

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Jersey Central Power & Light Company

Docket No. ER04-727-003

ORDER ON REHEARING

(Issued March 8, 2005)

1. Jersey Central Power & Light Company (Jersey Central) has requested rehearing of an unpublished delegated letter order issued by the Commission on July 16, 2004.¹ In the July 16 Order, the Commission accepted for filing revisions to an existing interconnection agreement filed by Jersey Central, but required that PJM Interconnection, L.L.C. (PJM) file and be a signatory to the revised interconnection agreement. We will grant Jersey Central's request for rehearing. This order benefits customers because it clarifies the applicability of certain PJM tariff provisions to the revised interconnection requirement at issue in this proceeding.

Background

A. The Filing

2. On April 9, 2004, Jersey Central filed a revision to an existing interconnection agreement under the PJM Open Access Transmission Tariff (OATT) between itself and Ocean Peaking Power, L.P. (Ocean Peaking). Jersey Central and Ocean Peaking revised the agreement to provide for an up-front payment from Ocean Peaking to Jersey Central in lieu of monthly payments. This up-front payment included the cost of interconnecting Ocean Peaking's facility to Jersey Central's transmission system and the net present value of twenty-five years of costs for the operation and maintenance of the interconnection facilities. Further, the agreement was amended to outline Ocean Peaking's responsibility to pay income taxes on the interconnection facilities, and to

¹ Unpublished delegated letter order dated July 16, 2004, Docket Nos. ER04-727-000, ER04-727-001 and ER04-727-002 (July 16 Order).

include a provision regarding the sharing of confidential information with the Commission and its staff pursuant to *Carolina Power & Light Company*.²

3. In Docket Nos. ER04-727-001 and ER04-727-002, Jersey Central filed amendments to its initial filing to include cost support data as requested by Commission Staff.

B. July 16 Order

4. The July 16 Order accepted the revised interconnection agreement for filing, subject to PJM filing a revised agreement within 30 days of the date of the order. The July 16 Order noted that because the agreement was filed as a service agreement under the PJM OATT, PJM must file the revised interconnection agreement under the settlement agreement approved by the Commission in *Pennsylvania-New Jersey-Maryland Interconnection*.³ Additionally, the order stated that PJM must be a signatory to the revised interconnection agreement, citing *American Transmission Company, LLC*.⁴

Request for Rehearing

5. On August 16, 2004, Jersey Central filed a request for rehearing of the July 16 Order. Jersey Central argues that the Commission erred by requiring that PJM file the revised interconnection agreement, and by requiring that PJM become a signatory to the agreement.

6. With regard to the requirement in the July 16 Order that PJM file the revised interconnection agreement, Jersey Central argues that the settlement agreement in *Pennsylvania-New Jersey-Maryland Interconnection* does not apply to service agreements. According to Jersey Central, the settlement agreement provides that the transmission owners in PJM “shall have the exclusive and unilateral right to make section 205 filings regarding: (i) the establishment and recovery of the PJM [Transmission Owners’] revenue requirements under the PJM OATT; (ii) the transmission rate design

² 97 FERC ¶ 61,193 (2001).

³ 105 FERC ¶ 61,294 (2003). That settlement agreement addresses the rights of the Transmission Owners and PJM to make filings under section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2000), concerning their respective interests in transmission facilities operated (but not owned) by PJM.

⁴ 107 FERC ¶ 61,261 (2004).

under the PJM OATT; and (iii) incentive and performance-based rates.”⁵ Jersey Central contends that the settlement agreement makes no mention of the filing of service agreements under section 205 of the Federal Power Act,⁶ and thus does not give PJM authority, exclusive or otherwise, to file such agreements.

7. Jersey Central makes several additional arguments regarding the requirement in the July 16 Order that PJM file the revised agreement. For example, Jersey Central contends that under the PJM OATT, PJM will file new interconnection service agreements, but pre-existing interconnection agreements such as this one are grandfathered. Additionally, Jersey Central asserts that the requirement in the July 16 Order that PJM file the revised interconnection agreement is contrary to the D.C. Circuit’s ruling in *Atlantic City Electric Company, et al. v. FERC*⁷ because it requires Jersey Central to give up its section 205 right to file the agreement. Jersey Central also notes that while it could have voluntarily given up its right to file the revised interconnection agreement, it explicitly retained this right through an agreement reached through the stakeholder process to develop PJM’s standard terms and conditions for generator interconnections filed in Docket No. ER02-1333-000. According to Jersey Central, PJM confirmed this explicit agreement of the stakeholders regarding the filing of amendments to pre-existing interconnection agreements in its answer in Docket No. ER02-1333-000.⁸

8. With regard to the second requirement, that PJM be a signatory to the revised interconnection agreement, Jersey Central states that it “appears to be premised on the assumption that PJM has no contractual relationship with [Ocean Peaking] under which it can ensure the safety and reliability of the transmission system.”⁹ It points out, however, that PJM and Ocean Peaking are parties to a separate interconnection agreement that requires Ocean Peaking to abide by all PJM rules regarding generation, including the

⁵ Request for Rehearing of Jersey Central at 3.

⁶ 16 U.S.C. § 824d (2000).

⁷ 295 F.3d 1 (D.C. Cir. 2002).

⁸ Answer of PJM filed April 23, 2002 in Docket No. ER02-1333-000, at 15. The Commission accepted PJM’s standardized interconnection terms and conditions for filing and suspended them for five months subject to refund and to the Commission’s final rule on generator interconnection in Docket No. RM02-1-000. *See Old Dominion Electric Cooperative v. PJM Interconnection, LLC*, 99 FERC ¶ 61,189 (2002).

⁹ Request for Rehearing of Jersey Central at 6.

rules related to dispatch of generation under the PJM Operating Agreement. For this reason, Jersey Central contends that *American Transmission Company, LLC* is distinguishable, because in that case the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) had no contractual relationship with the interconnection customer. Additionally, Jersey Central contends that *American Transmission Company, LLC* is inapplicable here because in that case the Midwest ISO's Operating Protocol specifically provided that Midwest ISO could supersede prior agreements if they were later amended by the parties, while here PJM's standard interconnection rules do not provide PJM with such authority. Further, Jersey Central argues that the interconnection agreement between itself and Ocean Peaking is grandfathered under both PJM's standard interconnection rules and the Commission's generator interconnection regulations set forth in Order No. 2003.¹⁰ Jersey Central asserts that the amendment to the interconnection agreement could not have eliminated the grandfathered status of the agreement because Order No. 2003 does not provide that minor amendments to grandfathered interconnection agreements are considered new agreements that would eliminate grandfathered status.

Intervention

9. On August 16, 2004, Ocean Peaking Power, LLC, filed a motion for leave to intervene out of time.

Discussion

10. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention.¹¹ Ocean Peaking Power, LLC has not met this higher burden of justifying its late intervention.

¹⁰ *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).

¹¹ *See, e.g., Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,250 at P 7 (2003).

11. The Commission will grant rehearing. Upon further review, we agree with Jersey Central that the provisions of the PJM OATT (including those sections included as a result of the settlement agreement in *Pennsylvania-New Jersey-Maryland Interconnection*) do not require that PJM file this revision to an existing interconnection agreement. Section 9 of the OATT, governing regulatory filings by PJM and the Transmission Owners participating in PJM, does not give PJM exclusive unilateral authority to file minor revisions to existing interconnection agreements.¹² Jersey Central thus retains its right to file the revision under section 205 of the FPA, in the absence of a specific reservation of that right to PJM. Furthermore, because the revision to the existing interconnection agreement between does not “increase the capacity of a generating unit in the PJM Region,” PJM’s interconnection procedures in its OATT (under which PJM would file the agreement) do not apply.¹³

12. With regard to the requirement that PJM be a signatory to the revised interconnection agreement, we find, after reconsideration, that our reasoning in *American Transmission Company, LLC* is inapplicable to this case, which involves an interconnection agreement that pre-dates PJM’s Order No. 2003 compliance provisions. In that order and another case,¹⁴ the Commission considered amended interconnection agreements in the Midwest ISO. We noted there that Midwest ISO’s Operating Protocol specifically provides that interconnection agreements predating the Midwest ISO remain in effect until modified or terminated by the parties pursuant to section 205 or 206 of the FPA, but that when such a change occurs, Midwest ISO has authority to supersede the prior agreements.¹⁵ PJM, however, lacks similar authority. As we noted above, PJM’s interconnection procedures, filed in compliance with Order No. 2003, apply to pre-existing interconnection agreements only when there is an increase in the capacity of the generating facility. Therefore, the requirement that PJM be a signatory to interconnection agreements does not apply to the revisions at issue here.

¹² See PJM Interconnection, L.L.C., FERC Electric Tariff, Sixth Revised Volume No. 1, Substitute First Revised Sheet No. 52.02 (section 9.2).

¹³ See PJM Interconnection, L.L.C., FERC Electric Tariff, Sixth Revised Volume No. 1, Second Revised Sheet No. 95 (Part IV Preamble).

¹⁴ See *Cinergy Services, Inc.*, 107 FERC ¶ 61,260 (2004).

¹⁵ *American Transmission Company, LLC*, 107 FERC ¶ 61,261 at P 14; *Cinergy Services, Inc.*, 107 FERC ¶ 61,260 at P 13 (both citing section 1.2.1 of the Midwest ISO’s Operating Protocol).

13. As a result of the grant of rehearing in this order, the revised interconnection agreement filed by Jersey Central on April 9, 2004, as amended on May 21, 2004 and May 27, 2004, is accepted for filing, effective March 10, 2004, as designated.

The Commission orders:

(A) The request for rehearing filed by Jersey Central is hereby granted, as discussed in the body of this order.

(B) The revised interconnection agreement is accepted for filing, effective March 10, 2004, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.