

112 FERC ¶ 61,276
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

PJM Interconnection, L.L.C.

Docket No. EL05-60-000

ORDER ACCEPTING RESPONSIVE FILING
SUBJECT TO ADDITIONAL MODIFICATIONS

(Issued September 15, 2005)

1. This order addresses the March 28, 2005 filing PJM Interconnection, L.L.C. (PJM) made in response to the Commission's February 10, 2005 Order in this proceeding. That order set for review under section 206 of the FPA the issue of whether the restudy provisions of PJM's interconnection procedures are just and reasonable.¹ The Commission finds here that those provisions are not just and reasonable and concludes that the *pro forma* provisions that PJM included in its filing are just and reasonable, but require further clarification. The Commission also requires PJM to clarify another aspect of the interconnection portion of its tariff.

Background

2. This proceeding is an outgrowth of the PJM's filings to comply with the interconnection requirements of Order Nos. 2003 and 2003-A.² The Commission's February 10 Order in Docket Nos. ER04-457-000, -001 and -002 accepted most of the interconnection tariff provisions that PJM filed in response to Order Nos. 2003 and 2003-A.³ However, based on contemporaneous complaint involving the Neptune

¹ *PJM Interconnection L.L.C.*, 110 FERC ¶ 61,099 (2005) (February 10 Order).

² *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs., ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005); *see also Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004).

³ *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,099 (2005).

Regional Transmission System, L.L.C. (Neptune), the Commission was concerned that certain aspects of the PJM's interconnection provisions might not be just and reasonable.⁴ In particular, the Commission was concerned that the PJM tariff allowed PJM to continuously restudy proposed generation and merchant transmission projects providing no termination to the restudy process and no certainty for the interconnecting customers.

3. The Commission therefore began this proceeding under section 206 of the Federal Power Act to determine whether to revise PJM's current tariff provisions. In doing so the Commission required PJM to explain why the interconnection restudy provisions of its tariff should not be governed by the specific standards in Order No. 2003, including the rationale for any deviations from that order. The Commission also directed PJM to provide a more explicit definition of the base line analysis concept it uses in its interconnection studies to determine the obligations of generation and merchant transmission interconnection customers. The Commission granted PJM an extension of time to file its response and PJM made the required filing on March 28, 2005.

The Filing

4. PJM included in its March 28 filing pro-forma tariff language that would adopt the restudy provisions contained in Order No. 2003. These provide that a restudy may be undertaken if it is required due to a higher queued project dropping out of the queue, a modification of a higher queued project, or the re-designation of a point of interconnection.⁵ The proposed sheets, if adopted would preclude restudy of a proposal based on other changes to the study base line occurring subsequent to the interconnection customer's placement in the interconnection queue. PJM also discussed the possible relationship of its filing to the then pending proceeding in *Neptune*. PJM explained that under its tariff provisions for merchant transmission interconnection customers, withdrawal rights granted to such a customer do not necessarily convey transmission rights over its grid equal in quantity to the withdrawal rights granted at the point of interconnection. However, PJM stated that because its study process is designed to identify all the probable upgrades that would be required to support a transmission interconnection customer's withdrawal rights, it was likely that few, and perhaps, no further system upgrades would be required to

⁴ *Neptune Regional Transmission System, LLC v. PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,098 (2005), *order on reh'g*, 111 FERC ¶ 61,455 (2005) (*Neptune*).

⁵ Pro-forma First Revised Sheet No. 97A, Pro-forma Second Revised Sheet Nos. 99, 101, 110, 112A, and 115.

provide transmission service. To the extent that transmission rights from specific receipt points were requested from areas that were not studied, then some additional improvements might be required.

5. Moreover, consistent with a request for clarification that PJM had pending at the time in *Neptune*, PJM stated that the proposed tariff revisions do not alter the fact under PJM's study methodology firm withdrawal transmission rights include a component of transmission deliverability to a merchant transmission project's point of interconnection. Otherwise, according to PJM far greater changes than those included here would need to be made to its tariff, and the practical result would be that merchant transmission interconnection customers and their potential clients would lack knowledge of what the total transmission costs of a project are likely to be. Thus merchant transmission developers would not have a complete cost picture with which to evaluate the financial feasibility of their investment at the time of executing and interconnection service agreement with PJM.

Interventions and Comments

6. Timely interventions with comments or protests were filed by the Gerdau Ameristeel Corporation (Gerdau), FirstEnergy Companies,⁶ Neptune, the PJM Transmission Owners (the PJM Owners),⁷ and the PSEG Companies. Timely interventions without comments were filed by Allegheny Power and Allegheny Energy Supply Company, LLC, Baltimore Gas and Electric Company, Exelon Corporation, Pepco Holdings, Inc.,⁸ Rockland Electric Company, State of New York Department of Public Service, Union Electric Company d/b/a Amerenue, and Virginia Electric and Power Company. A motion to file an untimely intervention, also without comments, was filed by American Electric Power Service Corporation. The Commission grants the motion for late intervention because these proceedings will not be delayed and as a result no party will be prejudiced. Answers or additional comments were filed by Gerdau, Neptune, and the PJM Owners. The Commission will accept those answers because they have provided information that assisted it in its decision making process.

⁶ Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company.

⁷ These include virtually all of PJM's major Transmission Owners as of the date of the comment. See footnote 1 of their April 21 Filing.

⁸ Including Potomac Electric Power Company, Atlantic City Electric Company, and Delmarva Power and Light Company.

7. Most of the protests and answers focus on the treatment of DC merchant transmission projects under these restudy provisions. In fact, none specifically address the restudy provisions as those apply to generation interconnection customers although the issues raised by the Commission's March 28 Order, and the rationale adopted here, apply in some regard to both generation and transmission interconnection customers. As discussed more fully below, the protests and comments consistently assert that (1) PJM should be permitted to restudy changes to its base line analysis that occur after an interconnection customer obtains its position in the queue, and (2) adoption of the language contained in the *pro forma* tariffs would result in an unjust shift of interconnection costs from the interconnection customers to the users of the transmission system. No party commented on PJM's explanation of its base line analysis procedures.

Discussion

8. The Commission finds that PJM's existing restudy tariff provision is unjust and unreasonable and that its proposed adoption of the *pro forma* tariff language addressing the restudy of interconnection requests in Order Nos. 2003 and 2003-A is just and reasonable, but requires further clarification as discussed below. In addition, consistent with the Neptune order, the Commission will require PJM to make an additional clarification to its tariff with respect to the obligation of a DC merchant transmission provider with firm withdrawal rights to pay for reliability upgrade expenses pursuant to PJM's Transmission Enhancement Charge specified in Schedule 12 of the PJM tariff.

9. Order No. 2003 permitted restudies only for three discrete events: (1) a higher-queued project drops out of the queue, (2) a higher-queued project must be modified or (3) the point of interconnection is re-designated. PJM's existing tariff provision states that: "If re-study of the system impact study is required, the Transmission Provider shall notify the Transmission Interconnection Customer in writing explaining the reason for the re-study and providing a scheduled completed date."⁹ The Commission finds that this provision is unjust and unreasonable because it can be interpreted as permitting, contrary to Order No. 2003, unlimited and unbounded restudies. Allowing repeated re-studies for possible speculative and unspecified events occurring after a project joins the queue unfairly delays the ability of projects to receive financing and commence construction. Project sponsors are entitled to a timely upfront determination of costs, based on reasonably foreseeable events. For example, the interconnection customer will know the costs associated with any higher queued project and can therefore factor into its analysis the possibility that it may

⁹ Section 41.4.3 of PJM's tariff.

have to pay some of those costs in the event the higher queued project drops out. There is no certainty in a process that can be continued indefinitely based on potential retirements or other reconfigurations of the transmission owner's system.

10. The PSEG Companies assert that the Commission accepted somewhat broader restudy provisions in *Midwest Independent Transmission System Operator, Inc.*, and maintain that the Commission should not reject PJM's existing restudy provisions.¹⁰ The Commission's decision in *MISO* does not justify the restudy provisions of PJM's tariff. The PJM tariff is vague regarding the effect of queue position on costs and the conditions triggering re-studies. Unlike the Midwest ISO tariff, which includes an expanded list of events permitting re-studies, the PJM tariff is unclear and vague about what circumstances trigger a re-study. Further, as we noted in *MISO*, the list of events provide the "Interconnection Customer with more certainty regarding the possibility that an interconnection request will be re-studied."¹¹ The PJM tariff, in contrast, provides no certainty as to conditions leading to a re-study. Therefore, the Commission's acceptance of the Midwest ISO interconnection procedures provides no precedent for permitting PJM to repeatedly re-study a project with no reasonable limitations. Moreover, none of the additional criteria listed in *MISO* address upgrade costs for merchant transmission interconnections that is the subject of PSEG's comments here. As such, the *MISO* case is inapposite.¹²

11. The Commission also finds that PJM's proposed filing to incorporate the Order No. 2003 limitations on restudies is just and reasonable. These standards are just and reasonable standards that apply to all utilities and the Commission finds them appropriate to PJM as well. The protests in opposition to the adoption of these criteria center on issues relating to restudies of merchant transmission interconnection projects, as was addressed in detail in *Neptune*. Specifically, Gerdau, PJM Owners, the PSEG Companies, and the FirstEnergy Companies assert that PJM's tariff should retain language permitting PJM to restudy a transmission interconnection request if significant reliability issues arise, or there are other changes to the PJM transmission grid, after an interconnection customer obtains its position in the interconnection

¹⁰ *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,085 (2004) (*MISO*). The additional provisions included the delay in the commercial operation of date for a higher queued project, reinstatement of a queue position where the queue position is subject to dispute resolution, and changes in either the Transmission Provider's or the transmission owner's design equipment or reliability criteria.

¹¹ *Id.* P 34, n. 30.

¹² *See Neptune*, 111 FERC ¶ 61,455, at P 21.

queue. The Gerdau and the PSEG Companies argue that PJM's proposed language would improperly shift to Transmission Owners the cost of transmission upgrades identified after a transmission interconnection customer obtains its position in the queue. The FirstEnergy Companies, the PSEG Companies, and the PJM Transmission Owners also request that PJM should have the right to conduct restudies until an interconnection study is tendered to the transmission interconnection customer.

12. The Commission denies these protests. In *Neptune*, the Commission found that for the purposes of determining interconnection costs applicable to a transmission interconnection agreement, the same standards must be followed in order to ensure that the project sponsors can get a reasonably timely determination of the upfront costs of their project, without having their interconnection agreement delayed, possibly interminably, for continued restudies. The Commission stated that the queue date establishes a base line analysis from which interconnection studies are conducted, and that without the queue system, the possibility exists for unlimited changes that would unduly delay interconnection projects.¹³ As the Commission explained, merchant transmission projects cannot be held responsible for costs that occur after their queue positions are established, because that could lead the interconnection provider to fail to determine a final level of interconnection costs within a reasonable period of time, delaying the provision of an interconnection agreement and the ability of the project to go forward.¹⁴ In this regard, the Commission notes that PJM did not address the issue of restudy time frames in its filing as specified in the Order No. 2003 provisions being adopted. In the subsequent filing required here PJM must explain the reasons for keeping its existing restudy time frames and why it should not be required to adopt the restudy time frames included in Order Nos. 2003 and 2003-A.

13. The Commission found in *Neptune* that reliability upgrade costs associated with merchant transmission projects occurring after the merchant transmission project's queue position are better handled as part of the process of assigning reliability upgrade costs to load through PJM's Transmission Enhancement Charge specified in Schedule 12 of the PJM tariff.¹⁵ The Transmission Enhancement Charge is assessed when the transmission owner builds the upgrades and then files to recover its costs of construction from transmission customers in the affected zone, which can include a merchant transmission project owner with firm transmission withdrawal

¹³ *Id.* at P 19-20.

¹⁴ *Id.* at P 22.

¹⁵ *Id.* P 24-25.

rights or the load that is using the merchant transmission facility.¹⁶ The appropriate cost responsibility would be determined when the transmission owner seeks to recover those costs. While PJM's current tariff provisions recognize that merchant transmission providers with firm withdrawal rights and their customers would be responsible for a reasonable allocation of reliability upgrade costs incurred after the queue date obtained by the interconnection customer, these provisions are dispersed throughout the tariff. To ensure that the tariff is clear, PJM is directed to file revisions to its tariff, within 30 days, to clarify this point.

14. Finally, First Energy, PSEG and Gerdau request that the Commission direct PJM to revise the RTEP to not include merchant transmission in RTEP base line until it has received a transmission request. Proposed changes to PJM's RTEP process are outside the scope of this proceeding and therefore the matter will not be discussed further here.

The Commission orders:

(A) The *pro forma* tariff sheets listed in footnote 6 satisfy the concerns stated in the Commission's March 28, 2005 Order in this proceeding, and the requirements of this order, subject to the additional clarification of PJM's interconnection procedures required in the body of this order. PJM shall file the tariff sheets conforming to this order within 30 days after this order issues.

(B) PJM's explanation of its base line analysis process is accepted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁶ *Id.*; see PJM Interconnection, LLC, Schedule 12 (the Transmission Provider shall designate in the Schedule 12-Appendix and in a report filed with the FERC the customers using Point-to-Point Transmission Service and/or Network Integration Transmission Service that will be subject to each such Transmission Enhancement Charge); PJM tariff, § 1.13A, First Revised Sheet No. 35 (firm withdrawal rights from a DC merchant transmission project are treated the same as firm point-to-point transmission service); Attachment K, Appendix, § 1.4, Second Revised Sheet No. 331 (market buyers must obtain network transmission or point-to-point transmission service).