

108 FERC ¶ 61,032  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Pennsylvania-New Jersey-Maryland  
Interconnection Docket Nos. OA97-261-008  
and ER97-1082-009

Atlantic City Electric Company, Baltimore  
Gas and Electric Company, Delmarva Power  
& Light Company, Jersey Central Power &  
Light Company, and Metropolitan Edison  
Company Docket No. ER97-3189-035

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 No. EC97-38-006

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 No. ER97-3273-006

Pennsylvania-New Jersey-Maryland  
Interconnection Restructuring Docket No. EL97-44-006

PJM Interconnection, L.L.C. Docket No. OA97-678-006

Docket No. OA97-261-008, et al.

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Atlantic City Electric Company, Baltimore  
Gas and Electric Company, Delmarva Power  
& Light Company, Jersey Central Power &  
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. ER96-2516-009,  
EC96-28-008  
and EL96-69-008

PECO Energy Company

Docket Nos. ER96-2668-008  
and EC96-29-008

### ORDER DENYING REHEARING

(Issued July 9, 2004)

1. On January 20, 2004, Old Dominion Electric Cooperative (ODEC) sought rehearing of a Commission order issued December 18, 2003.<sup>1</sup> For the reasons discussed below, we will deny rehearing.

#### **Background**

2. On October 3, 2003, PJM Interconnection, L.L.C. (PJM) and certain of the PJM transmission owners (PJM TOs) (collectively, the Settling Parties) filed a Settlement Agreement addressing: (i) the rights of the Settling Parties to make filings under section 205 of the Federal Power Act (FPA)<sup>2</sup> concerning their respective interests in transmission facilities operated, but not owned, by PJM; and (ii) the rights of the PJM TOs to withdraw from PJM. The Settlement Agreement also provided that the standard of review for any changes to its terms would be the “public interest” standard of review set forth in United Gas Pipe Line Company v. Mobile Gas Services Corporation<sup>3</sup> and Federal Power Commission v. Sierra Pacific Power Company<sup>4</sup> (Mobile-Sierra doctrine).

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<sup>1</sup> Pennsylvania-New Jersey-Maryland Interconnection, et al., 105 FERC ¶ 61,294 (2003) (December 18 Order).

<sup>2</sup> 16 U.S.C. § 824d (2000).

<sup>3</sup> 350 U.S. 332 (1956).

<sup>4</sup> 350 U.S. 348 (1956).

3. In the December 18 Order, we approved the Settlement Agreement, subject to conditions. We also addressed an issue raised by ODEC regarding the applicability of the Settlement Agreement to new members seeking to join PJM. We clarified that such matters would be addressed by the Commission in conjunction with the filings required to modify PJM's existing services, rates, terms and conditions to reflect the addition of new members and/or to expand PJM's borders. Accordingly, we held that we would not prejudge those issues in the context of this proceeding, where those issues are not at issue.<sup>5</sup>

### **Request for Rehearing**

4. On rehearing, ODEC asserts that the December 18 Order erred by failing to clarify the operation of the Settlement Agreement as it relates to the Mobile-Sierra doctrine. First, ODEC asserts that because the Settlement Agreement binds the Commission to the "public interest" standard of review in connection with any modification to the Settlement Agreement it may impose sua sponte, the Settling Parties must be bound to this same standard with respect to any changes they might seek jointly.<sup>6</sup> Second, ODEC argues that the Mobile-Sierra provision set forth in the Settlement Agreement should apply only to the Settling Parties and to the Commission, acting sua sponte on behalf of those parties, but should not otherwise apply to proceedings initiated by or on behalf of non-parties.

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<sup>5</sup> See December 18 Order, 105 FERC ¶ 61,294 at P 37.

<sup>6</sup> Under the provision at issue (section 4.5), the Settling Parties are prohibited from seeking changes only on a unilateral basis:

It is the intent of the Parties that the provisions of this Settlement Agreement, and the conforming changes to the PJM Tariff and the Transmission Owners Agreement required by this Settlement Agreement, shall be subject to change solely by written amendment executed by PJM and the Transmission Owners, with the Transmission Owners acting by vote in accordance with section 6.51 of the Transmission Owners Agreement. It is the intent of this section 4.6 [sic] that the Commission's right to change any provision of this Settlement Agreement shall be limited to the maximum extent permissible by law and that any such change shall be in accordance with the Mobile-Sierra public interest standard applicable to fixed rate agreements.

5. Finally, ODEC seeks rehearing regarding the applicability of the Settlement Agreement to new members joining PJM, asserting as error the Commission's failure to consider whether new members seeking to join PJM will be subject to the Settlement Agreement.<sup>7</sup>

### **Discussion**

6. We will deny rehearing of the December 18 Order. First, we reject ODEC's suggestion that changes to the Settlement Agreement, even if mutually agreed to by the Settling Parties, must meet a "public interest" standard of review. The parties are not prohibited from seeking a mutually agreed to change in their agreement and we are not prohibited from reviewing such a mutually agreed to change under a "just and reasonable" standard, *i.e.*, the contingency allowed for in section 4.5 of the Settlement Agreement. ODEC does not cite any precedent or any rationale based either on the interests of non-parties or the sanctity of contracts that would require allegiance to the Settlement Agreement and likewise require a "public interest" standard of review in those circumstances where the Settling Parties themselves, by their mutual consent, seek to modify its terms.

7. We also reject ODEC's assertion that the Mobile-Sierra provision set forth in the Settlement Agreement should apply only to the Settling Parties and to the Commission, acting *sua sponte* on behalf of those parties, but should not otherwise apply to proceedings initiated by or on behalf of non-parties. As we recently indicated in Public Utilities Commission of the State of California, et al.,<sup>8</sup> there is no Commission or court precedent that supports a finding that a non-signatory may unilaterally seek changes to a Mobile-Sierra "public interest" contract under the "just and reasonable" standard of review.

8. We also reject ODEC's claim that the instant proceeding is the most appropriate forum to consider whether new members joining PJM should be subject to the Settlement Agreement. As we noted in the December 18 Order and reiterate here, we will not address those issues in this proceeding because those issues are not properly before us at

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<sup>7</sup> On February 4, 2004, the PJM TOs filed an answer to ODEC's request for rehearing and on February 17, 2004, ODEC filed an answer to the PJM TOs' answer. rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2003), prohibits an answer to a rehearing request. Accordingly, we will reject the PJM TOs' answer and likewise dismiss ODEC's answer.

<sup>8</sup> 105 FERC ¶ 61,182 at P 50 (2003).

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this time. Specifically, there is no provision in the Settlement Agreement cited by ODEC which purports to resolve the applicability of its terms to new members.<sup>9</sup> Accordingly, the appropriate forum to consider such issues would be the proceedings in which those issues are before us, e.g., where a new member is seeking to join PJM.

The Commission orders:

ODEC's request for rehearing is hereby denied.

By the Commission. Commissioner Kelly not participating.

( S E A L )

Linda Mitry,  
Acting Secretary.

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<sup>9</sup> See Settlement Agreement at section 3.4:

The Parties to this Settlement Agreement contemplate that there may eventually be a single Transmission Owners Agreement covering the entirety of PJM. Because that has not yet occurred, the Parties share the mutual understanding that pursuant to section 9.18 of the West Transmission Owners Agreement as filed with the Commission in Docket No. ER03-262-000 (West TOA), the signatories to the West TOA have committed to make conforming parallel changes to the West TOA as are listed below with respect to the Transmission Owners Agreement.