

UNITED STATES OF AMERICA 104 FERC ¶ 61, 241
FEDERAL ENERGY REGULATORY COMMISSION

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

Transmission Congestion on the Delmarva
Peninsula

Docket No. PA03-12-000

ORDER DIRECTING ADMINISTRATIVE LAW JUDGE TO MAKE PROPOSED
FINDINGS OF FACT AND RECOMMENDATIONS

(Issued September 9, 2003)

1. The Commission directs the Presiding Administrative Law Judge (ALJ) to make, based on the record already developed in this proceeding, proposed findings of fact and recommendations regarding the issues raised in the hearing before the ALJ relating to transmission congestion on the Delmarva Peninsula. This will benefit customers because it will bring further clarity regarding the extent and costs of transmission congestion on the Delmarva Peninsula, help identify potential solutions to the problem, and also assist the Commission in identifying lessons we can learn from this experience that may apply to other situations.

Background

2. In a May 12, 2003 order (May 12 Order), the Commission established a fact-finding proceeding facilitated by an ALJ concerning transmission congestion on the portion of the power grid on the Delmarva Peninsula operated by PJM Interconnection, L.L.C. (PJM).¹ The May 12 Order directed the ALJ to explore, in a non-adversarial setting, the causes, extent, costs and possible solutions regarding such transmission congestion. The Commission identified the following seven specific issues for the ALJ to address: (1) the historical and expected extent of the congestion and its cost, rate and reliability effects for wholesale and retail customers on the Delmarva Peninsula and elsewhere in PJM; (2) the causes of the congestion; (3) how FTRs have been and can be used to protect customers on the Delmarva Peninsula from congestion costs; (4) whether transmission upgrades currently planned for the Delmarva Peninsula will effectively moderate this congestion; (5) the costs, benefits and timing of transmission expansion to

¹ Transmission Congestion on the Delmarva Peninsula, 103 FERC ¶ 61,163 (2003). The May 12 Order directed the ALJ to file report within sixty days after the date of the order. On June 13, 2003, a request for an extension of time was granted, allowing the ALJ to file a report on or before August 12, 2003.

relieve congestion and who will benefit from such transmission expansion; (6) whether demand-side, distributed generation or other generation solutions can complement new transmission to solve these problems over the near or long term; and (7) opportunities for solutions to better manage congestion costs, and the obstacles and timeliness of possible solutions.² The Commission noted that the above list was not meant to be exclusive.

3. Along with the participation of interested parties, the Commission invited the Public Service Commissions of Delaware and Maryland and the Virginia State Corporation Commission to send expert staff members to participate, and even to send an ALJ to work with the Commission's ALJ.

4. In an August 12, 2003 report, the Commission's Presiding ALJ provided a detailed description of the positions of various participants in the proceeding. The Report did not include proposed findings of facts or recommendations. The ALJ explained:

It should be noted that even though the undersigned ALJ utilized trial-type techniques, including the submission of testimony by witnesses, to compile the record in this non-adversarial fact-finding proceeding in order to prepare this report, the undersigned ALJ refrained from making evaluative findings of fact and/or conclusions of law. Rather, as directed by the Commission's May 12 Order, the undersigned ALJ has attempted to ". . . work with the parties to create a record that provides a thorough picture of the facts, problems, and opportunities, and lessons to be learned". . .^{3]}

Discussion

5. The Commission appreciates the Presiding ALJ's efforts in effectively convening a hearing to develop a thorough record in a non-adversarial atmosphere. In light of the record developed, and the positions of the parties as set forth in the ALJ's report, the Commission has determined that the Commission would benefit from determinations regarding the issues raised in this proceeding. Accordingly, we direct the Presiding ALJ to provide, within 30 days of the date of this order, proposed findings of fact and recommendations regarding the seven issues identified in the May 12 Order, as well as other issues that the ALJ deems appropriate. The ALJ's proposed findings of fact and recommendations should concentrate primarily on identifying possible remedies for transmission congestion on the Delmarva Peninsula and lessons learned from the experience that may be applied to other situations in the future. Participants in the proceeding will have the opportunity to file comments within 15 days after the ALJ files proposed findings of fact and recommendations.

² Id., at P 3.

³ Report at P 141.

6. Further, the ALJ's Report describes witness testimony that expressed concern about the potential exercise of market power on the Delmarva Peninsula.⁴ The ALJ should address this concern, either making proposed findings of fact or, if she believes that insufficient record information is available, making recommendations whether the concern merits further investigation by Commission Staff.

The Commission orders:

(A) The Presiding Administrative Law Judge shall file proposed findings of fact and recommendations within 30 days of the date of this order, as discussed in the body of this order.

(B) Participants in the proceeding may file comments within 15 days after the ALJ files proposed findings of fact and recommendations, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁴ Id., at PP 87-91.