

110 FERC ¶ 61,098
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Neptune Regional Transmission System, LLC

Docket No. EL05-48-000

v.

PJM Interconnection, L.L.C.

ORDER ON COMPLAINT

(Issued February 10, 2005)

1. In this order, the Commission addresses a complaint filed by Neptune Regional Transmission System, LLC (Neptune) against PJM Interconnection, L.L.C. (PJM) with respect to PJM's interpretation of the interconnection provisions of its tariff, specifically with regard to PJM's right to re-study the impact on its system of the interconnection of Neptune's proposed merchant transmission project, in light of unexpected announced generation retirements on PJM's system. This order benefits customers by providing certainty to Neptune, PJM and their customers on the impact of generation retirements on the interconnection procedures.

Background

2. On July 27, 2001, the Commission approved negotiated rates for the Neptune project, subject to certain conditions. *Neptune Regional Transmission System, LLC*, 96 FERC ¶ 61,147 (2001) (*Neptune*). The Neptune project is a merchant transmission project which will provide for the delivery of 660 MW of capacity from New Jersey to Long Island via a high-voltage, direct-current, underwater transmission cable. In *Neptune*, the Commission directed Neptune to work with the Northeastern regional

transmission organization¹ to ensure that the RTO's tariff is designed to accommodate Neptune's financing needs. The order also noted that Neptune had agreed to assume the entire risk for the Neptune project.

3. On June 23, 2004, Neptune secured, through a Request for Proposal (RFP) open-season process, a twenty-year contract with the Long Island Power Authority (LIPA) for the entire capacity of the cable, with service commencing in June 2007. Neptune states that it has obtained regulatory commitments and equity funding to complete all aspects of development, construction and operation of the project, except for construction funding, which is needed to manufacture the equipment, construct the converter stations, and lay the cable. In order to obtain the construction financing, Neptune must have an executed Interconnection Agreement with PJM by the end of March 2005. Neptune states that, because of a series of re-studies of the impact of the Neptune project on PJM's system due to unanticipated announced generator retirements, Neptune has been unable to secure an executed Interconnection Agreement with PJM.

4. In December 2000, as amended in March 2001, Neptune submitted an Interconnection Request to PJM in accordance with the interconnection procedures specified in PJM's tariff. The Interconnection Request established Neptune's interconnection queue position, the first step in a series of events that must occur before an Interconnection Agreement can be executed. Next, three levels of study must be completed: a Feasibility Study, a System Impact Study, and a Facility Study. These studies, which are progressively more expensive and are paid for by the interconnecting party, estimate and refine the system upgrade costs to be allocated to an interconnection customer. After the Facility Study has been completed, an Interconnection Agreement can be executed. In the executed Interconnection Agreement, facilities required for the interconnection upgrade are identified and the costs for those facilities are "locked in," *i.e.*, the estimated costs for identified facilities can be "trued up" based on the final construction costs, but additional upgrade facilities cannot be allocated to the interconnection customer.

5. The Feasibility Study for the Neptune project was completed in July 2001. There have been numerous System Impact Studies. The first System Impact Study was completed in October 2003 and estimated that Neptune would be responsible for \$3.7 million in system upgrade costs. A second System Impact Study was required when a higher-queued project withdrew its proposal. The second study, which was completed in January 2004, estimated Neptune's system upgrade costs to be \$4.4 million. Due to unanticipated announced generator retirements, PJM completed its third and fourth studies in June 2004. The estimated costs of system upgrades resulting from these

¹ The term Northeastern regional transmission organization was previously used to refer to the present ISO New England, the New York ISO and PJM.

studies were \$25.5 million and \$26.3 million, respectively. In September 2004, PJM announced that it had received notice of additional proposed generator retirements and therefore it started the System Impact Study process for a fifth time. Because of the series of re-studies, PJM has informed Neptune that it will not complete the Facilities Study until May 2005. Without a Facilities Study, PJM will not execute an Interconnection Agreement with Neptune.²

6. Neptune and PJM disagree on what constitutes an appropriate reason to re-study the system impact of Neptune's project on PJM. Although for five months they have tried to resolve their dispute through settlement, they have been unable to reach an agreement. Neptune therefore filed the subject complaint.

Complaint

7. On December 21, 2004, Neptune filed a complaint under section 206 of the Federal Power Act³ against PJM. Neptune claims that PJM's re-studies are in direct conflict with Order No. 2003,⁴ which states that re-studies can be provided for three discrete reasons: (1) a higher-queued project drops out of the queue, (2) a modification of a higher-queued project is required, or (3) the point of interconnection is re-designated. Neptune claims that since generation retirements are not one of the discreet reasons allowed by Order No. 2003, the re-studies performed as a result of announced proposed generator retirements are not permissible. Neptune further notes that there is no guarantee that there will not be additional generator retirements, giving PJM another occasion to re-study Neptune's system impacts. Neptune states that the unanticipated series of re-studies for generator retirements is the type of regulatory uncertainty that, if left unresolved, will prevent Neptune or any other independent transmission project from moving forward in PJM.

² According to Neptune, on August 4, 2004, in order to "keep the interconnection process moving forward," Neptune executed a Facilities Study Agreement with PJM based on the fourth System Impact Study and paid a \$200,000 deposit for the study. Neptune's execution of the agreement is without prejudice to its position on re-studies. (Complaint at 39.)

³ 16 U.S.C. § 824e (2000).

⁴ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs., ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats & Regs. ¶ 31,171 (2004), *reh'g pending*; *see also Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004).

8. Neptune requests that the Commission act expeditiously on the complaint and determine that it is unjust and unreasonable for PJM to interpret its tariff provisions on re-study as giving PJM unfettered discretion to re-study interconnection requests as it sees fit, or, if necessary, that PJM's tariff provisions are unjust and unreasonable because they can be interpreted as providing such unfettered discretion. Neptune further requests that the Commission determine that it is just and reasonable to interpret PJM's tariff as being consistent with Order No. 2003, and direct PJM to enter into an Interconnection Agreement with Neptune based on the scope of equipment and facilities included in the most recent System Impact Study completed before PJM's re-studies for generator retirements (the Second System Impact Study). Neptune states that although a dispute resolution process has not proved useful, it would not object to a tightly-constrained (one week) settlement process.

Notice of Filings and Responsive Pleadings

9. Notice of Neptune's complaint issued on December 23, 2004 with interventions and protests initially due on or before January 6, 2005. The due date for answers to the complaint was extended to January 11, 2005. Comments in support of Neptune's complaint were filed by the New York State Public Service Commission. Protests were filed by Public Service Electric and Gas Company (PSE&G); and Jersey Central Power and Light Company (Jersey Central, Metropolitan Edison Company, and Pennsylvania Electric Company (collectively, FirstEnergy Companies). LIPA, the Pennsylvania Public Utility Commission, PPL Electric Utilities Corporation, the New Jersey Board of Public Utilities, the New York Independent System Operator, Inc., and TransEnergie U.S. LTD. filed motions to intervene. The New Jersey Division of the Ratepayer Advocate (NJDR),⁵ the Maryland Public Service Commission (Maryland Commission) and FPL Energy, LLC (FPL) filed untimely motions to intervene. On January 11, 2005, PJM filed an Answer and on January 26, 2005, Neptune filed a reply to the answer of PJM.

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding. We will grant the motions of NJDR, the Maryland Commission, and FPL for late intervention given their interest in this proceeding, the early stage of this proceeding, and the absence of any prejudice or undue delay.

⁵ NJDR stated that if its late interventions were accepted, it would be filing comments on the complaint. Rule 214 requires a late intervener to accept the record of the proceeding as of the date of its intervention.

Answer and Protests

11. While PJM admits that its tariff does not expressly address the effects of generation retirements on its interconnection process, PJM nevertheless requests that the relief requested by Neptune be denied. PJM however concurs with Neptune that a prompt ruling in this proceeding will help remove uncertainty for all affected parties.

12. PJM states that granting the complaint would improperly shift to all other users of the transmission system costs that would not exist but for Neptune's project. Under Part IV of PJM's tariff, PJM claims that an interconnection customer is responsible for the costs of all upgrades to the PJM transmission system that would not be necessary but for the interconnection of the proposed facilities. PJM notes that the "but for" cost allocation prevents subsidization of interconnection projects by existing load and competing developers of transmission and generation facilities. PJM states that if Neptune does not bear the costs of the system upgrade (*i.e.*, the system upgrade costs above \$4.4 million), the costs would have to be allocated to existing PJM load, which did not cause the costs to be incurred.

13. PJM further notes that the results of a System Impact Study are simply estimates of the facilities required to accommodate the interconnection, and that every interconnection customer in PJM's queue is always at risk that PJM's transmission system may change. PJM further notes that each project in the queue is "protected" only with respect to costs that arise from accommodation of lower-queued projects. PJM emphasizes that the three levels of study provide information to assist the customer in evaluating its project. It further emphasizes, however, that until the execution of an Interconnection Agreement, there is no binding commitment by either the customer or PJM as to the specific costs allocated to the interconnection customer.

14. PJM states that its re-studies of the Neptune project are consistent with its tariff and with PJM's regional transmission planning responsibilities. PJM states that under section 41.4.3 of its tariff, it is permitted to re-study a merchant transmission study whenever, during the course of the study, such a re-study is required. PJM states that the Commission accepted PJM's Order No. 2003 compliance filing and its merchant transmission filing, without any requirement to change its re-study provisions, and that therefore those are the provisions that apply to this case.⁶ Further, PJM states that the Order No. 2003 *pro forma* tariff provisions are of limited, if any, relevance to the Neptune complaint, since this complaint does not involve generator interconnections, but

⁶ *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025 (2004). PJM's Order No. 2003 compliance filing in Docket No. ER04-457-001 and rehearing order in Docket No. ER04-457-002 is being issued contemporaneously with this order. *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,099 (2005)

merchant transmission projects. PJM states that merchant transmission projects are significantly different than generation interconnection projects. PJM asserts that while new generation would help relieve reliability concerns caused by retirements, PJM maintains that a large scale transmission project that exports power from PJM exacerbates such problems.

15. PJM also notes that even if Order No. 2003 applies to merchant transmission projects, Order No. 2003 contemplated that independent entities like PJM could adopt tariff terms different from those of the *pro forma* documents the Commission prescribed. Moreover, PJM contends that generator retirements were never discussed during the procedures established to develop the interconnection procedures.

16. PJM notes that because of the location of many of the announced retiring units and the large withdrawals of power from the PJM transmission system, the retirements have a greater effect on the facilities needed to accommodate the Neptune interconnection than on any other pending interconnection request. PJM states that its studies currently show a need for system upgrades with an aggregate cost of \$130 million just to maintain the baseline system, after the latest retirements, to conform with applicable reliability criteria. Of this amount, an incremental \$21 million is allocated to Neptune under the fourth System Impact Study compared with the amount allocated to Neptune under the second System Impact Study.

17. In the event that the Commission grants Neptune's complaint, PJM requests that the Commission ensure that the Interconnection Agreement contains the terms providing that Neptune, like all interconnection customers, bears the cost responsibility for the actual costs of the system upgrades required for Neptune's interconnection, as determined by a Facilities Study. Further, PJM argues that should the Commission direct PJM to execute an Interconnection Agreement, the ruling be based on the specific circumstances of this proceeding and not establish a precedent.

18. In its protest, FirstEnergy Companies requests that Neptune's complaint be summarily denied. Alternatively, FirstEnergy Companies request that the matter be set for hearing or other procedures. First, as a matter of policy, FirstEnergy Companies contend that neither PJM's tariff nor Order No. 2003 limit the circumstances in which PJM may conduct a re-study. In fact, FirstEnergy Companies contend that good utility practice and regional reliability requirements support PJM's need to conduct re-studies as circumstances warrant. Secondly, FirstEnergy Companies contend that PJM's "but for" test requires Neptune to pay for the difference between the \$4.4 million and the final estimated cost of the PJM network upgrades. Finally, FirstEnergy Companies contend that, while the Neptune project provides no apparent benefits to the customers of Jersey Central, it raises reliability and operational issues. For example, FirstEnergy Companies question the impact of the Neptune project on Jersey Central with respect to real and reactive losses, voltage instability, and reliability margins.

19. PSE&G, in its protest, contends that granting Neptune's complaint is contrary to PJM's "but for" pricing methodology. In addition, PSE&G contends that Neptune either knew, or should have known, that any expectation of cost certainty at the System Impact Study stage would run counter to the framework established by PJM in its tariff procedures and accompanying manuals, which provide that risk associated with changed circumstances remains with the developer through the completion of the study process. PSE&G further contends that granting Neptune's complaint would set a potentially dangerous precedent, where all merchant transmission projects could avoid paying their fair share of maintaining a reliable transmission system by merely shifting merchant transmission costs to local ratepayers when they make a bad investment decision. Finally, PSE&G contends that Neptune should be responsible for the costs of maintaining a grandfathered wheeling agreement between PSE&G and Consolidated Edison Company of New York, Inc.

Discussion

20. Neptune and PJM have indicated that they have worked cooperatively with each other throughout the interconnection study process. In addition, Neptune and PJM agree that this case does not involve disputes of issues of material fact, but rather, involves a policy question that needs to be resolved expeditiously.

21. The PJM tariff is silent on the impacts of generation retirements upon PJM's interconnection process, especially with respect to the queue position and the requirements for re-studies.⁷ Further, there are conflicting provisions in PJM's tariff which relate to PJM's interconnection policy with respect to merchant transmission projects. Because the tariff is unclear and vague, the Commission must interpret the tariff.

22. For example, section 36.10 of PJM's tariff provides that the queue position determines a generation interconnection customer's cost responsibility for the construction of facilities or upgrades to accommodate its interconnection request. However, in its answer, PJM argues that although the queue position protects each project, the protection offered is not absolute.⁸ To clarify the ambiguity of PJM's position, the Commission finds that the queue position provides a method for cost allocation of interconnection projects. The queue prioritizes the interconnection customer's project by assigning the customer a position in the queue based upon the date

⁷ PJM's Answer at 2.

⁸ *Id.* at 8.

the interconnection provider determines that the customer's application is valid.⁹ It is the interconnection customer's queue position which serves as an important baseline for the process that leads to an Interconnection Agreement.

23. The Commission notes that the queue system functions in several ways. For the interconnection provider, by looking to the date of each customer's position in the queue, the interconnection provider may determine which interconnection costs should be allocated to an interconnection customer, and which costs belong to the system itself. In turn, the interconnection customer is able to use the queue system to assess its business risks. Each customer knows that subsequent cost allocations will be determined by circumstances that are known as of the time its System Impact Study is conducted. Projects may drop out of the queue and customers may move up the queue, but the cost allocation system insulates an interconnection customer from costs arising from events occurring after its System Impact Study is completed, other than costs arising from changes from higher-queued generators. Thus, the queue position provides a potential customer a reasonable degree of certainty as to its financial costs. If an interconnection customer were to be held financially responsible for the costs of events occurring after its System Impact Study is completed it would be impossible for the customer to make reasoned business decisions. Instead, the customer would be susceptible to constant changes within the provider's system. Thus, it is the queue position that becomes an important baseline for interconnection customers in determining their business costs and risks. If an interconnection customer is required to anticipate unspecified events occurring after its System Impact Study is completed, other than costs arising from changes from higher-queued generators, individual interconnection customers would be unable to make reasoned business decisions. In fact, as in this case, there could be a never-ending series of changes, creating havoc for interconnection providers and customers alike.¹⁰

⁹ Order No. 2003 at P 35.

¹⁰ PJM offers *FPL Energy Marcus Hook v. PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,069 (2004), *reh'g denied*, 108 FERC ¶ 61,171, (2004), appeal pending *FPL Energy Marcus Hook, L.P. v. FERC*, No. 04-1341 (D.C. Cir. filed October 5, 2004), as supporting its view that upgrade costs are not to be "assigned back to ... transmission owners." *Id.* at P 21. Marcus Hook sought reimbursement from the interconnection provider for its costs of interconnection upgrades when a higher-queued project withdrew its proposal. The Commission held that the interconnection provider had properly allocated the costs of interconnection to the interconnection customers. Consequently, Marcus Hook was not entitled to reimbursement for upgrades which became unnecessary due to subsequent events. The facts presented in the instant complaint do not raise any question regarding reimbursement of costs and, therefore, this case is not instructive here.

24. When Neptune joined the PJM queue in March 2001, it became responsible for (1) any costs associated with its project as determined by its queue position, and (2) the costs of any reconfiguration arising from higher-queued projects withdrawing from consideration. When a higher-queued project dropped out of the queue, PJM properly conducted a re-study of the Neptune project and projected that system upgrade costs associated with the interconnection of the Neptune project increased from \$3.7 million to \$4.4 million. The announcements of the proposed generator retirements in October and November, 2003, and in September and October, 2004, took place several years after Neptune was assigned to its place in the queue. These generator retirements were not announced when the initial re-study was undertaken, could not have been considered as part of Neptune's business risk, and should not have been a basis for subsequent re-study.¹¹ Accordingly, the Commission rules that PJM failed to apply the principles of the queue system when it re-studied the Neptune project based upon the announcement of retiring generators.

25. Another example of how PJM's tariff is unclear and vague deals with re-studies. Section 41.4.3 of PJM's tariff states:

Re-study: If re-study of the system impact study is required, the Transmission Provider shall notify the Transmission Interconnection Customer in writing explaining the reason for the re-study and providing a scheduled completed date. Any cost of re-study shall be borne by the Transmission Interconnection Customer being restudied.

This provision provides notice to the interconnection customer when PJM will conduct re-studies. This phrase says nothing about the circumstances which trigger a re-study, and instead is only an antecedent to the main point that PJM must notify the interconnection customer when a re-study is required. Since this language does not address when or whether a re-study is "required," the Commission must construe the tariff's silence on that issue. We will not construe PJM's tariff as giving PJM sole, un-reviewable discretion, but rather, we will construe it as having some reasonable

¹¹ We do not decide today whether costs related to the announced retirements would be allocated to Neptune if the announcements preceded Neptune's entry into the queue. Those circumstances would raise questions not present here, such as whether earlier announced retirements of existing generators are equivalent to withdrawals of higher-queued projects, and whether non-binding, reversible announcements of retirements should affect allocations of costs to other projects.

boundary to its re-study process. In keeping with the fundamental principles of the queue process, the boundaries of the re-study process must correlate to circumstances known to PJM and the interconnection customer at the time of the initial System Impact Study, or through exercising due diligence, was reasonably ascertainable at that time (such as the risk of changes in higher-queued projects).

26. PJM has offered contradictory pleadings as to when the interconnection principles of Order No. 2003 apply to merchant transmission projects. For example, in PJM's filing submitted for approval of its tariff language establishing provisions to accommodate merchant transmission projects, PJM states:

The tariff changes proposed today apply to merchant transmission interconnections the same study procedures and, with only minor exceptions reflecting physical differences between generation and transmission facilities, the same standard terms and conditions of interconnection and related construction agreements that apply under the PJM Tariff to interconnection of new and expanded generation resources.¹²

27. The PJM filing was accepted by the Commission on March 13, 2003.¹³ However, in this proceeding, PJM states that Neptune "vastly overstates" the limited, if any, "applicability to this controversy of Order No. 2003's *pro forma* tariff provisions regarding generation interconnection."¹⁴ The Commission finds that since PJM itself stated that it intended to apply the same procedures, terms and conditions for merchant generation interconnection that it applies to interconnection of generation facilities, the principles of Order No. 2003 may provide useful guidance here.

28. In its answer, PJM argues that the baseline for its System Impact Study was the PJM system as it planned to be in place at the time the Neptune project is expected to go into service, *i.e.*, June 2007.¹⁵ However, PJM's tariff does not define "baseline." Further, the PJM Manuals do not define baseline conditions as they refer to generator retirements.

¹² PJM transmittal letter dated January 10, 2003, Docket No. ER03-405-000 at 3.

¹³ *PJM Interconnection, L.L.C.*, 102 FERC ¶ 61,277 (2003).

¹⁴ PJM Answer at 7.

¹⁵ *Id.* at 13.

29. The Commission finds that PJM's re-studies of the System Impact Study were not performed in accordance with PJM's tariff, and that cost allocations due to the announcements of generator retirements should have no bearing on the Facility Study. Accordingly, the Commission finds that PJM should have provided to Neptune a Facility Study immediately upon the completion of its second System Impact Study on January 21, 2004. The Commission therefore orders PJM to perform a Facilities Study no later than 60 days from the date of this order based on Neptune's queue position and any changes that occurred with respect to projects ahead of Neptune on the queue. Further, because Neptune has established that it needs an executed Interconnection Agreement by the end of March 2005 in order to obtain financing, the Commission directs PJM to submit an Interconnection Agreement to Neptune within 10 days of the date of this order.¹⁶ The Commission further grants PJM's request to find that this requirement, which deviates from the PJM tariff, is not precedential, but, rather, is based on the specific facts of this case.

30. Based on the above findings, the question arises as to what to do with the costs above \$4.4 million (*i.e.*, the difference between the \$4.4 million from the second System Impact Study and the approximately \$26.3 million from the fourth study).¹⁷ Some parties claim that since they would not have been incurred except for the Neptune project, the costs must be borne by Neptune in accordance with the "but for" principle. They further claim that by not assigning the costs to the Neptune project, parties not receiving the benefit of the additional facilities will unfairly subsidize the Neptune project in violation of the "at risk" condition.¹⁸

¹⁶ The Commission recognizes that until the Facilities Study is completed, the costs reflected in the Interconnection Agreement cannot be "locked in." However, to facilitate Neptune's financing needs, the Interconnection Agreement tendered within 10 days should reflect the most accurate estimate of costs possible, based on the factors set forth in second System Impact Study; the Interconnection Agreement may then be amended upon the completion of the Facilities Study to "lock in" the costs to be allocated to Neptune.

¹⁷ All parties agree that these costs are estimates, which, as discussed *supra*, will be trued-up upon completion of the construction of the facilities.

¹⁸ *Neptune* at 61,634.

31. Our order today addresses only the issue of interconnection and the costs Neptune must bear for interconnection. When Neptune or one of its customers seeks transmission service from PJM in the future, the transmission service may trigger upgrade costs, and those costs should be allocated according to PJM's tariff at the time. Until transmission service is requested, the costs of providing the service are unknown, and we do not need to decide today how any such costs will be recovered.

32. FirstEnergy Companies raise concerns about reliability and operational issues which might impact Jersey Central. These are the exact types of issues which the three levels of studies are intended to address. For example, the System Impact Study includes load flow, short-circuit and stability analyses. Since the FirstEnergy Companies' concerns should have already been fully addressed in detail by PJM, the Commission dismisses these issues.

The Commission orders:

(A) PJM is hereby ordered to perform a Facilities Study no later than 60 days from the date of this order based on Neptune's queue position, and any changes that occurred with respect to projects ahead of Neptune in the queue, as more fully discussed in the body of this order.

(B) PJM is hereby ordered to submit an Interconnection Agreement to Neptune for the interconnection of the Neptune project facilities to PJM's facilities within 10 days of the date of this order, as more fully discussed in the body of this order.

By the Commission. Commissioner Kelliher concurring with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Neptune Regional Transmission System, L.L.C.

Docket No. EL05-48-000

v.

PJM Interconnection, L.L.C.

(Issued February 10, 2005)

Joseph T. KELLIHER, Commissioner *concurring*:

I agree with the Commission's decision to grant Neptune Regional Transmission System, L.L.C.'s (Neptune) complaint against PJM Interconnection, L.L.C. (PJM) regarding PJM's interconnection provisions of its tariff that relate to PJM's ability to restudy the impact on its system of the interconnection of Neptune's proposed merchant transmission project in light of unanticipated generation retirements on PJM's system, but I would have done so on a different basis.

The Commission has the authority, and responsibility, under section 206 of the Federal Power Act to ensure that PJM's practices are just and reasonable even if they strictly comply with PJM's tariff. In *Southern California Edison v. FERC*, the court found that even when a company is in full compliance with a Commission regulation, the Commission has the authority under section 5 (in this case section 206) to take action to remedy unjust and unreasonable practices:

FERC makes much of the here-uncontested finding that no regulation was violated.... It is clear that, as a statutory matter, the Commission's duties are not so limited. Section 5 of the Natural Gas Act gives FERC jurisdiction not only over "unjust" and "unreasonable" "rates" but also over unjust and unreasonable "practices", as well as "unduly discriminatory" or "preferential" rates or practices. (citation omitted). That the rate charged in a particular instance is just and reasonable still leaves in place these other possible grounds for Commission action.¹

¹ *Southern California Edison Co. v. FERC*, 172 F.3d 74, 75 (D.C. Cir. 1999).

I believe that PJM's existing tariff is unreasonably vague since it provides no cut-off point for re-studies, and that its practice of re-studying the Neptune project for the third time based on still another possible change in the grid amounts to an unjust and unreasonable act or practice. The Neptune project is an extremely important transmission project. To obtain financing, the project sponsors require an interconnection agreement in sufficient time to enable them to reserve the ship to lay the required cable and to assure that capacity is available to deliver the power that will be transported from the PJM service territory to LIPA. PJM already has re-studied this project once, and PJM's latest effort to re-study the project again will result in even further delays in obtaining financing and beginning construction. In my view, PJM's use of its re-study provision to delay a project every time there are potential changes in its configuration when no final decision is imminent regarding the contingency involved, particularly when that contingency may not even occur, is an unjust and unreasonable application of its tariff authority.

The re-study provision is intended to provide the transmission provider with some ability to recover known costs in the event a higher-queue project drops out. At the same time, it provides a project sponsor with some certainty as to its possible cost exposure,² which will enable a project sponsor to obtain financing and start to build its project. The re-study provision is not designed to permit a transmission provider to re-study the project to death by refusing to provide a project sponsor with the completed facilities study and interconnection agreement that the project needs to proceed on a reasonable construction schedule. PJM's continuous re-studies in this case are based on potential events that are difficult to anticipate and whose impact cannot be projected with reasonable certainty. Making continuous revisions for future events that may never occur, and whose finality is cannot be readily determined under the PJM tariff, in my view, constitutes an unreasonable practice. I would require PJM to provide Neptune with its final facilities study and interconnection agreement within 30 days, so that Neptune can obtain financing and proceed with its project.

Joseph T. Kelliher

² Its ultimate exposure cannot exceed the cost estimates of projects ahead of it in the queue.