

103 FERC ¶ 61,170

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pennsylvania-New Jersey-Maryland
Interconnection
006

Docket Nos. OA97-261-004,
OA97-261-005, ER97-1082-
and ER97-1082-007

Atlantic City Electric Company, Baltimore
Gas and Electric Company, Delmarva Power
& Light Company, Jersey Central Power &
Light Company, and Metropolitan Edison
Company

Docket Nos. ER97-3189-032 and
ER97-3189-033

Pennsylvania Electric Company, Pennsylvania
Power & Light Company, Potomac Electric
Power Company, Public Service Electric and
Gas Company, Atlantic City Electric Company,
Baltimore Gas and Electric Company, Delmarva
Power & Light Company, Jersey Central Power
& Light Company, and Metropolitan Edison
Company

Docket Nos. EC97-38-003 and
EC97-38-004

Pennsylvania Electric Company, Pennsylvania
Power & Light Company, Potomac Electric
Power Company, Public Service Electric and Gas
Company, and Pennsylvania-New Jersey-
Maryland Interconnection Restructuring

Docket Nos. ER97-3273-003 and
ER97-3273-004

Pennsylvania-New Jersey-Maryland
Interconnection Restructuring

Docket Nos. EL97-44-003 and
EL97-44-004

PJM Interconnection, L.L.C.

Docket Nos. OA97-678-003 and
OA97-678-004

Docket No. OA97-261-004, et al.

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Atlantic City Electric Company, Baltimore
Gas and Electric Company, Delmarva Power
& Light Company, Jersey Central Power &
and
Light Company, Metropolitan Edison
Company, Pennsylvania Electric Company,
Pennsylvania Power & Light Company,
Potomac Electric Power Company, and
Public Service Electric and Gas Company

Docket Nos. ER96-2516-005,
ER96-2516-006, EC96-28-005,
EC96-28-006, EL96-69-005,

EL96-69-006

PECO Energy Company

Docket Nos. ER96-2668-005,
ER96-2668-006, EC96-29-005
and EC96-29-006

ORDER GRANTING IN PART AND DENYING
IN PART REHEARING AND ACCEPTING COMPLIANCE FILING

(Issued May 14, 2003)

1. The PJM Transmission Owners Group (PJM TOs)¹ and PECO Energy Company (PECO) seek rehearing and clarification of the Commission's order on remand issued in this proceeding on December 19, 2002.² In the PJM Remand Order, we responded to an order issued by the United States Court of Appeals for the District of Columbia Circuit in Atlantic City Electric Company, et al. v. FERC,³ wherein the court addressed certain rulings made by the Commission in its orders conditionally authorizing the establishment

¹The PJM TOs are comprised of the following entities: Baltimore Gas & Electric Company; Jersey Central Power & Light Company; Metropolitan Electric Company; Pennsylvania Electric Company; PPL Electric Utilities Corporation; Rockland Electric Company; Allegheny Power Service Company; and Public Service Electric and Gas Company (PSE&G).

²Pennsylvania-New Jersey-Maryland Interconnection, et al., 101 FERC ¶ 61,318 (2002) (PJM Remand Order).

³295 F.3d 1 (D.C. Cir. 2002) (Atlantic City).

of PJM Interconnection, L.L.C. (PJM) as an independent system operator (ISO).⁴ In the PJM Remand Order, we responded to the court's rulings, addressing, among other things, (1) the balance of rights, under Section 205 of the Federal Power Act (FPA),⁵ between a public utility regional transmission organization (RTO) (here, PJM, which, as discussed below, has now become an RTO) and its member public utilities, i.e., PJM's transmission owners; and (2) the obligation of PJM's transmission owners to apply for and receive authorization from the Commission, under Section 203 of the FPA,⁶ prior to withdrawing from PJM. The PJM TOs and PECO seek rehearing and clarification regarding these issues.⁷

2. We also address in this order a compliance filing made by the PJM TOs, in Docket No. OA97-261-005, et al., in which the PJM TOs renew their request for their originally-proposed allocation of Section 205 filing rights in this proceeding, as between PJM and PJM's transmission owners.⁸ The PJM TOs assert that their originally proposed allocation of these rights is fully consistent with the Commission's policies, that it would

⁴These underlying orders were issued by the Commission in Pennsylvania-New Jersey-Maryland Interconnection, et al., 81 FERC ¶ 61,257 (1997), order on reh'g, 92 FERC ¶ 61,282 (2000).

⁵16 U.S.C. § 824d (2000).

⁶Id. at § 824b.

⁷In the PJM Remand Order, the Commission also addressed a third issue – whether a 1992 bundled, wholesale power sales contract between PSE&G and Old Dominion Electric Cooperative (ODEC) can (and should) be reformed to reflect the subsequent establishment of the PJM ISO. No party has sought rehearing of the Commission's determination, on remand from the court, that the parties have not demonstrated the type of particularized, public interest considerations necessary for reformation of that contract.

⁸In the PJM Remand Order, we allowed the PJM TOs to provide this update, given our recent orders in which we have granted transmission owners, ISOs, and RTOs greater flexibility in allocating their respective Section 205 filing rights and responsibilities. See PJM Remand Order, 101 FERC ¶ 61,318 at P 31-37 (citing, among other cases, TRANSLink Transmission Company, 99 FERC ¶ 61,106 (2002)).

honor the independence of the PJM ISO (now RTO⁹), and that any filings made by the transmission owners under this proposal would be subject to both PJM as well as Commission oversight and approval. The PJM TOs state that, under their proposal, PJM's transmission owners would make rate and tariff filings relating to their facilities, subject to the following conditions: (1) a two-thirds majority vote by PJM's transmission owners supporting any such filing; (2) the right of the PJM Board to veto the filing based on only a simple majority vote; and (3) the continued independent, decision-making responsibility of the PJM RTO for all tariff and system operations functions.

3. As we discuss below, we recognize the value and importance of giving PJM's transmission owners a forum to formulate their own Section 205 proposals regarding the assets they own. However, the PJM transmission owners' Section 205 rights should not and would not detract from PJM's right, as a public utility, to make its own Section 205 filings, and also would be further subject, as the PJM TOs propose, to the right of PJM to veto any proposal made by PJM's transmission owners, based on a simple majority vote of the PJM Board. Giving both PJM and PJM's transmission owners filing authority, in this way, properly balances the interests of the public utility RTO and the public utilities whose facilities the RTO operates and controls. This allocation of rights, moreover, will benefit customers by preserving the statutory rights of PJM's transmission owners to the greatest extent feasible under our Section 205 balancing analysis, while, at the same time, ensuring the no-less-important statutory rights and continued independence of the PJM RTO.

4. As for Federal Power Act (FPA) Section 203, we continue to disagree with the PJM TOs as to statutory basis of their obligation to secure Commission authorization prior to withdrawing from PJM.

Background

5. In Atlantic City, the court determined, among other things, that the Commission's decision in its underlying orders to prohibit PJM's transmission owners from unilaterally filing for tariff and rate design changes, as proposed, violated the right of the PJM transmission owners under Section 205 of the FPA.¹⁰ The court held, therefore, that the Commission should not have vested in the PJM ISO the exclusive and independent authority to make Section 205 filings concerning facilities owned by PJM's transmission

⁹See PJM Interconnection, L.L.C., 101 FERC ¶ 61,345 (2002) (PJM RTO Status Order).

¹⁰Atlantic City, 295 F.3d at 9-11.

owners. In addition, the court determined that the Commission's decision to prohibit PJM's transmission owners from leaving the ISO, without first securing the Commission's authorization under Section 203 of the FPA, was inconsistent with the structure and meaning of this statutory provision.¹¹ The court held that a public utility, under the FPA, does not engage in the acts required to trigger the Commission's Section 203 jurisdiction, *i.e.*, it does not "sell, lease, or otherwise dispose" of its facilities, when it withdraws from an ISO. Based on these rulings, among others, the court vacated and remanded our underlying orders.

6. In the PJM Remand Order, we acknowledged that in our underlying orders, we had failed to adequately explain the specific public utility functions assigned to PJM by the various agreements giving rise to the PJM ISO, and had failed to address the full regulatory implications associated with these duties and functions under Section 205 of the FPA.¹² We noted that because, under Section 201(e) of the FPA,¹³ PJM's transmission owners and PJM are both public utilities with respect to the same facilities, the task of the Commission, under these circumstances, was to balance the Section 205 rights and responsibilities of these entities consistent with the regulatory objectives giving rise to the PJM ISO, *i.e.*, consistent with our statutory mandate to ensure the provision of non-discriminatory transmission services at just and reasonable rates. We concluded that while PJM's transmission owners should continue to have the exclusive right to file for recovery of their revenue requirements, the PJM ISO must have the exclusive right to file rate design and related tariff provisions.¹⁴

7. We also reviewed the implications of PJM's public utility status relative to our Section 203 authority.¹⁵ We noted (in much greater detail than we had in our prior

¹¹Id. at 11-13.

¹²PJM Remand Order, 101 FERC ¶ 61,318 at P 22.

¹³16 U.S.C. § 824(e) (2000).

¹⁴As discussed below, however, we also noted that in more recent cases, we had allowed greater flexibility in the allocation of these rights and that we would consider alternative proposals, as might be appropriate. See PJM Remand Order, 101 FERC ¶ 61,318 at P 33-37.

¹⁵Section 203 provides, in relevant part, that "[n]o public utility shall sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the

orders) the specific duties and functions transferred to the ISO pursuant to the PJM Operating Agreement and the PJM Transmission Owners Agreement, and the extent to which these duties and functions differed from those exercised by PJM under its predecessor agreements governing the PJM power pool.¹⁶ We concluded that because a transmission owner's withdrawal from the PJM ISO would result in the transfer of the ISO's jurisdictional, public utility functions, the Commission must have the authority to approve any such transfer under Section 203.

Requests for Rehearing and Clarification

8. The PJM TOs argue that the Commission erred in the PJM Remand Order, when it failed to vest exclusive Section 205 filing authority in PJM's transmission owners, subject to the terms and conditions originally proposed by the PJM TOs in this proceeding.¹⁷ The PJM TOs assert that this reservation of rights strikes the necessary balance of interests as between PJM and PJM's transmission owners, and is appropriate given the PJM transmission owners' ownership interests in the facilities at issue and the regulatory protections that inhere under the FPA with respect to any filing that might be made by PJM's transmission owners.

9. The PJM TOs further assert that, contrary to the Commission's finding in the PJM Remand Order, the Commission has no authority to deny or condition the PJM transmission owners' Section 205 filing rights, i.e., that PJM's transmission owners have exclusive Section 205 filing rights (which they may voluntarily surrender, but which the Commission cannot take away absent that consent). The PJM TOs argue that the PJM Remand Order thus failed to carry out the court's mandate in Atlantic City.

10. PECO similarly takes issue with the proposition that the establishment of an RTO rescinds a transmission owner's rights under Section 205 of the FPA. PECO seeks

¹⁵(...continued)

Commission . . . without first having secured an order of the Commission authorizing it to do so." See 16 U.S.C. § 824b(a) (2000).

¹⁶PJM Remand Order, 101 FERC ¶ 61,318 at P 44-49.

¹⁷As noted above, the PJM TOs proposed back in 1997 (and propose again in their compliance filing herein) that PJM's transmission owners be given the exclusive responsibility for rate and tariff filings relating to their facilities, subject to a two-thirds majority vote by PJM's transmission owners in support of such filing, and the right of the PJM Board to veto the filing based on a simple majority vote.

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clarification, in this regard, that the Commission cannot require utilities to relinquish their Section 205 filing rights, if the transmission owner has not voluntarily consented to such an arrangement.

11. The PJM TOs also assert as error the Commission's ruling in the PJM Remand Order that the Commission has the authority, under Section 203 of the FPA, to approve a transmission owner's withdrawal from the ISO. The PJM TOs assert that the right to withdraw from the ISO, without Commission approval, is a necessary and important safeguard for PJM's transmission owners should PJM's markets unravel, and so constituted a critical inducement underlying their support for the establishment of the PJM ISO. The PJM TOs also assert that the Commission's ruling, in this regard, fails to comply with the court's mandate in Atlantic City.¹⁸

The PJM TOs Compliance Filing

12. In the PJM Remand Order, we stated that if the PJM transmission owners are still committed to their original 1997 proposed allocation of filing responsibilities, as between PJM and PJM's transmission owners, we would permit PJM's transmission owners to submit a compliance filing herein, explaining how and why their originally proposed allocation ensures the independence of the PJM ISO and does not result in unduly discriminatory rates and practices. We stated that, alternatively, we would permit PJM's transmission owners to propose an alternative model that satisfies these standards.¹⁹

13. On February 4, 2003, the PJM TOs submitted a compliance filing in Docket No. OA97-261-0005, et al., in support of the allocation of Section 205 filing rights contained in their original proposal in this proceeding. Notice of the PJM TOs' compliance filing

¹⁸A group of transmission-owning utilities, consisting of Central Hudson Gas & Electric Corporation (Central Hudson); Consolidated Edison Company of New York, Inc. (Con Ed); New York State Electric & Gas Corporation (NYSIG); Orange and Rockland Utilities, Inc. (Orange & Rockland); Rochester Gas and Electric Corporation (Rochester); Niagara Mohawk Power Corporation; and New England Power Company and Northeast Utilities Service Company (collectively Central Hudson, et al.) also filed a separate, joint request for rehearing of the PJM Remand Order, in which they adopt and incorporate by reference the PJM TOs request for rehearing.

¹⁹PJM Remand Order, 101 FERC ¶ 61,318 at P 37.

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was published in the Federal Register,²⁰ with interventions, comments or protests due on before March 24, 2003. A motion to intervene was timely filed by Central Hudson, et al.²¹ In addition, a protest was timely filed by PJM. On April 7, 2003, the PJM TOs filed an answer responding to PJM's protest.

Discussion

A. Procedural Matters

14. On January 21, 2003, motions to intervene out-of-time and requests for rehearing of the PJM Remand Order were filed, in Docket No. OA97-261-004, et al. (the rehearing proceeding), by the New England Transmission Owners,²² Allegheny Power, and Rockland Electric Company. We will deny the motions to intervene out-of-time. Under Rule 214(d)(1) of the Commission's Rules of Practice and Procedure,²³ good cause must be shown for filing late interventions. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention. We find that this burden has not been met here. Consequently, since New England Transmission Owners, Allegheny Power, and Rockland Electric Company are not parties to this proceeding, they lack standing to seek rehearing and their requests for rehearing will not be considered.

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,²⁴ the timely, unopposed motion to intervene filed by Central Hudson, et al. serves to make it a party to Docket No. OA97-261-005, et al. (the compliance proceeding). Rule 213(a)(2)

²⁰68 Fed. Reg. 12,691 (2003).

²¹Central Hudson; Con Ed; NYSIG, Orange & Rockland; Rochester; and National Grid USA.

²²Bangor Hydro-Electric Company; Central Maine Power Company; NSTAR Electric & Gas Corporation; The United Illuminating Company, and Vermont Electric Power Company.

²³18 C.F.R. § 385.214(d)(1) (2002).

²⁴18 C.F.R. § 385.214 (2002).

of the Commission's Rules of Practice and Procedure²⁵ prohibits an answer in these circumstances unless otherwise permitted by the decisional authority. We are not persuaded to accept the PJM TOs April 7 answer, in Docket No. OA97-261B005, et al., and therefore will reject it.

B. Section 205 Filing Rights

16. We will grant in part and deny in part the PJM TOs' request for rehearing regarding the Section 205 filing rights of a public utility RTO and the public utility transmission owners who comprise it. As discussed below, we agree that PJM's transmission owners should be permitted to formulate Section 205 proposals regarding the public utility assets they own. However, PJM as a public utility in its own right would, of course, have the right to make its own Section 205 filings, thus ensuring continued independent operation of the PJM grid and avoiding undue discrimination or preference.²⁶

17. We turn first to the PJM TOs' request for rehearing regarding the Section 205 filing rights of a public utility RTO and public utility transmission owners which comprise it. As we noted in the PJM Remand Order, and reiterate here, our understanding of these Section 205 rights, as they relate to PJM and PJM's transmission owners, necessarily begins with Section 201(e) of the FPA, which defines a "public utility" subject to our regulation under the FPA as "any person who owns or operates" jurisdictional facilities.²⁷ In the PJM Remand Order, we noted that, undeniably, PJM's transmission owners are (and continue to be) "public utilities" pursuant to this provision, because, even after the establishment of the PJM ISO, their ownership interest in PJM's facilities grants them this status. We also noted, however, that PJM, as a result of the PJM restructuring and the voluntary action of the PJM transmission owners, is also a public utility, because it "operates" these same facilities. In this regard, among other duties allocated to PJM under the agreements giving rise to the PJM ISO, PJM is the

²⁵Id. at 385.213(a)(2).

²⁶In this regard, our RTO regulations note that an RTO "must satisfy" four characteristics to be an RTO, see 18 C.F.R. § 35.34(j) (2002), one of which is "Independence." Our regulations state that the RTO must have "independent authority under Section 205 of the [FPA] to propose rates, terms and conditions of transmission service provided over the facilities it operates." Id. at § 35.34(j)(1)(iii); Accord PJM RTO Status Order, 101 FERC ¶ 61,345 at P 16.

²⁷16 U.S.C. § 824(e) (2000).

designated "transmission provider" under PJM's open access transmission tariff (PJM OATT).²⁸

18. While the PJM TOs do not dispute that PJM is a public utility under the FPA, they suggest that ownership interests alone confer Section 205 filing rights. They submit that under the FPA, PJM can only have Section 205 filing rights with respect to facilities owned by PJM. However, we find no basis in the statute or elsewhere for devaluing PJM's jurisdictional interests, based on the distinction advanced by the PJM TOs. In fact, Section 201(e) of the FPA expressly extends public utility status (and thus confers Section 205 filing rights) to any entity that "owns" or "operates" jurisdictional facilities, without distinction.

19. Nor can we accept the PJM TOs' proposed allocation of Section 205 filing rights as between PJM and PJM's transmission owners. While the PJM TOs would permit the PJM RTO to veto a filing proposed by the transmission owners, they would vest no independent authority in the RTO to make its own filings. Clearly, this limitation on the RTO's rights and responsibilities would not be consistent with the independent operation of PJM's transmission system.²⁹ Nor would it ensure that PJM's system would be operated without undue discrimination or preference.

20. While the PJM TOs rest much of their rehearing argument on the mandate of the court in Atlantic City, they fail to explain satisfactorily why that mandate necessitates that the TOs alone should have independent rate filing authority. The PJM TOs, in fact, would undermine that mandate by limiting PJM, an RTO and thus just as much a public utility as the PJM TOs, to a passive role, by eliminating PJM's ability to make its own Section 205 filings. However, in light of the PJM TOs' compliance filing and the response of PJM to that filing, we can agree with the PJM TOs to the extent they argue on rehearing that they may have a role in formulating rate design proposals, and that their filing rights should not be limited simply to filing their revenue requirements.

²⁸While the PJM TOs assert that it is PJM's transmission owners who, in fact, provide transmission service under the PJM OATT from their facilities which they continue to physically operate, this control function is supervised and directed by (and thus operationally controlled by) PJM, not its constituent transmission owners. While the transmission owner may be the entity that physically "throws the switch," then, it is PJM that directs it to do so.

²⁹In this regard, see the discussion of RTO status supra note 26.

21. PECO requests clarification that, in the PJM Remand Order, we did not find that a public utility can be required by the Commission to involuntarily cede its Section 205 filing rights to an ISO or RTO. In the context of PJM's restructuring (which was voluntary), we were not required to address (and did not reach) the issue of whether participation in an ISO or RTO is mandatory. Accordingly, we will deny PECO's request as moot.

C. Withdrawal Rights Under Section 203

22. We will deny the PJM TOs' request for rehearing regarding the obligation of PJM's transmission owners to apply for and receive authorization from the Commission, under Section 203 of the FPA, prior to withdrawing from PJM. The PJM TOs assert that the Commission erred by imposing this requirement, because compliance with this provision may prevent PJM's transmission owners from withdrawing from PJM if the market in which PJM operates unravels. However, we fail to see the inadequacy of Section 203, in this regard. In fact, Section 203 offers PJM's transmission owners a forum to propose any transfer of jurisdictional facilities or any other restructuring that they may consider necessary or appropriate under the circumstances.³⁰

23. The PJM TOs further assert that, by imposing Section 203 requirements on PJM's transmission owners, the PJM Remand Order fails to comply with the court's mandate in Atlantic City, and did so on the basis of arguments already presented to and rejected by the court. We disagree. The court's mandate in Atlantic City was addressed fully by the Commission in the PJM Remand Order. There, we noted that in applying "the directives of the court to the circumstances presented by the restructuring of PJM . . . it is imperative to better explain the nature of that restructuring, the transfer of operating

³⁰Withdrawal of a transmission owning utility from an ISO or RTO raises precisely the type of issues – concerning the "maintenance of adequate service" and the "coordination in the public interest of facilities" – that Congress expressly delegated to the Commission for resolution in Section 203(b) of the FPA. As explained in the PJM Remand Order, an ISO or RTO makes constant operational decisions on how to: (1) transmit energy for its customers; (2) schedule maintenance; and (3) undertake regional long-term planning for the facilities under its control. The withdrawal of an ISO or RTO member would create an immediate gap in an existing regional grid, thus potentially undermining the ISO's or RTO's continuing ability to provide reliable service. For example, given the integrated nature of the transmission system, the transmission facilities of the departing member may be essential to serve a particular load, including a load that still is and must be served by the ISO or RTO.

control that occurred, and the functions of the ISO that emerged."³¹ We further noted that "[i]n reviewing the underlying PJM restructuring orders, the court, unfortunately, had little Commission explanation to guide its review of the Commission's understanding of the events triggering its Section 203 review of both entry of a transmission owner into, and exit by a transmission owner out of, the PJM ISO."³²

24. Thus, in the PJM Remand Order, we proceeded to fill that gap, explaining, among other things, that under the various agreements giving rise to the PJM ISO, including the PJM Operating Agreement, the PJM ISO was given authority to operate the PJM ISO in a manner materially different from its PJM predecessors, i.e., to operationally control PJM's transmission facilities. We noted, further, that the Transmission Owners Agreement established the transfer of these control functions from PJM's transmission owners to PJM.³³ In addition, we noted that as an ISO (and now an RTO), PJM is independently governed, and is prohibited from taking direction from any transmission owner(s) or any other market sector.³⁴

25. Applying these facts and circumstances to the language of Section 203, we found that the transfer of operational control functions from a public utility ISO to another entity was not explicitly contemplated by the language of Section 203. We found that while the court in Atlantic City was not presented with the opportunity to reconcile the language of Section 203 with the language of Section 201 (discussed above), when it found, based on the Commission's limited explanation of its reasoning in its earlier orders, that the phrase "sell, lease, or otherwise dispose" connotes the transfer of ownership or proprietary interests, we found that in PJM's case (involving the establishment of a new public utility and the transfer of operating authority over jurisdictional transmission facilities to that public utility), the Commission has the authority to approve that transfer under Section 203. For the same reason, the Commission has the authority to approve under Section 203 any subsequent transfer of

³¹PJM Remand Order, 101 FERC ¶ 61,318 at P 41.

³²Id.

³³See id. at P 34 (citing Section 2.3.4 ("transfer" of "responsibility to direct the operation" of transmission facilities); Section 2.3.6 (obligation of transmission owners to coordinate maintenance of the transmission facilities they own with other transmission owners and generation owners "subject to the direction of" PJM); and Section 2.3.7 (transfer to PJM of responsibility for regional long-term planning)).

³⁴Id. at P 45.

ISO control of jurisdictional transmission facilities back to a transmission owner leaving the ISO.³⁵

26. Thus, we explained in detail in the PJM Remand Order the reasoning supporting our conclusion. The PJM TOs, on rehearing, present no arguments that warrant overturning our findings and we will therefore deny rehearing on these issues.

D. The PJM TOs Compliance Proposal

27. The PJM TOs assert in their compliance filing that their proposed allocation of filing rights as between PJM and PJM's transmission owners (the same proposal initially made by the PJM TOs in this proceeding back in 1997) strikes the necessary balance of interests between these public utilities.

28. The PJM TOs assert that their proposal, while recognizing the right of transmission owners to file for any change in rates and charges necessary to recover their revenue requirements, contains specific restrictions on the rights of PJM transmission owners to seek other rate or tariff changes. Specifically, the PJM TOs state that under the PJM Transmission Owners Agreement, as proposed, the transmission owners, acting alone, could make no Section 205 filings addressing rate design and other tariff changes, and (acting as a group) could only do so pursuant to a two-thirds majority of the weighted and individual votes of the transmission owners. In addition, the PJM TOs note that any such vote could be vetoed by a simple majority vote of the PJM Board.

29. The PJM TOs assert that their proposal achieves the stated goals of Order No. 888³⁶ and Order No. 2000,³⁷ because it would not compromise the independence of the

³⁵Id. at P 47.

³⁶See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,730-32 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in part and rev'd in part sub nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002).

³⁷See Regional Transmission Organizations, Order No. 2000, 65 Fed. Red. 809

PJM Board, which would continue to have independent decision-making responsibility for tariff and system operations functions. The PJM TOs add that, as tariff changes must be filed with and approved by the Commission, there are statutory safeguards already in place to prevent discriminatory rates or practices.

30. PJM objects to the PJM TOs proposal. PJM argues that it is both necessary and appropriate that PJM retain its own Section 205 filing rights, regardless of any filing rights which may be accorded to PJM's transmission owners. PJM states that its retention of these rights is vital because, as an RTO and a public utility, it is important for PJM to be able to carry out its responsibilities to provide for the safe and reliable operation of its transmission system and the creation and operation of robust, competitive, and non-discriminatory electric markets. PJM further notes that there are times when it may be required to act quickly and decisively under Section 205, without waiting for market participants to resolve their differences. PJM also points out that there may be times when market participants and the PJM Board do not agree regarding the best ways to promote robust, competitive, and non-discriminatory markets.

31. PJM also points out that granting Section 205 filing rights to both PJM and the PJM TOs would not result in contradictory Section 205 filings concerning the same matter. PJM points out that if the PJM Board were permitted to veto a proposal made by the transmission owners, PJM would be permitted to make its own Section 205 filing while transmission owners would be precluded from doing so. PJM observes that, similarly, if PJM initiated a Section 205 filing, PJM could effectively veto any conflicting filing made by the transmission owners.

32. We will accept the PJM TOs compliance filing and will dismiss PJM's protest. While we agree with PJM that, in order to preserve the independent operation of the PJM Board, as contemplated by Order No. 888 and Order No. 2000, it is essential that PJM have the independent authority to make any Section 205 filing it may consider appropriate or necessary,³⁸ in fact, PJM, as a public utility in its own right, already possesses this Section 205 filing right. PJM's independent Section 205 filing authority, however, does not require that PJM's transmission owners surrender all of their Section

³⁷(...continued)

(2000), FERC Stats. & Regs. ¶ 31,089 at 31,075-76 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (2000), FERC Stats. & Regs. ¶ 31,092 (2000), appeal dismissed, Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

³⁸See supra note 26.

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205 filing rights. PJM itself recognizes that its independence can be secured, and reliable, non-discriminatory service maintained without the necessity of the PJM transmission owners surrendering all of their Section 205 filing rights.

The Commission orders:

(A) The PJM TOs' and PECO's requests for rehearing of the PJM Remand Order are hereby granted in part and denied in part to the extent discussed in the body of this order.

(B) The PJM TOs' compliance filing is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.