

108 FERC ¶ 61,246
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER04-1077-000

ORDER CONDITIONALLY ACCEPTING PARTIAL-PERIOD ALLOCATION
FOR AMERICAN ELECTRIC POWER AND DAYTON POWER & LIGHT
COMPANY ZONES

(Issued September 17, 2004)

1. On July 30, 2004, PJM Interconnection, L.L.C. (PJM) submitted the partial-period allocation of Financial Transmission Rights (FTRs) for the new zones of American Electric Power (AEP) and the Dayton Power and Light Company (DPL) for the period from October 1, 2004, to May 31, 2005. PJM requests that the Commission act on the filing before September 24, 2004, for the enclosed FTRs to ensure that market participants will have several days' notice before service commences that the allocated FTRs are in place. The Commission will not revise the FTRs allocated for the partial-period allocation.¹ However, consistent with the ComEd zone May, 2004 and annual allocations, we will require additional mitigation measures for long-term firm point-to-point customers that received allocated FTRs less than contractual rights.²

I. Background

2. PJM states that on January 10, 2003 PJM filed in Docket No. ER03-406-000 revisions to the PJM Tariff and Operating Agreement to establish a new annual FTR auction and an allocation mechanism for the auction revenues, using auction revenue rights (ARRs). PJM notes that on March 12, 2003, the Commission accepted PJM's proposed revisions, but directed PJM to submit certain additional changes in a

¹ PJM states that the partial-period allocation for new zones consists of FTRs, not ARRs. Additionally, PJM states that for the full-year allocation next spring, customers in the new zones will have the option of receiving an allocation of FTRs or ARRs.

² Respectively, *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,090 (April 29, 2004); *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,223 (May 28, 2004) (May 28 Order).

compliance filing, including transition provisions for new zones added to PJM to allow members in those zones to receive an allocation of FTRs instead of ARR. ³ PJM states that it submitted the required changes in April 2003. PJM also states that as directed by the Commission, it further explained in that compliance filing, with an illustrative example, how it would allocate FTRs in new zones if FTR requests were found not to be simultaneously feasible.

3. PJM observes that subsequently in an order issued January 28, 2004, the Commission accepted PJM's compliance filing in Docket No. ER03-406-001 *et al.*, and denied requests for rehearing of the March 12 Order. ⁴ However, the Commission required PJM "to amend section 5.2.2(e) of its tariff to state that PJM, prior to the initial allocation of FTRs in new regions, will make a filing with the Commission under section 205 of the Federal Power Act with the proposed allocation of ARRs." PJM states that on February 27, 2004, it submitted a compliance filing adding to section 5.2.2(e) of Schedule 1 of the Operating Agreement (and to the identical provisions of the Appendix to Attachment K of the Tariff) a statement that, prior to the effective date of the initial allocation of FTRs in a new PJM zone, PJM will file with the Commission the FTRs allocated in accordance with sections 5 and 7 of Schedule 1. ⁵

4. PJM explains that implementing this provision, PJM filed the interim (May 1 to May 31, 2004) allocation of FTRs for the newly added Commonwealth Edison Company (ComEd) zone in Docket No. ER04-653-000, and first annual (June 1, 2004 to May 31, 2005) allocation of FTRs and ARRs in the ComEd zone in Docket No. ER04-742-000. PJM observes that the Commission accepted those allocations by orders issued April 29, 2004 ⁶ and May 28, 2004, ⁷ respectively, subject to certain mitigation measures. PJM also

³ *PJM Interconnection, L.L.C.*, 102 FERC ¶ 61,276 at P 2 (March 12, 2003) (March 12 Order).

⁴ *PJM Interconnection, L.L.C.*, 106 FERC ¶ 61,049 (January 28, 2004) (January 28 Order).

⁵ *See PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,117 (August 2, 2004). There, the Commission required as a condition of accepting PJM's proposed FTR allocation method for new areas that it include specific language in its tariff stating that its filing showing the final allocation of FTRs will be made under section 205 of the Federal Power Act (FPA). Additionally, the Commission directed PJM to make this change in a compliance filing to be made within 30 days of the date of the order.

⁶ *PJM Interconnection, L.L.C.*, 107 FERC ¶ 71,090 (April 29, 2004).

⁷ *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,223 (May 28, 2004).

observes that the Commission initiated a proceeding in Docket No. EL04-105-000 under section 206 of the FPA to address the allocation process “for succeeding years,” i.e., beginning June 1, 2005.⁸

II. Summary of Filing

A. Interim Allocation of ARR and FTR in the AEP and DPL Zones

5. PJM explains that annually it allocates ARRs/FTRs for a period corresponding to PJM’s annual planning period, from June 1 of a calendar year to May 31 of the subsequent calendar year. PJM states that the Commission has established October 1, 2004 as the date for the AEP/DPL integration. Accordingly, PJM asserts that FTRs must be allocated in the new zones for the interim period from October 1, 2004 through the end of the current planning period, i.e., May 31, 2005. In accordance with PJM’s tariff, this partial-period allocation for new zones consists of FTRs, not ARRs.⁹ PJM also states that for the full-year allocation next spring, customers in the new zones will have the option of receiving an allocation of FTRs or ARRs.¹⁰

6. PJM states that the FTRs were allocated in accordance with sections 5 and 7 of Schedule 1 of the approved PJM Operating Agreement. PJM explains that in accordance with those provisions, FTRs were allocated in two stages. Under PJM’s currently approved Operating Agreement, PJM states that the first-stage allocation is to all network integration transmission service loads in a transmission zone from the generating resources that are designated as historically serving network loads in such zone.¹¹ PJM asserts that in the first stage, load serving entities (LSEs) in the zone are assigned a pro

⁸ PJM Interconnection, L.L.C., “Notice of Extension of Time,” Docket Nos. ER04-742-000, *et al.* (June 30, 2004).

⁹ *See* PJM Operating Agreement, Schedule 1, § 5.2.2(g). Third Revised Rate Schedule FERC No. 24, First Revised Sheet No. 127A.

¹⁰ *Id.* § 5.2.2(e). *See* PJM Operating Agreement, Schedule 1, Third Revised Rate Schedule FERC No. 24, Second Revised Sheet No. 126.

¹¹ *See* PJM Operating Agreement, Schedule 1, § 7.4.2(a). Third Revised Rate Schedule FERC No. 24, First Revised Sheet No. 136 and Original Sheet No. 136A.

rata share of the capability from such designated historic resources, based on the proportion of load such LSE serves in the zone.¹²

7. PJM asserts that the second-stage allocation is to firm point-to-point transmission paths and to other network service paths for which there was no designated historic resource.¹³ PJM explains that the second stage is an iterative process in which 25 percent of the remaining system FTR capability is allocated in each of the four rounds, after the results are posted for each prior round.¹⁴ PJM points out that Valid FTR source points in stage 2 include zones, generators, hubs, and external interface points. PJM states that network service customers can request 25 percent of their remaining peak load (after taking account of the FTRs they received in stage 1) in each round. Additionally, PJM states that firm point-to-point customers similarly may request in each round 25 percent of the MW on the source-sink path of their contracted service.¹⁵

8. PJM states that as required by its tariff, all outstanding FTRs must be simultaneously feasible. PJM also states that in accordance with section 5.2.2 (f) of Schedule 1,¹⁶ where all FTR requests for the new zones were not feasible, they were “prorated and allocated in proportion to the MW level requested and in inverse proportion to the effect on the binding constraint.” PJM asserts that this pro-ration was

¹² PJM notes that its ARR-FTR business rules also permit a subset of historic resources to be allocated pro rata within an “historic load aggregation zone,” defined as a sub region of a transmission zone that historically was served under a separate set of supply contracts or generation resources (such as for a municipality or rural electric cooperative). See PJM’s ARR-FTR Business Rules, Rule 44 (February 1, 2004), available at <http://www.pjm.com/markets/fttr/downloads/arr-fttr-business-rules-effective-feb2004.pdf>.

¹³ *Id.* § 7.4.2(b), (d). See Operating Agreement, Third Revised Rate Schedule FERC No. 24, Schedule 1, First Revised Sheet No. 137.

¹⁴ *Id.* § 7.4.2(b). See Operating Agreement, Third Revised Rate Schedule FERC No. 24, Schedule 1, First Revised Sheet No. 137.

¹⁵ *Id.* § 7.4.2(d). See Operating Agreement, Third Revised Rate Schedule FERC No. 24, Schedule 1, First Revised Sheet No. 137.

¹⁶ See PJM Operating Agreement, Schedule 1, Third Revised Rate Schedule FERC No. 24, First Revised Sheet No. 126A, Second Revised Sheet No. 127 and First Revised Sheet No. 127A.

performed in the same fashion as illustrated by PJM in its April 2003 compliance filing in Docket No. ER03-406-002.¹⁷

9. PJM showed the allocated FTRs for the AEP and DPL zones on an attachment. PJM states that 100 percent of all FTRs requested for the AEP and DPL zones in the first stage were awarded. Therefore, PJM asserts that all loads in the AEP and DPL zones are fully hedged for their requested access to the resources that historically have served those loads.¹⁸ In the second stage, PJM states that 78.2 percent of all requested FTRs were awarded.¹⁹ PJM explains that this is an aggregate average figure; more than half of the participants in the second-stage allocation received 100 percent of their requested FTRs, while some received less than the average. PJM mentions that the second-stage pro-rationing affected six point-to-point transmission service customers that received fewer FTRs than they requested based on their pre-existing firm contract reservations under AEP's tariff.

10. PJM explains that there were no binding constraints in the first stage, as all requests were granted. However, PJM states that the Kanawha River-Matt Funk 345 kV line was loaded nearly to its post-contingency limit and had little remaining capability at the end of Stage 1. PJM states that this line then became a binding constraint in Stage 2 of the allocation, as determined by modeling the system flows resulting from the source and sink paths and megawatts in the submitted FTR requests. PJM asserts that as required by the Operating Agreement, and explained in the April 2003 compliance filing, requested FTRs with a greater effect on this specific constraint were pro-rated to a greater degree, *i.e.*, the FTR award was inversely related to the effect of the FTR request on the constraint. PJM states that in this instance, FTR paths that sink to the south of AEP (particularly in Virginia and North Carolina) have a large effect on the identified constraint; therefore FTR requests associated with point-to-point service exporting to the south of AEP were significantly pro-rated as a result of this constraint.

¹⁷ See PJM's April 11, 2003 compliance filing in Docket No. ER03-406-002, at pages 6-7.

¹⁸ We note that generally in the first stage of the allocation process network service users may request ARRs (or FTRs) and in the second stage both network service users and firm point-to-point transmission customers may request ARRs (or FTRs).

¹⁹ PJM notes that the overall allocation in the AEP and DPL zones, after all pro-rations, was 96.6 percent of requested FTRs. For reference purposes, in PJM's 2004 annual ARR allocation, the ARRs awarded in the aggregate amounted to 72 percent of all ARRs requested.

11. PJM states that the enclosed allocations comply with PJM's approved Operating Agreement and were determined on a non-discriminatory basis using objective system modeling tools.²⁰ PJM also states that while some requests were pro-rated, that pro-rationing was dictated by the rules the Commission has previously established for PJM's FTR allocations.²¹ PJM mentions that as the Commission is aware, PJM's approved two-stage annual allocation process includes a preference for native load customers using resources that historically serve such loads. PJM asserts that such loads are allowed to request FTRs equal to their pro rata share (based on the network customer's share of peak load) of the megawatt capability of such resources in the first stage of the two-stage process. PJM explains that the two-stage annual allocation process resulted from a compromise in PJM's Market Implementation Committee designed to "give [] native load customers a priority in requesting ARRs from resources that historically served the load in the transmission zone," while at the same time "provid[ing] ample flexibility for market participants [through the second stage] to pursue hedging strategies that meet their changing needs."²² PJM states that the two-stage allocation process was previously accepted by the Commission as just and reasonable.²³ However, PJM notes that the Commission has opened an FPA section 206 investigation in Docket No. EL04-105-000 regarding the allocation process.

B. Mitigation Measures

12. PJM states that consistent with the mitigation PJM offered for the ComEd zone FTR allocations, PJM proposes to grant existing transmission customers in the AEP zone that were pro-rated in the FTR allocation the opportunity to terminate their existing

²⁰ PJM notes that its internet site posts detailed information concerning these system models and assumptions. See <http://www.pjm.com/markets/ptr/model-info.html>

²¹ PJM notes that in addition to the point-to-point customers noted above, the requests of two network transmission customers in the second stage for FTR source points that are not their historic sources were pro-rated.

²² PJM references its September 30, 2003 transmittal letter filed in Docket No. ER03-1409-000 at page 6.

²³ PJM references the filing in Docket No. ER03-1409-000 which was accepted under delegated authority on November 24, 2003.

transactions by forgoing payment of access charges in return for not receiving FTRs, to the extent they did not receive FTRs.²⁴

C. Effective Date

13. PJM requests an effective date of October 1, 2004 for the enclosed FTRs. PJM also requests that the Commission issue its order on the submitted FTRs no later than Friday, September 24, 2004, so that market participants will have several days' notice before service commences that the allocated FTRs are in place.

III. Notice of Filing, Interventions and Protests

14. Notice of the filing was published in the *Federal Register* on August 16, 2004, with comments, protests, and interventions due on or before August 20, 2004.²⁵

15. Timely motions to intervene were filed by Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric and FirstEnergy Solutions Corporation (FirstEnergy Companies), Allegheny Power and Allegheny Energy Supply Company, LLC (AE Supply), Exelon Corporation (Exelon), the Borough of Chambersburg, Pennsylvania (Chambersburg), Consumers Energy Company's (Consumers), North Carolina Electric Membership Corporation (NCEMC), DTE Energy Company (DTE Energy), American Municipal Power-Ohio, Inc. (AMP-Ohio), and Duke Energy North America, LLC (DENA) and Duke Energy Trading and Marketing, L.L.C. (DETM). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

16. On September 14, 2004, AK Steel Corporation (AK Steel) filed a late motion to intervene and protest. It states that it was excluded from discussions between its electric supplier and PJM and was not aware that the issue of allocation of FTRs to AEP's transmission customers was the subject of a proceeding before the Commission. Pursuant to Rule 214, any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

²⁴ PJM also notes that as a possible additional mitigation, point-to-point customers that were pro-rated in the FTR allocation could, under section 22 of the PJM Tariff, redirect their firm contracts and FTR requests to alternative points for which FTRs are available.

²⁵ 69 Fed. Reg. 50,379 (August 16, 2004).

IV. Responsive Pleadings

17. DTE Energy, AMP-Ohio, DETM and DENA, and NCEMC moved to intervene and protested the filing.

18. DTE Energy, DETM, NCEMC and AMP-Ohio argue that PJM used the same FTR allocation process that the Commission has previously found unjust and unreasonable. For example, DTE Energy argues that despite the Commission's findings in the May 28 Order, PJM used the exact same FTR allocation procedures in determining the interim FTR allocations for the AEP and DPL zones as those used by PJM and criticized by the Commission with regard to the ComEd zone. NCEMC states that in sharp contrast to NCEMC, those entities that are network customers and that participated in the first stage of the FTR allocation process received 100 percent of their requests. NCEMC explains that because its load is not in the AEP zone, it therefore must take point-to-point service from AEP to transport the energy to its native load in North Carolina. NCEMC contends that the discriminatory effect of the process is patent from the results of the FTR allocations: those customers with load in the AEP zone received 100 percent of their requested FTRs before NCEMC even had a chance to submit its initial request.

19. The majority of intervenors that protest the filing (*i.e.*, DTE Energy, AMP-Ohio, and NCEMC) argue that they were pro-rated in the second stage of the annual allocation. DTE Energy complains that it requested FTRs for two 100 MW long-term firm, point-to-point transmission reservations and received FTR awards in the second stage in the amount of 100 MW and 2.9 MW. AMP-Ohio contends that one of its members, City of Shelby, Ohio, should have received 4 MW of FTRs yet received only 0.4 MW, or 10 percent of its entitlement. NCEMC contends that it received a total of 4.8 MW of FTRs for its 150 MW firm point-to-point reservations. NCEMC argues that this represents only 3.2 percent of NCEMC's FTR request. In other words, NCEMC complains that it will be unhedged for nearly 97 percent of its transmission service. As a result, NCEMC argues that it will now face substantial congestion payments despite the fact that it has reserved and pays for long-term firm transmission capacity. NCEMC contends that PJM's assertion that in the second stage of the FTR allocation process, 78.2 percent of all requested FTRs were awarded does NCEMC no good. NCEMC complains that it does not provide NCEMC the financial hedge it requires to remain unharmed by the integration of AEP into PJM.

20. DETM states that on July 14, it contacted AEP to request termination of its reservation on the date AEP joined PJM, and on July 27, 2004, AEP informed DETM that it would not agree to terminate the reservation and took the position that other PJM transmission owners may also need to agree to any termination. Ultimately, DETM was awarded 25 MW of FTRs in each of the rounds 2-4 (resulting in a total of 75 MW from Duke Energy Washington LLC to MECS). On July 29, 2004, DETM informed PJM that

it did not want the FTR allocation and again sought termination of the reservation. DETM states that on July 30, 2004, PJM filed the proposed allocation.

21. DETM points out that under the AEP OATT, network and firm point-to-point customers hold the same curtailment and reservation priorities. DETM states that services are distinguished only with respect to price and flexibility to use the system. Thus, DETM states that under the AEP OATT, firm point-to-point customers had limited flexibility, but are fully hedged against congestion, while network customers have substantial flexibility but are not fully hedged. DETM explains that in addition the value of DETM's point-to-point reservation is diminished in other ways once the AEP system is integrated into PJM. For example, currently DETM asserts that it can redirect an export transaction to reach other points that will now lie within PJM, and post-integration, it is unclear whether this flexibility will exist. Further, DETM argues that it is unclear whether FTRs that are awarded to point-to-point customers will remain intact after the regional through and out rates are eliminated on December 1, 2004. DETM asserts that stakeholder groups at PJM have discussed the possibility that point-to-point customers should not continue to hold FTRs if they are no longer paying a reservation charge.²⁶

22. DETM explains that because the FTR obligations do not replicate the fully-hedged service that DETM obtains under its firm point-to-point reservation and because so many uncertainties remain as to the rights and obligations that will be associated with point-to-point reservation post-integration (and, in particular, after December 1, 2004), the award of an FTR on October 1, 2004 is not reasonably consonant with DETM's existing point-to-point reservation. Given that DETM's reservation under the AEP OATT cannot be converted to a reasonably consonant service under the PJM OATT, DETM asserts PJM must adopt practical and reasonable mitigation measures. Moreover, DETM states that the Commission has already endorsed the approach favored by DETM, i.e., granting a customer the option to terminate its reservation and forgo FTRs.

23. DETM contends that when a point-to-point customer is willing to take this option, conflicts among competing requests for FTRs are reduced and this provides system-wide benefits to the PJM system. DETM asserts that it also accelerates the transition from the physical rights model reflected in AEP's OATT and the financial rights model employed by PJM. Alternatively, DETM argues that if the Commission does not direct PJM to provide a termination option for all or part of the reservation, the Commission must not allow PJM to assess congestion charges for the portion of the reservation that is not terminated. DETM asserts that consistent with the Commission's action in the May 28

²⁶ See Draft Resolution of the Members of the PJM Members Committee, June 17, 2004, at <http://www.pjm.com/committees/members/downloads/20040617-item4b-ptp-ftr-arr-alloc.pdf>, which had been previously endorsed on June 3, 2004 by PJM's Electricity Markets Committee.

Order, if DETM is not allowed to terminate all or part of its 100 MW reservation, any congestion charges that would be imposed on DETM's reservation should be uplifted as a transitional mitigation measure.

24. Some intervenors (*i.e.*, AMP-Ohio, DETM and NCEMC) contend that PJM's proposed mitigation measures for customers pro-rated in the annual allocation process are inadequate. AMP-Ohio contends that alternative mitigation, such as redirection or termination, may sometimes be appropriate, but they are not for Shelby, which as a municipal electric system is a true load serving entity, not a marketer that can shift its focus elsewhere. AMP-Ohio argues that Shelby's load is not hedged and it is not an adequate answer to assert that Shelby should have taken network service. AMP-Ohio contends that unless and until the Commission decides that load serving entities with behind the meter generation are entitled to fair treatment, municipal systems like Shelby would pay too high a penalty for such service. AMP-Ohio explains that like many load serving entities, Shelby owns generation sufficient to meet its entire load, but for economic and reliability reasons, keeps some in reserve and purchases power to meet a portion of its needs. AMP-Ohio argues that firm transmission associated with that power is entitled to FTRs.

25. NCEMC argues that the mitigation measures PJM proffers to ameliorate the burden on customers who failed to obtain their requested FTR allocation are wholly inadequate. NCEMC states that PJM offers customers the option of terminating their long-term firm service agreements. NCEMC complains that this is not a feasible option for NCEMC because it has long-term power purchase agreements associated with its long-term firm transmission service agreements with AEP. NCEMC contends that it would still be obligated to purchase power to serve its load and would be left without any hedge against congestion costs incurred to deliver the power to its service territory.

26. In addition, NCEMC states that PJM also proposes a re-direct option where customers would give up their current FTRs in exchange for an opportunity to receive available FTRs from alternate sources. NCEMC asserts that redirect is not an option for NCEMC because its loads and sources are fixed; redirecting simply would not meet NCEMC's needs. NCEMC states that it is paying AEP for the full cost of transmission service under its long-term service contracts and is therefore entitled to equivalent rights. NCEMC argues that neither of these mitigation measures adequately protects NCEMC from the costs of congestion charges.

27. All intervenors that protest the filing (*i.e.*, DTE Energy, DETM, AMP-Ohio and NCEMC) argue that the Commission require the same mitigation measures for the FTR allocations in the AEP and DPL zones that were required for the ComEd zone. For example, NCEMC contends that PJM is not required to make a filing proposing modifications to its process until February 2005. NCEMC complains that in the meantime, PJM's discriminatory FTR allocation process is still in place, and NCEMC

stands to suffer significant harm. NCEMC, therefore, requests that the Commission either reject PJM's filing or require PJM to provide a comparable level of FTRs to NCEMC or order relief similar to that granted in Docket No. ER04-742-000, by directing PJM to pay to NCEMC the congestion revenues resulting from its lack of FTRs.

28. AK Steel asserts it is a retail customer of electric cooperatives, Southern Indiana Gas & Electric and Southern Indiana Rural Electric Cooperative (Joint Operating Group), that have a network service contract with AEP to supply power to AK Steel. AK Steel asserts that the Joint Operating Group was unable to request FTRs in stage one of the allocation process because there is no historic designated resource associated with the contract. As a result, AK Steel states that the Joint Operating Group received only 10 percent of the FTRs that it requested and that the unhedged congestion costs of the prorated FTRs will be passed on to it as the retail customer. AK Steel states it is in the same position as the prorated customers in the May 28 Order. AK Steel asks the Commission to require mitigation for it similar to the mitigation it required in the May 28 Order

V. Discussion

29. PJM allocated FTRs in the AEP and DPL regions in accordance with its tariff. The Commission has established a section 206 investigation in Docket No. EL04-105-000 to investigate whether the allocation procedures in its tariff are just and reasonable. Until a determination is made in that docket that PJM's FTR allocation procedures are unjust and unreasonable, the current tariff provisions govern the allocation process.

30. Consistent with our ruling in the May 28 Order, the Commission is accepting PJM's filing for this year, subject to the requirement described below for providing mitigation to customers that did not receive an allocation of FTRs in the annual allocation process reasonably consonant with their prior long-term firm contracts for transmission service.²⁷ As we stated in the May 28 Order, a mitigation approach should not be the long-run solution to FTR/ARR allocation.²⁸ However, we note PJM specified that oversubscription of the transmission system was a contributing factor in the pro-rating of some firm point-to-point reservations in the second stage of the allocation process in the ComEd zone. Whereas, in the instant filing, PJM specifies that a contributing factor in the pro-rating of some firm point-to-point reservations (*i.e.*, point-to-point reservations with FTRs that sink to the south of AEP) is due to an operative binding constraint. According to PJM, given the nature of the operative binding constraint it is not clear

²⁷ *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,223 at P 48 (2004).

²⁸ *Id.* at P 45 (2004).

whether customers will wish to use redirect as a mitigation option. As a result, we will evaluate whether mitigation for point-to-point reservations to the south of AEP is necessary when the new allocation procedures are filed with this Commission in Docket No. EL04-105-000.

31. PJM acknowledges that it provided network users preferential access to capacity and energy resources over customers holding firm point-to-point reservations in the FTR annual allocation process for the AEP and DPL zones. As a result, PJM pro-rated customers holding firm point-to-point reservations to a greater degree than network service users. In view of the fact that PJM has used the identical FTR allocation procedures in determining the FTR allocations for the AEP and DPL zones as those used by PJM with regard to the ComEd zone, we will require the same mitigation measures that were applied in the May 28 Order.²⁹ There, we required that congestion revenues associated with the FTRs that were requested but not received will be paid to the protesting parties that did not receive nominated FTRs up to their firm long-term point-to-point contract levels and that such payments will be recovered through an uplift payment assessed to all customers within the ComEd zone. Here, the Commission requires the same mitigation measures to be applied within the AEP and DPL zones, respectively.³⁰ We note that each customer is responsible for paying its proportionate share of the uplift costs. In other words, both network and firm point-to-point customers must share in the costs of the uplift charge.³¹ Further, a customer should receive mitigation payments only when necessary to offset congestion costs they have incurred.³² PJM must make a compliance filing within seven days of the date of this order containing tariff provisions that provide the methodology for determining and allocating the uplift charge paid by all customers in the AEP and DPL zones. The tariff provisions containing the uplift charge will go into effect October 1, 2004, subject to any further conditions the Commission may deem necessary. In addition, the Commission received a late intervention and protest from AK Steel that raises the issue of whether that company is

²⁹ *Id.* at P 48 (2004).

³⁰ The proposal filed on July 30, 2004, in Docket No. ER04-1068-000 to add transmission owner zones under the PJM rate design for AEP and DPL is pending.

³¹ We note that the rehearing orders providing clarification regarding mitigation measures are being issued contemporaneously in Docket Nos. ER04-653-002 and ER04-742-001.

³² Again, we note that rehearing orders providing clarification regarding mitigation measures are being issued contemporaneously in Docket Nos. ER04-653-002 and ER04-742-001.

entitled to the mitigation required in this order. We require PJM to address this issue in its compliance filing.

32. Additionally, PJM proposes two mitigation measures for customers in the AEP and DPL zones that were significantly pro-rated in the annual allocation process. These are: (1) customers may terminate their existing firm transactions; and (2) customers may re-direct point-to-point service requests. DETM explains that it contacted AEP to request termination of its long-term firm point-to-point reservations and AEP did not agree to terminate the point-to-point reservations as DETM requested. Therefore, in regards to DETM's concern that it will be subject to congestion charges associated with its point-to-point transactions, if DETM is unable to terminate its point-to-point transactions on the date PJM assumes responsibility for AEP's transmission system, we will require PJM to give DETM the opportunity to terminate its existing long-term firm point-to-point reservations by forgoing payment of access charges, or explain why this mitigation measure is not applicable to DETM. In *PJM Interconnection, L.L.C.*, 106 FERC ¶ 61,253 P 38 (2004), Duke raised a similar concern with regard to the termination of firm point-to-point reservations. There, the Commission stated:

We share the concerns of the protestors that customers holding firm reservations should receive FTRs for a comparable level and term. If PJM is not able to award FTRs to all existing firm customers, it must justify why the resulting allocation is reasonable, and why other mitigating measures, such as suggested by Duke, should not be adopted. PJM should also either give existing transmission customers the opportunity to terminate their existing transactions by foregoing payment of access charges in return for not receiving FTRs, as Duke suggests here, or else explain why such a provision would not be just and reasonable.³³

33. With respect to the redirect option proposal, in the May 28 Order, where PJM made the same proposal, we encouraged customers to use the redirect proposal to obtain FTRs.³⁴ There, however, the Commission did not require customers holding firm point-to-point reservations to accept redirect service and we will not do so here.

34. As to AMP-Ohio's suggestion that until municipal systems like Shelby are included in PJM's behind the meter generation program they would pay too high a penalty for redirect or termination of transmission service, AMP-Ohio raises a collateral issue regarding the expansion of PJM's behind the meter generation program. This issue is outside the scope of this proceeding, and we will not address this issue here. However, we note that whether the behind the meter program could be expanded to include some generation associated with a distribution system is currently being considered by

³³ *PJM Interconnection, L.L.C.*, 106 FERC ¶ 61,253 at P 41 (March 18, 2004).

³⁴ *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,223 at P 50 (2004).

stakeholders and PJM must file a status report by January 1, 2005 in Docket No. ER04-608-000 et al. That is the appropriate forum for AMP-Ohio to pursue any concerns it may have regarding PJM's behind the meter generation program.

35. With regard to DETM's concern that it is unclear whether FTRs that are awarded to firm point-to-point customers will remain intact after regional through and out rates are eliminated on December 1, 2004, we urge all parties to discuss the impact of the elimination of through and out rates on the allocation process using the ongoing stakeholder process.

The Commission orders:

(A) The proposal filed by PJM is accepted, to become effective October 1, 2004, or the date on which AEP integrates with PJM, subject to the condition that PJM implement the mitigation measures for the period October 1, 2004 through May 31, 2005, as discussed in the body of this order.

(B) PJM must make a compliance filing within seven days of the date of this order as discussed in the body of this order which includes PJM's response regarding whether AK Steel is entitled to the mitigation required by this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.