

119 FERC ¶ 61,067
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

PJM Interconnection, L.L.C.	Docket Nos.	ER06-1271-003 ER06-954-004 ER06-456-008
PJM Interconnection, L.L.C.	Docket No.	EL07-57-000
PJM Transmission Owners	Docket No.	ER06-880-005 (Consolidated)

ORDER GRANTING REHEARING, DIRECTING RESUMPTION OF HEARING,
AND INSTITUTING SECTION 206 PROCEEDING

(Issued April 19, 2007)

1. In orders issued on May 26, 2006, August 3, 2006, and October 18, 2006, the Commission found that PJM Interconnection L.L.C.'s (PJM) Schedule 12-Appendix tariff sheets implementing PJM's cost allocation reports should be conditionally accepted and suspended, and set for hearing and settlement judge procedures.¹ On rehearing, parties seek to expand the scope of the hearing to cover the methodology that PJM uses to allocate project costs, as well as the manner in which the methodology is applied to the

¹ *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,261 (2006) (May Order); *PJM Interconnection, L.L.C.*, 116 FERC ¶ 61,118 (2006) (August Order); *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,058 (2006) (October Order).

projects at issue.² We will grant rehearing, as discussed below. We also direct PJM to submit a tariff compliance filing for projects at or above 500 kV that are allocated costs within these consolidated dockets. Finally, we establish a section 206 proceeding regarding the allocation of costs for “economic” projects.

2. The Commission is issuing contemporaneously with this order an Opinion in Docket Nos. EL05-121-000 and EL05-121-002 in which the Commission affirms PJM’s current approach for allocating costs of new transmission facilities that will be below 500 kV to those customers that derive associated benefits. Further, in the Opinion the Commission accepts PJM’s proposal to allocate on a region-wide basis the costs of new, centrally-planned transmission facilities that will operate at or above 500 kV.

3. Accordingly, in this order, the Commission grants rehearing to expand the scope of the hearing to include the appropriate cost allocation methodology for determining “beneficiary pays,” *i.e.*, a formula to be included in PJM’s Open Access Transmission Tariff (OATT) that will determine cost allocations in keeping with the Opinion in Docket Nos. EL05-121-000 and EL05-121-002. We will expand the scope of the hearing to include all components of PJM’s power distribution factors (DFAX) methodology, including zonal netting, the treatment of phase angle regulators (PARS), and what processes should be used for allocations for electrically cohesive areas, as well as other issues discussed herein. The goal of the hearing should be a methodology that makes the allocation process routine so that PJM can allocate RTEP costs without project-by-project hearing procedures, so that any future RTEP cost allocation filing can be more informational in nature.

4. Because we are now allowing parties to propose alternative “beneficiary pays” methodologies in the hearing, we are also setting for hearing all projects below 500 kV included within these consolidated proceedings. The allocation of costs for projects at or above 500 kV should be addressed in accordance with our Opinion in Docket Nos. EL05-121-000 and EL05-121-002. Further, based on the Commission’s findings in this Opinion, we will require PJM to file proposed revisions to its cost allocations set forth in Schedule 12-Appendix of the tariff for all projects at or above 500 kV.

² On February 27, 2007, the Commission issued an order granting an interlocutory appeal, and holding the hearing in abeyance. *PJM Interconnection, L.L.C.*, 118 FERC ¶ 61,154 (2007).

5. Further, we direct that the hearing procedures that were suspended by Commission order on February 27, 2007 are to resume.³

Background

6. The Commission's earlier orders in these proceedings accepted reports filed by PJM of allocations of cost responsibility for certain transmission upgrades approved by the PJM Board of Managers (PJM Board) as part of PJM's Regional Transmission Expansion Plan (RTEP), along with revised tariff sheets; these filings were submitted pursuant to section 1.5.6 of Schedule 6 of the PJM Operating Agreement (OA) and Schedule 12 of PJM's OATT. The Commission accepted PJM's proposed revised tariff sheets, suspended them, and made them effective, subject to refund. The Commission also established hearing and settlement judge procedures. The Commission's orders in the later dockets consolidated those proceedings with the hearing and settlement judge procedures in Docket No. ER06-456-000, *et al.*

7. Schedule 6 of PJM's OA sets forth PJM's RTEP protocol. The purpose of RTEP is to provide for the construction of expansions and upgrades to PJM's transmission system in order to comply with reliability criteria, and to maintain and enhance the efficiency of PJM's wholesale electricity markets. PJM updates RTEP with input from the Transmission Expansion Advisory Committee (TEAC) and the Planning Committee.

8. Schedule 12 of PJM's OATT addresses the assignment of cost responsibility for transmission system expansions and upgrades for the PJM region. For each transmission system expansion and upgrade, PJM must designate the Transmission Owner (or owners and other entities) responsible to construct, own and/or finance each transmission expansion or upgrade. PJM must also designate for purposes of cost recovery the customers that use point-to-point transmission service and/or network integration transmission service that will be subject to a Transmission Enhancement Charge (TEC) for each expansion or upgrade.

³ Additionally, we note that, in an order issued on April 10, 2007, the Commission consolidated the hearing set in Docket No. ER07-424-000, with the ongoing hearing procedures established in Docket No. ER06-1271-000, *et al.* and ordered that proceeding held in abeyance with the other consolidated proceedings. *See PJM Interconnection, L.L.C.*, 119 FERC ¶ 62,033 (2007). In keeping with the order herein that directs the resumption of hearing procedures, the hearing in Docket No. ER07-424-000 should also resume.

9. PJM's submissions assigned costs for transmission system expansions and upgrades on a zonal basis, with the exception of merchant transmission interconnections, and allocated transmission project costs to all load serving entities in a particular zone. PJM also allocated a portion of certain transmission upgrade costs to the merchant transmission projects Neptune Regional Transmission System (Neptune) and East Coast Power, L.L.C. (ECP). These allocations were based upon PJM's determination that the withdrawals from PJM at these projects' points of interconnection will contribute to the need for certain upgrades to maintain system reliability, and thus the merchant transmission projects should bear responsibility for a portion of these costs. However, PJM indicated that its allocation report did not address whether the costs allocated to the merchant transmission projects should be paid by the projects, by the customers of the projects, or by the PJM market participants that deliver power to the projects' points of withdrawal.

10. Also, in Docket No. ER06-456-000 *et al.* PJM submitted a cost allocation for a single economic upgrade, located in the Delmarva Power & Light Company Zone. Cost responsibility for this upgrade was based on the change in Locational Marginal Price to the affected load.

11. The Commission's orders in each of the dockets accepted, suspended and set for hearing and settlement judge procedures the allocation of cost responsibility for specific projects and the allocation for the merchant transmission projects. However, the Commission maintained that "we are not setting for hearing general objections to PJM's proposed allocation or challenges to PJM's allocation methodology specified in its OATT or Operating Agreement."⁴

12. In a February 27, 2007 Order granting an interlocutory appeal, the Commission recognized that issues regarding the proper methodology for allocating the costs of existing and new transmission facilities are before the Commission on exceptions from an Initial Decision in Docket No. EL05-121-000.⁵ Therefore, the Commission ordered the consolidated hearing held in abeyance, pending the Commission's decision in Docket No. EL05-121-000.

⁴ May Order, 115 FERC ¶ 61,261 at P 56; August Order, 116 FERC ¶ 61,118 at P 38; and October Order, 117 FERC ¶ 61,058 at P 49.

⁵ *PJM Interconnection, L.L.C.*, 118 FERC ¶ 61,154 (2007); *see PJM Interconnection, L.L.C.*, 116 FERC ¶ 63,007 (2006).

Requests for Rehearing

13. Requests for rehearing of the Commission's May Order were filed by the PSEG Companies,⁶ and the PHI Companies⁷ (PSEG/PHI), the FirstEnergy Companies (FirstEnergy),⁸ and Old Dominion Electric Cooperative (ODEC). Requests for rehearing of the August Order were filed by PSEG⁹ and ODEC. Requests for rehearing of the October Order were filed by PSEG, PHI, FirstEnergy, PPL Electric Utilities Corporation (PPL Electric), and ODEC. These parties argue that the Commission failed to evaluate the justness and reasonableness of either the cost allocation process or the resulting allocations. They also request that the Commission reconsider specific aspects of PJM's cost allocation methodology. On July 11, 2006, PJM filed an answer.

Discussion

14. The Commission grants rehearing, as discussed below.

Procedural Issues

15. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(2006), prohibits an answer to a request for rehearing. Accordingly, we will reject PJM's answer.

Reliability Upgrades

16. PJM submitted a series of filings that identify new transmission projects it determined through its RTEP process to be necessary to maintain PJM system reliability,

⁶ The PSEG Companies are Public Service Electric & Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC. We note that PSEG Power LLC was not included as a party requesting rehearing of ER06-456-000, *et al.*, but that they were included in all other rehearing requests.

⁷ The PHI Companies are Pepco Holdings, Inc., Atlantic City Electric Company, Delmarva Power & Light Company, and Potomac Electric Company.

⁸ The FirstEnergy Companies include Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company.

⁹ The PSEG Companies incorporated by reference the specification of error and supporting arguments it filed in response to the May order. However, in its rehearing request regarding the August Order, PSEG is not joined by the PHI Companies.

as well as a cost allocation for a single economic upgrade. PJM identified these projects by applying its DFAX cost allocation methodology.¹⁰ In this order, we grant rehearing to allow the parties to address the appropriate cost allocation methodology to be added to the PJM OATT to implement “beneficiary pays,” including the DFAX methodology and the components of that methodology, such as zonal netting, the treatment of PARs, what processes should be used for allocations for electrically cohesive areas, as well as whether there should be a cost threshold for projects considered within the RTEP process, and how cost allocations for spare parts or the replacement or upgrade of circuit breakers are to be determined, and PJM’s implementation of operational performance criteria in its cost allocation process. We also set for hearing the cost allocation for the projects subject to the RTEP process in these dockets.

17. The hearing should develop a comprehensive formula to be included in PJM’s OATT that will determine cost allocations. It is not productive for the Commission or the parties to continually litigate each individual allocation decision made by PJM. Such delay is not only time and resource consuming, but may delay or even prevent the construction of needed infrastructure. Once a “beneficiary pays” methodology and the applicable procedures are determined, the RTEP cost allocation process will be less susceptible to protracted adversarial proceedings and offer more certainty to parties involved in the planning process. The methodology should make the cost allocation process routine so that any future RTEP cost allocation filing by PJM can be more informational in nature.

18. While Schedule 12 of PJM’s OATT currently provides that costs of RTEP projects be allocated to the parties benefiting from such projects, it does not provide the method and procedures by which such allocations should be determined; the DFAX methodology, for example, is included in PJM’s manuals, but was never filed with or accepted by the Commission as a methodology to be applied to RTEP cost allocations.¹¹ Any cost allocation methodology employed by PJM for RTEP projects below 500 kV

¹⁰ PJM also filed revised tariff sheets identifying the upgrades and their corresponding cost allocations.

¹¹ See *Keyspan-Ravenswood v. New York Independent System Operator, Inc.*, 474 F.3d 804 (D.C. Cir. 2007) (holding that materials in manuals do not constitute the filed rate).

must be contained in its OATT, and must contain the necessary details regarding how the “beneficiary pays” analysis is to be performed.¹²

Other Issues

19. PSEG, PHI, FirstEnergy, and PPL Electric also contend that customers identified as responsible to pay for the costs of specified projects have the right to know from the outset that they will be entitled to receive the incremental Financial Transmission Rights/Auction Revenue Rights (FTRs/ARRs) associated with those specific projects. However, we will not set the allocation of FTRs/ARRs for hearing in this proceeding. That issue is beyond the scope of this proceeding. In any event, PJM’s OATT properly assigns FTRs/ARRs where network upgrades create additional transmission capability giving rise to such rights.

20. FirstEnergy and PSEG/PHI raise concerns about the allocation of costs to merchant transmission projects. They are free to pursue their concerns in the hearing in these dockets.

Section 206 Investigation into Cost Allocation Methodology for Economic Upgrades

21. We also find that the current approach to allocating costs for “economic” projects suffers some of the same flaws highlighted above as to “reliability” projects. In an order issued in Docket No. ER06-1474-000,¹³ we approved a revised methodology for the planning of economic upgrades. That new methodology sought, among other things, to expand the types of benefits that could be considered and, in addition, to better integrate the planning of reliability and economic projects. Several parties raised concerns over the cost allocation for economic projects. We declined to address the issue, however, choosing instead to allow the matter to be vetted through the stakeholder process:

As PJM has stated in its transmittal letter, there is an existing policy for allocating the costs of economic upgrades in its Operating Agreement that is based on the principle that beneficiaries shall be allocated the costs of economic upgrades. In accepting this allocation method, we have concluded that it is just and reasonable, although we

¹² Cost allocations for projects at or above 500 kV will be determined consistent with the Commission’s order in Docket Nos. EL05-121-000 and EL05-121-002.

¹³ *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,218 (2006).

may conclude in the future that other cost allocation methods may provide a better measure of the beneficiaries of economic upgrades and, thus, will also be just and reasonable. Accordingly, we see no reason to delay a decision in the instant docket to await a proposal to revise the existing cost allocation methodology since PJM has in place an existing just and reasonable method for allocating the costs of economic upgrades. Nevertheless, we will require PJM to submit status reports every 90 days, beginning 90 days after the date of this order, on the progress of any stakeholder discussions on cost allocation, since cost allocation may affect which economic projects are included in PJM's RTEP.¹⁴

22. It has since become apparent that the stakeholders are not likely to reach consensus on this issue. As PJM stated in its February 20, 2007 status report in that case, "it appears unlikely that consensus or compromise on all issues will be reached" and that there is "no evidence of consensus among the state commissions."¹⁵ We therefore can no longer defer to that process to address cost allocation issues relating to economic projects.

23. Having reviewed the existing "beneficiary pays" approach to allocating economic project costs, we find that it suffers many of the same flaws as the approach to allocating reliability project costs. Most importantly, the methodology is not set forth in the PJM OATT and thus is subject to relitigation each time a new project is approved. Although this litigation has yet to proliferate as it has with reliability projects, this is likely due to the fact that PJM has only filed a cost allocation for one economic upgrade, and thus there has been less opportunity for controversy. Given the contentiousness of cost allocation, however, we see no reason why economic projects will not become bogged down in continuing litigation, just as has been the case with reliability projects. We are therefore instituting a section 206 investigation in Docket No. EL07-57-000 of PJM's cost allocation methodology for economic projects, and consolidating this proceeding with the hearing in ER06-1271-003, *et al.* regarding reliability projects. We, however, do not intend to suggest that there must be one methodology for both economic and reliability projects, but only that such methodology (whether one or two) be justified on the record and detailed and set forth in the PJM's OATT to ensure that it is not subject to relitigation.

¹⁴ *Id.* P 31.

¹⁵ PJM Letter at 1-2.

24. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date of publication of notice of the Commission's investigation in the Federal Register, and no later than five months subsequent to the expiration of the 60-day period. In order to give maximum protection to consumers, we will establish the refund effective date at the earliest date allowed. This date will be the date on which notice of our initiation of the investigation in Docket No. EL07-57-000 is published in the Federal Register.

25. Section 206 also requires that, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon the initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state its best estimate of when it reasonable expects to make such a decision. Based on our review of the filings, we expect that the presiding judge should be able to issue an initial decision by April 30, 2008. If the presiding judge is able to issue an initial decision by that date, we estimate that we will be able to issue our decision within approximately six months of the filing of briefs on and opposing exceptions, or by December 31, 2008.

The Commission orders:

(A) Rehearing is hereby granted, as discussed in the body of this order.

(B) The Commission hereby directs that hearing procedures, which were suspended by Commission order issued on February 27, 2007, are to be resumed in accordance with the holdings herein.

(C) Within 30 days of the date of this order, PJM is required to submit proposed revisions to its cost allocations set forth in Schedule 12-Appendix of the tariff to reflect the allocations required by the Commission's Opinion in Docket Nos. EL05-121-000 and EL05-121-002 for projects at or above 500 kV.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held in Docket No. EL07-57-000, concerning PJM's allocation of costs for "economic" projects.

(E) The Secretary shall promptly publish in the Federal Register a notice of the Commission's initiation of the proceeding in Docket No. EL07-57-000.

Docket No. ER06-1271-003, *et al.*

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(F) The refund effective date in Docket No. EL07-57-000, established pursuant to section 206(b) of the Federal Power Act, will be the date of publication in the Federal Register of the notice discussed in Ordering Paragraph (D) above.

(G) Docket No. EL07-57-000 is hereby consolidated with the ongoing proceeding in Docket No. ER06-1271-000, *et al.* for purposes of hearing and decision.

(H) The presiding judge in the ongoing proceedings in Docket No. ER06-1271-000, *et al.* shall determine the procedures best suited to accommodate consolidation.

By the Commission.

(S E A L)

Philis J. Posey,
Deputy Secretary.