168 FERC ¶ 61,190
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Duke Energy Carolinas, LLC Docket No. ER19-2459-000

ORDER REJECTING NETWORK INTEGRATION TRANSMISSION SERVICE AGREEMENT

(Issued September 23, 2019)

1. On July 25, 2019, Duke Energy Carolinas, LLC (DEC) submitted an unexecuted Network Integration Transmission Service Agreement (NITSA) between itself and the North Carolina Electric Membership Corporation (NCEMC) for filing pursuant to section 205 of the Federal Power Act (FPA),[1] and Part 35 of the Commission's regulations.[2] The NITSA is OATT Service Agreement No. 210 under Tariff Volume No. 4, DEC's Joint Open Access Transmission Tariff.[3] As discussed below, we reject DEC's filing.

I. Background

2. On February 1, 2017, NCEMC submitted to DEC a request for a new point of delivery to be located outside of Charlotte, North Carolina to serve the load of one of its distribution cooperative members, Union Power Cooperative (Union). In May 2017, NCEMC requested that DEC perform a System Impact Study to assess the impact of the requested point of delivery on DEC's transmission system and any affected systems.[4] According to DEC, the results of the System Impact Study show that to accommodate NCEMC's request to construct a new point of delivery, DEC must design, engineer,

[1] 16 U.S.C. § 824d (2018).

[2] 18 C.F.R. pt. 35 (2019).

[3] Duke Energy Carolinas, LLC, Tariffs, Rate Schedules and Service Agreement, OATT SA No. 210, NCEMC NITSA, 16.0.0.

[4] DEC Transmittal at 1.

construct, and install a new transmission tap line (Arlington Tap Line) by 2021 for a total cost of $4,574,124.[5]

3. DEC communicated these results to NCEMC, sharing its analysis that the Arlington Tap Line is radial in nature and that, pursuant to Commission precedent, all costs for the construction of the line will be directly assigned to NCEMC under DEC's proffered NITSA.[6] NCEMC disagreed with DEC's analysis and refused to sign the NITSA.[7] DEC subsequently filed the unexecuted NITSA with the Commission.[8]

4. Relevant to this filing are the Commission's "any degree of integration" test and the *Mansfield* test.[9] Pursuant to the "any degree of integration" test, a radial facility need only meet one of the five *Mansfield* criteria to be considered integrated into a transmission provider's transmission system.[10] If the facility meets one of the criteria, the costs of the facility are rolled in to the transmission provider's zonal revenue requirement. The five *Mansfield* criteria are:

- Whether the facilities are radial, or whether they loop back into the transmission system;
- Whether energy flows only in one direction, from the transmission system to the customer over facilities, or in both directions, from the transmission system to the customer, and from the customer to the transmission system;
- Whether the transmission provider is able to provide transmission service to itself or other transmission customers . . . over the facilities in question;

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[5] *Id.* at 1-2. DEC also proposes to include in its cost of service a contingency fee of $1,081,607 "to account for any cost uncertainty." DEC Filing, Haygarth Aff. ¶ 15.

[6] DEC Transmittal at 2.

[7] *Id*.

[8] NCEMC Protest at 12.

[9] *Mansfield Mun. Elec. Dep't v. New Eng. Power Co.*, Opinion No. 454, 97 FERC ¶ 61,134 (2001) (*Mansfield*), *reh'g denied*, Opinion No. 454-A, 98 FERC ¶ 61,115 (2002).

[10] *Ne. Tex. Elec. Coop., Inc.*, 108 FERC ¶ 61,084, at P48 (2004), *reh'g denied*, 111 FERC ¶ 61,189 (2005) (*NTEC*).

- Whether the facilities provide benefits to the transmission grid in terms of capability or reliability, and whether the facilities can be relied on for coordinated operation of the grid; and
- Whether an outage on the facilities would affect the transmission system. [11]

II. Description of the Filing

5. DEC's filing directly assigns all of the costs associated with the Arlington Tap Line to NCEMC. DEC contends that its decision to directly assign the costs of the Arlington Tap Line is supported by Commission precedent.[12] DEC argues that the Arlington Tap Line is a radial line and that its costs should not be rolled into DEC's zonal transmission revenue requirement because, based on the *Mansfield* test, the line will not be integrated into DEC's transmission system.

6. DEC argues that the Arlington Tap Line does not meet any of the five *Mansfield* criteria and therefore is not integrated into DEC's larger transmission system. To support its claim that the facility does not satisfy the requirements of the first criterion of the *Mansfield* test, DEC describes the radial nature of the line and points to a supporting diagram demonstrating that the Arlington Tap Line ends without looping back into the DEC transmission system.[13] DEC explains that the Arlington Tap Line does not qualify as an integrated facility under the second criterion of the *Mansfield* test because the energy will only flow in one direction from DEC's transmission system to Union via the Arlington Tap Line.[14]

7. Next, DEC argues that the Arlington Tap Line does not qualify as an integrated facility under the third criterion of the *Mansfield* test because it cannot provide service to any of its other customers.[15] In support of its argument, DEC stresses that it has no retail or additional wholesale customers on the line, but states "it is possible that DEC may have retail customers that will use the line if DEC builds a retail substation tap at the end

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[11] *Mansfield*, 97 FERC ¶ 61,134, at 61,613-14.

[12] DEC Transmittal at 3 (citing *Mansfield Mun. Elec. Dep't v. New England Power Co.*, 94 FERC ¶ 63,023, *aff'd*, 97 FERC ¶ 61,134 (2001), *reh'g denied*, 98 FERC ¶ 61,115 (2002)).

[13] DEC Transmittal at 4 (citing Attachment A).

[14] *Id.*

[15] *Id.*

of the line."[16] It argues that the possibility that the line may be used to serve retail customers in the future is not relevant to how the line should be classified at the current time.[17] DEC notes that, should it decide to build a retail substation at the end of the Arlington Tap Line, it would reclassify the line and address any remaining issues at that time.[18]

8. DEC also argues that the Arlington Tap Line does not meet the fourth criterion of the *Mansfield* test because the line's radial nature precludes it from offering benefits to DEC's transmission system in terms of capability or reliability and cannot be relied upon for coordinated operation of the transmission system.[19] Finally, DEC argues that the Arlington Tap Line does not meet the fifth criterion of the *Mansfield* test because an outage on the Arlington Tap Line would not impact DEC's transmission system being that the line is "hanging off" of the transmission system and not looping back into the system.[20]

III. Notice of Filing and Responsive Pleadings

9. Notice of the filing was published in the *Federal Register*, 84 Fed. Reg. 37,271 (2019), with protests or interventions due on or before August 15, 2019. On August 15, 2019, NCEMC filed a motion to intervene and protest. On August 23, 2019, DEC submitted motion for leave to answer and limited answer to NCEMC's protest. On September 9, 2019, NCEMC submitted an answer to DEC's answer.

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[16] *Id.*

[17] *Id.*

[18] *Id.* (citing *MidAmerican Energy Co.*, 140 FERC ¶ 61,028 (2012) (reclassifying certain distribution facilities as transmission facilities); *S. Cal. Edison Co.*, 107 FERC ¶ 61,017 (2004) (noting that facilities may have multiple uses that may change over time); *Cal. Wind Energy Ass'n v. Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,050, at P 50 (2014) (*California Wind*)).

[19] *Id.* at 4-5 (citing *California Wind*, 147 FERC ¶ 61,050 at P 51 to support its claim that all radial facilities do not provide benefits to the grid system in terms of capability or reliability and cannot be relied upon for coordinated operation of the grid).

[20] *Id.* (citing *California Wind*, 147 FERC ¶ 61,050 at P 53).

A. NCEMC Protest

10. In its protest, NCEMC explains that the Commission generally favors rolled-in rate treatment for transmission facilities and cites to Commission precedent to argue that the cost of a line must be rolled in if there is a showing of any degree of integration.[21] NCEMC argues: (1) that the Arlington Tap Line will be integrated with DEC's transmission system; (2) that the line satisfies the third, fourth, and fifth *Mansfield* criteria; and (3) that the costs of the line should therefore be rolled into DEC's zonal transmission revenue requirement. Further, NCEMC asserts that under Commission precedent a facility is considered a network facility subject to rolled-in pricing if any one of the Mansfield criteria is met.[22]

11. NCEMC explains that the Arlington Tap Line satisfies the third criterion of the *Mansfield* test because DEC plans to serve its retail load from the line in the near future. NCEMC uses testimonial evidence to demonstrate DEC's future plans to connect its retail load to the Arlington Tap Line, including: (1) written testimony from a DEC account manager who informed NCEMC in 2014 that DEC's growth projections included the possible construction of a similar tap line close to NCEMC's requested point of delivery around 2021;[23] (2) a DEC employee's affidavit confirming that DEC projects a need for an Arlington substation by 2025;[24] and (3) evidence that DEC acquired the rights-of-way for the Arlington Tap Line at least as early as 2014.[25]

12. Additionally, NCEMC claims that DEC likely placed the land in FERC Uniform System of Accounts, Account 105 - Plant Held for Future Use,[26] indicating that DEC intends for the Arlington Tap Line to serve DEC's retail load. Therefore, NCEMC argues, DEC's own admissions about its plans to construct the Arlington Tap Line to serve DEC customers in the future, coupled with DEC's likely accounting treatment, demonstrate the Arlington Tap Line satisfies the third *Mansfield* criterion.[27] In short,

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[21] NCEMC Protest at 19 (citing *NTEC*, 108 FERC ¶ 61,084, at P48)).

[22] *Id*. (citing *NTEC*, 108 FERC ¶ 61,084 at P 51).

[23] NCEMC Protest, Lemire Aff. ¶¶ 11-13.

[24] NCEMC Protest at 31 (citing DEC Transmittal, Duckworth Aff. ¶ 7).

[25] NCEMC Protest, Lemire Aff. ¶ 11.

[26] NCEMC Protest, Lemire Aff., Attachment 12 at 2.

[27] NCEMC Protest at 22-23.

NCEMC argues that the aforementioned evidence satisfies the Commission's "any degree of integration" standard, which considers potential future uses of the transmission facility and demonstrates the Arlington Tap Line is a network facility qualified for rolled-in rate treatment.[28]

13. Relevant to the fourth criterion of the *Mansfield* test, NCEMC argues that the Arlington Tap Line will provide reliability benefits to DEC's transmission system and can be relied on for coordinated operation of the transmission system. NCEMC presents written testimony to explain that in September 2018, a solar array was added to the Union system (the output of which is sold to DEC), and that the interconnection of this solar array has caused outages for NCEMC customers.[29] According to NCEMC's affiant, the construction of the Arlington Tap Line would enable Union to transfer load to a new point of delivery, thereby improving reliability for NCEMC members and providing DEC's transmission system with additional capabilities to transfer load for events like planned maintenance or real-time system contingencies.[30]

14. Finally, NCEMC argues that the Arlington Tap Line satisfies the fifth *Mansfield* criterion because an outage of the line would affect DEC's transmission system. Based on its affiant's review of DEC's planning and profile drawings for the new delivery point, NCEMC states that the Arlington Tap Line will include a Gang-Operated Air Break (GOAB), a mechanism which minimizes outages to upstream facilities to provide improved reliability to the transmission system.[31] According to NCEMC, the GOAB's contribution to DEC's transmission system by itself qualifies the Arlington Tap Line as an integrated facility that should be rolled into system costs because DEC's choice to install a GOAB indicates that an outage on the Arlington Tap Line would cause an outage on the neighboring lines.[32]

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[28] *Id.* at 20 (citing *Minn. Power & Light Co.*, 3 FERC ¶ 61,045, at 61,138 (1978)).

[29] NCEMC Protest, Lemire Aff. ¶ 34.

[30] *Id.*

[31] *Id.* ¶ 41.

[32] NCEMC Protest at 28-29.

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), NCEMC's timely unopposed motion to intervene serves to make it a party to this proceeding.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed in this proceeding and will, therefore, reject them.

B. Substantive Matters

17. As discussed below, we reject DEC's filing as unjust and unreasonable. We find that DEC has failed to demonstrate that the Arlington Tap Line is not an integrated facility under *Mansfield* and related Commission precedent, and we conclude that direct assignment of costs is not appropriate for this project.

18. A transmission provider seeking to directly assign the construction costs of a transmission facility must demonstrate that the facility is not integrated into the transmission provider's larger network. As described above, in considering whether the costs of a facility may be directly assigned to customers whose service request precipitated the facility's construction, the Commission has established the "any degree of integration" test.[33] Under this analysis, to be integrated for purposes of rolled-in rates, radial transmission facilities need only satisfy one of the five *Mansfield* criteria, thereby exhibiting integration into the transmission provider's larger network.[34] Based on the evidence submitted in this proceeding, DEC has not demonstrated that the costs of the Arlington Tap Line should be directly assigned,[35] and, in contrast, the record demonstrates that the Arlington Tap Line passes the "any degree of integration" test by satisfying at least one of the *Mansfield* criteria, thereby requiring rolled-in rate treatment.

19. We find NCEMC has demonstrated that the Arlington Tap Line satisfies the *Mansfield* test's fourth criterion, which considers whether the facilities provide benefits

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[33] *See NTEC*, 108 FERC ¶ 61,084; *Am. Elec. Power Serv. Corp*., 44 FERC ¶ 61,206 (1988), *reh'g denied*, 45 FERC ¶ 61,408 (1988), *reh'g denied*, 46 FERC ¶ 61,382 (1992).

[34] *NTEC,* 108 FERC ¶ 61,084 at P 9; *S. Co. Serv., Inc.,* 116 FERC ¶ 61,247 at P 18 (2006).

[35] *See* 5 U.S.C. § 556(d) (2018); *see also* 16 U.S.C. § 824d(e) (2018).

to the transmission grid in terms of capability or reliability, and whether the facilities can be relied on for coordinated operation of the grid. The record indicates that the Arlington Tap Line, as a result of its connection to the larger DEC transmission system, would not only help avoid outages for NCEMC's members, but also would provide DEC with the capability to remove load from DEC lines in the event of a DEC transmission system reliability issue. NCEMC's testimonial evidence regarding the interconnection of a new solar array on Union-owned distribution lines, whose output is sold to DEC, underscores the Arlington Tap Line's ability to assist DEC in coordinating the operation of the larger transmission grid since the Arlington Tap Line may be used by DEC as an alternate feed to transfer load.[36] Based on the record, we find that the Arlington Tap Line contributes to the overall reliability of the transmission system and should, therefore, be classified as an integrated facility.

20. We also find that NCEMC has demonstrated that DEC's inclusion of a GOAB on the Arlington Tap Line satisfies the fifth *Mansfield* criterion, which considers whether an outage on the facilities would affect the transmission system. Operationally, a GOAB can isolate the Arlington Tap Line from the larger transmission system, but cannot do so when the system is energized, which requires a protection device (i.e., circuit breaker) that does not appear to be part of DEC's engineering plans for the Arlington Tap Line.[37] Accordingly, an outage on the Arlington Tap Line would cause an outage on neighboring DEC-owned transmission lines. Therefore, based on the record, we agree with NCEMC that DEC's inclusion of a GOAB on the Arlington Tap Line contributes to the overall reliability of DEC's transmission system and, as such, should cause the Arlington Tap Line to be classified as an integrated facility.

21. Lastly, we find that NCEMC has demonstrated that the Arlington Tap Line satisfies the third *Mansfield* criterion, which considers whether the transmission provider is able to provide transmission service to itself or other transmission customers over the facilities in question. Commission precedent establishes a presumption against the direct assignment of costs of transmission facilities that provide transmission service to the transmission provider or other transmission customers.[38] The Commission has long

[36] NCEMC Protest, Lemire Aff. ¶ 41 ("Additionally, the new six mile line can be used as an alternate feed to transfer load during planned maintenance and outages to the DEC transmission system . . . .").

[37] *Id.* ¶ 42.

[38] *NTEC*, 108 FERC ¶ 61,084 at P 9.

required the use of rolled-in pricing based on evidence that the lines in question would eventually benefit future customers other than the initial user of the line.[39]

22. Here, the record demonstrates that DEC's plans anticipate, at some time in the future, construction of the Arlington Tap Line to serve DEC retail load. Specifically, correspondence between DEC account managers and NCEMC demonstrates that DEC anticipates the construction of a line to serve its retail customers in the area near Arlington Tap Line between 2021 and 2025.[40] In *El Paso*, the Commission stated that "in determining whether a transmission line is part of an integrated system, potential future conditions as well as present circumstances must be evaluated."[41] In light of DEC's admission that its plans anticipate the construction of the Arlington Tap Line at some point in the future for its own customers, we find that the Arlington Tap Line should be classified as an integrated facility.

23. NCEMC successfully demonstrated that the Arlington Tap Line satisfies criteria three, four, and five of the *Mansfield* test, thus satisfying the Commission's "any degree of integration" test. Hence, the Arlington Tap Line should be treated as an integrated facility and its costs should be rolled into DEC's zonal transmission revenue requirement. Accordingly, we reject DEC's unexecuted NITSA.

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[39] *See El Paso Elec. Co.*, 10 FERC ¶ 63,008, at 65,025-27 (1980), *aff'd in relevant part*, 14 FERC ¶ 61,082 (1981) (*El Paso*); *Pub. Serv. Comm'n of Colo.*, 62 FERC ¶ 61,031 (1993).

[40] *See* NCEMC Protest, Lemire Aff., Attachment 6 at 1 ("Presently, [DEC] does not have a transmission line in the area of your request. Future plans indicate a 100 kV transmission tap line may be built along a route which passes very close to the location of your proposed delivery point. However, the timeline for the construction of this tap line is beyond the horizon of your requested in-service date of 2018."); *see also* NCEMC Protest, Lemire Aff., Attachment 7 at 1 ("The 100 kV tap line is currently in our long range plan for 2021."); DEC Transmittal, Duckworth Aff. ¶ 7 ("The Arlington Substation is projected to be needed no earlier than 2025 according to DEC's load growth projections.").

[41] *El Paso*, 10 FERC ¶ at 65,025.

The Commission orders:

DEC's filing is hereby rejected, as discussed in the body of the order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.