

104 FERC ¶ 61,142
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. EL02-121-003
and EL02-121-004

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

ORDER ON COMPLIANCE FILING
AND REHEARING

Issued July 28, 2003

1. On April 11, 2003, PJM Interconnection, L.L.C. (PJM) made a compliance filing in Docket No. EL02-121-004 in response to an order issued by the Commission on March 12, 2003.¹ In addition, the PJM Transmission Owners Group (TO Group) sought rehearing of the March 12 Order in Docket No. EL02-121-003. For the reasons discussed below, we will accept PJM's compliance filing and deny the TO Group's request for rehearing.

Background

2. On August 16, 2002, Occidental Chemical Corporation filed a complaint alleging that the retail service it had been offered by Delmarva Power & Light Company (Delmarva), 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, which Occidental argued were unjust and unreasonable. Among other

¹Occidental Chemical Corporation v. PJM Interconnection, L.L.C. and Delmarva Power & Light Company, 102 FERC ¶ 61,275 (2003) (March 12 Order).

things, Occidental challenged PJM's calculation of its network access charge pursuant to Section 34.1 of the PJM Open Access Transmission Tariff (OATT).²

3. In an order issued October 10, 2002, we required PJM to explain further, or modify, its network access charge.³ We noted that while 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, 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. We 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.⁴

4. In its compliance filing made in response to the October 10 Order, PJM defended its use of curtailed load as an allocation factor under Section 34.1. In the March 12 Order, however, we rejected PJM's explanation, noting, among other things, that 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. Accordingly, we required PJM, to remove its curtailed load add-back provision from its network access charge allocation factor and to make any conforming changes, as may be necessary. We also established a refund effective date of November 1, 2002, as requested by Occidental in its complaint – a refund date which was more than 60 days from the filing of Occidental's complaint.⁵

²The Section 34.1 access charge is designed to recover the embedded costs of PJM's transmission facilities and the associated revenue requirements of PJM's transmission owners.

³Occidental Chemical Corporation v. PJM Interconnection, L.L.C. and Delmarva Power & Light Company, 101 FERC ¶ 61,005 (2002) (October 10 Order).

⁴October 10 Order, 101 FERC at P15.

⁵March 12 Order, 102 FERC at PP 13 and 17.

PJM's Compliance Filing

5. In its compliance filing, PJM states that it has removed curtailed load from its network access charge allocation factor. Specifically, PJM states that it has revised Subsection (a) of Section 34.1 of its OATT to remove the language providing that curtailed load would be included in the determination of the monthly demand charge. PJM states that it has done so by striking out the reference to curtailed load in the definition of "DCPZ," *i.e.*, the term used by PJM to refer to the daily load of a network customer located within a zone coincident with the annual peak of the zone. PJM states that it has also struck the reference to curtailed load in the paragraph identifying the elements included in network load.

Notice of Filings and Responsive Pleadings

6. Notice of PJM's compliance filing was published in the Federal Register,⁶ with interventions and protests due on or before May 12, 2003. Motions to intervene were timely filed by the FirstEnergy Companies and Baltimore Gas and Electric Company (BGE). In addition, BGE filed a protest challenging the Commission's determination in the March 12 Order that Section 34.1 of PJM's OATT should be revised to exclude curtailed load as an allocation factor.⁷

The TO Group's Request For Rehearing

7. In its request for rehearing of the March 12 Order, the TO Group asserts that the Commission erred in establishing November 1, 2002 as a refund effective date regarding the Section 34.1 tariff revisions we required PJM to make to its OATT. The TO Group characterizes this refund effective date as a retroactive action contrary to the requirements and allowances of Section 206(b) the Federal Power Act (FPA).⁸ Specifically, the TO Group asserts that in requiring PJM to revise its OATT, the Commission was acting pursuant to its own motion in the March 12 Order and that as

⁶68 Fed. Reg. 19,805 (2003).

⁷An answer to BGE's protest was submitted by Occidental on May 23, 2003.

⁸16 U.S.C. § 824e (2000).

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such, the refund effective date "shall not be earlier than the date 60 days after the publication by the Commission of notice of its intention to initiate such proceeding."⁹

8. On April 28, 2003, Occidental submitted an answer to the TO Group's request for rehearing. On May 12, 2003, the TO Group submitted an answer to Occidental's answer.

Discussion

Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁰ the timely, unopposed motions to intervene filed by FirstEnergy Companies and BGE in Docket No. EL02-121-004 serve to make these entities parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,¹¹ prohibits an answer to a protest, an answer to a rehearing request, or an answer to an answer unless otherwise permitted by the decisional authority. We are not persuaded to allow Occidental's and the TO Groups answers in Docket No. EL02-121-003, or Occidental's answer in Docket No. EL02-121-004, and therefore will reject them.

Analysis

10. We will accept PJM's compliance filing and deny BGE's protest in Docket No. EL02-121-004. PJM's compliance filing satisfies the requirements of the March 12 Order regarding the removal of curtailed load as an allocation factor in Section 34.1 of PJM's OATT (which no party in this case challenges). BGE's protest, in this regard, does not dispute PJM's compliance with the March 12 Order. Rather, BGE challenges the merits

⁹Rehearing Request at 4, citing Section 206(b).

¹⁰18 C.F.R. § 385.214 (2003).

¹¹Id. at 385.213(a)(2).

of the Commission's underlying directive in the March 12 Order, a collateral attack of that order which is beyond the scope of PJM's compliance proceeding.¹²

11. We will also deny the TO Group's request for rehearing of the March 12 Order. While the TO Group asserts that the Commission's refund effective date is retroactive and thus unlawful under FPA Section 206(b), in fact, the refund date we required in this case (November 1, 2002), post dates the filing of Occidental's complaint (filed August 16, 2002) by more than 60 days, consistent with the requirements of Section 206(b).

12. In this regard, we reject the TO Group's assertion that the Commission's directive in the March 12 Order arose out of its own independent investigation. This is a proceeding initiated by a complaint from Occidental, in which Occidental requested a refund effective date of November 1, 2002. While in the October 10 Order, we did not immediately grant Occidental's complaint, we found that adding curtailed load appeared to be inconsistent with the underlying rationale of PJM's allocation method and may create a disincentive for LSEs to implement a load response program on their own systems. But we provided PJM with an additional opportunity to either revise this provision of its tariff or provide an explanation of why such a provision is just and reasonable. Moreover, we required PJM to do so in this proceeding, *i.e.*, responsive to Occidental's underlying complaint. Accordingly, when we subsequently rejected PJM's explanation in the March 12 Order and established a refund effective applicable to PJM's required tariff revisions, we acted "in the case of a proceeding instituted on complaint," so that the refund effective date is established as no earlier than 60 days after the filing of the complaint.¹³ Since November 1, 2002, is more than 60 days from the August 16, 2002, filing of the complaint, the refund effective date of November 1, 2002 is appropriate.

¹²As noted below, BGE, as a member of the TO Group, did not seek rehearing of the March 12 Order in Docket No. EL02-121-003 on the issue raised by BGE in this proceeding. Nor can we treat BGE's protest in this proceeding as a request for rehearing in Docket No. EL02-121-003, since it was filed well after the date on which rehearings were due, *i.e.*, while rehearing requests of the March 12 Order were required to be filed on or before April 11, 2003, BGE's filing in PJM's compliance proceeding was not made until May 12, 2003. In any event, BGE's arguments were addressed in substantial part (and previously rejected) in the March 12 Order.

¹³16 U.S.C. § 824e (2000). *See, e.g.*, *Mansfield Municipal Electric Department v. New England Power Company*, 93 FERC ¶ 61,077 at 61,213 (2000).

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The Commission orders:

(A) PJM's compliance filing in Docket No. EL02-121-004 is hereby accepted, as discussed in the body of this order.

(B) The TO Group's request for rehearing in Docket No. EL02-121-003 is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.