

108 FERC ¶ 61,151
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Allegheny Power

Docket Nos. ER02-136-005
and ER02-136-006

OPINION NO. 469-A

ORDER DENYING REHEARING AND
DIRECTING FILING OF ADDITIONAL COMPLIANCE FILING

(Issued August 5, 2004)

1. Earlier in this proceeding, we issued an order (Opinion No. 469)¹ affirming the judge's findings in an initial decision (ID),² making an additional finding on a contribution in aid of construction (CIAC) issue, and directing Allegheny Power to make a compliance filing within 30 days of the date of issuance of the order. In this order, we deny a request for rehearing of Opinion No. 469 and find that Allegheny Power's compliance filing did not comply with the requirements of Opinion No. 469. Accordingly, we will direct Allegheny Power to make an additional compliance filing in accordance with that order.

I. Background

2. Among the issues addressed in the ID was the question of whether the costs of the facilities used by Allegheny Power to provide Allegheny Electric Cooperative, Inc. (AEC) with subtransmission service should be determined based on the system-wide average costs of Allegheny Power's subtransmission facilities (*i.e.*, on a system-wide rolled-in basis) or based on a direct assignment of the costs of specific subtransmission facilities to AEC (*i.e.*, on a rolled-out basis). In the ID, the judge found that the facilities at issue constitute part of Allegheny Power's total integrated network and thus, these costs should be rolled-in. In Opinion No. 469, the Commission affirmed the judge's finding on this issue.

¹ Allegheny Power, 106 FERC ¶ 61,241 (2004).

² Allegheny Power, Initial Decision, 103 FERC ¶ 63,001 (2003).

3. In Docket No. ER02-136-005, Allegheny Power filed a request for rehearing challenging the findings of the judge and the Commission on this issue.
4. In Docket No. ER02-136-006, Allegheny Power made a compliance filing that it claims meets the requirements of Opinion No. 469. In response, AEC filed a protest arguing that Allegheny Power's filing fails to comply with the requirements of Opinion No. 469 and that Allegheny Power should be directed to make an additional filing that fully complies with the requirements of Opinion No. 469.
5. Prior to this matter being assigned to a judge and set for hearing, the parties attempted to resolve the issues in this case and succeeded in reaching agreement on all the issues in the case except the issue of direct assignment of costs v. use of average system costs. Under the settlement agreement, the parties agreed to exchange data with respect to the development of an appropriate direct assignment charge related to transmission service provided by Allegheny Power and/or PJM to AEC and agreed to attempt to negotiate a resolution of the direct assignment charge prior to August 31, 2002.
6. The settlement agreement also provided that, if further negotiations regarding the direct assignment failed (as they ultimately did), either party could notify the Commission that hearing procedures should be instituted and that the direct assignment charge resulting from either negotiation or litigation would apply retroactively to December 1, 2001. The settlement agreement specifically provided that starting on December 1, 2001, the direct assignment charge would be \$65,000 per month, subject to downward adjustment and refunds without interest or subject to upward adjustment and additional collections without interest, pending the outcome of negotiation and/or litigation related to this item; however, the upward adjustment would not exceed \$23,000 per month or a total direct assignment charge of \$98,000 per month. In addition, the settlement agreement provided that the \$65,000 per month charge would be contained in the service agreement under the applicable open access transmission tariff (either that of PJM or Allegheny Power). These are the charges that have been in effect on this issue while this case has been pending.

A. Allegheny Power's Request for Rehearing

7. Allegheny Power's request for rehearing alleges that the Commission made the following errors in Opinion No. 469: (1) the Commission erred when it found that Allegheny Power operates a fully integrated or low voltage system and this finding is unsupported by substantial evidence in the record and is contradicted by record evidence; (2) the Commission failed to explain how Allegheny Power is to allocate all of the costs of its 138 kV transformers and related substation costs to the service at issue if the direct assignment method is not used; and (3) the Commission failed to consider the ratemaking implications of its decision.

B. Allegheny Power's Compliance Filing

8. On April 8, 2004, Allegheny Power submitted a compliance filing in Docket No. ER02-136-006 to comply with Opinion No. 469. The filing states that, although the Commission, in Opinion No. 469, directed Allegheny Power to submit a filing within 30 days of the date of the order, the details of the compliance filing were explained in the ID, which required Allegheny Power to submit a revised cost-of-service and revised rate schedule reflecting that cost-of-service. To this end, Allegheny Power states that it submitted a revised cost-of-service that updates Staff's Exhibit S-2 to add additional 138 kV substation investment in accordance with the Commission's affirmation of the ID's requirement that no substation costs are to be excluded from the cost-of-service.

9. Allegheny Power further states that using the same information contained in Exhibit S-2 and including the same divisors produces a unit rate of \$0.57 per kV for low voltage and \$2.35 per kV for primary service. In addition, Allegheny Power's revised cost-of-service reflects a total monthly distribution charge of \$25,874 (based on \$25,597 per month for low voltage facilities and \$277 for primary voltage facilities). Allegheny Power did not submit a revised rate schedule to implement its proposed cost-of-service.

10. Allegheny Power also states that the ID required it to refund, with interest, monies owed to AEC within 90 days after the Commission approves the compliance filing and submit a refund report within 30 days after making any required refunds. In connection with the requirement that Allegheny Power pay interest, Allegheny Power notes that the partial settlement agreement approved by the Commission specifically eliminates the requirement for any refunds owed by either Allegheny Power or AEC in this proceeding.

C. Notice of Filing And Responsive Pleadings

11. Notice of Allegheny Power's filing was published in the *Federal Register*, 69 Fed. Reg. 21,522 (2004) with interventions, comments, or protests due on or before April 29, 2004. In response to this notice, AEC timely filed a supplemental motion to intervene, protest, and motion for prompt effectiveness of interim charge and refund.

12. AEC's protest argues that Allegheny Power's filing fails to comply with two aspects of Opinion No. 469: (1) Allegheny Power failed to credit AEC with a \$168,740 CIAC (as required by Opinion No. 469); and (2) Allegheny Power's inclusion of additional 138 kV substation investment is neither required nor authorized by Opinion No. 469 or the record of this proceeding.

13. On May 12, 2004, Allegheny Power filed an answer requesting that the Commission reject AEC's protest. On May 27, 2004, AEC filed a response to Allegheny Power's answer requesting that the Commission reject Allegheny Power's answer.

II. Discussion

A. Procedural Matters

14. AEC's timely, unopposed motion to intervene in Docket No. ER02-136-006 serves to make it a party to that proceeding.

15. Under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (a)(2) (2004), answers to an answer or a protest are prohibited unless otherwise ordered by the decisional authority. In this instance, we will accept Allegheny Power's answer and AEC's response thereto because they provide information that assist us in our decision-making process.

B. Allegheny Power's Rehearing Request

16. On rehearing, Allegheny Power argues that the Commission directed Allegheny Power to use a rolled-in rate to compute subtransmission costs based on a finding that all of Allegheny Power's geographically separate subtransmission facilities are integrated with each other for the reasons given by the presiding judge. However, Allegheny Power argues that this finding is not supported by substantial evidence and, in fact, is contradicted by the evidence.

17. Allegheny Power supports its contention by pointing out that only Trial Staff, in direct testimony, claimed that all of West Penn's low voltage facilities are integrated with each other. Allegheny Power claims that Trial Staff pointed only to a discrete portion of Allegheny Power's 25 kV facilities in the area around Pittsburgh and has described one set of such facilities as a network facility. Allegheny Power states that, on cross examination, Trial Staff's witness conceded that West Penn's 25 kV, 46 kV, 34.5 kV, and 69 kV facilities are located in discrete and unattached areas of West Penn's system and that these separate subtransmission networks are not integrated. Allegheny Power states that in the ID, the presiding judge deferred to Trial Staff without addressing the cross examination of Trial Staff. Allegheny Power further argues that, while it pointed out Trial Staff's flawed analysis in its Brief on Exceptions, this argument was overlooked by the Commission in Opinion No. 469. Consequently, Allegheny Power asks the Commission to correct its error and find that West Penn's subtransmission networks are not integrated with each other.

18. Allegheny Power further argues that initially both Allegheny Power and AEC favored a direct assignment charge but disagreed over the appropriate direct assignment charge methodology. Allegheny Power states that AEC's methodology resulted in allocated significant portions of substation costs to transmission level customers based on load flows measured by AEC through the high side of the substations, *i.e.*, flows that were not transformed to lower voltage.

19. Allegheny Power further alleges that while the ID intended to decide this issue in Allegheny Power's favor (because AEC's methodology allocated substation costs to customers other than those served by the substations), the Commission failed to recognize that this issue is only significant in the context of a direct assignment. Allegheny Power theorizes that the Commission may have intended to mean that all substations with a 138 kV element (not just the ones used to serve AEC or included in Trial Staff's analysis) should be included in the roll-in but the decision does not clarify that point as the issue only arose in the context of competing direct assignment methods sponsored by Allegheny Power and AEC. Allegheny Power asks that the Commission re-review the evidence that both Allegheny Power and AEC presented direct assignment methods and that Trial Staff effectively retracted the basis for a roll-in and render a reasoned decision.

20. Finally, Allegheny Power asserts that the Commission failed to consider the ratemaking implications its decision has on other Allegheny Power subtransmission customers. Allegheny Power argues that the decision means that a generator attached to looped portions of Allegheny Power's subtransmission facilities must be charged the same \$0.54/kW month rolled-in rate that Allegheny Power charges AEC. In addition, Allegheny Power argues that currently customers will pay rates using a direct assignment method while under Opinion No. 469, others will now pay rolled-in rates. Allegheny Power states that fairness dictates that either revenues from direct assignment charges for some low voltage customers must be credited or the costs and loads associated with such services must be eliminated in determining the rolled-in rate. Allegheny Power states that Trial Staff's presentation, adopted by the Commission, made no such required adjustment.

Commission Finding

21. Allegheny Power is making much of the fact that in its cross examination of a Staff witness, the witness did not dispute Allegheny Power's contention that a few specific transmission facilities were not integrated into Allegheny Power's integrated transmission network. It also points out that Allegheny Power and AEC did not disagree about the use of a direct assignment of facilities until the allocation got bogged down in a disagreement over the details of that allocation. Finally, Allegheny Power argues that, as usual in questions of cost allocation, the use of one method over another favors the interests of particular customers over those of others.

22. All of these objections, however, are beside the point. Allegheny Power did not properly substantiate its proposed direct assignment methodology. In Opinion No. 469, the Commission noted that Trial Staff stated that 9 of 18 of Allegheny Power's interconnection points with AEC are normally served in network configurations and that the integrated nature of Allegheny Power's facilities are based on the following: (1) the facilities are looped, not radial; (2) energy does not flow in just one direction over these

Allegheny Power facilities; (3) Allegheny Power serves not only AEC but also its own customers over these facilities; (4) the looped configuration enables Allegheny Power to provide support and added reliability to the other looped lines; and (5) an outage on any one of these facilities affects the power flows on other facilities. In the absence of such support, the Commission is justified in rejecting Allegheny Power's proposed direct assignment of facilities and calculating costs based on a roll-in of AEC's facility costs and the use of system-wide average costs. Allegheny Power's approach would flip the burden of proof from themselves to the Commission and would ignore the deficiencies in its own direct assignment proposal. Absent specific and convincing evidence to the contrary, we have found that the transmission grid is a single piece of equipment that benefits all users.³ Allegheny's isolated objections to Staff's testimony do not suffice to show otherwise. Nor does the fact that Allegheny Power and AEC tried to reach agreement on a direct assignment approach buttress Allegheny Power's direct assignment presentation.

C. Allegheny Power's Compliance Filing

23. Allegheny Power maintains that its compliance filing meets the requirements of Opinion No. 469. AEC's protest challenges three aspects of Allegheny Power's filing. First, AEC argues that Allegheny Power failed to credit AEC with a \$168,740 CIAC as required by Opinion No. 469. Second, AEC argues that Allegheny Power improperly included additional 138 kV substation investment in its cost of service. Third, AEC argues that the compliance filing fails to provide required refunds.

1. Computation of CIAC

24. AEC states that while the ID did not address whether AEC was entitled to a credit for the \$168,740 CIAC, Opinion No. 469 granted AEC's exception and directed Allegheny Power to credit AEC for the CIAC. AEC states that because Staff did not take a position on AEC's requested CIAC, Exhibit S-2, which calculated the charge to AEC based on the rolled-in methodology required by Opinion No. 469, did not include the CIAC. Therefore, AEC contends that Allegheny Power should be required to modify Staff Exhibit S-2 to reflect a credit for the CIAC.

25. In response, Allegheny Power states that AEC's protest for the first time proposes the method by which it hopes to obtain the credit which would result in an insupportable windfall of \$2,237 in perpetuity. Allegheny Power states it opted to credit the CIAC amount to the system-wide rate base mandated by the Commission. Allegheny Power

³ See, e.g., Entergy Gulf States, Inc., 99 FERC ¶ 61,095 at P 13 (2002); accord Western Massachusetts Electric Company v. FERC, 165 F.3d 177, 179-182 (D.C. Cir. 1999); Southern Company Services, Inc., 101 FERC ¶ 61,309 at P 8-9 (2002).

states that the impact of the CIAC on the revised rate base is *de minimis* and is subsumed in and does not measurably impact the revised rate base numbers shown in the cost-of-service in its compliance filing

26. AEC objects to Allegheny Power's response to its protest as a violation of Rule 213(a)(2), generally characterizing it as a late-filed request for rehearing or further support for its request for rehearing rather than addressing the merits of AEC's protest. AEC requests that all of it be stricken other than Allegheny Power's response regarding its request for interim relief. With respect to Allegheny Power's answer to its request for interim relief, AEC argues that Allegheny Power has not contradicted the assertions contained in AEC's motion but requests relief in a different docket not involving AEC.

Commission Finding

27. As we discussed above, we will allow Allegheny Power's answer because it helps clarify the parties' positions. However, AEC's objections highlight the relevant point that a compliance filing is supposed to implement the Commission's findings and is not intended to be a vehicle for a company dissatisfied with the order to use the compliance filing as a means to seek rehearing. In this instance, the Commission made a finding in Opinion No. 469 directing Allegheny Power to credit AEC with the CIAC. It is not clear from Allegheny Power's compliance filing and the workpapers contained therein that Allegheny Power has properly credited the CIAC to AEC. Therefore, as part of the additional compliance filing that we are requiring in this order, we will direct Allegheny Power to submit working papers that demonstrate that it has appropriately credited the CIAC to AEC as we directed in Opinion No. 469.

2. Inclusion of Additional 138 kV Substation Investment

28. AEC protests Allegheny Power's compliance filing, stating that Allegheny Power revised Staff Exhibit S-2 to add additional 138 kV substation investment not required or authorized by Opinion No. 469 or the ID and asks that the adjustment be eliminated. AEC further alleges that Allegheny Power nowhere specifies any reason to believe that any West Penn 138 kV substation investment was improperly excluded from Staff Exhibit S-2 nor identifies what 138 kV substation investment was improperly excluded from Staff Exhibit S-2.

29. AEC states that the specific issue addressed by the ID, as affirmed by Opinion No. 469, was raised in a portion of AEC's testimony which attempted to correct Allegheny Power's direct assignment methodology by proposing to exclude substantial amounts of Allegheny Power's investment in 138 kV facilities from the calculation of the charge to AEC.

30. In its response, Allegheny Power requests that the Commission reject AEC's protest. Allegheny Power states that Opinion No. 469 affirmed without modification the ID which directed Allegheny Power to develop a rolled in subtransmission charge, which Allegheny Power states it did by rolling-in the costs associated with all of its 138 kV substations. Allegheny Power further argues that because AEC did not take exception to the ID on this issue and because AEC did not seek rehearing of Opinion No. 469, AEC's protest is either an improper collateral attack on Opinion No. 469 or an untimely request for rehearing.

Commission Finding

31. As with the CIAC issue, Allegheny Power has again used its compliance filing as a vehicle to raise objections to our findings in Opinion No. 469, rather than complying with the directives of the order. As with the CIAC issue, we will direct Allegheny Power to file a revised compliance filing consistent with what we ordered in Opinion No. 469.

32. As noted in Opinion No. 469, none of the parties filed exceptions to the presiding judge's finding concerning the allocation to lower voltage transmission customers of the costs of Allegheny Power's 138 kV transformer substations. The issue being decided by the judge was whether only a portion of Allegheny Power's 138 kV substation transformers should be allocated to lower-voltage customers (with the remainder allocated to high-voltage customers) or all these facilities should be allocated to the low-voltage customers. He concluded that all of these facilities should be allocated to the low-voltage customers. This finding by the judge, that we affirmed in Opinion No. 469, did not give Allegheny Power authority to add additional 138 kV facilities to the inventory of facilities contained in Staff's Exhibit S-2 and Allegheny Power has not supported its proposed revisions to Staff's Exhibit S-2 contained in its compliance filing. In particular, Allegheny Power has not shown that its proposed adjustments were excluded from Staff's Exhibit S-2 and are not post-hearing adjustments.

33. Thus, we will direct Allegheny Power to file a revised compliance filing, within 30 days of the date of this order, that either removes these additional 138 kV facilities from its filing or that cites where in the record it offered adjustments to Staff's Exhibit S-2 that were accepted by the judge.

3. Interim Charges

34. AEC states that, under the terms of a partial settlement in this proceeding that was approved by the Commission on July 1, 2002, Allegheny Power bills AEC \$65,000 per month, subject to refund, for the use of Allegheny Power's low voltage facilities.⁴ AEC

⁴ Allegheny Power, *letter order*, 100 FERC ¶ 61,013 (2002).

states that Allegheny Power's compliance filing has proposed a charge of \$25,874 per month for this service without an adjustment related to the CIAC. AEC contends that however the dispute between AEC and Allegheny regarding the appropriate substation charge is resolved, it is entitled to a reduction of at least \$39,126 per month and asks that the Commission direct Allegheny Power to order the prompt institution of an interim charge of \$25,874 per month pending resolution of the two disputed items in the compliance filing. AEC states that, while interest normally keeps a customer whole pending resolution of its challenges to a compliance filing, this is not the case here, as the parties agreed to forego the requirement for interest on refunds under the terms of the partial settlement.

35. Allegheny Power contends that AEC's request for interim relief is not necessary if the Commission promptly issues an order on rehearing to correct the flaws identified in Allegheny Power's request for rehearing. Allegheny Power further contends that this case has significant implications for Allegheny Power and its customers beyond this case as a number of its customers are currently being charged on the basis of a direct assignment derived rate for use of a portion of Allegheny Power's subtransmission facilities. Allegheny Power states no customer currently is charged a rolled-in rate and that even AEC argued for a direct assignment rate using its own load flow derived allocators which have been rejected. Allegheny Power states that the only fair and legally justifiable result is to apply the Commission's decision to all of its subtransmission customers prospectively under section 206 of the Federal Power Act, given the Commission's determination that Allegheny Power's direct assignment methodology is unjust and unreasonable and that the system-wide rate is just and reasonable. Allegheny Power states that this question is pending before the Commission in connection with a generating customer's request for increased service on Allegheny Power's subtransmission system⁵ and that it has had requests from other customers seeking to know if they will benefit from a system-wide roll-in.

36. Allegheny Power states that since other users of its system are affected by Opinion No. 469, it suggests that any form of interim relief include the granting rehearing to the limited extent of vitiating the factual finding that Allegheny Power operates a single integrated subtransmission system which supports the use of a system-wide rolled-in rate.

37. While Allegheny Power states that this would not resolve other complex and contentious direct assignment issues (such as accounting issues for line investment), the Commission could assign the entire matter to a settlement judge for further proceedings in the context of such finding and Allegheny Power would advise all other potentially-affected customers of the existence of settlement procedures and would commit itself to once again attempting to resolve this entire matter. However, Allegheny Power states

⁵ The Commission recently set this filing for hearing and settlement judge procedures. PJM Interconnection, L.L.C., 107 FERC ¶ 61,182 (2004).

that the Commission must at a minimum correct the erroneous finding that Allegheny Power operates a single integrated subtransmission system that supports a system-wide rolled-in rate; otherwise customers will insist on the rate methodology which produces the lower rate for their individual circumstances.

Commission Finding

38. The ID, affirmed by Opinion No. 469, required:

If refunds are due any customer as a consequence of any action, revision, or amendment required to conform to the rulings, findings, or conclusions made in this initial decision, then within 90 days after the Commission approves such action, revision, or amendment, [Allegheny Power] must refund all amounts collected in excess of those that would have been payable under any such action, revision, or amendment, with interest from the date of payment to the date of refund as provided in this Commission's rules and regulations. *See* 18 CFR 35.19a(a)(2) (2002).

Within 30 days after making any refund payment required by this initial decision, [Allegheny Power] must file with this Commission a report in writing describing the payee of such payment, the amount of refund paid, the amount of interest paid, and the methods by which such refund and interest were determined and calculated.

39. Although the ID required refunds with interest, the settlement approved by the Commission specifically recognized that the refunds would be without interest. Since this provision was agreed to by each party, we will not require Allegheny Power to pay interest on refunds. However, in light of these circumstances, we will direct Allegheny Power, as part of its compliance filing, to file a refund report detailing how and when it calculated and paid out refunds to AEC.

40. Further, we disagree with Allegheny Power's allegations regarding the applicability of the finding in this proceeding to other customers. The findings in this case regarding the roll-in of transmission facilities were made on a case-by-case basis based on the fact that Allegheny Power has not properly supported its direct assignment of facilities serving AEC and that, on the record before us, it appears that those facilities are part of Allegheny Power's integrated transmission system. How such allocations would be resolved regarding the facilities serving other customers is not before us and will be decided on a case by case basis, based on the particular facts involved, when this issue is presented to us for decision.

The Commission orders:

Within 30 days of the date of issuance of this order, Allegheny Power shall file a revised compliance filing, including a refund report and relevant agreements, consistent with the discussion in this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.