eligible for direct assignment, to file within 30 days an amended interconnection agreement to reflect this finding, to ensure that CSC will not pay operation and maintenance costs related to the network upgrades, and to amend UI's confidentiality clause in Article 8 of the interconnection agreement to comply with the Commission's finding in Carolina Power & Light Company, 97 FERC & 61,193 (2001).

B. Compliance Filing

13. In its compliance filing to the December 9 Order, UI amends the interconnection agreement to provide that CSC is not obligated to pay operation and maintenance costs associated with network upgrades in Section 6.2.1 and to include Commission-approved confidentiality language in Section 8.4 of the agreement.

⁶ 104 FERC ¶ 61,103 at P 911 (2003).

C. Notice, Interventions, and Comments

14. Notice of UI's compliance filing was published in the Federal Register, 68 Fed. Reg. 3024 (2003), with interventions, protests, and comments due on or before January 30, 2003. An intervention was filed by KeySpan-Ravenswood L.L.C., and a protest was timely filed by CSC.

D. Discussion

15. CSC argues in its protest that UI has not complied in its compliance filing with the December 9 Order in that UI still proposes to include upgrade costs in the calculation of its Annual Facilities Charge, and continues to directly assign certain network upgrade costs. Further, CSC requests that UI be directed to immediately refund to CSC all directly assigned costs, with interest, and to exclude all network upgrade costs from the Annual Facilities Charge calculation.

16. CSC further asserts that the Annual Facilities Charge should be limited only to property taxes. CSC argues that since the Commission has determined that all of the interconnection facilities are network upgrades, and that the Commission forbade UI to charge the cost of operation and maintenance of the network facilities, then the only items remaining to be billed to CSC under these terms are the property taxes.

17. We find that the issues raised by CSC regarding the compliance filing are moot in light of our decision to grant rehearing. UI is directed to file a revised interconnection agreement consistent with our findings in this order within 30 days of the date of this order.⁷

⁷We find the revised confidentiality clause submitted in Section 8.4 of the compliance filing in ER03-31-001 is consistent with Commission policy and procedure. Therefore, UI is directed to include this language in its future filing.

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The Commission orders:

(A) UI's compliance filing is rejected as moot in light of the rehearing findings, and UI is thereby ordered to refile within 30 days of this order a modified interconnection agreement consistent with the discussion in the body of this order.

(B) UI's request for rehearing is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.