

110 FERC ¶ 61,099
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket Nos. ER04-457-001
ER04-457-002
EL05-60-000

ORDER ON COMPLIANCE FILING AND REHEARING
AND ESTABLISHING SECTION 206 PROCEEDING

(Issued February 10, 2005)

1. This order addresses several filings pertaining to PJM Interconnection, L.L.C.'s (PJM) compliance with Order Nos. 2003 and 2003-A.¹ These include PJM's August 9, 2004 compliance filing to the Commission's July 8, 2004 order² in this proceeding in Docket No. ER04-457-002 and a request for rehearing of that order filed by Old Dominion Electric Cooperative (ODEC) in Docket No. ER04-457-001. Based on the Commission's decision in a complaint filed by Neptune Regional Transmission System, LLC (Neptune)³, the Commission is concerned that certain aspects of PJM's interconnection provisions relating to studies may not be just and reasonable and is instituting a section 206 proceeding to address such issue. The Commission accepts

¹ *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).

² *PJM Interconnection L.L.C.*, 108 FERC ¶ 61,025 (2004) (July 8 order).

³ *Neptune Regional Transmission System, LLC v. PJM Interconnection L.L.C.*, Docket No. EL05-48-000, compliant filed December 21, 2004.

PJM's compliance filing effective August 9, 2004, subject to further Commission action in the section 206 proceeding, and denies ODEC's request for rehearing. This order serves the public by assuring that PJM's tariff provisions governing interconnection facilities are just and reasonable.

Background

2. This proceeding began on January 20, 2004, when PJM, a Regional Transmission Organization (RTO), filed revisions to its open access transmission tariff to comply with Order No. 2003. The Commission's July 8 order accepted most of that compliance filing with five exceptions. The Commission permitted PJM to adopt a quarterly reconciliation for billings for facilities studies, required PJM to adopt provisions that permit an Interconnection Customer to suspend its project for up to three years, authorized the use of an Interim Interconnection Agreement design to reduce the parties' risk during a negotiating period, capped total collateral requirements at 125 percent of the total estimated construction costs, and required PJM to further justify its insurance provisions.⁴ The Commission also required PJM to modify its January 20 compliance filing where necessary to conform to Order No. 2003-A.⁵

3. On August 9, 2004, PJM made its compliance filing, requesting an August 9, 2004 effective date. On the same day ODEC filed a request for rehearing of the July 9 order in Docket No. ER04-457-001. ODEC's rehearing request addresses PJM's procedures for awarding Firm Transmission Rights (FTRs), Capacity Interconnection Rights (CIRs) and Auction Revenue Rights (ARRs) to interconnection customers required to make network upgrades to the PJM transmission grid.⁶ ODEC argues that there are no assurances that capacity created by Network Upgrades will result in FTRs, CIRs, or ARRs of sufficient value to provide recovery of the investment made by an Interconnection Customer.

4. ODEC has consistently challenged the "but for" provisions of the PJM tariff, which require an Interconnection Customer to pay 100 percent of the Network Upgrades that must be made for the Interconnection Customer to connect to the PJM grid. ODEC first did so by filing a complaint against PJM in Docket No. EL01-106-000, in which

⁴ *Id.* At P 12, 16, 17, 18, and 22.

⁵ *Id.* at Ordering Para. B.

⁶ FTRs are used as a hedge against congestion over specific paths on the PJM system. These are tradable in a monthly auction market that establishes their value. CIRs and ARRs can be created by upgrades to the system. ARRs are replacing FTRs on the PJM system.

ODEC asserted that PJM's procedures violate the Commission's policy against "and" pricing by failing to provide ODEC with transmission credits for improvements it made to the PJM managed transmission grid in order to obtain an interconnection.⁷ The Commission deferred action on the complaint stating that this issue would be addressed in the context of PJM's Order No. 2003 compliance filing.⁸

5. Longview Power, LLC (Longview) filed a motion to intervene and comment during the compliance phase of this proceeding. Longview asserts that PJM's tariff does not include provisions that are superior or even equivalent to Large Generator Interconnection Agreement (LGIA) articles 5.12 and 5.13. Those articles provide that transmission owners must facilitate interconnections that require rights of way and other land rights, in particular, where the land rights are required to construct facilities on the interconnection customer's side of the point of interconnection with the grid. Longview asserts that it is not clear whether PJM's tariff would prevent a PJM transmission owner from unreasonably refusing to provide a needed right of way for a connection that is to be located on the customer's side of the interconnection, or whether PJM is obligated to resolve a dispute. On September 4, 2004, PJM filed an answer. PJM objects to Longview's comments on grounds that this is a compliance filing and the issue Longview raises was never addressed by any prior Commission order. PJM further states that its tariff provisions provide all the obligation and authority required to assure that such a right of way is provided.

Discussion

A. The Compliance Filing and Request for Rehearing

6. The Commission accepts PJM's compliance filing with regard to the specific issues involved in that filing, subject to further Commission action. Regarding Longview's motion to intervene, the Commission discourages such motions during the compliance phase of proceeding because interventions at this point are likely to raise new issues, which serves to prolong and complicate the proceedings. The Commission concludes that Longview's motion to intervene is untimely and denies it. In any event, PJM adequately addresses the matter raised by pointing out that PJM Tariff section 82.2.1 requires transmission owners to acquire any property interests or rights of access to lands owned or controlled by third parties that are necessary to carry out the transmission owner's obligation to construct, operate, and maintain interconnection

⁷ See *Old Dominion Electric Cooperative v. PJM Interconnection, L.L.C. and PJM Interconnection L.L.C.*, 99 FERC ¶ 61,189 at 61,771 (2002).

⁸ *Id.* at 61,773.

facilities.⁹ This resolves Longview's concern whether a transmission owner must exercise its power of eminent domain on behalf of an interconnection customer if it is necessary to complete the interconnection.

7. The Commission also denies ODEC's request for rehearing. ODEC asserts here that it did not attack the "but for" pricing method contained in Order No. 2003. Rather, ODEC asserts that PJM's reimbursement mechanism is inadequate to provide the protection against "and" pricing the Commission determined was necessary in Order No. 2003. It asserts that the contingent nature of ARRs and FTRs and their amorphous character can not meet the well-defined capacity rights required by the Commission in Order No. 2003. It therefore requests that PJM be required to (1) provide transmission credits for all Network Upgrades that are determined by the Transmission Provider (PJM) to be required for the connection and which benefit all users, and (2) clarify that any ARRs associated with increased transfer capacity resulting from the interconnection should be allocated to the Interconnection Customer who funds the facilities.

8. ODEC's rehearing request is denied. Order No. 2003 does not require that the FTRs or ARRs have a value equal to the actual cost of the network upgrades funded by the interconnection customer, or that the interconnection customer receive any FTRs or ARRs. As explained in the July 8 order, because of the lower risk of discrimination against interconnection customers by an RTO, the Commission permits RTOs to require interconnection customers to pay for the incremental facilities that are required to support their interconnection to the grid. These include not only facilities required to connect the interconnection to the grid, but the improvements that are necessary to assure efficient transmission of the additional load that the interconnection customer will be delivering to PJM's grid.¹⁰ This in turn creates important incentives for efficiency.¹¹ Such improvements are known as local network upgrades and are the minimum necessary

⁹ See PJM's September 14, 2004 answer at 7-8.

¹⁰ The incremental facilities which the interconnection customer must pay for are limited to those identified as incremental by the transmission provider's study process using a proper baseline case developed under an appropriate tariff provision. See *Neptune Regional Transmission System, LLC v. PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,098 (2005). As discussed below, certain elements of PJM's study procedures will be examined further in the section 206 proceeding established by this order.

¹¹ July 8 order at P 19 and 20.

upgrades that would not have been incurred under the Regional Transmission Expansion Plan (RTEP),¹² and as such are considered “but for” facilities necessary to support the interconnection request.

9. As was further explained in detail in *FPL Energy Marcus Hook, L.P. v. PJM Interconnection, L.L.C.*,¹³ as a matter of general principle, all economic risk for network upgrades is borne by the interconnection customer once the appropriate universe of the risks has been defined. That risk includes that any FTRs and ARRAs issued to the interconnection customer may prove to have only limited value. ODEC’s argument for transmission credits assumes that there is some firm, quantifiable value contributed to the PJM system as a whole by the interconnection customer’s investment and that there are consistent benefits to be reaped by other customers that should be repaid to interconnection customer. To the contrary, the network upgrades required from an interconnection customer are based on the fact that those upgrades are not part of the RTEP plan. As noted, that plan reflects the collective judgment of the PJM system of what network improvements should be constructed precisely because they provide system benefits and are required.¹⁴ Thus FTRs and ARRAs provide an opportunity for the interconnection customer to collect revenue if demand is such that other customers use

¹² The RTEP reflects transmission enhancements and expansions, load and capacity forecasts and generation additions and retirements for the next ten years, and includes, at a minimum, which entity will own a transmission facility and how the costs will be recovered. *PJM L.L.C.*, 87 FERC ¶ 61,299 at 62,202, n. 40 (1999). *See also* Schedule 6 attached to PJM’s Operating Agreement, Third Revised Rate Schedule FERC No. 24, Sheets 182 through 188.

¹³ *FPL Energy Marcus Hook, L.P. v. PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,069 (2004), *order on rehearing*, 108 FERC ¶ 61,171 (*Marcus Hook*). *See* PP 2, 4, 14, 20, and 26 of that *Marcus Hook* rehearing order. For a detailed discussion of how PJM determines the interconnection customers’ obligation, see PP 16-19 of the *Marcus Hook* rehearing order.

¹⁴ As explained in *Marcus Hook*, there is an appeal process of this determination and the proposed network upgrades can be added to the RTEP if appropriate. Network upgrades constructed pursuant to the RTEP are added to the rate base of the relevant transmission owner. Network upgrades provided by an interconnection customer do not become part of the rate base of the relevant transmission owner and as such are not charged to the network users through the transmission owner’s usage charges.

some of the capacity that the interconnection customer was required to provide to meet its own needs. As such, the certainty that ODEC seeks is inconsistent with the incremental investment concept at the core of the PJM interconnection tariff. While the Commission has expressed concern regarding how PJM has calculated specific FTRs or ARRs,¹⁵ it has not found the concept itself to be unsound.¹⁶

B. Proceeding under Section 206 of the Federal Power Act.

10. Neptune filed a complaint asserting that PJM has improperly applied the interconnection study provisions of its tariff governing the proposed interconnection of merchant transmission facilities. The complaint alleges that PJM has construed its tariff to permit an open ended study process without outside limit to the number of studies, or revised studies, that can be conducted with regard to a particular interconnection request. In a companion order, the Commission is granting the complaint.¹⁷ While the Commission's ruling in the Neptune proceeding is limited to the facts presented in that complaint, the proceeding suggests that the restudy provisions of PJM's interconnection procedures may not be just and reasonable. Therefore, the Commission is instituting a proceeding under section 206 of the FPA directing PJM to explain within 30 days why the restudy procedures for generation and transmission interconnection projects should be considered just and reasonable.¹⁸ PJM must explain why the restudy provisions of its tariff should not be governed by the specific standards in Order No. 2003, including the rationale for any deviations from that order. The Neptune proceeding also concluded that PJM's procedures for establishing the baseline case for an interconnection study are unclear, and that as applied in that proceeding were not consistent with Commission policy. Therefore, in this proceeding PJM must also provide and justify a more explicit definition of the base line used in its interconnection studies to determine the incremental obligations of generation and transmission interconnection customers. A refund obligation will attach to this investigation 60 days after notice of this proceeding is published in the *Federal Register*.

¹⁵ *Marcus Hook*, 108 FERC ¶ 61,171 at P1 and 6.

¹⁶ For an example where the mechanics of FTRs and ARRs are discussed, *see id.*, PP 9-10.

¹⁷ *Neptune Regional Transmission System, LLC v. PJM Interconnection L.L.C.*, Docket No. EL05-48-000, 110 FERC ¶ 61,098 (2005).

¹⁸ The specific sections include Sections 36.4.3, 36.7.2, 41.4.3, and 41.6.2 of PJM's FERC Electric Tariff, Sixth Revised Volume No. 1.

The Commission orders:

(A) ODEC's request for rehearing in Docket No. ER04-457-001 is denied.

(B) PJM's compliance filing in Docket No. ER04-457-002 is accepted, effective August 9, 2004, subject to further Commission action in the section 206 proceeding established by this order.

(C) PJM is directed to file in Docket No. EL05-60-000 its response to the Commission's concerns with the existing restudy provisions in the interconnection portions of its tariff within 30 days from the date of the issuance of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held in Docket No. EL05-60-000 concerning the restudy provisions of PJM's tariff, as discussed in the body of this order.

(E) Any interested person desiring to be heard in the proceedings in Docket No. EL05-60-000 should file a notice of intervention or motion to intervene with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214) within 21 days of the date PJM makes the filing directed in Paragraph (C) above.

(F) The Secretary is directed to publish a notice of this section 206 proceeding in the *Federal Register*.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.