

154 FERC ¶ 61,244
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Grid Assurance LLC

Docket No. EL16-20-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued March 25, 2016)

1. On December 4, 2015, pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure,¹ Grid Assurance LLC (Grid Assurance) submitted a petition for declaratory order requesting a number of regulatory findings for the benefit of prospective subscribers to the spare transmission equipment service that it plans to offer. For the reasons discussed below, the Commission grants Grid Assurance's petition in part and denies it in part. We find that a transmission owner's decision to participate as a Grid Assurance subscriber by entering into the Subscription Agreement and to acquire spare equipment at Grid Assurance's original cost upon the occurrence of a Qualifying Event to be prudent.² We also find that public utility subscribers may use single-issue ratemaking to seek recovery of expenditures related to subscribing to Grid Assurance sparing service and procuring spare equipment after a Qualifying Event from Grid Assurance. Finally, we deny Grid Assurance's request to find that purchases of non-power goods and services from Grid Assurance by an affiliated subscriber are consistent with section 35.44(b)(2) of the Commission's regulations;³ instead, we grant Grid Assurance's alternative request to waive these requirements, subject to condition.

¹ 18 C.F.R. § 385.207(a)(2) (2015).

² Grid Assurance attaches to its petition a Subscription Agreement, which it states it intends to offer prospective customers. Grid Assurance, Petition for Declaratory Order and Request for Expedited Action, Docket No. EL16-20-000, at 3 (filed Dec. 4, 2015) (December Petition).

³ 18 C.F.R. § 35.44(b)(2).

I. Background

2. Grid Assurance states that it is a Delaware limited liability company formed to provide greater accessibility and timely deployment of spare transmission equipment after a catastrophic event.⁴ To provide this service, Grid Assurance states that it will procure and maintain spare equipment and store it at strategically located regional warehouses.⁵ Additionally, it asserts that it will develop logistics “playbooks” and work with transportation companies to provide delivery logistics support to assist subscribers with transporting critical equipment as expeditiously as possible after a catastrophic event.⁶

3. On June 9, 2015, Grid Assurance filed a petition for declaratory order asking the Commission to acknowledge the benefits offered by its service as a means of cost-effectively supporting grid resilience.⁷ Additionally, it asked the Commission to declare that contracting with Grid Assurance for access to spare critical transmission equipment is a permissible resiliency element of a physical security plan under Requirement 5 of Reliability Standard CIP-014-1 (Physical Security). It also asked whether prior authorization under Federal Power Act (FPA) section 203⁸ is required for sales or purchases of spare equipment from Grid Assurance.⁹

⁴ Grid Assurance explains that American Electric Power Company, Inc., BHE U.S. Transmission, LLC, Edison Transmission, LLC, Eversource Energy, Exelon Corporation, KLT, Inc., and Southern Company Services, Inc. are involved in the development of the Grid Assurance business model. In addition, Grid Assurance states that these companies or their affiliates may consider equity investments in Grid Assurance, and that additional electric utility sector entities may also invest. December Petition at n.19.

⁵ *Id.* at 8.

⁶ *Id.*

⁷ Grid Assurance, Petition for Declaratory Order, Docket No. EL15-76-000, at 21 (filed June 9, 2015) (June Petition).

⁸ 16 U.S.C. § 824b (2012).

⁹ June Petition at 23-24.

4. The Commission denied, without prejudice to any future filings, Grid Assurance's request that the Commission specifically acknowledge the cost-effectiveness of Grid Assurance's proposal.¹⁰ With regard to the second request, the Commission found that "to the extent that the [s]paring [s]ervice . . . is considered an aspect of a transmission owner's recovery plan and general inventory management practices . . . [it] could serve as a permissible resiliency element of a physical security plan under Requirement R5 of Reliability Standard CIP-014-1."¹¹ In response to the third request, the Commission found that prior authorization under FPA section 203 was unnecessary because "transmission facilities that are not in service at the time of the transfer are not subject" to FPA section 203.¹² Additionally, in response to comments, the Commission declined to speculate how it "should, or would, consider or review Grid Assurance's rate structure," finding the charge Grid Assurance may impose for its service to be beyond the scope of the proceeding.¹³

II. Notice of Filing

5. Notice of the December Petition was published in the *Federal Register*, 80 Fed. Reg. 78,219 (2015), with interventions and protests due on or before December 28, 2015. Timely motions to intervene were filed by Exelon Corporation; Ameren Services Company; Starwood Energy Group Global, L.L.C.; Dominion Resources Services, Inc.; GridLiance Heartland LLC; Midcontinent MCN LLC, South Central MCN, LLC, and Mid-Atlantic MCN LLC; American Public Power Association; Pepco Holdings, Inc., Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; City of Santa Clara, California, and M-S-R Public Power Agency; Modesto Irrigation District; Sunflower Electric Power Corporation; Mid-Kansas Electric Company, LLC; New York Transmission Owners;¹⁴ California Department of Water Resources; and Old Dominion Electric Cooperative. The Arkansas Public Service

¹⁰ *Grid Assurance LLC*, 152 FERC ¶ 61,116, at P 13 (2015) (August 7 Order).

¹¹ *Id.* P 14.

¹² *Id.* P 19.

¹³ *Id.* P 31.

¹⁴ Here, the New York Transmission Owners are Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Power Supply Long Island; New York Power Authority; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation.

Commission filed a notice of intervention. Out-of-time motions to intervene were filed by Southern California Edison Company and Westar Energy, Inc. (Westar).

6. Edison Electric Institute (EEI) and Pacific Gas and Electric Company filed timely motions to intervene and comments in support of the December Petition. Mitsubishi Electric Power Products, Inc. filed comments in support of the December Petition. American Municipal Power, Inc. (American Municipal) filed a timely motion to intervene and protest. On January 12, 2016, Grid Assurance filed an answer to American Municipal's protest.

III. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁵ the timely, unopposed motions to intervene and notice of intervention serve to make the entities that filed them parties to this proceeding.

8. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,¹⁶ the Commission will accept Southern California Edison Company's and Westar's late-filed motion to intervene, given their interests in the proceeding and the absence of undue prejudice or delay.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹⁷ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Grid Assurance's answer because it has provided information that assisted us in our decision-making process.

IV. December Petition

10. Grid Assurance states that it has expended considerable effort to develop the terms and conditions of the Subscription Agreement it intends to offer to prospective customers.¹⁸ Grid Assurance states that now that the essential elements of its contractual agreement with customers have been defined, it seeks additional regulatory declarations from the Commission concerning a public utility's decision to become a Grid Assurance

¹⁵ 18 C.F.R. § 385.214 (2015).

¹⁶ *Id.* § 385.214(d).

¹⁷ *Id.* § 385.213(a)(2).

¹⁸ December Petition at 3, 9.

subscriber and acquire spare transmission equipment from Grid Assurance under the Subscription Agreement.

11. Specifically, Grid Assurance asks the Commission to declare that:
 1. Contracting for Grid Assurance sparing service and purchasing spare equipment from Grid Assurance following a Qualifying Event pursuant to the Subscription Agreement is prudent;
 2. Grid Assurance subscribers may use single-issue ratemaking to modify existing [Commission] jurisdictional rates in order to seek to recover the costs of purchasing sparing service and spare equipment from Grid Assurance; and
 3. To the extent purchases of non-power goods and services from Grid Assurance by any affiliated subscriber are subject to affiliate pricing restrictions...that prohibit purchases “at a price above market,” making such purchases at the pricing described in the Subscription Agreement is permissible.¹⁹
12. Pursuant to the Subscription Agreement, Grid Assurance states that it will:
 - (1) maintain an inventory of critical spare transformers, circuit breakers and related transmission equipment optimized for the collective resiliency needs of its subscribers, (2) provide secure domestic warehousing of the inventory of spares in strategic locations, and (3) release inventory of spares to utility subscribers as needed to respond to a Qualifying Event.²⁰

¹⁹ *Id.* at 3-4. Each of these requests is elaborated on in section V (Discussion) below.

²⁰ *Id.* at 9. Grid Assurance defines a Qualifying Event as:

[a]ny damage, destruction or other material impairment of the safe operation of any equipment comprising the electric transmission system of a Subscriber Group Member, which damage, destruction or impairment is caused by, or the result of: (a) an act of war, terrorism, rebellion, sabotage or a public enemy, or any other physical attack (whether or not such physical attack is conducted in connection with an act of war, terrorism or a public enemy); (b) a cyber-attack, whether or not in connection with an act of war, terrorism or a public enemy; (c) an electromagnetic pulse or

(continued...)

13. According to Grid Assurance, this service will minimize subscribers' share of the costs to access inventory, and Grid Assurance's volume purchases will allow it to obtain favorable pricing on equipment supply and maintenance agreements.²¹ Additionally, Grid Assurance states that it will provide this service to any transmission owner that enters into the Subscription Agreement.²²

14. According to Grid Assurance, Article 1 of the Subscription Agreement identifies the available services under the agreement, including equipment procurement, warehousing and inventory management, inspection, testing, maintenance, and logistics support for transportation and delivery.²³ Grid Assurance states that, pursuant to Schedule 2.1, subscribers must identify a nominated quantity for each class of equipment they wish to access. Additionally, the "Sparing Protocols" in Schedule 2.2 set forth the rules and procedures for determining the optimal quantities of each type of spare equipment that Grid Assurance will maintain in its inventory based upon subscribers' collective identified needs. Grid Assurance states that section 2.2.4 of the Subscription Agreement requires it to exercise good utility practices in procuring spare equipment. It adds that it expects to rely on competitive procurement processes and to leverage volume purchase efficiencies to ensure a reasonable cost. The Subscription Agreement provides that "Grid Assurance shall have exclusive authority to determine: (a) the types of equipment to be procured . . .; (b) the Equipment Manufacturers from which [equipment] will be procured; and (c) subject to Section 9.2.2(a),²⁴ the terms, conditions and pricing

intentional electromagnetic interference; or (d) an act of God, a catastrophic event (natural or otherwise) or a severe weather condition, including a solar storm, earthquake, volcanic eruption, hurricane, tornado, derecho, windstorm, wildfire or ice storm.

Id. Subscription Agreement at Part 1 (Defined Terms) at 5.

²¹ December Petition at 12.

²² *Id.* at 9.

²³ *Id.*

²⁴ "[A]cquisition of an Inventories Spare with Equipment Manufacturer warranties that are not assignable by Grid Assurance to a purchaser" shall be "subject to the approval of the Equipment Committee associated with that Equipment Class." *Id.* (citing Subscription Agreement at section 9.2.2(a)).

upon which [i]nventoried [s]pares are procured.”²⁵ Grid Assurance states that it will store its inventory in one or more secure domestic warehouses.²⁶

15. Furthermore, the Subscription Agreement provides that, after a Qualifying Event, a subscriber may purchase, at original cost, equipment equal to the lesser of the: (1) subscriber’s nominated quantity for that class; (2) number of units of comparable equipment on subscriber’s electric transmission system that was damaged, destroyed, or impaired; (3) number of inventoried spares in that class; or (4) number of inventoried spares available for sale to subscriber based on the deployment protocols in the Subscription Agreement.²⁷ Grid Assurance states that its deployment protocols “provide rules and procedures for allocating inventory in the unlikely circumstance that there is a catastrophic Qualifying Event so widespread that the equipment in inventory is not sufficient to cover all the requests of subscribers.”²⁸ Further, Grid Assurance indicates that section 4.3 of the Subscription Agreement ensures that the deployment protocols will provide that sales of spare inventory to subscribers will be made on a non-discriminatory basis. In addition, Grid Assurance states that it will assist with delivery logistics planning and will seek to pre-negotiate transportation and delivery arrangements that subscribers may opt to use.²⁹ Grid Assurance refers to this package of services as the sparing service.

²⁵ *Id.* (citing Subscription Agreement at section 2.2.4).

²⁶ *Id.* at 10.

²⁷ *Id.* (citing Subscription Agreement at section 4.1).

²⁸ *Id.* n.21. The deployment protocols indicate that if the number of available spares is inadequate, Grid Assurance will allocate available spare equipment on a non-discriminatory basis taking into consideration “the impact on the stability of the bulk electric transmission network; and the total electric load and number of customers impacted; and whether electric service can be restored with fewer Inventoried Spares than the quantities requested by Subscriber Group Members.” Subscription Agreement, Schedule 4.3 at 4(a)-(c).

²⁹ Grid Assurance clarifies that, in all cases, subscribers will be responsible for transportation, delivery, installation, and restoring service. December Petition at 11.

16. The Subscription Agreement also provides that Grid Assurance may make discretionary sales³⁰ to subscribers and non-subscribers at the greater of the equipment's original or replacement cost when Grid Assurance deems it appropriate to do so in its "reasonable judgment."³¹ Grid Assurance states that such sales are permissible pursuant to section 4.2 of the Subscription Agreement "if there is sufficient inventory to allow the sales without violating the applicable Sparing and Deployment Protocols."³²

17. Furthermore, Grid Assurance states that subscribers will pay a monthly, cost-based sparing service fee that will cover costs not recovered from equipment sales, such as warehousing and inventory costs. Grid Assurance explains that Schedule 5.1 of the Subscription Agreement establishes a cost-based formula for determining costs associated with each equipment class, and common costs associated with all equipment classes, and allocates those costs among subscribers based on their equipment nominations.³³

V. Discussion

18. We grant in part and deny in part the December Petition and grant waiver of section 35.44(b)(2) of the Commission's regulations, subject to condition. We find that a transmission owner's decision to participate as a Grid Assurance subscriber by entering into the Subscription Agreement and to acquire spare equipment at Grid Assurance's original cost upon the occurrence of a Qualifying Event to be prudent. We also find that public utility subscribers may use single-issue ratemaking to seek recovery of

³⁰ Discretionary Sale is defined as:

Any sale of any Inventoried Spare(s) by Grid Assurance other than a sale that is: (a) made to a Subscriber Group Member; (b) due to damage or destruction caused by a Qualifying Event affecting that Subscriber Group Member; (c) from an Equipment Class in which such Subscriber Group Member is participating; and (d) in a quantity, for each such Equipment Class, no greater than such Subscriber Group Member's Nominated Quantity in that Equipment Class.

Id. (citing Subscription Agreement at Part 1, Defined Terms).

³¹ *Id.* (citing Subscription Agreement at sections 4.2.1, 4.2.2).

³² *Id.* at 11.

³³ *Id.* at 11-12.

expenditures related to subscribing to Grid Assurance sparing service and procuring spare equipment after a Qualifying Event from Grid Assurance. Finally, we deny Grid Assurance's request to find that purchases of non-power goods and services from Grid Assurance by an affiliated subscriber is consistent with section 35.44(b)(2) of the Commission's regulations; instead, we grant Grid Assurance's alternative request to waive these requirements, subject to condition. We address each of Grid Assurance's requests for declaratory order in detail below.

19. We note that our determinations are based on the statements and representations made in the December Petition and on our review of the Subscription Agreement as submitted with the December Petition. To the extent that the statements and representations on which the Commission has relied or the terms of the Subscription Agreement change, the determinations made in this order may not be applicable. In addition, we deny the December Petition to the extent it seeks findings with regard to discretionary sales. As discussed in the December Petition, increasing grid resiliency following a Qualifying Event is the underlying premise and fundamental policy goal of the sparing service and Grid Assurance's specific requests are designed to achieve this objective.³⁴ Discretionary sales, however, are not solely tailored to advance this purpose because they can occur at any time and need not follow a Qualifying Event, and may be made to an entity that is not a subscriber to the sparing service.³⁵

A. Prudence

1. Grid Assurance's Request

20. Grid Assurance asks whether: (1) "a transmission owner's decision to participate as a Grid Assurance subscriber by entering the Subscription Agreement is prudent"; and (2) "a subscriber's decision to acquire spare equipment at Grid Assurance's original cost

³⁴ *Id.* at 3, 7-8, 15.

³⁵ *See supra* n.30. However, we note that the Subscription Agreement provides as follows:

[a]ny discretionary sales to a non-subscriber in circumstances that would constitute a Qualifying Event are subject to the purchaser's agreement to enter into a contract for sparing service and pay sparing service fees that would have been owed if it had been a subscriber from the outset.

December Petition, Subscription Agreement at Part 2, section 4.2 General Terms and Conditions.

upon the occurrence of a Qualifying Event, pursuant to the terms and conditions set forth in Article 4 of the Subscription Agreement, is also prudent.”³⁶

21. Grid Assurance points to *Edison Electric Institute* to support this request.³⁷ That decision pertained to an agreement that established the Spare Transformer Equipment Program (STEP), pursuant to which each participating utility must “maintain, and if necessary, acquire a specific number of transformers in various voltage classes” and “sell its spare transformers to any other participating utility in its voltage class if there is a Triggering Event.”³⁸ Grid Assurance quotes *Edison Electric*, where the Commission found that the STEP sharing arrangement was prudent because it would “improve a participating utility’s recovery capability if there is a Triggering Event, with a reduced burden on any single utility to acquire spare transformers.”³⁹ Grid Assurance also states that the Commission held that the transfer of transformers “when there is a Triggering Event is prudent because . . . the [STEP] Agreement requires that the transfers occur after a Triggering Event and sets the price at which transformers are to be sold.”⁴⁰ Grid Assurance states that it seeks parallel declarations from the Commission to those issued with respect to EEI’s STEP.⁴¹

22. In its first request, Grid Assurance asks the Commission to declare that a transmission owner’s decision to participate as a Grid Assurance subscriber by entering the Subscription Agreement is prudent. Grid Assurance states that the same reasoning that prompted the Commission in *Edison Electric* to deem prudent a utility’s decision to participate in STEP is applicable to a decision by a potential Grid Assurance subscriber to enter into the Subscription Agreement. To this point, Grid Assurance argues that contracting for sparing service will enhance a transmission owner’s ability to restore service promptly following a Qualifying Event and that Grid Assurance will maintain an “optimized inventory” of critical transmission equipment that would otherwise be unavailable shortly after a Qualifying Event.⁴² Additionally, Grid Assurance expects its

³⁶ *Id.* at 14, 17.

³⁷ *Edison Electric Institute*, 116 FERC ¶ 61,280 (2006) (*Edison Electric*).

³⁸ *Id.* P 6.

³⁹ December Petition at 14 (quoting *Edison Electric*, 116 FERC ¶ 61,280 at P 39).

⁴⁰ *Id.* (quoting *Edison Electric*, 116 FERC ¶ 61,280 at P 40).

⁴¹ *Id.* (citing *Edison Electric*, 116 FERC ¶ 61,280 at P 39).

⁴² *Id.* at 15.

inventory approach to be more cost-effective than alternative individual utility sparing strategies because Grid Assurance will diversify and pool equipment and achieve economies of scale in purchasing, storage, and maintenance for the types of low-probability, high-impact resiliency risks addressed by Grid Assurance. Additionally, Grid Assurance claims that its sparing service will not duplicate or replace the benefits of STEP, but instead will take into account each subscriber's existing arrangements to provide "incremental benefits" to STEP participants.⁴³

23. Grid Assurance also claims that it will maintain a significant and diverse inventory of long-lead-time equipment tailored to its subscribers' "collective resiliency needs" and offer logistics support to enable "prompt delivery" of purchased equipment.⁴⁴ Grid Assurance states that, in short, its sparing service will "greatly improve a transmission owner's recovery capability" and "provide cost-effective subscriber coverage" for recovery after a Qualifying Event.⁴⁵ For these reasons, Grid Assurance contends that it is prudent for utilities to enhance their quick recovery capabilities by gaining access to a domestic supply of critical spare transmission equipment.⁴⁶

24. In its second request, Grid Assurance asks the Commission to declare that "a subscriber's decision to acquire spare equipment at Grid Assurance's original cost upon the occurrence of a Qualifying Event, pursuant to the terms and conditions set forth in Article 4 of the Subscription Agreement, is also prudent."⁴⁷ Grid Assurance states that such a purchase at original cost would be prudent because it is a "much more timely option" than a utility independently ordering and procuring spares after the occurrence of a Qualifying Event.⁴⁸ Grid Assurance states that the fact that it will acquire spares "for a reasonable price" and make them available to subscribers at original cost also indicates that such a purchase would be prudent.⁴⁹ Grid Assurance states that the Commission has

⁴³ *Id.* at 16.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 16-17.

⁴⁷ *Id.* at 17.

⁴⁸ *Id.*

⁴⁹ *Id.*

found previously that a utility's decision to procure spare equipment at cost-based pricing is prudent.⁵⁰

2. Protest

25. American Municipal states that although Grid Assurance argues that it seeks only parallel declarations to those already granted by the Commission, Grid Assurance inappropriately stretches the Commission's prior declarations and repackages a request that has already been denied. It argues that the Commission has made clear that jurisdictional utilities that seek to recover costs, such as those related to Grid Assurance sparing service and spare equipment purchases, must still make new FPA section 205⁵¹ filings.⁵² American Municipal argues that, while the Commission found an agreement to share spare transformers upon a Triggering Event with participating utilities to be prudent, the Commission has already declined to acknowledge the "cost effectiveness" of Grid Assurance's sparing service because the request was made through an FPA section 203 request for declaratory order and not an FPA section 205 filing.⁵³

26. Further, American Municipal argues that, although Grid Assurance insists that it is not seeking to limit the Commission's future FPA section 205 review of costs incurred pursuant to its sparing service or spare equipment purchases, as was done by EEI and rejected by the Commission, essentially, that is exactly what Grid Assurance requested in the December Petition.

27. American Municipal states that similar to the Commission's response in *Edison Electric* and Grid Assurance's prior request for a predetermination of the prudence, cost-effectiveness or justness and reasonableness of costs related to the sparing service or spare equipment purchases, the Commission should decline without prejudice such a predetermination and direct applicants to submit requests for recovery of costs related to the transactions in separate rate filings under FPA section 205.⁵⁴ American Municipal

⁵⁰ *Id.* at 17-18 (citing *Edison Electric*, 116 FERC ¶ 61,280 at P 40).

⁵¹ 16 U.S.C. § 824d (2012).

⁵² American Municipal Protest at 2 (citing *Edison Electric*, 116 FERC ¶ 61,280 at P 52).

⁵³ *Id.* at 2-3 (citing August 7 Order, 152 FERC ¶ 61,116 at P 13).

⁵⁴ *Id.* at 3-4 (citing *Edison Electric*, 116 FERC ¶ 61,280 at PP 43, 50, 52).

states the Commission should “require each applicant to fully develop and support any rate designed to recover those costs, including cost allocation, and rate design.”⁵⁵

3. Answer

28. In response, Grid Assurance states that American Municipal misinterprets Grid Assurance’s request because Grid Assurance is not asking the Commission to narrow its future FPA section 205 review of subscriber costs.⁵⁶ Grid Assurance states that American Municipal conflates the Commission’s review of the prudence of utility decisions with its review of the justness and reasonableness of rates under FPA section 205. Grid Assurance states that the Commission distinguished between the prudence of utility decisions to participate in a sparing program and the justness and reasonableness of resulting utility transmission rates in *Edison Electric*.⁵⁷ Grid Assurance states that the December Petition makes the same distinction as the Commission made in *Edison Electric*, and that Grid Assurance’s requested declaration is limited to the prudence of decisions to subscribe to the Grid Assurance sparing service and to acquire transformers and other critical transmission equipment pursuant to the Subscription Agreement following a Qualifying Event. Therefore, Grid Assurance asserts that its requested declaration concerning prudence does not “inappropriately stretch” the Commission’s *Edison Electric* precedent, but instead falls squarely within its bounds.⁵⁸ Grid Assurance further states that the December Petition makes no request for a declaration concerning the cost effectiveness of the Grid Assurance sparing service.⁵⁹

29. Finally, Grid Assurance states that “clarity on the prudence of decisions to subscribe to the . . . sparing service, and to acquire spare equipment at . . . original cost upon the occurrence of a Qualifying Event, is critically important to prospective subscribers” because “[w]ithout such regulatory declarations, uncertainty about after-the-fact prudence review could discourage participation.”⁶⁰

⁵⁵ *Id.* at 4.

⁵⁶ Grid Assurance Answer at 4.

⁵⁷ *Id.* at 4-5 (citing *Edison Electric*, 116 FERC ¶ 61,280 at P 52).

⁵⁸ *Id.* at 5 (citing American Municipal Protest at 2).

⁵⁹ *Id.*

⁶⁰ *Id.* at 6.

4. Commission Determination

30. We find a transmission owner's decision to participate as a Grid Assurance subscriber by entering into the Subscription Agreement and to acquire spare equipment at Grid Assurance's original cost upon the occurrence of a Qualifying Event to be prudent.

31. In *Edison Electric*, EEI "request[ed] that the Commission find that the sharing arrangement of the Participating Utilities under the [STEP] Agreement and their participation in the [Pooled Inventory Management program]⁶¹ is a prudent approach to enhancing the reliability of the electric grid."⁶² In response, the Commission explained that, without the STEP agreement "utilities would have to purchase substantially more transformers to achieve the same recovery capability, incurring substantially higher costs, or experience the inherent time delay associated with finding, negotiating for, ordering, transporting, and testing a replacement transformer."⁶³ The Commission also looked favorably upon the "obligation to share spare transformers with Participating Utilities if there is a Triggering Event."⁶⁴ The Commission concluded that "the sharing arrangement in the [STEP] Agreement is prudent."⁶⁵

32. Additionally, EEI asked the Commission "to make a finding of prudence in the case where the transfer of transformers occurs between affiliates because the [STEP] Agreement does not provide any opportunity for affiliate abuse."⁶⁶ In response, the Commission stated that "the transfer of transformers between affiliates when there is a Triggering Event is prudent" because "the Agreement requires that the transfers occur

⁶¹ *Edison Electric*, 116 FERC ¶ 61,280 at P 37. In its petition, EEI explained that the Pooled Inventory Management program is a program "managing joint equipment acquisition for the nuclear power industry" that "extend[ed] the scope of its spare parts program to include transformers." *Id.* P 11. EEI further explained that Pooled Inventory Management program participants can use the transformers they jointly own under that program to meet their obligations under the STEP Agreement. *Id.*

⁶² *Id.* P 37.

⁶³ *Id.* P 39.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* P 38.

after a Triggering Event and sets the price at which transformers are to be sold.”⁶⁷ The Commission stated, however, that, if a jurisdictional participating utility wished to recover the costs related to a transfer, it must “seek recovery in a new section 205 filing.”⁶⁸ The Commission further noted that it had not “made any predetermination regarding the costs incurred pursuant to the [STEP] Agreement” and that it would “not limit the Commission’s review of any future section 205 filing.”⁶⁹

33. We find the decision to enter into the Subscription Agreement prudent because here, similar to the finding in *Edison Electric*, contracting for sparing service is expected to enhance a transmission owner’s ability to restore service promptly following a Qualifying Event. As Grid Assurance explains, the proposed sparing service is expected to achieve significant efficiencies, without which utilities would individually have to purchase substantially more equipment to achieve the same recovery capability. They would also incur substantially higher costs or experience the inherent time delay associated with finding, negotiating for, ordering, transporting, and testing replacement equipment after a Qualifying Event.

34. We also find that a subscriber’s decision to acquire spare equipment at Grid Assurance’s original cost upon the occurrence of a Qualifying Event is prudent. Such acquisitions will make efficient use of Grid Assurance’s sparing service to ensure the reliability of the transmission grid.⁷⁰ While we find that a subscriber’s decision to acquire spare equipment at Grid Assurance’s original cost upon the occurrence of a Qualifying Event is prudent, we note that utilities are under no obligation to participate in the sparing service nor are subscribers obligated to purchase spare equipment from

⁶⁷ *Id.* P 41.

⁶⁸ *Id.*

⁶⁹ *Id.* P 52.

⁷⁰ As noted, Grid Assurance states that subscribers will benefit from Grid Assurance’s diversification, pooling, and economies of scale in the purchase, storage, and maintenance of spare equipment. *See supra* P 22. In addition, Grid Assurance states that it could take 12 to 18 months to obtain a replacement transformer from a manufacturer rather than weeks under the sparing service. *See* December Petition at 21.

Grid Assurance.⁷¹ Thus, subscribers, weighing all possible alternatives, can still pursue the most cost-effective solution to ensure reliability even if that involves purchasing spare equipment from sources other than Grid Assurance.

35. We note, however, while finding here that the decisions to enter into the Subscription Agreement and acquire spare equipment at Grid Assurance's original cost are prudent, if a jurisdictional participating utility wishes to recover costs associated with those decisions, it must seek recovery in an FPA section 205 filing. Further, we make no predetermination regarding the costs subscribers will incur pursuant to the Subscription Agreement and will therefore not limit the Commission's review of any future FPA section 205 filing. Because such filings must fully support any rate to recover these costs, including the proposed cost allocation and rate design, we disagree with American Municipal's argument that granting Grid Assurance's request will limit the Commission's future FPA section 205 review.

B. Single-Issue Ratemaking

1. Grid Assurance's Request

36. Grid Assurance asks the Commission whether "public utility subscribers [may] seek any rate changes needed to recover expenditures related to subscribing to Grid Assurance sparing service and procuring spare equipment from Grid Assurance using single-issue ratemaking."⁷² To support this request, Grid Assurance cites *Edison Electric*, where the Commission determined that recovery of STEP agreement "costs through single-issue ratemaking should be permitted."⁷³ According to Grid Assurance, the Commission's reasoning in that decision relied upon *Extraordinary Expenditures Necessary to Safeguard National Energy Supplies* where the Commission allowed public

⁷¹ "Upon the occurrence of a Qualifying Event affecting Subscriber's electric transmission system, Subscriber shall have the right to purchase one or more Inventoried Spares from any Equipment Class(es) in which Subscriber is participating at that time at a price equal to the Original Cost of such Inventoried Spare(s) . . ." *Id.* Subscription Agreement at section 4.1.

⁷² *Id.* at 19.

⁷³ *Id.* (citing *Edison Electric*, 116 FERC ¶ 61,280 at P 43).

utilities to utilize a “separate rate recovery mechanism . . . to recover the expenses necessary to safeguard our energy infrastructure.”⁷⁴

37. Grid Assurance states that uncertainty surrounding an FPA section 205 filing could discourage participation in Grid Assurance’s sparing service. It states that, to encourage broad participation in Grid Assurance, the Commission should allow subscribers to seek recovery of Grid Assurance subscription fees and replacement equipment costs through single-issue ratemaking without opening the subscriber’s existing rate to challenges on unrelated issues.⁷⁵

2. Commission Determination

38. We find that public utility subscribers may seek to recover expenditures related to subscribing to Grid Assurance sparing service and procuring spare equipment after a Qualifying Event from Grid Assurance using single-issue ratemaking. The Commission “generally does not allow the recovery of new costs outside a rate case that considers all costs,” but it “has entertained exceptions for special cases.”⁷⁶ For example, the Commission allowed such rate treatment in response to “a pressing need for the development of new and innovative smart grid capabilities that will be needed by the electric system” and “a statutory directive to support the modernization of the electric grid.”⁷⁷

39. Our finding here is consistent with the finding in *Edison Electric*, which relies upon the Commission’s reasoning in *Extraordinary Expenditures*, a policy statement issued shortly after September 11, 2001.⁷⁸ In *Extraordinary Expenditures*, the

⁷⁴ *Id.* (citing *Extraordinary Expenditures Necessary to Safeguard National Energy Supplies*, 96 FERC ¶ 61,299 (2001) (*Extraordinary Expenditures*)).

⁷⁵ *Id.* at 19-20.

⁷⁶ *Smart Grid Policy*, 128 FERC ¶ 61,060, at P 136 (2009).

⁷⁷ *Id.* See also *Cost Recovery Mechanisms for Modernization of Natural Gas Facilities*, 151 FERC ¶ 61,047, at P 2 (2015) (permitting pipelines to recover expenditures through a surcharge if limited to modernization costs that enhance system safety, reliability and regulatory compliance); *Electric Generation and Natural Gas Supply*, 95 FERC ¶ 61,225, at 61,766 (2001) (allowing abbreviated filing procedures to address extraordinary circumstances surrounding the 2001 California energy crisis).

⁷⁸ *Edison Electric*, 116 FERC ¶ 61,280 at P 43 (citing *Extraordinary Expenditures*, 96 FERC ¶ 61,299).

Commission explained that companies may propose a separate rate recovery mechanism, “such as a surcharge to currently existing rates or some other cost recovery method” to recover costs associated with “extraordinary expenditures to safeguard the reliability of energy transportation systems and energy supply infrastructure.”⁷⁹ In *Extraordinary Expenditures*, the Commission also stated that it would “approve applications to recover prudently incurred costs necessary to further safeguard the reliability and security of our energy supply infrastructure in response to the heightened state of alert.”⁸⁰

40. Because Grid Assurance’s sparing service is designed to assist transmission systems to quickly restore electric service after a Qualifying Event, a term that covers a multitude of catastrophic scenarios, expenses related to this service are comparable to the types of costs contemplated in *Extraordinary Expenditures*.⁸¹ We note, however, that a subscriber must fully develop and support any rate designed to recover those costs.

C. Applicability of Affiliate Pricing Restrictions

1. Grid Assurance’s Request

41. Grid Assurance asks the Commission to find that to the extent purchases of non-power goods and services from Grid Assurance by any subscriber are subject to the affiliate pricing restrictions under section 35.44 (b)(2) of the Commission’s regulations,⁸² Grid Assurance’s provision of sparing service and spare equipment at original cost pursuant to the terms of the Subscription Agreement “is consistent with the requirement that such sales not be priced above market.”⁸³ Grid Assurance states that it anticipates

⁷⁹ *Extraordinary Expenditures*, 96 FERC ¶ 61,299 at 62,129.

⁸⁰ *Id.*

⁸¹ *Edison Electric*, 116 FERC ¶ 61,280 at P 43 (citing *Extraordinary Expenditures*, 96 FERC ¶ 61,299).

⁸² Section 35.44(b)(2) provides that:

[u]nless otherwise permitted by Commission rule or order . . . , a franchised public utility that has captive customers or that owns or provides service over jurisdictional transmission facilities, may not purchase or receive non-power goods and services from . . . a non-utility affiliate at a price above market.

⁸³ December Petition at 20.

that some of its subscribers will be public utilities that own or provide transmission service over jurisdictional facilities and that are affiliates of Grid Assurance. Grid Assurance also states that “[i]n particular, certain Grid Assurance subscribers may be affiliated with Grid Assurance by virtue of the ‘under common control’ branch of the section 35.43 definition of affiliate, combined with the 10% voting securities test for control.”⁸⁴ Grid Assurance states, however, that it will provide the same service on the same terms and conditions to all subscribers, regardless of whether they are affiliates because the Subscription Agreement governs the pricing of service and equipment. Specifically, Grid Assurance states that “the periodic, cost-based subscription fee will be determined under Schedule 5.1 of the Subscription Agreement, and sales of spare equipment following a Qualifying Event will occur at original cost as set forth in Article 4 of the Subscription Agreement.”⁸⁵

42. Grid Assurance also states that it is difficult to determine the “market” price for sparing service because there is “no comparable service now offered.”⁸⁶ Grid Assurance argues that a manufacturer’s price of long-lead-time transmission equipment is not a good indicator of market price because “a replacement transformer to be delivered in 12-18 months is simply not the same offering as a replacement transformer that is available for pickup and delivery in a manner of weeks.”⁸⁷ While Grid Assurance concedes that these factors complicate the Commission’s analysis, it argues that several facts indicate that the pricing in the Subscription Agreement is at or below market pricing. First, it states that, because of diversification, pooling, and economies of scale in purchase, storage, and maintenance, Grid Assurance’s sparing service will likely be less expensive than it would be for each utility to build its own spare inventory.⁸⁸ Second, Grid Assurance states that the pricing under the Subscription Agreement is cost-based and that economic theory provides that market prices will reflect producers’ costs,⁸⁹ and that this is the same rationale the Commission employs for cost-of-service regulation for utility monopolies,

⁸⁴ *Id.* at 20-21.

⁸⁵ *Id.* at 21.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at 21-22.

⁸⁹ *Id.* at 22.

as a proxy for competitive market results.⁹⁰ Third, Grid Assurance states that its costs for purchasing equipment will reflect the market prices in the long-lead-time equipment market, because it plans to “utilize competitive procurement processes whenever practicable to source its inventory of spare transmission equipment.”⁹¹ To this point, it also argues that, while it will resell equipment at original cost, the product is of more value when purchased from Grid Assurance because of how quickly Grid Assurance’s products will be available when compared to purchases from alternative sellers.

43. Grid Assurance further argues that, because it is offering a cost-based service to affiliates and non-affiliates on identical terms, there is no opportunity for the types of cross-subsidization concerns that gave rise to the section 35.44(b)(2) requirements. To this point, it notes that pricing for sparing service and equipment are predetermined and applicable to all subscribers.⁹²

44. Grid Assurance also cites the FPA section 203 determination in *Edison Electric* where the Commission stated that the proposed STEP transactions were “unlikely to provide the opportunity for cross-subsidization of a non-utility affiliate of the Participating Utilities” because “the [STEP] Agreement establishes specific conditions under which transfers are to occur . . . and sets the price at which transformers are to be sold.”⁹³ Grid Assurance argues that the same reasoning applies here.

45. If the Commission does not find Grid Assurance’s sparing service and spare equipment pricing to be consistent with section 35.44(b)(2), Grid Assurance requests that the Commission waive these requirements with respect to the sparing service and spare equipment pricing. Grid Assurance states that the Commission granted such waivers where utilities proposed to use cost-based pricing for inter-affiliate purchases of non-power goods and services instead of a market-based price.⁹⁴ Grid Assurance also notes

⁹⁰ *Id.* (citing *ExxonMobil Oil Corp. v. FERC*, 487 F.3d 945, 961 (D.C. Cir. 2007) (“[T]he purpose of a cost-of-service rate . . . is to simulate what a [regulated entity’s] economic behavior would be in a competitive market.”)).

⁹¹ *Id.*

⁹² *Id.* at 22-23.

⁹³ *Id.* at 23 (citing *Edison Electric*, 116 FERC ¶ 61,280 at P 31).

⁹⁴ *Id.* at 24 (citing *National Grid USA*, 133 FERC ¶ 61,241 (2010); *TECO Energy, Inc.*, 149 FERC ¶ 61,294 (2014); *Pepco Holdings, Inc.*, 141 FERC ¶ 61,034 (2012); *Northeast Utilities Service Co.*, 141 FERC ¶ 61,016 (2012)).

that the Commission granted such waivers where market prices are difficult to determine.⁹⁵ Finally, Grid Assurance contends that the Commission should consider the use of cost-based pricing as a reasonable alternative to the requirements of section 35.44(b)(2) because there is no well-established market for sparing service or immediately available spare equipment.

2. Protest

46. American Municipal asks the Commission to decline Grid Assurance's request to waive the affiliate transaction requirements in section 35.44(b)(2) of the Commission's regulations. While it suggests that Grid Assurance's proposal to set its sparing service fee using a cost-based formula could mitigate concerns, it points out that Grid Assurance is not subject to FPA section 205, and the Commission will not scrutinize Grid Assurance's formula rate or the inputs to its annual updates.⁹⁶ Furthermore, American Municipal states that it is unclear which companies (or their affiliates) will ultimately become Grid Assurance equity owners and that Grid Assurance has not indicated whether transmission owners or non-investor owned utilities can become equity investors.⁹⁷

3. Answer

47. In response to American Municipal, Grid Assurance reiterates that it asks for waiver of section 35.44(b)(2) of the Commission's regulation as an alternative to its primary request that the Commission find that the Subscription Agreement's pricing is consistent with that section's requirements. Grid Assurance states that American Municipal did not object to this requested declaration and that granting Grid Assurance's primary requested declaration would avoid the need to address whether waiver is appropriate.⁹⁸

48. With regard to its request for waiver, Grid Assurance states that American Municipal acknowledges that Grid Assurance's cost-based formula mitigates its concerns about potential affiliate pricing abuse. Grid Assurance also states that it has limited the scope of its waiver through the terms of the Subscription Agreement, which requires that all subscribers, regardless of whether or not they are affiliated, will be charged cost-based

⁹⁵ *Id.* at 24 (citing *Pepco Holdings, Inc.*, 141 FERC ¶ 61,034 at P 23).

⁹⁶ American Municipal Protest at 4-5.

⁹⁷ *Id.* at 5.

⁹⁸ Grid Assurance Answer at 6-7.

prices.⁹⁹ Grid Assurance repeats its claim that the Commission granted waivers where the utility proposes to use cost-based pricing for inter-affiliate purchases of non-power goods and services.¹⁰⁰ With regard to American Municipal's concern that it is unclear which companies will become equity owners of Grid Assurance, Grid Assurance states that investment will not be limited to the entities currently involved in the development of its business model. Additionally, it states that it will offer sparing service to transmission owners of all sizes and types, and notes that details of investment opportunities for subscribers are under development.¹⁰¹

4. Commission Determination

49. We find that the December Petition does not provide sufficient information to conclude that Grid Assurance's provision of sparing service and spare equipment at original cost pursuant to the terms of the Subscription Agreement is consistent with section 35.44(b)(2). Section 35.44 of the Commission's regulations is implicated because, Grid Assurance anticipates that some of the subscribers will be public utilities that own or provide transmission service over jurisdictional facilities and that are affiliates of Grid Assurance. The Grid Assurance business model is in the development stage and it is unclear which, if any, public utilities will have an ownership interest in Grid Assurance and how that ownership interest may be held in their corporate structures. Nonetheless, we find that, subject to the conditions discussed below, jurisdictional utilities that subscribe to the sparing service may be granted waiver of section 35.44 of the Commission's regulations.

50. The chief concern that gave rise to section 35.44(b)(2) is that "a franchised public utility and an affiliate may be able to transact in ways that transfer benefits from the

⁹⁹ *Id.* at 7.

¹⁰⁰ *Id.* (citing *National Grid USA*, 133 FERC ¶ 61,241; *Northeast Utilities Service Co.*, 141 FERC ¶ 61,016).

¹⁰¹ *Id.* at 8.

captive customers of the franchised public utility to the affiliate and its shareholders.”¹⁰² Accordingly, the Commission adopted the rule to prohibit a franchised public utility with captive customers from purchasing non-power goods or services from a non-utility affiliate at a price above market price.¹⁰³ Under the Subscription Agreement, Grid Assurance will provide non-power goods and services, *i.e.*, sparing service and spare equipment at Grid Assurance’s original cost to subscribers after a Qualifying Event. As Grid Assurance concedes, there is no currently available service that is comparable to its proposed sparing service and therefore no market price to use as a benchmark to assess whether Grid Assurance’s provision of sparing service and spare equipment is consistent with the requirement that such sales not be priced above market.

51. We agree with Grid Assurance that concerns that captive customers of franchised public utilities may inappropriately cross-subsidize the activities of non-utility affiliates should not be implicated by such cost-based sales, especially where the pricing is dictated by the terms of Subscription Agreement. However, we will require additional information to ensure that such inappropriate cross-subsidization does not occur. While Grid Assurance is not a public utility, its subscribers likely will be, and they will likely seek to recover costs related to the Subscription Agreement.

52. As we have determined, if jurisdictional utilities wish to recover costs associated with the Subscription Agreement, they will need to submit filings under FPA section 205 that provide sufficient detail of the charges assessed by Grid Assurance and the costs

¹⁰² *Cross-Subsidization Restrictions on Affiliate Transactions*, Order No. 707, FERC Stats. & Regs. ¶ 31,264, at P 4, *order on reh’g*, Order No. 707-A, FERC Stats. & Regs. ¶ 31,272 (2008). In discussing the purpose of the affiliate regulations, the Commission stated:

[j]ust as the Commission has adopted regulations designed to prevent captive customers of franchised public utilities from inappropriately cross-subsidizing the activities of market-regulated affiliates (such as affiliated power marketers), so too the Commission wants to ensure that captive customers of franchised public utilities do not inappropriately cross-subsidize the activities of non-utility affiliates (such as an affiliated construction services firm, real estate company, legal services companies, fuel supply companies, or other non-utility affiliates).

Order No. 707, FERC Stats. & Regs. ¶ 31,264 at P 23.

¹⁰³ *Id.* P 71.

underlying those charges.¹⁰⁴ In addition, we condition our grant of waiver to any Grid Assurance subscriber that is subject to the affiliate pricing restrictions under section 35.44 (b)(2) on the provision of information concerning the costs underlying the sparing service. To satisfy this condition, Grid Assurance should submit an annual informational report: (1) containing Grid Assurance's most recently issued audited financial statements and other detailed information providing the inputs to the sparing service fee formula in Schedule 5.1 of the Subscription Agreement; and (2) listing all sales showing a piece of equipment's original cost and the price at which it was sold, along with any additional information that assists in justifying that affiliate issues do not exist.¹⁰⁵ Specifically, such information should allow the Commission to determine whether waiver continues to be warranted. Grid Assurance should make its initial annual informational report one year from beginning its sparing service operations.¹⁰⁶

53. Accordingly, we grant waiver of the affiliate pricing restrictions under section 35.44(b)(2) of the Commission's regulations with respect to the pricing of sparing service and spare equipment purchased by subscribers, subject to condition, as discussed above.

The Commission orders:

(A) Grid Assurance's petition for declaratory order is hereby granted in part and denied in part, as discussed in the body of this order.

¹⁰⁴ See *supra* P 35.

¹⁰⁵ Section 388.112 of the Commission's regulations permits any person filing a document with the Commission to request privileged treatment for some or all of the information contained in the document that the filer claims is exempt from the mandatory public disclosure requirements of the Freedom of Information Act. 18 C.F.R. § 388.112(b)(1) (2015).

¹⁰⁶ This report, as an informational report, will not be noticed for comment, or require Commission action.

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(B) Grid Assurance's request for waiver of the affiliate restrictions under 18 C.F.R. § 35.44(b)(2) (2015) for purchases by an affiliated subscriber of sparing service at cost, and sparing equipment at original cost after a Qualifying Event, is granted, subject to condition, 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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