

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Allegheny Power Docket No. ER02-136-007

Allegheny Power Docket No. ER02-136-008

ORDER ON REMAND DIRECTING THE PARTIES
TO ENGAGE IN SETTLEMENT DISCUSSIONS

(Issued September 21, 2006)

1. In response to a petition for review of the Commission's orders issued earlier in this proceeding,¹ the United States Court of Appeals for the District of Columbia Circuit issued an order remanding that case back to the Commission for further consideration.² At issue was whether the costs of Allegheny Power's facilities used to provide so-called subtransmission service to Allegheny Electric Cooperative, Inc. (AEC) should be directly assigned or rolled-in.

2. In addition, in response to a Commission directive that Allegheny Power make a compliance filing that would, among other matters, compute the contribution in aid of construction (CIAC) credit due to AEC, Allegheny Power submitted a compliance filing, which subsequently was protested by AEC.

3. In this order, we refer both of these matters to the Commission's Dispute Resolution Service (DRS) and direct the DRS to contact the parties in an effort to facilitate settlement discussions. We will also direct Allegheny Power to submit a progress report, within sixty days, on the parties' progress towards reaching a settlement.³

¹*Allegheny Power*, Opinion No. 469, 106 FERC ¶ 61,241 (2004), *reh'g denied*, Opinion No. 469-A, 108 FERC ¶ 61,151 (2004).

²*Allegheny Power v. FERC*, 437 F.3d 1215 (D.C. Cir. 2006) (Remand Order).

³ If progress is being made, further progress reports will be required.

If it appears that the parties will not be able to reach a settlement of outstanding issues, the Commission will then address the unresolved issues.

Background

4. As explained in Opinion No. 469,⁴ this matter began on October 19, 2001, when West Penn Power Company, doing business as Allegheny Power, filed an addendum to its agreement with AEC. The matter was set for hearing, a hearing was held, briefs were filed, and the presiding judge issued an initial decision.⁵

5. Among the issues addressed in the initial decision was the question of whether the costs of the facilities used by Allegheny Power to provide AEC with subtransmission service should be determined based on the system-wide average costs of Allegheny Power's subtransmission facilities (*i.e.*, on a system-wide rolled-in basis) or based on a direct assignment to AEC of the costs of specific subtransmission facilities. In the initial decision, the judge found that these costs should be rolled-in. In Opinion No. 469, the Commission affirmed the judge's finding on this issue. On rehearing, in Opinion No. 469-A, the Commission again affirmed the judge's finding on this issue. On February 7, 2006, the D.C. Circuit remanded this case back to the Commission on the issue of the allocation of the costs of Allegheny Power's facilities used to provide so-called subtransmission service.

6. Separately, on September 7, 2004, Allegheny Power submitted a compliance filing in response to Opinion No. 469-A. The compliance filing included a computation of the CIAC credit due to AEC. Notice of Allegheny Power's compliance filing was published in the Federal Register, 69 Fed. Reg. 56208 (2004), with interventions and protests due on or before September 28, 2004.

7. On September 28, 2004, AEC filed a protest requesting that Allegheny Power make two changes to its CIAC credit. These changes would add an income tax factor of 2.6 percent and a depreciation expense factor of 2.73 percent to the cost of money of 8.57 per cent, resulting in a figure of 13.9 per cent that AEC maintains should be multiplied by AEC's CIAC of \$168,740 to produce the CIAC credit.

8. On October 12, 2004, Allegheny Power filed a response to AEC's motion, arguing that AEC's proposed adjustment to its CIAC credit is unwarranted.

⁴ Opinion No. 469 at P 2.

⁵ *Allegheny Power*, 103 FERC ¶ 63,001 (2003).

Discussion

9. The D.C. Circuit's Remand Order dismissed Allegheny Power's petition insofar as it challenged the Commission's rejection of direct assignment. However, it also vacated the Commission's order accepting a system-wide roll-in and directed the Commission to consider whether an adjusted roll-in was appropriate (along with such additional alternatives as it deems appropriate). In addition, Allegheny Power's compliance filing, which contains a computation of the CIAC credit due to AEC, has been protested by AEC.

10. Before deciding these issues, we believe it would be appropriate to first refer this matter to the Commission's DRS so that the parties have an opportunity to resolve their differences through settlement. If the DRS process is unavailing, the Commission will address the unresolved issues.

11. Accordingly we will refer this matter to the Commission's DRS and direct the DRS to contact the parties in an effort to facilitate settlement discussions. We will also direct Allegheny Power to submit a progress report, within sixty days of the date of issuance of this order, on the parties' progress towards reaching a settlement.⁶

The Commission orders:

This proceeding is hereby referred to the Commission's DRS. Within sixty (60) days of the date of issuance of this order, Allegheny Power shall file a report with the Commission on the status of its negotiations with AEC. If it appears that the parties are making progress on a settlement, then Allegheny Power shall file further progress reports every 60 days thereafter. If the parties are unable to reach agreement on the issues, Allegheny Power shall so report to the Commission.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁶ As noted above, if the parties believe that they are making progress towards reaching settlement, further progress reports will be required.