UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C. Docket Nos. ER04-474-000
ER04-474-001

ORDER ACCEPTING AND SUSPENDING AN UNEXECUTED INTERCONNECTION SERVICE AGREEMENT AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued May 25, 2004)

1. In this order, we accept an unexecuted Interconnection Service Agreement (ISA) filed by PJM Interconnection, L.L.C. (PJM) among itself, Industrial Power Generating Corporation (INGENCO), Monongahela Power Company, the Potomac Edison Company, and West Penn Power Company, all doing business as Allegheny Power (Allegheny Power), and suspend the ISA, to become effective January 23, 2004, subject to refund and to the outcome of a hearing. This action benefits customers because it establishes procedures to ensure that Allegheny Power's transmission rates are just and reasonable.

I. Background

2. On January 23, 2004, PJM submitted for filing an unexecuted ISA. PJM's OATT requires transmission service customers to pay a stated rate for service above 138 kV, plus a charge determined by each transmission provider on a case-by-case basis for service on facilities below 138 kV. INGENCO requires service on one of Allegheny Power's local sub-transmission networks because it is interconnected at 34.5 kV, unlike the 138 kV or higher transmission facilities that are directly under the PJM OATT. Thus, PJM has proposed to include a separately-stated sub-transmission charge for service on a portion of Allegheny Power's sub-transmission network in the form of a direct assignment charge included as Schedule G of INGENCO's interconnection agreement.

3. INGENCO first interconnected its 9.9 MW Mountain View, Franklin County Pennsylvania generating facility (Mountain View Facility) to the Allegheny Power system effective on March 15, 2003, with a service agreement that obligated INGENCO to pay a direct assignment charge of $1,538 per month for service on a portion of

Allegheny Power's 34.5 kV sub-transmission network.[1] Subsequently, INGENCO requested an increase of 4.1 MW, from 9.9 MW to 14 MW, in transmission service for INGENCO's 48 small generating units (0.34 MW each). Due to this increase, the proposed ISA provides for a new monthly sub-transmission usage charge of $2,190 per month, which is in addition to the existing charge of $1,538 per month.

II. Notice of Filings and Responsive Pleadings

4. Notice of PJM's original filing was published in the Federal Register, 69 Fed. Reg. 5,970 (2004), with comments, protests and interventions due on or before February 13, 2004.

5. On February 13, 2004, INGENCO filed a timely motion to intervene and protest. INGENCO states that under the existing ISA, INGENCO pays a monthly charge of $1,538 for the costs associated with the delivery of the output from the Mountain View Facility. INGENCO asserts that the combination of the new sub-transmission charge of $2,190 per month and the existing charge of $1,538 per month (for a total of charge of $3,728 per month) represents a 140 percent increase in rates for sub-transmission usage, whereas the increase in transmission capacity is only 40 percent. INGENCO states that Allegheny Power has been unable to provide any justification for the proposed sub-transmission rate.

6. On February 25, 2004, a delegated letter order (Deficiency Letter) was issued to Allegheny Power, requesting cost support for its proposed transmission charges under the proposed ISA.[2]

7. On March 1, 2004, Allegheny Power filed a motion to intervene and answer to INGENCO's protest, asserting that it has provided adequate support for its proposed sub-transmission charges. Allegheny Power explains that a standard computerized load program was used to identify the specific low voltage facilities affected by INGENCO's service request under normal circumstances during peak conditions using the base case/change case method. Using this method, the load flow model both identified all facilities impacted by INGENCO's service request, and calculated the percent impact that

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[1] The rate was approved in a May 12, 2003 delegated letter order in Docket No. ER03-625-000.

[2] The Deficiency Letter also directed Allegheny Power to revise the ISA to specifically address the release of confidential information to this Commission and/or its staff to be consistent with the Commission's order in Carolina Power & Light Company, 97 FERC ¶ 61,193 at 61,861 (2001).

INGENCO's service had on the affected facilities. The ratio of the change case to the base case was used as an allocation factor to assign cost responsibility to INGENCO for its share of the facilities that it uses.

8. On March 15, 2004, Allegheny Power filed a supplemental answer and protest of the filing. Allegheny Power contends that the Commission's recent decision in Allegheny Power, 106 FERC ¶ 61,241 (2004) (Opinion No. 469) directly impacts the question of how Allegheny Power should determine the sub-transmission charge for local 34.5 kV service to INGENCO. Allegheny Power asserts that it must protest PJM's filing in this proceeding because the Commission found in Opinion No. 469 that the direct assignment charge method contained in Schedule G of the proposed ISA to be unjust and unreasonable, and has found the rolled-in method to be just and reasonable. Allegheny Power asserts that the Commission must apply the rolled-in method to INGENCO's service prospectively.

9. On March 26, 2004, PJM filed an amendment in response to the Deficiency Letter. Notice of the amendment was published in the Federal Register, 69 Fed. Reg. 18,070 (2004).

10. On April 16, 2004, INGENCO filed a motion renewing its protest in response to PJM's amended filing. INGENCO reasserts that the proposed total charge of $3,728 per month is unjust and unreasonable. INGENCO also asserts that Allegheny Power proposes to charge INGENCO for use of sub-transmission facilities over which INGENCO caused negative energy flows, thus charging INGENCO for reducing the energy flowing over those lines and transformers and freeing up capacity. In addition, INGENCO asserts that Allegheny Power utilizes a load flow model that is designed to apply to transmission, not to sub-transmission facilities, but fails to explain how it modified the model or to justify the modifications. Lastly, INGENCO contends that a $7,543 rate[3] set forth in Allegheny Power's March 15, 2004, supplemental answer and protest does not attempt to provide justification for what appears to be a reclassification of the sub-transmission facilities used by INGENCO as network facilities and for the application of a system unit rate to INGENCO.

11. On April 26, 2004, Allegheny Power filed an answer, rearguing that the Commission must apply its findings in Opinion 469 prospectively to the situation here.

[3] The $7,543 rate is based on multiplying the network sub-transmission monthly rate of $0.54 per kW times 14,000 kW.

III. Discussion

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept Allegheny Power's and INGENCO's answers because the filings have assisted us in our decision-making process.

13. INGENCO asserts that it is unreasonable to raise its charge by 140 percent when the increase in transmission capacity is only 40 percent. INGENCO asserts that Allegheny Power's affidavits and exhibits, while purporting to present a coherent cost of service, cost allocation, and rate design, raise significant questions and concerns. INGENCO also asserts that Allegheny Power proposes to charge it for use of sub-transmission facilities over which INGENCO's output causes negative energy flows thus charging INGENCO for reducing the energy flowing over those lines and transformers and freeing up capacity.

14. The proposed ISA raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below. Our preliminary analysis indicates that these new charges have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept the proposed charges under the ISA for filing, suspend them and make them effective January 23, 2004, subject to a refund, and set them for hearing and settlement judge procedures.

15. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[4] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.[5] The settlement judge

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[4] 18 C.F.R. § 385.603 (2003).

[5] If 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 listing of the Commission's judges and a summary of their background and experience (www.ferc.gov – click on Office of the Administrative Law Judges).

shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of the 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.

16. PJM requested a waiver of the Commission's 60-day notice requirement to allow an effective date of January 23, 2004. In its protest, INGENCO requested that the new charge be suspended for the maximum statutory period of 150 days. We will decline INGENCO's request for a five-month suspension and grant PJM's request for waiver. Providing a January 23, 2004 effective date will allow the new agreement to become effective as of the termination of the previous agreement and permit the interconnection service to be provided. The refund condition will ensure that INGENCO pays a just and reasonable rate for the service provided.

The Commission orders:

(A) The proposed ISA is accepted for filing and suspended to become effective January 23, 2004, subject to refund, as discussed in the body of this order.

(B) 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 FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of the sub-transmission charges under the proposed ISA. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2003), the Chief Administrative Law Judge is hereby authorized to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all 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 (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with 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 additional time to continue their settlement discussion, 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 file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If the settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, within fifteen (15) days of the date of the presiding judge's designation, shall convene a conference in this proceeding in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 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 in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.