

123 FERC ¶ 61,122
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Commonwealth Edison and Commonwealth Edison of Indiana, Inc. Docket Nos. ER08-358-000
ER08-358-001

ORDER ACCEPTING REVISED TARIFF SHEETS

(Issued May 5, 2008)

1. On December 21, 2007, Commonwealth Edison (ComEd) on behalf of itself and its wholly-owned subsidiary, Commonwealth Edison of Indiana, Inc., filed a revised Attachment H-13 (Network Integration Transmission Service for the ComEd Zone) of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT).¹ The revised tariff sheets incorporate a wholesale distribution charge and a distribution loss factor applicable to wholesale distribution service to the Winnebago Energy Center LLC (Winnebago). Winnebago will be interconnecting directly with the ComEd distribution system (and indirectly with the PJM transmission system). ComEd requests waiver of the Commission's notice of filing requirements to allow Attachment H-13 to become effective on January 1, 2008 because service to Winnebago was expected to begin by that date. In this order, we accept for filing ComEd's revised Attachment H-13 under PJM's OATT, to become effective January 1, 2008, as requested.

I. Background

2. Winnebago is a 6.4 MW landfill gas-to-energy generating station located at Winnebago Landfill in Rockford, Illinois. It is a qualifying small power production facility that is a direct, wholly-owned subsidiary of WPS Power Development, LLC, which is a direct wholly-owned subsidiary of Integrys Energy Services, Inc. (Integrys

¹ The facilities of Commonwealth Edison Company of Indiana, Inc. are included in the ComEd pricing zone. There are no other transmission owners within the ComEd pricing zone.

Energy).² Power produced by the facility is sold only at wholesale through PJM. To reach the PJM marketplace, Winnebago must interconnect with a 12.5 kV distribution line on the ComEd system.

II. ComEd's Filing

3. ComEd proposes to revise Attachment H-13 of the PJM OATT to reflect the wholesale distribution charge and distribution loss factor that ComEd proposes to assess to Winnebago for wholesale distribution service linking Winnebago to the PJM marketplace. ComEd explains that it determined the wholesale distribution charge in accordance with ComEd's fixed charge rate for wholesale distribution as accepted by the Commission.³ ComEd states that the wholesale distribution charge was developed by applying the fixed charge rate of 24 percent to the net distribution plant that is directly assigned to the individual customer taking wholesale distribution from ComEd. In accordance with paragraph 3 of Attachment H-13, ComEd also proposes an annual distribution loss factor of 2.52 percent applicable to Winnebago.⁴

4. ComEd requests waiver of the Commission's prior notice requirement, 18 C.F.R. § 35.11 (2007), and asks the Commission to accept the proposed revisions to Attachment H-13 effective January 1, 2008.

² Winnebago recently filed a notice of self certification as qualifying facility. *See Winnebago Energy Center LLC*, November 20, 2007 FERC Form No. 556, Docket No. QF08-70-000.

³ *Citing, Commonwealth Edison Co.*, Docket No. ER06-1194-000 (August 8, 2006) (unpublished letter order). Under Attachment H-13, ComEd charges an annual fixed charge rate of 24 percent to the net distribution plant that is directly assigned to a customer taking wholesale distribution service over ComEd's distribution facilities. The net distribution plant is directly assigned to the customer based on the customer's pro-rata share of the non-coincident peak loading (or maximum net output of the unit) of the distribution facilities necessary to provide the service.

⁴ Paragraph 3 of Attachment H-13 states that, "[w]ithin the ComEd Zone, a Network Customer's peak load shall include a transmission loss percentage of 1.6 percent as well as any distribution losses as reflected in applicable state tariffs and/or service agreements that contain specific distribution loss factors for said Network Customers." PJM Interconnection, LLC, FERC Electric Tariff, Sixth Revised Vol. No. 1, Original Sheet No. 314A.

III. Notice of Filings and Responsive Pleadings

5. Notice of ComEd's December 28, 2007 filing was published in the *Federal Register*, 73 Fed. Reg. 1219 (2007), with interventions and protests due on or before January 11, 2008. Winnebago filed a timely motion to intervene and protest to ComEd's December 21, 2007 filing. On January 25, 2008, ComEd filed an answer to Winnebago's protest.

6. On February 15, 2008, the Director, Division of Tariffs and Markets – East issued a deficiency letter (Deficiency Letter) to ComEd requesting additional data supporting the assessment of its proposed distribution loss factor. The Deficiency Letter also sought clarification as to why the underlying interconnection agreement is not jurisdictional and was not filed under section 205 of the FPA.

7. On March 6, 2008, ComEd responded to the Deficiency Letter with additional data supporting the distribution loss factor. ComEd also clarified that, at the time Winnebago made its interconnection request, its distribution facilities were not available for jurisdictional service under the PJM OATT. ComEd explained that, since its facilities were non-jurisdictional, the interconnection agreement between ComEd and Winnebago was not jurisdictional and so was not filed under section 205.⁵ ComEd also stated that, in order for Winnebago to be eligible to sell into the PJM market, PJM entered into a wholesale market participation agreement with Winnebago and ComEd. Notice of the filing was published in the *Federal Register*, 73 Fed. Reg. 14,464 (2008), with interventions and protests due on or before March 27, 2008. Winnebago filed a timely protest. On April 10, 2008, ComEd filed an answer.

A. Distribution Loss Factor

1. Winnebago's Protests

8. In its initial protest, Winnebago states that, in its negotiations with ComEd, Winnebago understood that it would be responsible for a wholesale distribution charge and that it would be required to sign a wholesale market participation agreement in order to sell its power in the PJM marketplace. Winnebago does not dispute the wholesale distribution charge. Winnebago contends, however, that there was no mention that Winnebago would also be responsible for distribution losses prior to ComEd's December 21 filing. Winnebago disputes the assessment of distribution losses, the methodology for determining the distribution loss factor, and the level of the loss factor. Moreover, Winnebago claims that ComEd does not have the authority to impose a distribution loss factor for this wholesale service and that ComEd has not supported the filing with a sufficient cost basis. Winnebago also contends that it is unclear from the

⁵ Citing, *PJM Interconnection, LLC*, 114 FERC ¶ 61,191, at P 14 (2006).

filing whether ComEd will double collect amounts assessed on Winnebago and amounts collected from retail customers under the revised Attachment H-13. If so, Winnebago argues that accepting this distribution loss factor would create bad precedent.

9. Winnebago asks the Commission to reject ComEd's proposal to impose distribution losses and deny waiver of the Commission's 60-day notice requirement.⁶ If the Commission does not reject the ComEd's filing outright, Winnebago asks the Commission to order ComEd to file additional information supporting the assessment of distribution losses including information that identifies with specificity the derivation of the distribution loss factor.

10. In its protest of ComEd's response to the Deficiency Letter, Winnebago states that the data supplied by ComEd does not support ComEd's proposed distribution loss factor. Winnebago contends that the data provided by ComEd to support its calculation of loss factors suggests a different loss factor and that, in fact, Winnebago is entitled to a credit. Winnebago claims that ComEd has ignored the positive changes to power flow resulting from the addition of Winnebago's facility to the ComEd system. Winnebago explains that generation sited near load alleviates grid congestion and losses, and enhances grid voltage and frequency stability. Winnebago contends that ComEd's calculation of the distribution loss factor is at odds with the approach embodied in the Regional Transmission Organization markets such as PJM, where loads pay for distribution losses and generators are subject to marginal loss calculations. Winnebago also contends that ComEd's calculation is contrary to the physical reality of Winnebago's contribution to ComEd's distribution system.

11. Winnebago argues that, although ComEd recognizes that Winnebago is making wholesale sales into PJM, ComEd fails to recognize the physics of power flows and the financial aspect of the sales into PJM. Winnebago states that the power it generates and delivers to PJM is physically consumed in the ComEd control area. Winnebago contends that, by ignoring the direction of the power flow, ComEd's approach to loss calculations precludes the possibility that distributed generation resources reduce energy losses. Winnebago contends that this is one of the benefits of having generators located on the distribution system.

12. Winnebago contends that ComEd must not be permitted to apply loss factors on Winnebago and other generators who may interconnect at distribution level when such loss factors produce a clear windfall to ComEd's shareholders at the expense of Winnebago.⁷ Winnebago contends that permitting a utility to unilaterally charge a

⁶ *Citing, Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992); *Duke Power*, 113 FERC ¶ 61,192 (2005).

⁷ *See* Winnebago Protest at 7.

generator for losses, whether real losses are increased or decreased, will shift economic value from generators to distribution system owners and reduce the economic incentive for adding new generators on the distribution grid. According to Winnebago, this economic penalty will inhibit the growth of distribution generation resources and thereby stymie the growth of renewable generation, since renewable generation tends to be distributed in nature. Winnebago contends that the local nature of distributed generation and renewable energy investment, provides local job growth, increases local tax base, enhances grid stability, and reduces the energy lost to transmission and distribution from power plants remote from load. Winnebago further contends that the small size of distributed generators also provide a security benefit in that the loss of one small unit does not have as dynamic an impact as the loss of a 600 MW power plant. Finally, Winnebago contends that the low costs of renewable generation will help offset rising fossil fuel costs while the reduced carbon footprint will help offset carbon dioxide production.

2. ComEd's Answers

13. ComEd defends its assessment of a distribution loss factor, stating that Winnebago is imposing loads on ComEd's distribution facilities by exporting its electricity over the ComEd distribution system. ComEd states that it filed a wholesale distribution charge and a distribution loss factor applicable to Winnebago to recover the costs that Winnebago will impose on the ComEd distribution system. ComEd notes that Winnebago does not contest the filed wholesale distribution charge, only the distribution loss factor.

14. ComEd states that the Commission has accepted for filing wholesale distribution charges and distribution loss factors for other customers interconnected to the ComEd distribution system to access the PJM market.⁸ ComEd contends that, like those other customers, Winnebago is incurring incremental losses when transmitting power through ComEd's distribution system to access the PJM transmission system. ComEd contends that, unless Winnebago makes up those losses, the incremental cost will be unjustifiably shifted to ComEd's retail customers. ComEd explains that the distribution facilities at issue here are not, nor will they be paid for by PJM customers because these facilities are presently non-jurisdictional and have not been placed under the control of PJM. ComEd contends that, because these losses are directly caused by the addition of Winnebago's

⁸ Citing, *PJM Interconnection, LLC*, Docket No. ER07-1102-000, *et al.* (Nov. 27, 2007) (unpublished letter order) (accepting wholesale distribution charges and distribution loss factors set forth in two Network Integration Transmission Service Agreements with PJM and noting ComEd's intention to file its wholesale distribution charges and distribution loss factors as amendments to Attachment H-13 of the PJM Tariff in a future rate filing).

generator to ComEd's system, Winnebago should bear the costs associated with these losses. ComEd contends that this result is consistent with the Commission's principles of cost-causation.⁹

15. ComEd disputes Winnebago's assertion that, based on the data supplied by ComEd in response to the Deficiency Letter, it is entitled to a credit because its facilities have a positive effect on ComEd's distribution system. ComEd argues that Winnebago's analysis was overly simplistic and incorrectly characterizes the load of the feed conductors. ComEd contends that a proper determination of the effect of the operation of Winnebago's generator on the ComEd distribution system requires a power flow study that correctly models the region of the system affected. ComEd states that it has performed such a study, analyzing the change in losses due to the addition of the Winnebago generator. Based on its analysis, ComEd states that the addition of the Winnebago generator increases losses on the ComEd distribution system at all levels of loading of the affected distribution facilities. ComEd explains that the Winnebago generator is connected to a branch of the feeder that serves less than 25 percent of ComEd's total load and that Winnebago's analysis would only be valid if all loads on the feeder were at the same location. Moreover, ComEd states that Winnebago's analysis failed to account for the output of another generator connected to the feeder. ComEd also contends that Winnebago failed to account for the fact that there is reactive power flowing on the feeder and that since Winnebago's generator is of the inductive type, it consumes, rather than produces, reactive power.

B. Distribution Loss Factor as an Initial Rate

1. Winnebago's Protests

16. In its initial protest, Winnebago contends that ComEd's assessment of a distribution loss factor constitutes an initial rate under section 35.12 of the Commission's regulations and that ComEd has failed to provide sufficient support to justify assessment of this new rate on Winnebago or any other wholesale distribution customer.¹⁰ Winnebago states that when ComEd filed to implement its wholesale distribution rate, it provided adequate support of the formula as an initial rate including details of the 24 percent fixed charge rate. By contrast, Winnebago contends that nothing in ComEd's filed revisions to Attachment H-13 details losses or the assessment of loss factors on wholesale distribution customers. Winnebago also contends that ComEd's reliance on paragraph 3 of Attachment H-13 is inappropriate because paragraph 3 applies only to network customers.

⁹ *Citing, Midwest Indep. Transmission Owners, et al. v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004).

¹⁰ 18 C.F.R. § 35.12 (2007).

17. In its protest of ComEd's response to the Deficiency Letter, Winnebago states that, as indicated in Winnebago's initial protest, ComEd has not previously sought to impose distribution losses on customers under Attachment H-13 to the PJM tariff. Winnebago contends that, even with the supplemental information provided in its deficiency filing, ComEd has failed to demonstrate that this initial rate is just and reasonable. Winnebago contends that, in fact, the data submitted by ComEd shows that the Winnebago project reduces overall system losses on the relevant distribution lines. Winnebago reiterates that ComEd has failed to provide the information required by section 35.12 of the Commission's regulations for initial rate applications and that the information submitted by ComEd does not support its proposed loss factors.¹¹

2. ComEd's Answers

18. ComEd disputes Winnebago's assertion that the proposed loss factor is an initial rate within the meaning of section 35.12 of the Commission's regulations.¹² ComEd states that the loss factor is simply a modification to the existing Attachment H-13 of the PJM Tariff and that, therefore, ComEd is not required to make a separate section 205 filing.¹³ ComEd contends that the Commission has held that, in order for a filing to be an initial rate, it must present both a new service and a new customer.¹⁴ ComEd states that the Commission has already accepted amendments to Attachment H-13, which incorporate wholesale distribution charges and distribution loss factors for other entities. ComEd states that no new service is being provided here, only a new customer, Winnebago, to a preexisting service.

¹¹ *Id.*

¹² *Id.*

¹³ See *PJM Interconnection, LLC*, 114 FERC ¶ 61,191 at P 14.

¹⁴ *Citing, Pub. Svc. Co. of Colo.*, 74 FERC ¶ 61,354, at 62,087 & n.2 (1996). (finding that a power supply agreement added a new customer to an existing service and, therefore, constituted a changed rate); *Northern States Power Co.*, 74 FERC ¶ 61,106, at 61,345 (1996) (finding that Northern States' filing was a changed rate because it unbundled its requirements rates to provide for separately-stated charges for various types of transmission and related ancillary services rather than providing a new service to a new customer).

IV. Discussion

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to an answer or protest unless otherwise ordered by the decisional authority. We will accept the answers filed by ComEd as they have assisted us in our decision-making process.

B. Commission's Determination

21. The Commission accepts ComEd's proposed revisions to Attachment H-13 of the PJM OATT. ComEd has provided sufficient support for the assessment of a wholesale distribution charge and a distribution loss factor for wholesale distribution service to Winnebago. In particular, the data provided by ComEd in response to the Deficiency Letter supports its assessment of a 2.52 percent distribution loss factor attributable to Winnebago. By contrast, Winnebago has not provided any detailed support for its assertion that the interconnection of its generator creates counterflows.

22. We find that ComEd's proposed distribution loss factor of 2.52 percent is reasonable and supported by record evidence. Winnebago disputes the assessment of a distribution loss factor, arguing that its generator will reduce line losses by creating a flow in the reverse direction. ComEd, on the other hand, submitted several power flow runs showing the results of increased losses on its system resulting from the addition of Winnebago's generator. We agree with ComEd that the location of Winnebago's generator - near the end of the 4-mile long feeder - and the fact that it is connected to a low voltage (12.5 kV) feeder increases energy losses by 5.63 percent of the generator's output on an annual basis. We therefore conclude that the 2.52 percent distribution loss factor is just and reasonable.

23. Winnebago argues that ComEd's proposed distribution loss factor constitutes an initial rate within the meaning of section 35.12 of the Commission's regulations and that ComEd has failed to provide the information required under that section.¹⁵ For a filing to constitute an initial rate, it must present both a new service and a new customer.¹⁶ The Commission finds that ComEd's filing represents a modification to Attachment H-13 to

¹⁵ 18 C.F.R. § 35.12 (2007).

¹⁶ *Pub. Svc. Co. of Colo.*, 74 FERC at 62,087 & n.2.

PJM's OATT and, therefore, is not an initial rate within the meaning of section 35.12. ComEd has provided sufficient information to support this modification to its existing rate schedule.

24. ComEd requests waiver of the Commission's 60-day notice requirement, 18 C.F.R. 35.3 (2007), to make the proposed tariff change effective January 1, 2008. Winnebago commenced commercial operations on December 28, 2007 and was set to interconnect with the ComEd distribution system on December 31, 2007. In light of these circumstances, we find good cause exists to grant ComEd's requested waiver.¹⁷

The Commission orders:

ComEd's proposed revisions to Attachment H-13 are hereby accepted for filing to become effective January 1, 2008, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁷ See *Central Hudson Gas and Elec. Co., et al.*, 60 FERC ¶ 61,106 at 61,337, *reh'g denied*, 61 FERC ¶ 61,089 (1992); *Prior Notice Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,974-75 (1993), *clarified*, 65 FERC ¶ 61,081 (1993).