

102 FERC ¶ 61,275
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Occidental Chemical Corporation

v.

Docket Nos. EL02-121-001
and EL02-121-002

PJM Interconnection, L.L.C. and
Delmarva Power & Light Company

ORDER ON COMPLIANCE FILING
AND REHEARING

(Issued March 12, 2003)

1. On November 12, 2003, PJM Interconnection, L.L.C. (PJM) made a compliance filing, in Docket No. EL02-121-002, in response to an order issued by the Commission on October 10, 2002.¹ In addition, Occidental Chemical Corporation (Occidental) sought rehearing of the October 10 Order, in Docket No. EL02-121-001. For the reasons discussed below, we find that PJM's allocation of its network access charge costs (the issue addressed by its compliance filing) is unjust and unreasonable, to the extent this methodology adds back certain curtailed load in determining a customer's coincident peak usage. In addition, we will deny Occidental's request for rehearing, for the reasons discussed below.

2. Our determination, herein, concerning PJM's allocation of its network access charge costs, is in the public interest because it ensures that PJM allocates its transmission charges to those using the system on peak and helps ensure that customers have incentives to curtail load during peak periods.

¹Occidental Chemical Corporation v. PJM Interconnection, L.L.C. and Delmarva Power & Light Company, 101 FERC ¶ 61,005 (2002) (October 10 Order).

Background

3. On August 16, 2002, Occidental filed a complaint with the Commission alleging that the retail service it had been offered by Delmarva Power & Light Company, d/b/a Connectiv Power Delivery (Delmarva), which began November 1, 2002, would significantly increase the rates Occidental was previously paying Delmarva under a retail rate freeze, due in part to certain rates, terms and conditions assessed by PJM. Specifically, Occidental challenged PJM's calculation of its network access charge pursuant to Section 34.1 of the PJM open access transmission tariff (OATT).² In addition, Occidental challenged PJM's existing procedures for allocating Financial Transmission Rights (FTRs).

4. In the October 10 Order, the Commission noted that part of the formula for allocating PJM's network access charge costs, *i.e.*, the component which is based on a customer's actual load (both firm and non-firm) coincident with the annual peak of the zone, was reasonable. Nonetheless, the Commission found that PJM's practice of adding back curtailed load to its calculation appeared inconsistent with the underlying rationale of reducing a customer's costs when it reduces load during system peaks. The October 10 Order further noted that relying on curtailed loads to allocate PJM's access charge costs may create a disincentive for load serving entities (LSEs) to implement load response programs on their own systems, since LSEs would be charged for system costs regardless of whether they curtail load during system peaks. Based on these findings, we required PJM to revise Section 34.1 of its OATT by removing "curtailed load" as an allocation factor, or, in the alternative, to provide an explanation of why such an allocation factor is warranted.

5. The October 10 Order also held that to maximize the benefits of retail competition, PJM's FTR allocation procedures should reflect load shifts. We noted, however, that PJM had initiated a stakeholder process to accomplish this objective and that PJM's stakeholders should be afforded a reasonable opportunity to develop the rules and procedures necessary to allow FTR rights to follow load. Accordingly, we directed PJM to modify its existing procedures and to make a filing reflecting these modifications by no later than April 1, 2003.

²The Section 34.1 demand charge is designed to recover the embedded costs of PJM's transmission facilities and the associated revenue requirements of PJM's transmission owners. It is based on a network customer's daily load coincident with the annual peak of the zone in which the load is located plus any curtailed load coincident with the annual peak of the zone.

PJM's Compliance Filing

6. In its compliance filing, PJM defends its use of curtailed load as an allocation factor under Section 34.1, noting, as a threshold matter, that this allocation factor does not include all curtailed load. Rather, PJM states that curtailed load, as used under Section 34.1, includes only those curtailments attributable to emergency generation capacity shortages, *i.e.*, to "mandatory load reduction as a result of PJM and/or local control center directions to reduce load due to a system emergency condition." PJM states that these emergency load reductions include load reductions made pursuant to PJM's active load management (ALM) program and loads effectively reduced as a result of PJM's emergency load response (E-LRP) program.

7. PJM further states that the inclusion of these generation-related curtailments in its allocation factor, under Section 34.1, is fully consistent with PJM's transmission planning procedures, as specified by the Mid-Atlantic Area Council, which make no planning allowances for curtailments caused by generation emergencies. Specifically PJM states that its transmission planning procedures add back into actual metered peak demand any emergency load reductions, because in these circumstances a load may still be served by PJM if there are imports available from outside the PJM region. PJM therefore concludes that its curtailed load add-back, under Section 34.1, is fully justified and should remain in effect, without revision.

Occidental's Request For Rehearing

8. In its request for rehearing of the October 10 Order, Occidental asserts that the Commission erred by not requiring a reallocation of Delmarva's FTRs, effective November 1, 2002. Occidental asserts that this requested timetable for reallocating Delmarva's FTRs is both feasible and fully consistent with the underlying rationale relied upon by the Commission in its order. Occidental also asserts as error the Commission's failure to require PJM to modify Section 34.1 of its OATT, as requested, effective November 1, 2002.

Notice of PJM's Compliance Filing and Responsive Pleadings

9. Notice of PJM's compliance filing was published in the Federal Register,³ with interventions and protests due on or before December 9, 2002. Motions to intervene were timely filed by the PJM Industrial Customer Coalition (PJM Industrials), the

³67 Fed. Reg. 72,157 (2002).

Electricity Consumers Resource Council (ELCON), and Occidental Power Services, Inc. (OPSI). In addition, comments and protests were filed by Delmarva and Public Service Electric and Gas Company (Delmarva, et al.), ELCON, PJM Industrials, OPSI, and Occidental.

10. Comments generally supportive of PJM's compliance filing were submitted by Delmarva, et al., who assert that adding curtailed load to PJM's access charge allocation factor is appropriate for the reasons relied upon by PJM. OPSI, Occidental, ELCON, and PJM Industrials, on the other hand, challenge PJM's allocation formula, arguing that PJM's network access charge should be designed to charge network customers for their contribution to peak usage of the system alone. They assert that Section 34.1's add-back of certain curtailed load, in this regard, fails the test of cost causation. ELCON adds that the alleviation of emergency conditions, however caused, incurs benefits and therefore costs associated with such actions should be allocated to the appropriate beneficiaries. OPSI and Occidental submit that while the need for system relief during emergencies on the PJM system has not disappeared, PJM's allocation formula under Section 34.1 provides LSEs no incentive to establish or maintain curtailment programs to retail load.

11. Finally, PJM Industrials assert that it is unclear whether, as PJM contends, load resources participating in PJM's ALM and E-LRP programs are required to respond to generation emergencies alone. PJM Industrials assert that, in fact, ALM customers that are required by retail tariffs or contracts to reduce load in response to transmission limitations should be assured that they receive the benefit of their reductions commensurate with the value to the transmission system. PJM Industrials further assert that if PJM is calling upon ALM or E-LRP resources for transmission contingencies, customers should receive both the generation and transmission benefit of not contributing to system peak loads. PJM Industrials conclude that ALM and E-LRP interruption amounts should not be added back to a network customer's actual loads under Section 34.1.

Discussion

Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁴ the timely, unopposed motions to intervene filed by PJM Industrials, ELCON, and OPSI, in Docket No. EL02-121-002, serve to make these entities parties to this proceeding.

⁴18 C.F.R. § 385.214 (2002).

Allocation of PJM's Network Access Charge Costs

13. We find that Section 34.1 of the PJM OATT is unjust and unreasonable for the reasons discussed below, and will therefore require PJM, within 30 days of the date of this order, to file revised tariff sheets removing the add-back for curtailed load. Consistent with Section 206(b) of the Federal Power Act (FPA),⁵ we will set a refund effective date of November 1, 2002, as requested by Occidental, a date which is more than 60 days from the filing of Occidental's complaint. PJM will be required to determine refunds and surcharges to comply with this order, including interest as allowed under our regulations.⁶

14. Access charges for use of PJM's transmission system should be allocated to network customers based on a network customer's actual use of PJM's system, consistent with the principle of cost causation. While PJM's consideration of curtailed loads may be one of many factors that is appropriate to consider for transmission planning purposes, its inclusion as an allocation factor, under Section 34.1, is not justified.⁷ Specifically, while PJM appears to suggest that its add-back tracks actual usage (because, in this instance, PJM's transmission system can still be used by a network customer if there are imports available from outside the PJM region), PJM has not documented how and to what extent its system is in fact used under these circumstances. Therefore, we find that the effect of PJM's allocation adjustment is to increase network charges to customers that curtail load during emergencies and could dampen participation in demand side response programs.

15. PJM concedes that its voluntary economic load reduction program, as well as customer conservation during peak periods, serve to reduce a customer's peak demand for purposes of allocating PJM's network access charges. We find that there is not sufficient justification for treating curtailed load (under PJM's emergency load response or other load reduction programs) differently. For example, on the same day, the load reduction reflected by a customer that voluntarily reduces load in order to receive the locational marginal price (LMP) under the economic load response program, will not be added-back, while another customer voluntarily reducing load to receive the LMP, under the emergency load response program, will have its load added back. As PJM Industrials

⁵16 U.S.C. § 824(e) (2000).

⁶18 C.F.R. § 35.19a (2002).

⁷Under PJM's bid-based system, high congestion prices are the principal indicator of a need for new transmission or generation.

points out, however, customers that reduce load under ALM and E-LRP curtailments should not be treated differently than other load reductions since all such reductions benefit the system.

16. Further, PJM's add-back provision is not consistent with the need to encourage load response during periods when generation or transmission are in short supply and prices are rising. Under PJM's tariff, an LSE that adopts a load response program in such circumstances is treated no differently (receiving the same allocation of transmission costs) as an LSE that has not initiated a load response program. PJM maintains that if these curtailed loads are not added back to the peak usage other customers would have to bear a greater proportion of the costs of the transmission system. But such a higher allocation is not unreasonable, as PJM suggests. The other customers are making greater use of the system during the system coincident peak and are therefore justifiably assigned a larger percentage of the costs. Indeed, as the protesters point out, what is unreasonable is PJM's current tariff which charges customers a higher rate on peak than their actual usage would support.

17. For these reasons, we find that Section 34.1 of PJM's tariff is unjust and unreasonable. Accordingly, we will require PJM, within 30 days of the date of this order, to remove its curtailed load add-back provision from its network access charge allocation factor and make any conforming changes, as may be necessary.

Implementation of PJM's FTR Allocation Revisions

18. We will deny Occidental's request for rehearing regarding PJM's implementation timetable for its FTR allocation revisions. Occidental asserts that the Commission could have granted the relief Occidental requested with respect to its claimed FTR entitlements, effective November 1, 2002, and could have done so under PJM's existing FTR allocation procedures, *i.e.*, without revision to the PJM OATT or to PJM's operating agreements. However, in a complaint proceeding filed pursuant to Section 206 of the FPA, Occidental has the burden of proof to demonstrate that the terms and conditions it seeks to revise are unjust and unreasonable and, conversely, that the revisions it proposes are just and reasonable. Occidental has failed to meet this burden here.

19. First, we reject Occidental's suggestion that the relief it seeks should be implemented (effective November 1, 2002) with respect to Occidental alone. That mandate would be discriminatory as to other customers similarly situated. Second, Occidental fails to elaborate on, or otherwise support, the claimed feasibility of implementing the relief it seeks on a systemwide basis to be effective November 1, 2002, which other parties in this case, including PJM, dispute. PJM, for example, noted that in

order to implement Occidental's proposed revisions on a systemwide basis, it would be required to address a number of technical implementation issues, including software issues, as well as implementation options. PJM suggested, and we agreed in the October 10 Order, that this undertaking would be best accomplished in the context of a broad, stakeholder process to develop the rules and procedures for determining the FTRs to be assigned to the load. There may be a variety of different methods for reallocating FTRs as load shifts. Occidental, in its complaint, did not specify a methodology for assigning FTRs as load shifts, and the Commission determined that PJM, through its stakeholder process, should be given a reasonable time to develop a fair and equitable method for such an allocation.⁸

20. Finally, Occidental has not met its burden in this case because it has failed to show that the relief it seeks justifies the cost to other customers of upsetting PJM's FTR allocation scheme in mid cycle. When Delmarva acquired the FTRs it currently holds, it did so with the expectation that those FTRs would remain in effect until the June reallocation. We find no compelling reason offered on this record for undermining the commitments made based on these expectations. Under these circumstances, we find that Occidental has not demonstrated that the revisions it seeks could have been implemented justly and reasonably, effective November 1, 2002. Based on the evidence presented, we reaffirm, here, our determination in the October 10 Order that the revisions Occidental seeks should be considered under the expedited time table envisioned under PJM's stakeholder process.

21. Accordingly, we find that, in exercising our authority under Section 206 of the FPA, it was appropriate to require PJM to use its stakeholder process in order to craft a comprehensive proposal for determining how FTRs will follow load, rather than attempting to craft an ad hoc provision applicable to only one customer. Indeed, PJM has filed such a proposal in ER03-406-000, which we are accepting today in a companion order.⁹

⁸In fact, on January 10, 2003, PJM submitted for filing, in Docket No. ER03-406-000, amendments to the PJM OATT and PJM Operating Agreement to, among other things, allow congestion rights (in the form of Auction Revenue Rights) to follow load. See PJM Interconnection, L.L.C., 102 FERC ¶ 61,276 (2003) (PJM FTR Order).

⁹See PJM Interconnection, L.L.C., Docket No. ER03-406-000, 102 FERC ¶ 61,276 at P.54.

Docket Nos. EL02-121-001 and EL02-121-002

- 8 -

The Commission orders:

(A) PJM's compliance filing, in Docket No. EL02-121-002, is hereby rejected, as discussed in the body of this order.

(B) PJM is hereby directed, within 30 days of the date of this order, to make a compliance filing, removing from Section 34.1 of PJM's OATT, its use of "curtailed load" as an allocation factor, as discussed in the body of this order. In its compliance filing, PJM, consistent with Section 206(b) of the FPA and our findings made herein, shall also be required to determine refunds and surcharges to comply with this order, including interest, as allowed by 18 C.F.R. § 35.19a, based on a refund effective date of November 1, 2002. A report detailing these refunds and surcharges shall be made by PJM within 60 days of the date that refunds and surcharges are made.

(C) Occidental's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.