

171 FERC ¶ 61,093  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.  
Atlantic City Electric Company

Docket No. ER20-1187-000

ORDER ACCEPTING FORMULA RATE REVISIONS

(Issued May 5, 2020)

1. On March 6, 2020, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> PJM Interconnection, L.L.C. filed, on behalf of Atlantic City Electric Company (ACE), proposed revisions to ACE's transmission formula rate (Formula Rate), contained in the PJM Open Access Transmission Tariff (OATT), Attachment H-1A, to conform ACE's Formula Rate to accounting presentation changes concerning the treatment of Material and Supplies (M&S) inventory costs. In this order, we accept ACE's proposed tariff revisions to its Formula Rate, to become effective May 6, 2020, as discussed below.

**I. Summary of Filing**

2. ACE states that it is a New Jersey corporation and a wholly owned subsidiary of Pepco Holdings, LLC, a public utility holding company and a wholly owned subsidiary of Exelon, a Pennsylvania corporation. ACE states that it owns approximately 11,500 miles of transmission and distribution facilities and provides delivered electric power to approximately 600,000 customers in New Jersey. ACE states that the New Jersey Board of Public Utilities regulates ACE's retail electric service, while the Commission regulates transmission service over ACE's transmission facilities and its wholesale sale of electric energy in interstate commerce. ACE states that it does not own any generation facilities.<sup>2</sup>

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<sup>1</sup> 16 U.S.C. § 824d (2018).

<sup>2</sup> Transmittal at 3.

3. ACE proposes to modify the Form No. 1 reference to M&S inventory in its Formula Rate in order to conform the reference to an intended change in accounting presentation. ACE states that it plans to implement this change in accounting presentation for the Form No. 1 for the 2019 reporting year that it will submit to the Commission in early 2020.

4. Since before the inception of its Formula Rate in 2005, ACE explains that it has directly assigned its M&S inventory amounts to transmission and to distribution, and has thus reflected all of its transmission related M&S inventory on page 227, line 8, of its Form No. 1 submitted each year.<sup>3</sup> ACE states that no customer or interested party had objected, and it has continued to rely on that accounting presentation.

5. ACE states that, while it believes that its accounting presentation of M&S amounts is consistent with Commission policy and that ACE has conformed to the requirements of its Formula Rate, it has determined that, based on *Duke Energy Progress, LLC*,<sup>4</sup> it is appropriate to revise the population on line 5 of page 227 of Form No. 1, starting with the 2019 reporting period and going forward because it will now reflect only the transmission plant (estimated) assigned to Operations and Maintenance (O&M). ACE states that line 5 of Page 227 will now be utilized to reflect the Company's estimate of total M&S inventory assigned to construction. ACE states, however, that its Formula Rate currently does not include the balance inputs from line 5 of page 227 of Form No. 1.<sup>5</sup> ACE states that the proposed changes to the Formula Rate will include the total amount on line 8 of page 227 of Form No. 1 as well as the transmission-related only component of the total amount of "Assigned to – Construction" found on line 5 of page 227 of Form No. 1 to compute the transmission M&S balance. ACE contends that line 5 of page 227 of Form No. 1 does not itself distinguish between transmission and distribution supplies but because ACE has been directly assigning the supplies to transmission and distribution, it is able to provide a breakout of the amounts associated with transmission and distribution on line 5 of page 227 of Form No. 1 and will specify those amounts in a footnote. In the Formula Rate revisions, ACE states, it will indicate that only the transmission portion of line 5 of page 227 of Form No. 1, as reflected in the footnote, will be added to line 8 of page 227 of Form No. 1 to establish the transmission M&S inventory balance used in the rate calculation.<sup>6</sup>

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<sup>3</sup> *Id.* at 4.

<sup>4</sup> 163 FERC ¶ 61,051 (2018) (*DEP*).

<sup>5</sup> Transmittal at 4.

<sup>6</sup> *Id.* at 6.

6. ACE advises that the change is substantially identical to changes that the Commission has allowed for other utilities and will have no rate impact.<sup>7</sup> ACE explains that the change ensures that the same transmission M&S inventory amounts will be reflected in rates after the change in accounting presentation that would have been reflected in rates prior to the change.<sup>8</sup>

7. ACE states that the current instructions noted in its Formula Rate specify the use of line 8 of Page 227 of the Form No. 1 as an input to the Company's working capital component of rate base in its Formula Rate. ACE explains that, if it implements the change in Form No. 1 without corresponding changes in its Formula Rate, it would result in an under-recovery by ACE of the transmission related costs. ACE contends that regardless of whether the transmission-related M&S inventory balances are estimated for assignment to Construction or assignment to O&M, such balances are recorded in Account 154, Plant Materials and Operating Supplies, of Form No. 1, which is appropriately considered to be a component of working capital.<sup>9</sup> ACE explains that the M&S inventory balances that are estimated to be "Assigned to – Construction" and that now will be included on line 5 of page 227 of Form No. 1, represent funds that the Company has invested in materials still being held in inventory and for which a construction order has not been issued but once the construction work orders are issued and the inventory is used, the corresponding dollar amounts move out of Account 154 and into Account 107, Construction Work in Progress (CWIP).

8. ACE states that the Commission and courts have found that utilities are entitled to earn a return on their investment in such M&S inventory balances.<sup>10</sup> ACE states that the

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<sup>7</sup> *Id.* (citing *Bal. Gas & Elec. Co.*, Docket No. ER20-789-000 (Mar. 4, 2020) (delegated order); *Commonwealth Edison Co.*, Docket No. ER20-379-000 (Jan. 8, 2020) (delegated order); *PJM Interconnection, L.L.C.*, Docket No. ER19-1569-000 (May 7, 2019) (delegated order); *Duke Energy Carolinas LLC*, Docket Nos. ER18-2367-000, ER18-2368-000 (Oct. 19, 2018) (delegated order)).

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> *Id.* at 5 (citing *Midwest Independent Transmission System Operator, Inc.*, 141 FERC ¶ 63,014, at PP 1-2, 1469 (2012) (accepting Wholesale Distribution Service Agreements among Ameren Illinois Company and eight customers to establish the rates, terms, and conditions for Ameren's provision of service to customers on its distribution network, and which included in rate base M&S costs), *aff'd in relevant part*, Opinion No. 534, 148 FERC ¶ 61,206 (2014); *So. Cal. Edison Co.*, 53 FERC ¶ 61,408, at 62,413 (1990) (permitting utility to reflect in rate base an adjusted M&S balance of \$8,600,000) (citing *So. Cal. Edison Co.*, 34 FERC ¶ 63,016, at 65,024-25 (1986))).

Commission has specifically permitted utilities to include transmission-related M&S inventory balance estimated to be assigned to construction in rate base.<sup>11</sup>

9. ACE requests waiver of the 60-day prior notice requirement, and an effective date of March 6, 2020. If the Commission declines to waive the 60-day notice period, ACE requests an effective date of May 5, 2020. ACE states that it intends to reflect the changes required in the Form No. 1 revisions required by *DEP* that are implemented in the tariff revision proposed in this proceeding in the Formula Rate Annual Update to be posted on PJM's website by May 15, 2020.<sup>12</sup> ACE states that the Formula Rate Annual Update will reflect the estimated Annual Transmission Revenue Requirement billed for the calendar year 2020 and the true-up of the prior year's rates, based on actual FERC Form No. 1 data for reporting year 2019.<sup>13</sup>

10. ACE requests single-issue rate treatment for this filing because it is a limited amendment to a single component in ACE's formula rate, with no rate impact. ACE states that the Commission has previously accepted similar filings on a single-issue basis.<sup>14</sup>

## **II. Notice of Filing and Responsive Pleadings**

11. Notice of ACE's filing was published in the *Federal Register*, 85 Fed. Reg. 14,469 (Mar. 12, 2020), with protests and interventions due on or before March 27, 2020.

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<sup>11</sup> *Id.* at 5 (citing *Boston Edison Co.*, 59 FERC ¶ 63,028, at 65,245 (1992); *Cleveland Elec. Illuminating Co.*, Opinion No. 242, 32 FERC ¶ 61,381, at 61,860-61, *reh'g granted on other grounds*, 33 FERC ¶ 61,309 (1985) (*Cleveland*); *Union Elec. Co.*, Opinion No. 94, 12 FERC ¶ 61,239, at 61,582 (1980), *aff'd. sub nom. Union Elec. Co. v FERC*, 668 F.2d 389, 396 (8th Cir. 1981) (*Union Electric*); *Mo. Utils. Co.*, 6 FERC ¶ 63,041, at P 65,234 (1979), *aff'd*, 10 FERC ¶ 61,297 (1980); *Cent. Ill. Pub. Serv. Co.*, 8 FERC ¶ 63,022, at 65,196 (1979), *aff'd*, 10 FERC ¶ 61,162 (1980)).

<sup>12</sup> ACE states that even without waiver of the prior notice requirement, the proposed change to the Formula Rate would become effective prior to the May 15, 2020 Annual Formula Rate and true-up filings. *Id.* at 7.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> Transmittal at 2 (citing *Sw. Pub. Serv. Co.*, 145 FERC ¶ 61,281, at P 18 (2013), *reh'g denied*, 152 FERC ¶ 61,126 (2015); *Int'l Transmission Co.*, 116 FERC ¶ 61,036, at P 3 (2006); *Boston Edison Co.*, 65 FERC ¶ 61,311, at 62,425-27 (1993), *reh'g denied*, 66 FERC ¶ 61,337 (1994)).

12. The New Jersey Division of Rate Counsel (NJ Rate Counsel) filed a timely motion to intervene and a limited protest and comments. On April 9, 2020, ACE filed an answer to NJ Rate Counsel's protest.

**A. NJ Rate Counsel Protest**

13. NJ Rate Counsel disagrees with ACE that the proposed revisions have no rate impact. NJ Rate Counsel states that ACE has been improperly including construction related M&S in the Form No. 1 reference to M&S associated with O&M and including construction related M&S in its calculation of the its revenue requirement which resulted in overcharging customers for 15 years.<sup>15</sup> NJ Rate Counsel states that ACE's existing Formula Rate only includes the Form No. 1 reference for M&S associated with O&M and ACE has been improperly including construction related M&S in that line item.<sup>16</sup> As a result, according to NJ Rate Counsel, the instant filing is a rate increase.<sup>17</sup>

14. NJ Rate Counsel argues that the filing does not include sufficient information to understand how ACE plans to perform its M&S cost accounting going forward or the related ratemaking. NJ Rate Counsel argues that ACE adds to its formula a new reference to Form No. 1, page 227, line 5, so that ACE has a legal basis to include construction M&S in its transmission revenue requirement. Thus, NJ Rate Counsel asserts that ACE's filing adds a new cost, construction M&S, to its transmission revenue requirement.

15. NJ Rate Counsel contends that ACE should have complied with the Commission's regulation and included "[i]nformation related to the effect of the rate schedule change."<sup>18</sup> Specifically, NJ Rate Council asserts that ACE's filing does not include illustrative data sufficient to enable customers and the Commission to verify that ACE is not earning an improper incentive on CWIP costs.<sup>19</sup> NJ Rate Council states that while the Commission has permitted utilities to acquire M&S to be used for construction and earn a return on such M&S before the M&S is assigned to a construction project, once M&S is assigned to a project, it becomes CWIP.<sup>20</sup> NJ Rate Counsel explains that ACE's

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<sup>15</sup> Protest at 2.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 5.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 6.

<sup>20</sup> *Id.*

failure to allocate the appropriate share of its total M&S to construction M&S raises the possibility that ACE may have effectively received a 100% CWIP allowance for the past work, contrary to the Commission's regulations that limit CWIP in rate base to 50% of non-pollution control CWIP.<sup>21</sup>

16. NJ Rate Counsel states that since the construction M&S on line 5 of page 227 of the Form No. 1 includes all functions as one amount, there is a lack of transparency as to what the "transmission" portion will be and there is no listed data source identifying what will be used to calculate formula inputs or the calculation methodology ACE will use to derive the amounts.<sup>22</sup> NJ Rate Counsel argues that there should be explicit provisions in the Formula Rate to enable the Commission and ratepayers to ensure that any construction M&S costs are not also already included in CWIP and that there is no double recovery in the construction amounts used in the allowance for funds used during construction (AFUDC) calculation.<sup>23</sup> NJ Rate Counsel requests that the Commission should investigate whether ACE is properly accounting for M&S inventory, CWIP, and AFUDC.<sup>24</sup>

17. Finally, NJ Rate Counsel requests that the Commission confirm that any acceptance of ACE's filing in this proceeding is not an acceptance of an estimation methodology with respect to M&S. That is, the estimation of M&S is properly the subject of each year's annual update and ACE will bear the burden of proof to demonstrate that its rate is just and reasonable.<sup>25</sup>

**B. ACE Answer**

18. ACE states that the Commission should reject NJ Rate Counsel's protest. ACE states that NJ Rate Counsel ignores Commission precedent that has permitted the same rate treatment requested by ACE in its filing.<sup>26</sup> ACE states that in *Cleveland* the Commission explained that such M&S would become CWIP - booked to Account 107 of Form No. 1 only after the materials are "earmarked" for use in a specific project, and

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 6.

<sup>23</sup> *Id.* at 7.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 8.

<sup>26</sup> ACE Answer at 6; *see supra* n.7 (citing cases).

could then earn a return through the AFUDC mechanism.<sup>27</sup> ACE states that the Commission further held that M&S that was estimated to be used for construction but not yet earmarked should be included in rate base because excluding that M&S from rate base “would deprive investors of a current return on the M&S later used as betterments altogether.”<sup>28</sup> ACE states that the Commission relied on *Union Elec.*, where an essentially identical ruling allowing rate base recovery of such M&S was upheld by the Eighth Circuit Court of Appeals.<sup>29</sup> ACE contends that because the Commission approved similar proposals by other utilities, there is no reason to treat ACE’s proposal differently.<sup>30</sup>

19. ACE states that the other issues raised by NJ Rate Counsel should be rejected as beyond the scope of the proceeding. ACE states that NJ Rate Counsel’s argument that the proposal will result in a rate increase, and therefore, requires the additional cost support is nothing more than NJ Rate Counsel’s wish that the Commission finds an over-collection in ACE’s past annual updates. ACE states that this challenge to past annual updates is inappropriate and without merit. ACE states that ACE’s Formula Rate protocols provide a process to raise and address such challenges in an Annual Update, including a process and timeline for pursuing such challenges. ACE states that its case differs from *DEP*, where the utility’s decision regarding reporting resulted in an adverse rate impact. Here, ACE contends, its proposed revisions would simply ensure that the same investment that should earn a return will earn a return going forward. ACE states that it has historically followed the very reporting and ratemaking it employed since the 2006 settlement. ACE states that this filing is not an Annual Update challenge proceeding.<sup>31</sup>

20. ACE states that NJ Rate Counsel’s argument that ACE might seek to earn an inappropriate rate base return on CWIP in this proceeding is an attempt to relitigate the issue of whether M&S that are estimated to be used for construction but not yet earmarked for a specific project should earn a return. ACE states that the NJ Rate Counsel is raising the exact argument that the Commission rejected in *Union Electric* and *Cleveland*. ACE states that NJ Rate Counsel’s concern about CWIP is beyond the scope of this proceeding because ACE does not seek any rate treatment related to CWIP. ACE states that NJ Rate Counsel’s argument that M&S estimated to be used for construction is

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<sup>27</sup> *Id.* at 7 (citing *Cleveland*, 32 FERC at 61,860-61).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 7-8 (citing *Union Electric*, 12 FERC at 61,582).

<sup>30</sup> *Id.* at 8

<sup>31</sup> *Id.* at 9-10.

the same as CWIP has been litigated and rejected, and NJ Rate Counsel has provided no basis for litigating the issue again.<sup>32</sup>

21. ACE states that NJ Rate Counsel is concerned that the amounts reported on page 227, line 5, of Form No. 1 are necessarily “estimates” and that NJ Rate Counsel will be able to review those estimates. ACE states that this proceeding is not a proper venue for these concerns but should instead be addressed in the context of individual rate updates, including the review process available for annual rate updates. ACE explains that its Formula Rate protocols contain a process to address such concerns, i.e., an information request or a challenge. ACE contends that the Commission has held that challenges to formula rate amendments that are better addressed through the annual protocol review process are beyond the scope of a section 205 proceeding and should be rejected.<sup>33</sup>

### **III. Discussion**

#### **A. Procedural Matters**

22. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), NJ Rate Counsel’s timely unopposed motion to intervene serves to make it a party to the proceeding.

23. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.217(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept ACE’s answer because it has provided information that assisted us in our decision-making process.

#### **B. Substantive Matters**

24. We accept ACE’s proposed revisions to its Formula Rate, to become effective May 6, 2020. We find that ACE’s proposed revisions to its Formula Rate are just and reasonable and consistent with the guidance in *DEP*. We agree with ACE that Commission precedent allows construction-related M&S to be included in rate base prior to being assigned to specific construction projects and transferred to accounts that are capitalized.<sup>34</sup>

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<sup>32</sup> *Id.* at 11-12.

<sup>33</sup> *Id.* at 12-13 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 163 FERC ¶ 61,163, at P 56 (2018), *aff’d on reh’g*, 167 FERC ¶ 61,238, at P 18 (2019)).

<sup>34</sup> *See supra* n.11 (citing cases); *see also Union Elec. Co.*, 8 FERC ¶ 63,026, at 65,243 (1979) (“Union Electric argues, and their argument is accepted, that the [M&S] are not earmarked to either maintenance or construction while in that status. They only

25. We find that NJ Rate Counsel's objections are outside the scope of this proceeding. As ACE points out, NJ Rate Counsel's argument regarding the rate impact of the proposed Formula Rate change is based on NJ Rate Counsel's claim that ACE has been over-recovering in previous Annual Updates, an issue which is beyond the scope of this proceeding. If NJ Rate Counsel or any customer or other interested entity believes that ACE has been overcharging in previous Annual Updates, ACE's Formula Rate protocols in Attachment H-1B of the PJM Tariff specify how to raise such an issue. We also dismiss as beyond the scope of this proceeding NJ Rate Counsel's arguments regarding CWIP and AFUDC. Though M&S reported as earmarked to construction and other functions is estimated in the Form No. 1, ACE is required to provide detailed workpapers, documentation and calculations in its annual update for the rate year necessary to support formula rate inputs, pursuant to ACE's Formula Rate protocols in Attachment H-1B of the PJM Tariff.<sup>35</sup> This means that ACE will be required to provide detailed information and workpapers in future filings to show how construction-related M&S is estimated and functionalized to transmission.

26. Here, in accepting ACE's proposed formula rate revisions effective May 6, 2020, we find that ACE can only apply the formula rate revisions prospectively.<sup>36</sup> Thus, when ACE calculates its true-up of estimated 2019 charges to actual 2019 costs in May 2020, it must calculate its actual costs using the formula that was in effect for the applicable time period (i.e., ACE's revisions cannot be applied to its 2019 formula rate true-up).<sup>37</sup> We note that, in *DEP*, the Commission required DEP to refile Form 1 and make refunds in a proceeding addressing Fayetteville's formal challenge to DEP's 2015 annual true-up for a formula rate on file, and not in response to a filing by a utility to revise its formula rate prospectively.

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become earmarked when removed; hence, there is no prohibition against including the full [M&S] inventory amount in the rate base.”), *summarily aff'd in relevant part, Union Electric*, 12 FERC ¶ 61,239.

<sup>35</sup> See PJM Intra-PJM Tariffs, OATT Attachment H-1B - Atlantic City Electric Company, 3.1.0.

<sup>36</sup> See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 161 FERC ¶ 61,020, at PP 6-8 (2017).

<sup>37</sup> See, e.g., *Wis. Elec. Power Co.*, 167 FERC ¶ 61,163, at PP 20-22 (2019). Similarly, when ACE calculates its true-up of estimated 2020 charges to actual 2020 costs in May 2021, it should only use the revised formula to calculate its true-up for that portion of 2020 that the revised formula rate was in effect (i.e., May 6, 2020 through December 31, 2020).

27. We deny ACE's request for waiver of the 60-day prior notice requirement. We find that ACE has not shown good cause for granting waiver of the 60-day prior notice requirement to permit a March 6, 2020 effective date. Although there are circumstances in which the Commission may grant waiver of the 60-day prior notice requirement, none of these circumstances apply in the present case.<sup>38</sup> Thus, ACE's tariff records are accepted effective May 6, 2020.<sup>39</sup>

The Commission orders:

ACE's filing is hereby accepted, effective May 6, 2020, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>38</sup> *Cent. Hudson Gas & Elec. Corp*, 60 FERC ¶ 61,106, *order on reh'g*, 61 FERC ¶ 61,089 (1992); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *reh'g denied*, 65 FERC ¶ 61,081 (1993).

<sup>39</sup> Given that we are denying waiver of the 60-day prior notice requirement, the earliest permissible effective date is May 6, 2020, 61 days after ACE's filing.