SPIEGEL & MCDIARMID LLP

FERC Grants Complaint by Owensboro, Kentucky; Orders Refunds Exceeding $5.5 Million

March 12, 2019 | Thomas C. Trauger, David E. Pomper

In *Owensboro Municipal Utilities v. Louisville Gas & Electric Co. and Kentucky Utilities Co*., 166 FERC ¶ 61,131 (Feb. 21, 2019), Spiegel & McDiarmid LLP successfully enforced an obligation worth about half a million dollars each month to its client, Owensboro Municipal Utilities ("Owensboro").

In 2006, Louisville Gas & Electric and Kentucky Utilities ("LG&E/KU") were allowed to leave what is now the Midcontinent Independent System Operator ("MISO"), on the condition that they shield their on-system transmission customers, such as Owensboro, from having to pay an extra ("pancaked") transmission charge to move power over the resulting MISO-LG&E/KU border. LG&E/KU complied with that condition by entering into a contract and rate schedule under which, among other things, it reimburses Owensboro for transmission access charges incurred to bring power from within MISO to that border. (In ongoing proceedings in a different docket, LG&E/KU are seeking to terminate that reimbursement obligation; Owensboro and other Kentucky Municipals maintain that it remains in the public interest.) With the impending retirement of its local coal-fired power plant, Owensboro determined it would need to procure replacement power supply from outside LG&E/KU and a firm transmission path to bring that power to the LG&E/KU border. Through parallel procurement processes, it purchased firm power from MISO member Big Rivers Electric Cooperative, and reserved a 115 MW firm path from within MISO to the MISO-LG&E/KU border. But when Owensboro submitted invoices to LG&E/KU requesting reimbursement for MISO's export transmission access charges, LG&E/KU denied reimbursement, claiming that Owensboro didn't need power from within MISO and had reserved the export path before its contract with Big Rivers was signed. Through Spiegel & McDiarmid, Owensboro filed a complaint seeking to enforce LG&E/KU's reimbursement obligation. FERC granted the complaint, ordered LG&E/KU to reimburse Owensboro's charges for so long as the reimbursement tariff remains on file with FERC, and ordered refunds with interest for the twelve months of previously withheld reimbursements. The refunds are expected to exceed $5.5 million.

Related Practices and Services

- Electric

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