

UNITED STATES OF AMERICA 114 FERC ¶61,296
FEDERAL ENERGY REGULATORY COMMISSION

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

FPL Energy Marcus Hook, L.P.,
Complainant

Docket No. EL04-57-002

v.

PJM Interconnection, L.L.C.
Respondent

ORDER ON REMAND

(Issued March 21, 2006)

1. On January 20, 2004, FPL Energy Marcus Hook, L.P. (FPL Energy) filed a complaint against PJM Interconnection, L.L.C. (PJM), alleging that PJM failed to properly apply those portions of PJM's Open Access Transmission Tariff (PJM OATT) governing interconnections of new power plants to the PJM grid. The Commission denied FPL Energy the relief requested in the complaint on April 20, 2004,¹ and then denied rehearing on August 9, 2004.² FPL Energy filed an appeal, and on December 2, 2005, the U.S. Court of Appeals for the D.C. Circuit remanded the portion of the Commission's order dealing with whether FPL Energy's upgrades provide system-wide benefits.³ The court's remand requires the Commission to further consider the interpretation of section 37.2 of PJM's OATT.
2. The Commission is establishing a briefing schedule to address how section 37.2 should be interpreted and applied in light of the court remand. Initial briefs are due 45 days from the date of this order, with reply briefs due 30 days thereafter. After making a

¹ *FPL Energy Marcus Hook, L.P. v. PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,069 (2004) (April 20th Order).

² 108 FERC ¶ 61,171 (2004).

³ *FPL Energy Marcus Hook, L.P. v. FERC*, 430 F.3d 441 (D.C. Cir. 2005).

determination on that matter, the Commission will determine whether, and to what extent, further proceedings are necessary.

Background

3. FPL Energy's 2004 complaint addressed certain of the interconnection costs it incurred as part of a generation project it was developing in Marcus Hook, Delaware. The complaint centered on one of the required network upgrades required for the project, the Mickleton-Monroe circuit upgrade, of which \$10,334,018 was allocated by PJM to the FPL Energy project, project A19, and \$1,148,000 was allocated to project A21, which is owned by an unaffiliated entity. This upgrade was to add a second 230 kV Mickleton-Monroe transmission line to meet the needs of projects A19 and A21. FPL Energy alleged that the need for the second transmission line was obviated when a higher-queued project, project A13, was withdrawn. FPL Energy also asserted that, under the relevant circumstances, sections 37.2 and 36.8.4(c) of the PJM Tariff required PJM to reassign the cost responsibility and to execute an amended Interconnection Study Agreement. FPL Energy therefore concluded that, because the second 230 kV Mickleton-Monroe transmission line is not required to flow power from either project A19 or A21, that FPL Energy should have no liability for any of the past or future costs for the construction of that line. Alternatively, FPL Energy asserted that the additional transmission line provides system-wide benefits and should be included in the transmission owner's asset base. It asserted that the double tower structure supporting the line indicated that the additional line was contemplated in any event and therefore there would be no burden on the PJM system of concluding that the additional line had system benefits.

4. The Commission concluded in its April 20 Order that PJM had reasonably applied the provisions of its Tariff governing generator interconnections in the instant case. The Commission found that, under section 36.8 of the PJM OATT, PJM's obligation to reallocate costs that were charged to a higher-queued project that was not completed is limited to interconnection projects that are lower down in the queue and that could use those upgrades. Because no such lower-queued projects existed, the Commission found that the costs of the upgrade could not be reallocated. The Commission rejected FPL Energy's assertions that the additional 230 kV line has system-wide benefits since the extra line was not included in PJM's applicable five-year Regional Transmission Expansion Plan (RTEP).

5. The U.S. Court of Appeals for the D.C. Circuit affirmed the Commission's conclusion that, under section 36.8 of the PJM OATT, the costs of the Mickleton-Monroe circuit upgrade could not be reallocated because there were no interconnection projects lower in the queue. The court, however, concluded that the Commission had not adequately supported its finding that there were no benefits from construction of that circuit upgrade. The court pointed to the language of section 37.2 of the PJM OATT,

which it read as allowing a reduction in the customer's cost responsibility by the amount of benefits resulting from the upgrades. The court stated:

The Commission correctly recognized that necessity and "but for" causation are two essential elements of the cost responsibility calculus under section 37.2; it failed, however, to acknowledge the remainder of the section. It is true that the tariff imposes on interconnection customers "100 percent of the costs" of upgrades meeting those two elements, but the tariff also reduces the customer's cost responsibility by the amount of "benefits resulting from the . . . upgrades." Tariff Section 37.2. Accordingly, this key language requires PJM to subtract system benefit from the interconnection customer's cost responsibility.⁴

6. The court further found that the Commission had not adequately explained why failure to be considered in the RTEP process would affect the benefit offset provided under section 37.2 of the PJM OATT. The court also noted that the Commission did not explain why PJM's RTEP should apply on the benefit side of the equation. The court observed that section 37.2 provides examples of costs and benefits that may be considered when assigning cost, and pointed to language in section 37.2 that provides for the inclusion of benefits that are not and do not formally become part of the RTEP. Finally, the court stated that the earlier orders had not adequately explained why PJM's RTEP should be the sole dispositive factor for Marcus Hook's cost responsibility in this proceeding.⁵

Discussion

7. On remand, the Commission is establishing a briefing schedule with respect to the interpretation of section 37.2. Section 37.2 of the PJM OATT provides:

A Generation Interconnection Customer shall be obligated to pay for 100 percent of the costs of the minimum amount of Local Upgrades and Network Upgrades necessary to accommodate its Generation Interconnection Request and that would not have been incurred under the Regional Transmission Expansion Plan but for such Generation Interconnection Request, net of benefits resulting from the construction of the upgrades, such costs not to be less than zero. Such costs and benefits shall include costs and benefits such as those associated with accelerating, deferring, or eliminating the

⁴ 430 F.3d at 449.

⁵ 430 F.3d at 449.

construction of planned Local Upgrades and Network Upgrades, the construction of Local Upgrades and Network Upgrades resulting from the modifications to the Regional Transmission Expansion Plan to accommodate the Generation Interconnection Request, or the construction of other Local Upgrades and Network Upgrades that are not and do not formally become part of the Regional Transmission Expansion Plan. (emphasis added)

8. The court held this OATT provision requires that in addition to PJM performing the “but for” determinations, PJM must also subtract benefits resulting from the construction of the upgrades. While the PJM OATT requires PJM to subtract benefits from the customer’s responsibility, it does not define what is meant by the term “benefits” as used in section 37.2. This issue was not addressed in sufficient depth in the parties’ initial set of filings. Accordingly, the Commission is establishing a briefing schedule for the parties to address how the term benefits should be defined and calculated pursuant to this provision of the PJM OATT.

9. In their briefs, the parties are directed to address the following issues.

1. The definition of the term “benefits” and how the value of such “benefits,” should be measured or determined. In this regard, the parties should identify the specific set of factors or categories, *e.g.*, reliability enhancement, that should be included as benefits, any practical issues that should be considered in determining the set of factors or categories, and the process by which the value of benefits for each set of factors or category should be determined. They also must address the clause “accelerating, deferring, or eliminating” and the examples in section 37, explain how that clause and the examples should bear upon the definition of benefits contemplated under section 37, and further explain when and how benefits that are not or may not become part of the RTEP are evaluated.
2. Providing relevant facts about the constructed facilities and the PJM system, explain whether the transmission facilities constructed by FPL Energy provide benefits as contemplated in section 37 of the PJM OATT.
3. When the determination of benefits is to be made, *i.e.*, whether the PJM OATT or other agreements contemplate a determination of benefits only at the time the Interconnection Agreement is executed or at a subsequent point in time, such

as when a higher-queued project withdraws and the costs cannot be reallocated to other, lower-queued projects.

4. When are generation interconnection customers required to raise questions concerning the determination of benefits under section 37 of the PJM OATT?

In their briefs, the parties must discuss specific PJM OATT provisions, specific Commission precedent or policy, and legal interpretative principles that support their interpretations of section 37.

10. Once these briefs have been filed, the Commission will determine whether additional procedures, if any, need to be established to resolve the issues relating to the Mickleton-Monroe upgrade.

The Commission orders:

Parties shall submit briefs on the issues summarized in the body of this order within 45 days after this order issues. Reply briefs are due 30 days after the filing of the initial briefs.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.