

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New PJM Companies	Docket Nos.	ER03-262-019
American Electric Power Service Corporation		ER03-262-000
Commonwealth Edison Company		
Dayton Power and Light Company		
Virginia Electric and Power Company		

and

PJM Interconnection, LLC

Commonwealth Edison Company	Docket Nos.	ER03-263-003
		ER03-263-000

ORDER GRANTING CLARIFICATION AND
TERMINATING PROCEEDINGS

(Issued March 30, 2005)

1. The Commission grants the clarification requested by the New PJM Companies, finding that the parties are not required to proceed to hearing on the rates filed in these dockets and terminating the proceedings in these dockets.

Background

2. On December 11, 2000, the New PJM Companies (American Electric Power Service Corporation (AEP), Commonwealth Edison Company (ComEd), Dayton Power and Light Company (DP&L), and Virginia Electric and Power Company) and PJM Interconnection, LLC (PJM) filed proposed revisions to PJM's Open Access Transmission Tariff (OATT) and operating agreement to enable the integration of the New PJM Companies into PJM. These revisions reflected the parties' understanding that AEP and ComEd would integrate into PJM by March 1, 2003.

3. On April 1, 2003, the Commission issued an order approving AEP's and ComEd's transfer of control over their transmission facilities to PJM.¹ The Commission accepted and suspended the tariff sheets, and set certain rate issues for hearing, subject to refund, to become effective as of the date of the transfer of AEP's and ComEd's facilities to PJM.

4. The hearing was suspended to allow settlement proceedings, but those settlement proceedings were terminated in December 2003.² The New PJM Companies allege that the parties did not begin the hearing after termination of settlement procedures, because intervening events had led the parties and Chief Administrative Law Judge Wagner to conclude that the issues set for hearing had become moot. In a report issued on May 7, 2004, the Chief Judge stated that:

the issues set for hearing herein have been rendered moot by superseding events, specifically (1) Commission orders in related proceedings, (2) changes to the timeline of companies' integration into PJM, (3) and changes to certain rate schedules filed to comply with the Commission's order approving the Going Forward Principles and Procedures³] that were negotiated under the Chief Judge's guidance. In addition, the state legal and regulatory issues impacting AEP's integration into PJM have superseded the rate issues set for hearing in this proceeding and the integration of AEP and DP&L into PJM will require new rate filings superseding tariff sheets in this proceeding.⁴

¹ *American Electric Power Service Corporation, et al.*, 103 FERC ¶ 61,008 (2003) (April 1 Order).

² While settlement proceedings were going on, the schedule for the integration of the New PJM Companies was altered, due to the fact that AEP did not receive approval from the necessary state authorities to transfer control of its transmission facilities to PJM in time for AEP to integrate into PJM in 2003. Ultimately, therefore, ComEd was the first of the New PJM Companies to integrate into PJM, doing so on May 1, 2004.

³ *Midwest Independent Transmission System Operator, Inc., et al.*, 106 FERC ¶ 61,262 at P6, P19 and P23 (2004) (order providing going forward principles for eliminating through and out rates between the Midwest Independent Transmission System Operator (Midwest ISO) and PJM).

⁴ *American Electric Power Service Corporation, et al.*, 107 FERC ¶ 63,032 at P 5 (2004) (Chief Judge Order).

5. The Chief Judge therefore found that the hearing originally ordered in the April 1 Order had become moot, and therefore returned the proceeding to the Commission for such further action as it deemed appropriate.

6. On May 20, 2004, PJM made a tariff filing in which it withdrew some of the tariff sheets previously submitted in this docket, and explained that the remainder of the tariff sheets submitted in this docket had been superceded or otherwise rendered moot by other orders or filings. The Commission accepted this filing on June 22, 2004.⁵

7. In a rehearing order issued on August 4, 2004, the Commission addressed issues that had been raised with respect to the proposals of AEP and ComEd relating to recovery of FERC Annual Charges. The Commission stated that "PJM and ComEd . . . should file a revised tariff provision providing for recovery of annual charges through the PJM mechanism, including data justifying any unrecovered 2003 annual charges to be included, or to explain why [a] separate tracker should be used."⁶ As to AEP, the Commission stated that "[r]ather than setting up a tracking system for these costs, when AEP joins PJM, PJM should include the appropriate amount of unrecovered 2004 annual charges in its annual charge assessment or explain why a separate tracker is justified"⁷ and that "the Commission will set for hearing the issue of whether AEP's cost-of-service once it joins PJM should be reduced to reflect the fact that its annual charges will now be collected through PJM's tracking mechanism."⁸

Request For Clarification

8. In a request for clarification filed on September 3, 2004, the New PJM Companies allege that, now that the Commission has issued its June 22 Order, there are no rates left as to which a hearing is required. They state that all of the issues set for hearing in Docket No. ER03-262 have either been rendered moot by intervening events, or superceded by subsequent filings. The New PJM Companies ask the Commission to clarify that all of the issues set for hearing in this proceeding have become moot, and that the parties therefore need not proceed to hearing.

⁵ Delegated Letter Order accepting filing in PJM Interconnection, LLC, Docket Nos. ER04-807-000 and ER04-807-001 (June 22, 2004) (June 22 Order).

⁶ *Id.*

⁷ *Id.* at P 28

⁸ *Id.* at P 29.

9. The New PJM Companies further request the Commission to withdraw its directive that PJM and the New PJM Companies revise the PJM OATT with regard to annual charges, and remove related provisions from the OATT,⁹ because the tariff sheets in question have been previously withdrawn or superseded. Absent clarification, the New PJM Companies seek rehearing on both of these issues.

Discussion

10. The Commission grants the request for clarification. In our June 22 Order, we accepted a filing that withdrew some of the tariff sheets filed in the New PJM Companies' original December 11, 2000 filing, and explained that the remainder of the tariff sheets submitted in this docket had been superseded or otherwise rendered moot. We, therefore, find that there is no further need for a hearing on the rates filed in this docket.

11. Since the parties' filings with respect to annual charges in these dockets have been withdrawn, we see no further need for proceedings with respect to these proposals. Issues with respect to collection of FERC Annual charges have been resolved in other dockets. As to ComEd's annual charges, PJM filed revisions to its OATT to reflect the terms and conditions for the collection of FERC Annual Charges for the ComEd Zone, which the Commission has now accepted.¹⁰ The issue of AEP's payment of annual charges addressed in paragraphs 28 and 29 of the August 4 Order has also been resolved by the issuance of an order on September 28, 2004 in which the Commission provided that AEP's annual charges will be collected through Schedule 9 of PJM's OATT.¹¹ Thus, all questions relating to the collection of annual charges by or on behalf of AEP and ComEd, after their integration into PJM, have become moot.

⁹ In the August 4 Order, the Commission stated at Ordering Paragraph C that "[w]ithin 60 days from the date of this order, New PJM Companies and PJM are directed to revise PJM's OATT with regard to annual charges and to remove the 'retroactive' language from the OATT."

¹⁰ Delegated Letter Order, Docket No. ER05-114-000, December 10, 2004.

¹¹ PJM Interconnection, LLC, 108 FERC ¶ 61,318 at P 58 (2004).

The Commission orders:

A. The parties are not required to proceed to hearing on any of the rates in this docket, and ComEd and PJM are not required to file a revised tariff provision providing for recovery of ComEd's annual charges through PJM's mechanism.

B. The proceedings in Docket No. ER03-262-000, ER03-263-000, ER03-262-019 and ER03-263-003 are terminated.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.