

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northeast Texas Electric Cooperative, Inc.
Rusk County Electric Cooperative, Inc.
Upshur-Rural Electric Cooperative, Inc.
and Wood County Electric Cooperative, Inc.

Docket No. EL01-73-004

ORDER DENYING REHEARING

(Issued May 9, 2005)

1. Southwest Electric Power Company (SWEPCO)¹ and Northeast Texas Electric Cooperative, Inc. (NTEC) request rehearing of the Commission's order² affirming the Presiding Judge's Initial Decision³ that facilities constructed at three points of delivery qualify as transmission system upgrades whose costs must be rolled into transmission rates rather than being directly assigned to the entities requesting their construction. For the reasons discussed below, we will deny rehearing. This order benefits customers by assuring that the Commission's transmission pricing policies are applied consistently, in this case by assigning the costs of transmission grid improvements that benefit all users of the grid to these users.

¹ SWEPCO is an electric utility subsidiary of American Electric Power Company, Inc. (AEP). Since acquisition by AEP, in 2000, SWEPCO has operated under the AEP-West Zone open access transmission tariff (OATT or tariff).

² *Northeast Texas Electric Cooperative, Inc.*, 108 FERC ¶ 61,084 (2004) (July 29 Order).

³ *Northeast Texas Electric Cooperative, Inc.*, 100 FERC ¶ 63,033 (2002) (Initial Decision).

I. Background

A. Initial Decision

2. NTEC, acting on behalf of three member distribution cooperatives,⁴ and SWEPCO agreed that SWEPCO would construct, maintain, operate, and own new facilities that would improve transmission service reliability at the three cooperatives' points of delivery.⁵ They agreed also to raise before the Commission the question of whether these new facilities are network facilities, whose costs should be rolled into the AEP-West Zone transmission cost of service, or sole use facilities, whose costs should be directly assigned to NTEC.

3. Because the Commission could not answer the question based on the parties' filings, it set the matter for settlement procedures, which proved unsuccessful, and hearing.⁶ In the Initial Decision, the Presiding Judge determined that the standard governing the question was the Commission's traditional presumptive integration test for determining when facilities are integrated with the transmission provider's network – transmission facilities are presumed to be part of the integrated network and thus should be rolled in unless there is a special circumstance (such as lack of a fully integrated network, the facilities are so isolated from the network that they are and will remain non-integrated, or customer-specific distribution facilities that do not support the network).⁷

⁴ Rusk County Electric Cooperative, Inc. (Rusk County), Upshur-Rural Electric Cooperative, Inc. (Upshur-Rural), and Wood County Electric Cooperative, Inc. (Wood County).

⁵ The Rusk County facilities replaced manual switches at the existing Carthage point of delivery with a circuit breaker and a motor-operated switch. The Upshur-Rural facilities are a new Camp County point of delivery and include power circuit breakers and switches. The Wood County facilities are a new Mount Vernon point of delivery, superseding a different point of delivery, and include a manually operated three-way switch. The Carthage and Camp County facilities are located on looped transmission lines; the Mount Vernon facilities are located on a line that becomes looped when SWEPCO closes a two-way switch, No. 1W05.

⁶ *Northeast Texas Electric Cooperative, Inc.*, 96 FERC ¶ 61,278, *reh'g denied*, 97 FERC ¶ 61,313 (2001) (2001 Order).

⁷ See July 29 Order at note 13; Initial Decision at P 31-32 & nn.48-54, citing, *inter alia*, *Western Massachusetts Electric Co.*, Opinion No. 409, 77 FERC ¶ 61,268 at 62,120 (1996), *aff'd*, *Western Massachusetts Electric Co. v. FERC*, 165 F.3d 922 (D.C. Cir. 1999) (*Western Massachusetts*).

Using this standard, the Presiding Judge examined the functions of the three sets of new facilities and found that they improved reliability on the SWEPCO system. She concluded therefore that they were part of the integrated SWEPCO network and that their costs should be rolled into the AEP-West Zone transmission cost of service.⁸ The Presiding Judge declined to make any findings about alleged undue discrimination by SWEPCO against NTEC or lack of comparable treatment because the Commission had not set those issues for hearing.⁹

B. July 29 Order

4. The July 29 Order relied on existing Commission policies to affirm the Presiding Judge's decision. The Commission permits direct assignment of costs to the customer only for non-grid facilities that do not serve a system-wide function, such as radial lines and generator interconnection facilities on the generator's side of the point of interconnection with the grid. A finding as to whether facilities are integrated (part of the grid) does not depend on whether the facilities are installed to meet a particular customer's request for service. A showing of any degree of integration suffices for a facility to be a network (grid) facility.¹⁰

5. The Commission found, in the July 29 Order, that the new point of delivery facilities operate in-line with the transmission network and perform a switching function to maintain service over the network transmission lines. It relied on precedent that such facilities, *i.e.*, circuit breakers and line sectionalizing switches located on transmission lines, serve a transmission function and therefore are part of an integrated network.¹¹

⁸ Initial Decision at P 89-95.

⁹ *Id.* at P 102-103.

¹⁰ July 29 Order at P 47-48 & nn.64-66, citing: *San Diego Gas & Electric Co.*, 98 FERC ¶ 61,332 at 62,408, *reh'g denied*, 100 FERC ¶ 61,073 (2002) (*San Diego*); *Consumers Energy Co.*, Opinion No. 456, 96 FERC ¶ 61,132 at 61,561 (2001) (*Consumers Energy*); *Public Service Co. of Colorado*, 59 FERC ¶ 61,311, *reh'g denied*, 62 FERC ¶ 61,013 at 61,061 (1993) (*Public Service*); *Entergy Services, Inc.*, 89 FERC ¶ 61,079 at 61,235-36 (1999) (*Entergy Services*); *American Electric Power Service Corp.*, Opinion No. 311, 44 FERC ¶ 61,206 at 61,748, *reh'g denied*, Opinion No. 311-A, 45 FERC ¶ 61,408 (1988), *reh'g denied*, Opinion No. 311-B, 46 FERC ¶ 61,382 (1989) (*AEP*).

¹¹ July 29 Order at P 49 & n.68, citing *Otter Tail Power Co.*, Opinion No. 93, 12 FERC ¶ 61,169 at 61,424 (1980), *reversing Otter Tail Power Co.*, 4 FERC ¶ 63,046 (1978) (*Otter Tail*).

The Commission was not persuaded by SWEPCO's insistence that the new facilities are not needed to restore service to non-NTEC loads after an outage because the SWEPCO system already has sufficient redundancy. Because the new facilities enable faster restoration of service over SWEPCO's looped transmission lines, the Commission found that they perform a system-wide function and are integrated into SWEPCO's network.¹² Thus, the Commission concluded that costs of these facilities cannot be directly assigned to the customer.

6. The Commission also affirmed the Presiding Judge's rejection of the five-part Staff Test, proffered by Commission Trial Staff (Trial Staff), which based it on tests used in initial decisions in *Consumers Energy Co.*¹³ and *Mansfield Municipal Electric Department v. New England Power Co.*¹⁴ The Commission found the *Consumers Energy Test*¹⁵ inapposite because it applies to a very different situation. It is used to determine whether a transmission customer should receive credits against its transmission bill because the transmission provider uses facilities owned by this customer to provide

¹² July 29 Order at P 50 & n.69, citing *Alabama Power Co.*, Opinion No. 54, 8 FERC ¶ 61,083 at 61,329, *reh'g denied*, 8 FERC ¶ 61,320 (1979), *remanded on other grounds*, 684 F.2d 20 (D.C. Cir. 1982) (*Alabama Power-1979*); *Public Service*, 62 FERC at 61,061; *Florida Power & Light Co.*, 99 FERC ¶ 61,197 at P 12 & n.9 (2002).

¹³*Consumers Energy Co.*, 86 FERC ¶ 63,004 (1999), *aff'd in part and rev'd in part*, *Consumers Energy Co.*, 96 FERC ¶ 61,132 (2001) (note 10, *supra*).

¹⁴ *Mansfield Municipal Electric Department v. New England Power Co.*, 94 FERC ¶ 63,023 at 65,170, *aff'd*, Opinion No. 454, 97 FERC ¶ 61,134 (2001), *reh'g denied*, Opinion No. 454-A, 98 FERC ¶ 61,115 (2002) (*Mansfield*).

¹⁵ The *Consumers Energy* four-part test is: (1) the network customer must demonstrate that the facilities for which it seeks credits are integrated into the transmission provider's plans and operations; (2) the transmission provider is able to provide transmission service to itself or other transmission customers over the network customer's facilities; (3) the transmission provider actually uses the network customer's facilities to provide service to the network customer or other parties; and (4) the network customer must demonstrate that its facilities provide additional benefits to the transmission grid in terms of capability and reliability and are relied upon for coordinated operation of the grid. *Consumers Energy*, 86 FERC at 65,016.

service to other transmission customers.¹⁶ The Commission found the *Mansfield* Test¹⁷ inapposite because the purpose of that test is to determine whether radial lines exhibit any degree of integration.¹⁸ Despite SWEPCO's and Trial Staff's arguments that the new facilities here must satisfy all parts of the five-part Staff Test, the Commission found that use of the Staff Test would contradict the Commission's policy that, in deciding cases involving facilities owned by the transmission provider, the costs of such facilities should be rolled in when *any* degree of integration has been shown.¹⁹

7. The Commission commented that even if it had used the *Consumers Energy* Test²⁰ for customer-owned facilities credits, as advocated by SWEPCO and Trial Staff, it still would have found the new facilities to be integrated into SWEPCO's network. The new facilities operate in-line with SWEPCO's transmission network and complete a circuit on SWEPCO's system. They can perform a switching function to maintain service reliability over SWEPCO's network. Thus, they satisfy the Commission's requirement applied in customer-owned facilities credit cases that the transmission provider must be

¹⁶ These cases concerning customer-owned facilities are sometimes referred to as "customer credit" cases. They are a separate line of cases from the cases about generator interconnection (where the transmission provider normally owns the facilities), although both lines of cases involve credits against transmission bills. To avoid confusion, we will use "customer-owned facilities credits" when referring to the line of cases about credits for facilities owned by the customer.

¹⁷ The five *Mansfield* factors are: (1) whether the facilities are radial, or whether they loop back into the transmission system; (2) whether energy flows only in one direction, from the transmission system to the customer over the facilities, or in both directions; (3) whether the transmission provider is able to provide transmission service to itself or other transmission customers over the facilities; (4) whether the facilities provide benefits to the transmission grid in terms of capability or reliability, and whether they can be relied on for coordinated operation of the grid; and (5) whether an outage on the facilities would affect the transmission system. 94 FERC at 65,170; 97 FERC at 61,613-14.

¹⁸ In *Mansfield*, the Commission affirmed the presiding judge's finding that when evaluated based on each of the factors, the facilities were not integrated into the transmission provider's system, thus demonstrating the "exceptional circumstances" needed to allow direct assignment of their costs. *Mansfield*, 97 FERC at 61,613-15.

¹⁹ July 29 Order at P 51.

²⁰ See note 13, *supra*.

able to provide transmission service to itself or other transmission customers over these facilities.²¹

8. The Commission discounted arguments that transmission customers will now insist on installation of overly expensive new facilities (gold-plated facilities), knowing that the costs of these new facilities will not be directly assigned to them. It said that the transmission provider and other transmission customers are protected from rate increases due to a particular customer's request for service by the Commission's pricing policy, which allows the transmission provider to charge the higher of the incremental cost for network upgrades or the rolled in rate. It added that the gold-plating argument operates in the reverse as well because the transmission provider might overstate the need for high cost equipment when the customer will have to pay for it.²²

9. The Commission found that the Initial Decision was not in conflict with the AEP OATT²³ because the new facilities were clearly not facilities constructed for the sole use or benefit of NTEC and its member cooperatives, and thus did not qualify as direct assignment facilities. Lastly, because the Commission affirmed the Initial Decision, it found moot NTEC's contentions that SWEPCO was treating the member cooperatives discriminatorily. It also found that the Presiding Judge had correctly declined to extend the hearing to include these contentions.²⁴

II. Discussion

A. Procedural Matter

10. On September 14, 2004, NTEC filed an answer to SWEPCO's rehearing request. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure²⁵ prohibits an answer to a request for rehearing unless otherwise ordered by the decisional authority. We are not persuaded to accept NTEC's answer and will, therefore, reject it.

²¹ July 29 Order at P 52-53 & n.70.

²² July 29 Order at P 54.

²³ See note 1, *supra*.

²⁴ July 29 Order at P 55-56.

²⁵ 18 C.F.R. § 385.213(a)(2) (2004).

B. Integration Standard

1. SWEPCO's Arguments

11. SWEPCO argues that the July 29 Order fails to articulate a clear legal standard for determining whether the new facilities are integrated. SWEPCO objects that “a showing of any degree of integration is sufficient”²⁶ is a presumptive integration test under which *any* new facility that operates in line with a pre-existing integrated transmission line is automatically considered to be integrated. SWEPCO objects further that, under this standard, it is irrelevant whether other transmission customers use or benefit from the facility. SWEPCO contends that court and Commission precedent do not presume integration, and cites a number of customer-owned facilities credits cases. Rather, SWEPCO says, integration must be determined by individual analysis of the function and use of the new facility.

12. SWEPCO again urges the Commission to use the integration standard described in *Consumers Energy* or *Mansfield*, or to use the Staff Test. SWEPCO states that the Commission used this integration standard to determine integration when determining whether a transmission-owning entity could be a “host zone” under the Southwest Power Pool (SPP) OATT.²⁷ SWEPCO states that “the Commission held that the facilities of the East Texas Electric Cooperatives, including NTEC, did not meet the Southwest Power Pool’s criteria for transmission facilities because these facilities ‘are used solely to distribute power to their distribution members, do not provide any benefits to SPP in terms of additional capability or reliability, are not relied upon for the coordinated operation of the SPP grid, and are not integrated with any SPP transmission provider.’”²⁸ SWEPCO cites the court’s holding, on appeal, that integration would require a showing

²⁶ July 29 Order at P 48.

²⁷ *Southwest Power Pool, Inc.*, 89 FERC ¶ 61,284 (1999), *order on reh’g*, 98 FERC ¶ 61,038 (2002), *aff’d sub nom. East Texas Electric Cooperative, Inc. v. FERC*, 331 F.3d 131 (D.C. Cir. 2003) (East Texas), *order on remand, Southwest Power Pool, Inc.*, 108 FERC ¶ 61,078 (2004), *reh’g pending (Southwest Power Pool)*. The proceeding concerns credits for customer-owned facilities. The court upheld the Commission’s standard for integration, which is that the facilities are considered integrated when they “contribute to the overall functioning of the SPP system;” it remanded the proceeding for a Commission determination on whether specific facilities met this integration standard.

²⁸ SWEPCO’s Rehearing Request at 9-10, citing *Southwest Power Pool*, 98 FERC at 61,110.

that the transmission facilities contributed to the overall functioning of the SPP system.²⁹ SWEPCO urges the Commission to use this test to determine integration of the new point of delivery facilities.

2. Commission Response

13. SWEPCO misstates the standard that the Commission used to determine whether these new point of delivery facilities are transmission system upgrades or non-grid facilities. SWEPCO characterizes this standard as a presumption that, when new equipment is added to operate in line with a pre-existing integrated transmission line, the new equipment is integrated. In the July 29 Order, the Commission looked at more than the location of the new facilities and whether they operate in line with pre-existing integrated transmission lines. It also considered whether the SWEPCO transmission lines on which the new facilities operate are looped lines and whether the new facilities provide benefits to other users of these lines.³⁰

14. SWEPCO is incorrect when it states that the Commission considered benefit to other transmission system users to be irrelevant to a finding of integration. The Presiding Judge and the Commission both found that the new point of delivery facilities benefited other users. By providing a switching function for transmission, the facilities support reliable operation of SWEPCO's system.³¹ What is irrelevant is SWEPCO's statement that its system is sufficiently reliable without the new facilities; we would expect SWEPCO to have designed a system to meet minimum reliability criteria prior to

²⁹ *East Texas*, 331 F.3d at 137.

³⁰ Courts have described an integrated system thus: *City of Holyoke Gas & Electric Dep't v. FERC*, 954 F.2d 740, 742 (D.C. Cir. 1992), *reh'g denied*, (D.C. Cir. Mar. 31, 1992) (*per curiam*) (*Holyoke*) (an integrated transmission system is an interconnected system designed to operate in parallel; Commission favors rolled-in cost allocation); *Maine Public Service Co.*, 964 F.2d 5, 8 (D.C. Cir. 1992) (*Maine*) (integration described as higher and lower voltage facilities operating in an interconnected and parallel way); *Sierra Pacific Power Co. v. FERC*, 793 F.2d 1086, 1088 (9th Cir. 1986) (*Sierra Pacific*) (existence of two or more parallel paths from sources of power to receiving points establishes integration (looping) even where one parallel path is normally operated "opened," with the connection broken by opening a switch).

³¹ July 29 Order at P 49.

construction of the new facilities. The point made in the Initial Decision and the July 29 Order is that the new point of delivery facilities increase the reliability of the SWEPCO grid.

15. The Commission declined, in the July 29 Order, and we decline today, to apply the line of cases involving customer-owned facilities credits, which uses a stricter standard, to cases involving whether to directly assign or to roll into transmission rates the construction costs of new facilities owned by the transmission provider. The main distinction is ownership.

16. Customer-owned facilities credits cases, such as *Consumers Energy Company*,³² address whether the customer's transmission system and the transmission provider's transmission system should be considered separate systems or a single integrated transmission system. If they are a single integrated system, the customer receives credits against its transmission rates from the transmission provider for the cost of the customer's transmission facilities. The costs of these credits are rolled into the transmission provider's rates and are allocated to all grid users. To determine whether particular customer-owned facilities qualify for transmission credits, the Commission uses a higher standard than it uses to determine whether transmission provider-owned facilities serve a network transmission function, even where the transmission provider-owned facilities were built at a customer's request.

17. The reason for this distinction is that customer-owned facilities are generally constructed to serve an individual customer's needs; before their costs may be assigned to all users, it must be demonstrated that those facilities are relied upon by the transmission provider to provide service to its transmission customers. By contrast, the transmission provider-owned system is planned, constructed and owned, from the very beginning, by the transmission provider to meet its obligation to its customers.³³ Use of the higher standard is appropriate for customer-owned facilities credits cases because they involve not just a determination of whether facilities are part of an integrated transmission system, but also of whether the customer's and the transmission provider's systems should be considered separate systems or a single, integrated transmission system.

³² Note 10, *supra*. See July 29 Order at P 12 & nn.26-27.

³³ In instances where the Commission has denied credits for customer-owned facilities, the Commission has then applied the same customer-owned facilities credits standard to the transmission provider's own facilities to determine which of these facilities should have their costs included in or excluded from the provider's rolled in transmission rates. See *Florida Power & Light Co.*, 105 FERC ¶ 61,287 (2003), *reh'g denied*, 106 FERC ¶ 61,204 (2004), *order on compliance*, 110 FERC ¶ 61,058 (2005).

18. In this case, SWEPCO has not been directed to apply the customer-owned facilities credits test to its entire transmission system for the purpose of establishing which facilities' costs qualify for rolling into the AEP-West Zone transmission rates. We will not permit SWEPCO to apply this test on a piecemeal basis to determine whether facilities built to meet the service requests of individual wholesale customers should be rolled in or directly assigned.

19. The facilities in *Southwest Power Pool*, on which SWEPCO relies, are customer-owned, not transmission provider-owned, so that precedent does not apply here. Moreover, the court's holding in *East Texas*, that integration requires contribution to the overall function of the grid, does not contradict our holding in these proceedings. The new point of delivery facilities, as stated above, provide additional reliability to the SWEPCO system and so benefit other grid users.

20. The Commission explained in the July 29 Order why it rejected use of the *Consumers Energy* and *Mansfield* Tests and the derivative Staff Test.³⁴

C. Other Commission Precedent on Interconnection

1. SWEPCO's Arguments

21. SWEPCO argues that the July 29 Order fails to justify its departure from Commission precedent that requires inquiry into what the facilities do, why they are there, and what would happen had the facilities not been installed. It contends that the Commission disregarded or applied incorrectly cases that hold that the costs of sole use and sole benefit facilities should be borne by those who benefit from the facilities, a standard used in the Commission's *pro forma* tariff³⁵ and the AEP OATT. SWEPCO

³⁴ July 29 Order at P 51.

³⁵ Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,533-34 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group, et al. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002) (*pro forma* tariff or Order No. 888).

cites, in this regard, cases such as *Entergy Services*³⁶ and *Alabama Power Co.*³⁷ It continues that, had the Commission applied here the holdings in those cases, the Commission would have found the new facilities to be for the cooperatives' sole use.

22. SWEPCO states that *Entergy Services* correctly applied Commission precedent³⁸ when it determined that the interconnection facilities on the transmission provider's side of the point of interconnection between the generator and the grid should properly be assigned to the generator, explaining, "[the] modifications are not grid upgrades or system reinforcements that serve a system-wide function. They simply permit interconnection . . . [to the] transmission system."³⁹ Here, according to SWEPCO, the Commission should have followed *Entergy Services* and found that the new NTEC facilities benefit only NTEC. SWEPCO criticizes the July 29 Order as trying to explain away *Entergy Services* precedent by stating, "upon revisiting the facts . . . the order may have erred," and the structures used to support the transmission line in and out of the new substation "may well be network facilities benefiting all grid users."⁴⁰

23. *Alabama Power-1993*, discussed in the July 29 Order,⁴¹ concerned twelve interconnection agreements requiring construction of circuits, metering equipment, protective devices and towers to connect customer substations to the transmission grid.

³⁶ See note 10, *supra*. That case concerned the re-routing of a transmission line on the transmission provider's side of the point of interconnection so as to pass through a customer's substation. The Commission found that the facilities were not grid upgrades or system reinforcements serving a system-wide function. Therefore, it allowed direct assignment of their costs.

³⁷ *Alabama Power Co.*, 63 FERC ¶ 61,309 (1993) (*Alabama Power-1993*).

³⁸ SWEPCO cites: *Pennsylvania Electric Co.*, 60 FERC ¶ 61,244 (1992); *Southern Co. Services, Inc.*, 60 FERC ¶ 61,273 (1992), *reh'g denied*, 67 FERC ¶ 61,080, *reh'g denied*, 68 FERC ¶ 61,098 (1994).

³⁹ *Entergy Services*, 89 FERC at 61,236.

⁴⁰ July 29 Order at note 68.

⁴¹ *Id.*

SWEPCO states that the NTEC situation is indistinguishable from that of the first eleven *Alabama Power-1993* agreements, which the Commission found were for customer-specific facilities that were not part of the integrated transmission grid.⁴²

24. SWEPCO attempts to refute the Commission's reliance on *Otter Tail*⁴³ by stating that the *Otter Tail* holding was based on the failure by the proponents of excluding the facilities' costs from rolled-in rates to show that those facilities would have been unnecessary absent the distribution substations where they were located. SWEPCO continues that, in the NTEC situation, the evidence is overwhelming that none of the new facilities is needed except to offer a more reliable connection of the NTEC loads.

25. SWEPCO states that the other cases relied upon by the Presiding Judge and the Commission involve facilities that are not comparable to the new NTEC delivery facilities. SWEPCO states that *AEP* addressed the function of an entire, extensive transmission system, and that *Alabama Power-1979*⁴⁴ addressed allocation of transmission system costs using a process that segregated the transmission system into discrete service levels based on voltage. These situations, SWEPCO states, differ from the NTEC facilities, which are simply connected to the grid to perform a function for a single point of delivery. SWEPCO states that *Public Service*⁴⁵ confirms that direct assignment is appropriate for facilities that are so isolated from the grid that they are and

⁴² The Commission suspended the twelfth agreement, pending further action, because that agreement apparently covered facilities that were an improvement benefiting all transmission customers. New circuit breakers were installed to replace circuit breakers that had existed before the customer interconnection, and this suggested that the new breakers could also serve a network function. *Alabama Power-1993*, 63 FERC at 63,129, 63,131; July 29 Order at P 49 n.68. To distinguish this twelfth agreement, SWEPCO points out that the Commission had deferred ruling on it; SWEPCO says that the agreement was different because it concerned generator interconnection and replacement of already existing circuit breakers that demonstrably benefited other customers.

⁴³ July 29 Order at P 9 & n.16, P 49 & n.68. *See* notes 7 and 11, *supra*. The case concerned the requirement for the transmission provider to provide wheeling service over its lines. It necessitated Commission ascertainment of which facilities, *e.g.*, circuit breakers and sectionalizing switches, should be included in the transmission provider's rate base.

⁴⁴ *See* notes 10 and 12, *supra*.

⁴⁵ *See* note 7, *supra*.

will remain non-integrated, and that *Western Massachusetts*⁴⁶ was based on identifying the beneficiaries of the upgrades, which included other customers. It continues that *Sierra Pacific*⁴⁷ noted that the presumption favoring roll in of transmission costs can be overcome by a showing that, although integrated, the facilities at issue do not provide a system-wide benefit. SWEPCO also cites various Commission orders where it says that benefit to others had to be shown for a finding that facilities' costs should be rolled in.

26. SWEPCO repeats its characterization of the July 29 Order as holding that the costs of the SWEPCO facilities must be rolled in merely because these facilities are connected "in-line" to an integrated transmission system. It states that if a simple presumption could have resolved this case, the Commission would have done so and not required a hearing.

2. Commission Response

27. We repeat that, contrary to SWEPCO's assertion, the Commission did not hold that mere connection of a facility "in line" with integrated transmission facilities suffices for a finding that the facility must be considered integrated with the transmission provider's network. The new facilities' "in line" location was just the first fact that the Commission looked at. The necessary second fact, upon which the Commission also relied, was the new facilities' ability to perform a switching function to maintain reliability of service over SWEPCO's network transmission lines. The July 29 Order reads: "The facilities here operate in-line with the transmission network and perform a switching function to maintain the reliability of service over the network transmission lines. The Commission has specifically found that such facilities are part of an integrated network."(Emphasis added.)⁴⁸

28. After examining each of the three points of delivery, the Presiding Judge found that the new facilities are located on looped (or looped but radially operated) lines that are part of the SWEPCO transmission grid, and that the new facilities aid in faster restoration of service after outages on lines that SWEPCO relies upon to serve customers other than NTEC. The Presiding Judge concluded therefore that the new facilities thus provide a reliability benefit to the transmission grid.⁴⁹ In the July 29 Order, the

⁴⁶ See note 11, *supra*.

⁴⁷ See note 30, *supra*.

⁴⁸ See July 29 Order at P 49.

⁴⁹ Initial Decision at P 89-95.

Commission agreed with these findings. Based on its review of the record, the Commission concluded that the new facilities perform a switching function to maintain the reliability of service over SWEPCO's network transmission lines.⁵⁰ Thus, the Commission followed precedent⁵¹ and examined whether the new facilities benefit other customers before it affirmed the Presiding Judge to require that the costs of these new facilities be rolled into the AEP-West Zone cost of service. We amplify that the lines on which the new facilities are located provide parallel paths for service to other customers and can serve a back-up function in the event that the alternate path serving these customers is out of service; back-up capability is a system-wide benefit.⁵²

29. We have examined again the *Entergy Services* case, since SWEPCO claims that that case is controlling precedent for the NTEC facilities. Because *Entergy Services* involved a different situation, the findings in that order do not contradict the findings of the July 29 Order. The *Entergy Services* facilities were only modifications to the structures supporting the transmission provider's transmission line, used to re-route that line to permit interconnection with the customer's substation. The Commission found that the modifications to such supporting structures were not grid upgrades or system reinforcements serving a system-wide function, but that they simply permitted the customer to interconnect with the transmission provider's system. In contrast, the record here demonstrates that the NTEC facilities support the reliability of SWEPCO's network facilities, which are used to serve both NTEC and other SWEPCO customers.

30. We have also re-examined the situation in *Alabama Power-1993*, where the Commission allowed direct assignment to customers, under eleven agreements, of the costs of point of delivery facilities, a situation that SWEPCO contends is indistinguishable from the case at hand. The treatment of these eleven sets of facilities is not precedent for future cases because the Commission did not address in *Alabama Power-1993* whether the facilities were part of the transmission provider's integrated transmission grid or how their costs should be assigned. No one had raised these issues

⁵⁰ July 29 Order at P 52.

⁵¹ See, e.g., *Western Massachusetts*, 165 F.3d at 927, note 7, *supra* ("When a system is integrated, any system enhancements are presumed to benefit the entire system"), affirming *Western Massachusetts*, 77 FERC at 61,120 (1996) (transmission reinforcements benefit all customers using the grid).

⁵² See, e.g., *Maine*, 964 F.2d at 8 (reliability of system improved because parallel paths of electricity can act as backups for the primary path); *Sierra Pacific*, 793 F.2d at 1089 (giving an example of a system-wide benefit: lower voltage lines can substitute for high voltage lines during outages and provide backup capability).

for Commission investigation, and the descriptions of the eleven agreements, on their face, did not raise concern, as did the description of the twelfth agreement.

31. Here, in contrast, NTEC disagreed with SWEPCO over whether the new point of delivery facilities serve only NTEC customers, and asked the Commission to make a determination. Because SWEPCO and NTEC described differently the purpose and effect of the new facilities, the Commission set for hearing whether the facilities were directly assignable or transmission system upgrades whose costs may not be directly assigned. The Presiding Judge's and Commission's findings that the new facilities are part of SWEPCO's grid and provide benefits to customers other than NTEC was based on the extensive record developed through the hearing. Thus, the situation here differs fundamentally from that involving the eleven agreements in *Alabama Power-1993*.

32. We have also re-examined *Otter Tail*, relied upon in the July 29 Order,⁵³ which SWEPCO claims supports its position. SWEPCO cites the Commission's reversal in that case of the presiding judge, who had excluded from the transmission rate base the costs of all circuit breakers and switches located in or near distribution substations. The Commission held, instead, that the location of facilities is not determinative, and that those arguing that the costs of the facilities should not be rolled into the transmission rates had failed to show that the facilities would have been unnecessary if the distribution substations did not exist.⁵⁴ SWEPCO states that the evidence is overwhelming here that none of the new facilities would be needed except to offer a more reliable connecting of the related NTEC loads.

33. *Otter Tail* does not state that if the transmission provider shows that it does not need the new facilities, absent a customer's request for service, the costs must be directly assigned. Rather, *Otter Tail* held that, because the record indicated that the facilities were on a transmission line and serving a transmission function, although located in a distribution substation, the cost of the facilities should be rolled in. *Otter Tail* further held that, to merit a contrary conclusion, those arguing that the costs of the facilities should not be rolled in should have shown that the equipment was located on a radial line going out to the distribution substation.⁵⁵ Moreover, as noted in the July 29 Order, *Otter Tail* also states that since the system operates as an integrated whole, transmission costs have generally been rolled in, absent a finding of special circumstances; that an integrated system is designed to achieve maximum efficiency and reliability as a minimum cost on a

⁵³ See July 29 Order at P 9 n.16 & P 68.

⁵⁴ *Otter Tail*, note 11, *supra*, 4 FERC at 63,356.

⁵⁵ *Otter Tail*, 12 FERC at 61,424.

system-wide basis; and that the assumption is that all customers receive the benefits of such an integrated system.⁵⁶

D. Relation to Generator Interconnection Cases

34. SWEPCO asks the Commission to clarify whether generator interconnection cases govern this proceeding. The answer is no. In those cases, the Commission uses a bright-line test enunciated in Order No. 2003⁵⁷ and case law. Under that test, facilities “at or beyond”⁵⁸ the point where the generator connects to the transmission provider’s grid cannot be directly assigned to the generator. The costs of those facilities located “at or beyond” the interconnection point are rolled into transmission rates. This proceeding does not involve generator interconnection.

E. Network Benefit

1. SWEPCO’s Arguments

35. SWEPCO criticizes the July 29 Order’s conclusion that the new facilities perform a system-wide function for as relying on two bases that SWEPCO says do not warrant the conclusion: an alleged admission by SWEPCO that faster restoration of transmission service to NTEC somehow benefits other customers; and unquestioning reliance on the Presiding Judge’s conclusions that the facilities at issue switch existing network facilities in order to maintain continuation of service over those network facilities in the event of a fault on the adjacent line, and allow faster restoration of looped transmission lines, thereby benefiting other loads.⁵⁹

⁵⁶ *Id.* at 61,420.

⁵⁷ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 21 (2003), *order on reh’g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh’g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2005), *reh’g pending*. See July 29 Order at P 49 n.67.

⁵⁸ See *Nevada Power Co*, 111 FERC ¶ 61,161 (2005), on remand from *Entergy Services, Inc. v. FERC*, 391 F.3d. 1240 (D.C. Cir. 2004), *reh’g & reh’g en banc denied*, (D.C. Cir. February 11, 2005) (per curiam) (*Entergy Services-2004*).

⁵⁹ SWEPCO’s Rehearing Request at 28-29, citing the July 29 Order at P 50, P 48 n.66.

36. SWEPCO objects that the Commission misread SWEPCO's Brief on Exceptions when the July 29 Order stated that SWEPCO acknowledges that the NTEC facilities do benefit other customers, albeit to a small extent, and can permit faster restoration of transmission service to NTEC.⁶⁰ SWEPCO says that the referenced paragraph was making the point that, even if certain NTEC claims were accepted as true, and SWEPCO did not accept these claims, the benefit to other SWEPCO customers was not significant. SWEPCO continues that the next paragraph of its brief and other statements show that SWEPCO was not accepting NTEC's claim that the facilities in question would benefit other loads.⁶¹

37. SWEPCO objects that the Initial Decision's findings are largely unexplained and internally inconsistent. It criticizes the Presiding Judge for finding the testimony of NTEC witnesses credible, while finding that of SWEPCO and Trial Staff witnesses not credible, instead of citing to relevant evidence to support three unexplained conclusions: (1) the facilities are located on looped transmission lines that are part of the integrated AEP transmission grid; (2) they provide a reliability benefit to the transmission grid by allowing for faster restoration of outages; and (3) network facilities located near the facilities at issue are sized to carry the power needs of all SWEPCO loads.⁶²

⁶⁰ July 29 Order at 48 n.66, citing SWEPCO's October 15, 2002 Brief on Exceptions at 20.

⁶¹ SWEPCO cites its October 15, 2002 Brief on Exceptions at 21, 53; Tr. 361, lines 6-18 (Kithas). SWEPCO refers to witness Kithas' statement that he had not received empirical data demonstrating that the new point of delivery facilities allow for faster restoration of outages on the Pittsburgh-Petty line at Camp County. The Commission notes that the witness' next words, following the cited text, are, "It's my experience in utility system design and operation that the installation of circuit breakers, as are installed at Camp County POD, allow for the faster restoration of transmission lines that are subjected to outage conditions and allows them to be more quickly returned to pre-fault condition." *Id.* lines 18-23.

SWEPCO also claims that the July 29 Order is contradictory when it concludes that the NTEC facilities benefit other customers because they permit faster restoration of transmission service to NTEC. SWEPCO's Rehearing Request at 30. SWEPCO misrepresents the Commission's actual statement, which says: "Thus, SWEPCO acknowledges that the NTEC facilities do benefit other customers, albeit to a small extent, and can permit faster restoration of transmission service to NTEC." July 29 Order at P 48 n.66.

⁶² SWEPCO's Rehearing Request at 31-33.

38. SWEPCO asserts that location of the facilities on looped transmission lines is irrelevant to a finding of integration, citing, Commission statements in Order No. 888⁶³ and in *Northern States Power Company*.⁶⁴ SWEPCO explains that, unlike transmission lines, the purpose of switches and circuit breakers at a point of delivery is not to deliver power, but to protect continuing service to the load served at the point of delivery from faults on nearby transmission lines, or to aid in restoring service lost due to such a fault by isolating the load from the faulted line section. To illustrate that not all “in-line” facilities are integrated, SWEPCO says that circuit breakers and switches installed at SWEPCO distribution stations to serve SWEPCO’s retail load are included not in AEP’s transmission rates, but in its retail rates.

39. SWEPCO insists that the only load whose service is protected by the facilities at issue is NTEC load and that service to non-NTEC customers would not suffer if the facilities were removed. SWEPCO says that evidence contradicts the Presiding Judge’s finding that the new NTEC facilities provide a reliability benefit to the transmission grid by allowing for faster restoration of outages. It emphasizes that no customers other than NTEC are served directly from the transmission lines used to serve the Carthage, Camp County, and Mount Vernon points of delivery. SWEPCO denies that the new NTEC facilities would limit the extent and duration of service interruptions on the transmission grid. It points out that the new three-way switch at the Mount Vernon point of delivery does not operate automatically to isolate NTEC’s Mount Vernon load from a faulted line section. The switch must be operated manually and then only after the fault has been located that causes loss of service to Mount Vernon.

40. SWEPCO states that there is no evidence that the new equipment would allow for faster restoration of service after outages. It adds that testimony by Trial Staff concluded that the new circuit breakers and switches do not isolate or otherwise protect any non-NTEC loads from faults. Moreover, any benefit would not be significant because the SWEPCO system is already designed to operate while any one line segment in an area is out of service. Even if there were a significant benefit, the benefit would be only to the NTEC points of delivery, not to the network.⁶⁵

⁶³SWEPCO cites Order No. 888, note 35, *supra*, FERC Stats. & Regs ¶ 31,036 at 31,743. The cited text pertains to item IV.G.1.f, “Credit for Customers’ Transmission Facilities.”

⁶⁴ *Northern States Power Company*, 87 FERC ¶ 61,121 (1999) (*Northern States*). That proceeding concerned credits for customer-owned facilities.

⁶⁵ SWEPCO’s Rehearing Request at 35-40.

41. SWEPCO criticizes NTEC's argument that the new NTEC facilities were sized to allow future system expansion as invalid. It says that there is no evidence that the new facilities were sized to serve loads other than NTEC. Rather, SWEPCO states, equipment size is selected to ensure that new equipment does not become a limiting element on an existing line. Switches and circuit breakers do not change a line's power carrying capability; they are used for traffic control on transmission lines.

2. Commission Response

42. SWEPCO's arguments pertain mainly to the question of how much benefit the new facilities offer to non-NTEC customers. Essentially, it argues that increased reliability is not a benefit to other users of the grid. Our position, which has been affirmed by the courts, does not look at the amount of benefit to other users. The criterion we examine is simply whether other users receive a benefit, without regard to quantifying that benefit.⁶⁶ A benefit need not be large to be significant; one instance of faster restoration of transmission service over many years may come at a critical time to the customer. Even though SWEPCO has built its transmission system carefully over the years, following minimum engineering standards, added reliability nevertheless is still a benefit that is significant enough for us to require the facilities' costs to be rolled into transmission rates.

43. There is ample evidence that the new facilities increase reliability. Evidence in the record shows, and SWEPCO does not dispute, that the new facilities can be used to determine the location of faults and to isolate these faults. This enables the faults to be removed and the lines to be restored to service.⁶⁷ If SWEPCO's existing fault locating relays fail or produce inaccurate results, which the record shows happens,⁶⁸ the new facilities can help SWEPCO locate and remove faults more quickly on the looped lines serving the Camp County and Carthage points of delivery. With respect to the Mount Vernon point of delivery, the record shows that these facilities allow isolation of the line segment between the Mount Vernon point of delivery and the two-way switch No. 1W05

⁶⁶ See, e.g., *Western Mass*, 165 F.3d at 927 (when a system is integrated, any system enhancements are presumed to benefit the entire system); *Maine*, 964 F.2d at 8 (parallel paths of electricity act as backups for the primary path and improve the reliability of the system); *Sierra Pacific*, 793 F.2d at 1089 (substitution of lower voltage transmission lines for higher voltage lines during outages provides back-up capability and a system-wide benefit).

⁶⁷ See Exh. NTC-9 at 20-22, 28-30, 35-37.

⁶⁸ See Exh. NTC-40 at 13-14; Tr. at 259-69, 337-341.

towards SWEPCO's Mount Vernon Substation. This allows restoration of the looped transmission line serving other customers in case that line segment has an outage.⁶⁹

44. We address next SWEPCO's argument that, even if the new facilities allow faster restoration of the looped transmission lines that serve other SWEPCO customers, this will not provide a significant reliability benefit to those customers because they are served from alternate transmission lines that will maintain service to them if there is an outage of the transmission lines to which the NTEC cooperatives connect. We find that any equipment that can support the restoration of the integrated transmission grid after an outage, as these new facilities can, strengthens and improves reliability, thereby benefiting all users of the grid. Reliability is critically important, and we will not find that improvements in reliability are not significant enough to merit rolled-in treatment.

45. We disagree with SWEPCO that the location of the new facilities on looped lines is irrelevant to a finding of integration. To illustrate that not all "in-line" facilities are integrated, SWEPCO cites the fact that circuit breakers and switches installed at SWEPCO distribution substations are not included in AEP's transmission rates. However, as discussed above, in *Otter Tail*, the Commission found that the cost of line sectionalizing switches and circuit breakers located at distribution substations should be functionalized as transmission and given rolled in treatment.⁷⁰ If SWEPCO concludes, as a result of our decision here, that the AEP-West Zone rates should be revised to include facilities at SWEPCO distribution stations that are comparable to the NTEC points of delivery facilities at issue here, it may file a proposal, under section 205 of the FPA, 16 U.S.C. § 824d (2000), seeking revision of those rates.

F. Gold-Plating

1. SWEPCO's Arguments

46. SWEPCO objects to the July 29 Order's rejection of its gold-plating argument, which is that rolling in of the new facilities will allow customers to obtain unnecessarily expensive new equipment at their points of delivery and to pay only a load ratio share of the equipment's costs which were rolled into transmission rates. It objects also to the Commission's observation that the gold-plating argument works in reverse – that a transmission provider might overstate the need for high cost equipment when a customer

⁶⁹ See Exh. NTC-9 at 34, 36-37.

⁷⁰ *Otter Tail*, note 11, *supra*, 12 FERC at 61,422-23 (any facility serving a transmission function should be in the rate base).

will pay for it.⁷¹ SWEPCO states that it does not benefit financially from directly assigned facilities because it recovers the same amount for new equipment regardless of whether the costs are allocated to the requesting customer or among all of SWEPCO's customers. It fears that customers will soon be demanding upgrades and additional protection and control equipment at many other points of delivery.

47. SWEPCO argues that rolling in point of delivery costs subsidizes the customers requesting the upgrades, sends an inaccurate price signal, and encourages inefficient investment. It objects also to the July 29 Order's observation that incremental pricing protects the transmission provider and other customers from rate increases due to a particular customer's request for service.⁷² SWEPCO states that incremental rates are ineffective and would require an unworkable mixing and matching of incremental rates and rolled in rates.

2. Commission Response

48. SWEPCO's arguments regarding the danger that it will be required to install gold-plated facilities are exaggerated. First, we reiterate that our incremental pricing policy, whereby the transmission provider can charge the higher of the incremental cost of network facilities or the rolled in rate, will be effective in protecting other customers from rate increases caused by a particular customer's request for service. While SWEPCO argues that such rates are unattractive for the service it provides NTEC, it does not deny that it could, if necessary, design rates for NTEC that recover the incremental costs of the new facilities in a manner that protects other customers from a rate increase caused by the upgrades to NTEC's service, thereby preventing those other customers from subsidizing NTEC's service.

49. We continue to believe that there is a reverse gold-plating concern; the transmission provider would have an incentive to over-state the need for grid upgrades if the costs could be directly assigned to individual wholesale customers. We disagree with SWEPCO's argument that it will recover the same amount for the new facilities regardless of whether the costs are rolled in or directly assigned, and that, therefore, it would not benefit financially from over-stating the need for high cost equipment when the customer will pay for it. Direct assignment provides immediate cost recovery with no uncertainty. When costs are rolled into rates, cost recovery occurs over time and is far less certain. SWEPCO would have greater incentive to install gold-plated facilities if it were allowed to directly assign the costs to the customer.

⁷¹ See July 29 Order at P 54.

⁷² *Id.*

50. Finally, we note that SWEPCO has not argued that the specific facilities constructed to upgrade the points of delivery in this case are unnecessarily expensive or excessive for the purpose of remedying the reliability concerns of the NTEC cooperatives - - that the new facilities are gold-plated.

G. Customer Credits Test

51. SWEPCO states that the July 29 Order erred when it stated, in *dicta*, that, even were the Commission to apply the customer-owned facilities credits test⁷³ to the new point of delivery facilities, the Commission would find that the costs of these facilities, if owned by NTEC, should be rolled into the AEP-West Zone transmission rates. SWEPCO disputes that the new point of delivery facilities, if owned by NTEC, would qualify for a credit because NTEC's load is the only load that benefits from the switching function relied upon by the Commission.

52. As SWEPCO points out, the July 29 Order's footnote discussion stating that the new facilities satisfy the customer-owned facilities credits tests was *dictum*. The Commission did not rely on this reasoning to reach its conclusion. We therefore will not address the issue in this order beyond our discussion under Item B., "Integration Standard," *supra*.

H. NTEC's Rehearing Request

53. NTEC asks us to address its previous arguments on discrimination and comparability if, on rehearing, we reverse the July 20 Order's decision, which requires rolling into the AEP-West Zone transmission rates of the costs of the new point of delivery facilities, and instead require direct assignment of these costs to NTEC.

54. As described above, we have not reversed the July 29 Order. NTEC's rehearing request is moot and is therefore denied.

⁷³ See note 16, *supra*.

The Commission orders:

(A) The requests for rehearing of the Commission's July 29, 2004 Order are hereby denied.

(B) NTEC's filing of September 14, 2004 is hereby rejected.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.