

101 FERC ¶ 61, 326
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Revision of Annual Charges to Public Utilities
(California Independent System Operator, et al.)

Docket No. RM00-7-007

ORDER DISMISSING REHEARING

(Issued December 20, 2002)

Summary

1. In this order the Commission dismisses the request of American Transmission Systems, Inc. (American Transmission) for rehearing of the Commission's October 11, 2002 order in this proceeding.¹ This order benefits customers by upholding the policy found in the Commission's regulations and by ensuring that the Commission recovers its electric regulatory program costs from those who are primarily responsible for the Commission's current and future workload.

Background

2. On October 11, 2002, the Commission denied the requests of the California Independent System Operator (California ISO), the New York Independent System Operator (New York ISO), Arizona Public Service Company, American Transmission Company, and American Transmission for rehearing of their most recent annual charges bills. On November 12, 2002, American Transmission filed a request for rehearing of the October 11 Order.

3. American Transmission notes that, as acknowledged in the October 11 Order, PJM Interconnection, LLC (PJM) under-reported the amount of MWh of transmission

¹Revision of Annual Charges to Public Utilities (California Independent System Operator, et al.), 101 FERC ¶ 61,043 (2002) (October 11 Order).

service that it provided during 2001.² American Transmission asks the Commission to: (a) audit all reporting entities to verify the accuracy of the data that they submitted;³ and (b) adjust American Transmission's annual charges immediately based on the revised data that PJM has submitted.⁴

Discussion

4. American Transmission seeks rehearing of an order denying rehearing. That we generally do not allow.⁵ Accordingly, we will dismiss American Transmission's request for rehearing. However, even if we were to consider American Transmission's request for rehearing on the merits, we would not grant American Transmission the relief it requests; rather, we would deny rehearing for the reasons identified below.

5. As required by Section 3401 of the Omnibus Budget Reconciliation Act of 1986,⁶ the Commission's regulations provide for the payment of annual charges by public utilities.⁷ The Commission intends that these electric annual charges in any fiscal year will recover the Commission's estimated electric regulatory program costs (other than the costs of regulating Federal Power Marketing Agencies (PMAs) and electric regulatory program costs recovered through electric filing fees) for that fiscal year. In the next fiscal year the Commission adjusts annual charges up or down, as appropriate, both to eliminate any over- or under-recovery of the Commission's actual costs and to eliminate any over- or under-charge of any particular person. The Commission accomplishes this

²Rehearing at 4; October 11 Order, 101 FERC at P 10 n.16.

³American Transmission suggests that, rather than audit all reporting entities, the Commission could "take other reasonable measures to assure that the data submitted by such companies is accurate and complete." Rehearing at 4. American Transmission does not indicate what those measures might be.

⁴Id. at 1-5.

⁵See American Transmission Company, LLC, 96 FERC ¶ 61,193 at 61,384 (2001); Accord, California Independent System Operator Corporation, 96 FERC ¶ 61,267 at 62,021 n.5. (2001); Southwest Public Service Company, 65 FERC ¶ 61,088 at 61,533 (1993).

⁶42 U.S.C § 7178 (2000).

⁷18 C.F.R. Part 382 (2002).

by recalculating the annual charges and carrying over any over- or under-charge from the prior year as a credit or debit on the next fiscal year's annual charges bill.⁸

6. In calculating annual charges, the Commission determines its total electric regulatory program costs and subtracts all PMA-related costs and electric filing fee collections to determine its collectible electric regulatory program costs. The Commission charges that amount to public utilities that provide transmission service.

7. Public utilities that provide transmission service and thus are subject to annual charges must submit FERC Reporting Requirement No. 582 (FERC 582) to the Office of the Secretary by April 30 of each year, providing data for the previous calendar year.⁹ The Commission uses that data to allocate the Commission's costs among the public utilities that provide transmission service. The Commission issues bills for annual charges, and public utilities that provide transmission service must pay those bills within 45 days from the date on which the Commission issues the bills.¹⁰

8. American Transmission argues that “[u]nless and until the FERC audits all reporting entities to verify the accuracy of the data that has been submitted, [American Transmission] and similarly situated transmission providers remain subject to payment of excessive annual charges.”¹¹ The Commission rejects American Transmission's suggestion that it audit all reporting entities. That would be an enormous task and an inefficient, and likely largely unnecessary, use of the Commission's limited resources.

9. Rather, as provided in the Commission's regulations,¹² and as described above, the Commission bases its annual charges on the data that utilities submit on FERC 582.

⁸18 C.F.R. § 382.201 (2002). See, e.g., Revision of Annual Charges to Public Utilities, No. 641, 65 Fed. Reg. 65,757 (November 2, 2000), FERC Stats. & Regs. Regulations Preambles July 1996-December 2000 ¶ 31,109 at 31,841-42 (2000), reh'g denied, Order No. 641-A, 66 Fed. Reg. 15,793 (March 21, 2001), 94 FERC ¶ 61,290 (2001); Annual Charges under the Omnibus Budget Reconciliation Act of 1986 (CNG Power Services, et al.), 87 FERC ¶ 61,074 at 61,302 (1999) (CNG).

⁹18 C.F.R. § 382.201 (2002).

¹⁰See Texas Utilities Electric Company, 45 FERC ¶ 61,007 at 61,026 (1988).

¹¹Rehearing at 3.

¹²See 18 C.F.R. § 382.201 (2002).

Utilities file this data under oath, and the Commission accepts these statements made under oath as accurate, until subsequent audit (or a corrected FERC 502) may reveal errors. (The Commission is, in fact, now auditing several public utilities that provide transmission service.) Should errors be discovered, either in the number of reporting entities, or in the figures that they report, or both, the Commission adjusts the annual charges for the next fiscal year up or down, as appropriate. Thus, if there are any errors this year (such as the erroneous data reported by PJM), the Commission will correct those errors through adjustments in the annual charges next year.¹³ The Commission will, of course, follow this long-standing practice,¹⁴ and adjust next year's annual charges to compensate for any errors in the calculation of this year's annual charges.

10. But American Transmission requests immediate recalculation of its annual charges in light of PJM's under-reporting. This is inconsistent with the Commission's long-standing practice, described above, and, in any event, would not be practical. Before the Commission can begin to correct American Transmission's annual charges, the Commission must first recalculate the total volume of electric energy that the industry transmitted and develop a new per-unit charge factor by dividing the Commission's total program costs by the recalculated total volume of electric energy that the industry transmitted. Then the Commission must not only reallocate its costs to American Transmission, but also to all public utilities that provide transmission service.

11. Thus, the Commission must not only adjust the annual charges of American Transmission, but the annual charges of all public utilities that provide transmission service. The Commission cannot simply order a refund at this time to American Transmission alone; indeed, the Commission would not know how much to refund.

12. In short, the recalculation of annual charges is best accomplished by correcting the industry's annual charges in next year's annual charges billing cycle, as the Commission has long done.¹⁵

¹³See October 11 Order, 101 FERC at P 10 & n.16; Order No. 641, FERC Stats. & Regs. at 31,841; CNG, 87 FERC at 61,303; Annual Charges Under the Omnibus Budget Reconciliation Act of 1986 (Phibro, Inc.), 81 FERC ¶ 61,308 at 62,425 (1999) (Phibro).

¹⁴See October 11 Order, 101 FERC at P 10 & n. 16.

¹⁵CNG, 87 FERC at 61,303; Phibro, 81 FERC at 62,425 (1999).

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The Commission orders:

The request for rehearing is hereby dismissed.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.