UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C. Docket Nos. ER04-653-000
ER04-653-001

ORDER CONDITIONALLY ACCEPTING THE INITIAL ALLOCATION OF FINANCIAL TRANSMISSION RIGHTS FOR THE COMMONWEALTH EDISON ZONE

(Issued April 29, 2004)

I. Summary

1. On March 15, 2004, PJM Interconnection, L.L.C., (PJM) submitted the initial allocation of Financial Transmission Rights (FTRs) for the zone of Commonwealth Edison Company (ComEd), which they anticipate will come under the PJM Tariff and market rules on May 1, 2004. The initial allocation of FTRs addressed in this filing will be in effect from the projected May 1, 2004 integration date of the new zone until the next annual allocation of FTRs that will take place on June 1, 2004.[1] PJM requests that the Commission act on the filing before May 1 so that market participants will know of their FTR allocations before service commences. The Commission, in this order will not revise the FTRs allocated for May 2004. However, it will require additional mitigation measures for long-term firm point-to-point customers that received allocated FTRs less than their contractual rights. This order serves the public interests by implementing FTRS and ensuring protections for customers in the FTR process in new areas of PJM.

II. Background

2. On January 10, 2003, PJM submitted for filing, pursuant to section 205 of the Federal Power Act, amendments to the PJM Open Access Transmission Tariff (OATT) and PJM's amended and restated Operating Agreement to: (1) create an annual FTR

[1] In its transmittal letter, PJM states that its planning period is from June 1 of a calendar year to May 31 of the following year.

auction and Auction Revenue Rights (ARR) allocation process; (2) offer FTR options in addition to FTR obligations; and (3) enhance the existing monthly FTR auctions by including a 24 hour FTR product. In initiating these modifications, PJM hoped to create a more liquid and deeper market for FTRs, promote a more efficient allocation of scarce FTRs, provide greater flexibility in hedging risk, and foster a more active secondary market for FTRs. On March 12, 2003, the Commission accepted PJM's proposed amendments for filing and subject to PJM making certain changes in a compliance filing.

3. On January 28, 2004, the Commission issued an order accepting the PJM compliance filing from April, 2003, and denying several requests for rehearing and clarification of the March 12 Order. The Commission found, however, that under the procedures set forth in PJM's Tariff, there was some uncertainty as to the exact level of ARRs that a customer in an area joining PJM would receive. To provide customers in new areas with an opportunity to raise any specific concerns regarding ARR allocation before implementation, the Commission required PJM to submit another compliance filing. Specifically, the Commission directed PJM to "amend Section 5.22(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."[2]

4. In response to this order, PJM submitted a compliance filing to the Commission in Docket No. ER03-406-004 on February 27, 2004. PJM revised section 5.22(e) of its Tariff to include a statement that, prior to the effective date of the initial allocation of FTRs in a new PJM zone, PJM would file with the Commission the FTRs allocated in accordance with sections 5 and 7 of its Tariff.[3] In the instant filing, in accordance with this Tariff revision, PJM describes its ARR and FTR allocation process in the newly integrated ComEd zone.

III. Filing

5. The filing addresses the initial allocation of FTRs in the newly integrated ComEd zone within PJM for the month of May 2004. FTRs and ARRs for the annual period beginning June 1 will be subject to a separate allocation. These allocated FTRs and ARRs are contained in a filing made on April 17 in Docket No. ER04-742-000.

6. For the May FTRs, PJM allocated FTRs in two stages: first to all firm point-to-point transmission customers and all network integration transmission service paths for which the source point is a capacity resource or for which the original transmission service request to ComEd identified a specific source; second, to the extent FTRs

[2] PJM Interconnection, L.L.C., 106 FERC ¶ 61,049 p. 8 (January 28, 2004).

[3] This docket is pending.

remained available after the first allocation, to network service paths for which there was no specifically designated source. PJM's Tariff requires that all outstanding FTRs be simultaneously feasible. In accordance with section 5.22(f) of Tariff schedule 1, when all FTR requests for a new zone are not feasible, they are pro-rated and allocated in proportion to the MW level requested and in inverse proportion to the effect of the binding constraint. Overall, 83.8 percent of requested FTRs were allocated. PJM states that in aggregate, a majority of the customers received 100 percent of their requested FTRs, while PJM attributes the less than full allocation to some customers to the greater degree of pro-ration of second stage requests because they sought FTRs from the same subset of generators requested by many other market participants, which therefore became oversubscribed as FTR source points. In the filing, PJM also agreed to one of the mitigation measures suggested by the March 12 Order. Specifically, PJM agreed that short-term firm customers could reduce their firm contract levels if they did not receive equivalent FTRs.

7. On April 22, 2004, PJM filed a supplemental filing in which it stated that firm point-to-point transmission customers that did not receive all of the FTRs they requested have the option to redirect their FTR requests to alternative resources for which FTRs are available. Additionally, PJM reports that Alliant Energy Corporate Services, Inc. (Alliant) has received an additional 44.2 MW of FTRs and Madison Gas and Electric Company (MGE) an additional 6.7 MW of FTRs through exercising the option to redirect.

IV. Notice of Filings and Responsive Pleadings

8. Notice of the filing was published in the Federal Register on March 18, 2004, with comments, protests, or interventions due on or before April 5, 2004.

9. Timely interventions, comments, or protests were filed by the Illinois Commerce Commission (Illinois Commission), Consumers Energy Company (CECo), Edison Mission Energy, Edison Mission Marketing & Trading, Inc., (Edison Mission), Midwest Generation EME, LLC, Illinois Municipal Electric Agency (IMEA), Exelon Corporation (Exelon), MGE, The Detroit Edison Company (Detroit Edison), Wisconsin Public Service Corporation (WPSC), Wisconsin Public Power Inc., (WPPI), MidAmerican Energy Company (MidAm), and Wisconsin Electric Power Company (WEPC). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. Late interventions, comments, or protests were filed by WPPI, Alliant, Cities of Batavia, Rochelle and St. Charles Illinois, (Illinois Cities), and Duke Energy North America, LLC and Duke Energy Trading and Marketing, L.L.C. (Duke). 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.

11. On April 16, 2004, PJM filed an Answer to the protests. Rule 231(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PJM's Answer because it has provided information that assisted us in our decision-making process. MGE and WPSC filed Answers in response to PJM's Answer. We will accept MGE's and WPSC's Answers for the same reason that we are accepting PJM's Answer.

12. Notice of the supplemental filing of April 22, 2004 was issued by the Commission on April 22, 2004, with comments due on April 27, 2004. No comments were received.

V. Protests

13. MGE, WPSC, MidAm, WEPC, WPPI and Alliant moved to intervene and protested the filing.

14. In the instant filing, PJM notes that the award of FTRs was lower on three source-sink transmission paths, and that these paths incurred the largest degree of pro-ration within the ComEd zone. The majority of protestors (e.g., MGE, WPPI, Alliant, WEPC and WPSC) argue that network integration service customers received higher priority than firm point-to-point customers in the PJM FTR allocation process. WEPC and WPSC state that the substantial pro-ration included a great reduction in the FTRs awarded to existing ComEd firm transmission customers located in the Midwest Independent Transmission System Operator (MISO) region, despite the fact that existing firm service had previously been confirmed by ComEd or PJM acting on behalf of ComEd. They state that this resulted from "a higher priority given to PJM network resource transactions over firm point-to-point transactions that cross the new PJM/MISO seam."[4] In addition, MGE contends that there is no basis for this preference, where firm point-to-point customers have reserved and paid for service of equivalent firmness to the network integration customers' service.

15. MGE argues that although it is nowhere apparent in the instant filing, it can plainly be seen from PJM's FTR allocation training materials and its FTR awards, both posted on PJM's website, that PJM gave a preference to load serving entities, which have network integration service, over firm point-to-point customers in the FTR allocation process. As a result, MGE complains that PJM's assertion that 90.3 percent of all FTRs requested in the first stage on an aggregate average basis says little about the success rate

[4] See WEPC, p. 3. Also, WPSC, p. 2.

for the firm point-to-point customers, who were awarded FTRs only after the load serving entities requests were satisfied.

16. WEPC and WPSC state that PJM must treat firm transmission crossing the new PJM/MISO seam with the same priority that firm transmission internal to PJM is treated. They state that if pro-rating is still required after this correction, it must be explained and justified so as to mitigate the effect on firm customers. MGE and WPPI contend that not treating network integration and firm point-to-point customers in a comparable manner would gut the Commission's "hold harmless" requirement by allowing PJM to worsen, rather than ameliorate, the seams between PJM and MISO.

17. WPPI asserts that a resource that would be eligible for designation as a network resource – i.e., one that is non-interruptible and the subject of a contract or ownership economic commitment by the receiving load – merits network-service-level FTR rights. WPPI states that this is true even if the delivery of that resource to a network load uses firm point-to-point service as its firm segment, rather than using network service for the entire path.

18. Several intervenors (e.g., MGE, Alliant, WEPC, and WPSC) argue that PJM's pro-rata FTR allocation process will expose them to congestion charges. In total, WEPC received approximately 70 percent of FTRs requested. MGE will be exposed to congestion risk for up to 44 percent of its reserved capacity.

19. Based on Commission proceedings involving the integration of ComEd into PJM, MGE, Alliant, WEPC and WPSC came to the conclusion that customers holding firm reservations would be protected from new congestion charges.[5] WEPC and WPSC state that, "the Commission's orders implicitly recognize that it is inequitable to require a firm transmission customer –that on April 30, 2004 pays no congestion – to face an unlimited and unknown expense for congestion on May 1, simply because operation of the facilities has changed hands."[6]

20. In their Answers, WPSC and MGE reiterate arguments mentioned above. For example, WPSC and MGE contend that PJM's unfair allocation process provides priority to PJM load serving entities at the expense of ComEd customers. WPSC argues that as a consequence of PJM's allocation process, it awarded WPSC only 25 percent of the FTRs

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[5] Alliant states that the mitigation measure proposed by Duke in the March 18 order may be a suitable mitigation measure for a generator such as Duke but is grossly inadequate for entities with an obligation to serve load that require firm transmission service to meet load and reserve margin obligations. See page 5 of Alliant's Motion To Intervene Out-of-Time and Protest.

[6] WEPC, p. 6.

requested for the May allocation and only 31.2 percent of the FTRs requested for the annual allocation for the Byron Path. WPSC also argues that for the AEP Path, PJM awarded WPSC only 60.8 percent of the FTRs requested for the May allocation. Additionally, WPSC notes that PJM's averaging of awarded FTR results is misleading because it is not path-specific leading and incorrectly leads to the conclusion that WPSC received a higher percentage of FTRs than it actually did. WPSC points out that unlike WPSC, ComEd received 100 percent of its requested FTRs related to deliveries from Byron, capped only at Byron's maximum output. WPSC states that in the May allocation, ComEd requested and, according to PJM's technical posting, received 2,356 MW of FTRs sourced from Byron . WPSC contends that by comparison, it requested 50 MW and received less than 13 MW. WPSC complains that there is no plausible rationale that justifies this discrimination.

VI. PJM's Answer

21. PJM states that it made the allocation in accordance with sections 5 and 7 of Schedule 1 of the approved PJM Operating Agreement, as well as the special transitional allocation rules developed by PJM with the ComEd zone stakeholders, as set forth in section 9.4 of Schedule 1 filed December 31, 2003 in Docket No. ER04-521-000. PJM asserts that in accordance with those provisions, FTRs were allocated in two stages: first, to all firm point-to-point transmission customers and all network integration transmission service paths for which the source point is a capacity resource or for which the original transmission service request to ComEd identified a specific source; and second, to the extent FTRs remained available after that allocation to network service paths for which there was no specifically designated source. PJM also asserts that the allocations also honored the priority rankings (first through fourth) each market participant assigned to each one-fourth of its FTR requests.

22. PJM claims that the allocations were determined on a non-discriminatory basis using objective system modeling tools. PJM states that contrary to MGE's claim that PJM has not provided sufficient information to support its allocations, its internet site posts detailed information concerning the system models and assumptions. [7] PJM states that as required by PJM's Tariff, all outstanding FTRs must be simultaneously feasible. PJM explains that in accordance with section 5.2.2(f) of Schedule 1, where all FTR requests for the new zone 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."

23. PJM points out that in the aggregate for the ComEd zone initial FTR allocation, 90.3 percent of all FTRs requested in the first stage were awarded. PJM states that in the

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[7] See http://www.pjm.com/markets/ftr/model-info.html.

second stage, 58.8 percent of all requested FTRs were awarded. PJM explains that there was somewhat less pro-ration experienced for those full-year allocations than was observed for the single-month allocation at issue in this docket. PJM states that the parties could have received a greater share of the FTRs if they revised their nominations to avoid the specific transmission constraints. For example, PJM states that parties could receive a higher portion of their FTRs by using the Northern Illinois Control Area Hub as a source rather than an individual generator. As a result of some of the changes that were made for the annual allocation, PJM claims that notably, some of the specific parties that filed protests in this docket received a greater share of their requested FTRs in the annual allocation. PJM argues that WEPC, for example, received over 97 percent of the FTRs it requested in the annual allocation. In addition, PJM complains that WPPI filed comments in this docket adopting protests filed by other parties, but WPPI received 100 percent of its requested FTRs in both the May 2004 allocation and the annual allocation. Further, PJM contends that WPSC states that "overall" it received only 35 percent of the FTRs it requested in the May 2004 allocation. However, PJM argues that WPSC received 62 percent of its requested FTRs for May, and over 65 percent in the annual allocation.

24. Moreover, PJM asserts that where pro-ration occurred, it was strictly based on physical parameters such as the location of binding transmission constraints and the location of requested FTR paths. PJM claims that for the monthly allocation at issue in this proceeding, firm point-to-point paths and network service paths were treated in exactly the same way. PJM explains that when a constraint occurs, paths affecting that constraint are pro-rated based on the amount of FTRs in each request and the effect of the requested path on the constraint, without regard to whether the path is for network or point-to-point service. PJM purports that in every instance where one of the protesting parties did not receive all of the FTRs it requested on a particular path, network service users within the ComEd zone also had their requests pro-rated to the extent their requested paths affected such constraint.

25. PJM states that it understands that there are number of "slice of system" (i.e., slice of system service states one receipt point, but allow the customer to source power from multiple locations on ComEd's system) arrangements in the ComEd zone. PJM states that modeling such slice of system services for FTR purposes as required by the PJM Operating Agreement on the basis of a contractually specified source point (rather than from a composite point such as the Northern Illinois hub) contributed to the pro-rationing of FTR requests in the May 2004 allocation for the ComEd zone. PJM believes that this result can be mitigated by allowing the pro-rated customer to re-direct its FTR request to other source points that have less effect on the operative binding constraint and that also may better reflect the former ComEd service agreement's underlying intent.

26. PJM states that under the Tariff, point-to-point customers that were pro-rated can redirect their FTR requests to alternative sources for which FTRs are available. PJM explains that some customers were pro-rated because they sought FTRs from the same

sub-set of generators requested by many other market participants, which therefore became oversubscribed as FTR source points. PJM states that it has suggested to such customers that a possible solution would be for them to diversify their FTR sources through redirected point-to-point transmission service requests. As stated earlier, PJM believes that for customers with “slice of system” supply contracts, for example, this provides them the opportunity to receive FTRs from a composite point that may better reflect the underlying intent of the their former ComEd service agreements. PJM asserts that it has made every possible effort to inform customers whose requests were pro-rated of their available alternatives. PJM states that it is up to the customers to use this information to develop their own FTR hedging strategies. PJM understands that several of the affected customers are actively pursuing this redirect option.

27. Additionally, PJM states that it will grant existing transmission customers in the ComEd zone that were pro-rated the opportunity to terminate their existing transactions by forgoing payment of access charges in return for not receiving FTRs, to the extent they did not receive FTRs. Further, PJM argues that under its Tariff, PJM cannot issue more FTRs than are simultaneously feasible. PJM asserts that if it were to do so, then there would be more FTRs outstanding than the system could accommodate. PJM argues that the financial effect of this over-allocation would be to create more entitlements to congestion revenues than there would be revenues to satisfy such entitlements. PJM states that under the approved rules, all holders of FTRs would share in a revenue deficiency, the costs of congestion would be partially socialized, and the basic design of market-based congestion management system would be partially frustrated.

VII. Discussion

28. The FTR allocations proposed by PJM are accepted, but such acceptance is subject to PJM’s adoption of a mitigation measure to ensure that customers are not harmed from the allocation of FTRs that is lower than their prior firm transmission service. In the ComEd Integration Order, PJM Interconnection, L.L.C., 106 FERC ¶ 61,253 at P 41 (March 18, 2004) (ComEd Integration Order),we expressed concern that customers holding firm reservations should receive FTRs for a comparable level and term in the PJM FTR allocation process. As a result, we determined that if PJM was unable to award FTRs to all existing firm customers, it must justify why the resulting allocation is reasonable, and why mitigating measures should not be adopted. The FTR allocation for the month of May occurred before this order was issued. In this filing, it is clear that certain customers within MISO holding long-term point-to-point firm contracts did not receive nominated FTRs up to their contract levels. In the instant filing, PJM does not propose mitigation measures for these customers for the May 2004 allocation. It appears that the lower allocation of FTRs may be related to the source and sink that these customers nominated. PJM states these problems appear to be at least partially resolved

in the annual allocation to be effective on June 1.[8] However, if PJM and Com Ed are to proceed with a May 1, 2004 integration date, the Commission needs to ensure that parties are protected beginning May 1.

29. Consistent with our concerns expressed in the ComEd Integration Order, we find that it is necessary to require as a condition of approving the May FTR allocation that an additional mitigation measure is added to ensure that the long-term firm customers located in MISO are not harmed while we determine in the annual allocation filing whether other remedies are available. This mitigation measure will apply to long-term firm point-to-point customers that did not receive nominated FTRs up to their contract levels, i.e., those MISO customers that filed protests in this proceeding. To the extent that these specific customers did not receive nominated FTRs up to their firm long-term point-to-point contract levels, we will require that congestion revenues associated with the FTRs that were requested but not received will be paid to these customers, and that such payments will be recovered through an uplift payment assessed to all customers within the ComEd zone.[9] This way these customers will be protected from having to pay the congestion costs for which they were unable to receive FTRs.

30. As we stated in the ComEd Integration Order, we continue to be concerned that customers receive an equivalent level of FTRs or ARRs for their firm contracts when ComEd joins PJM. This mitigation measure will ensure that the customers will receive protection for the month of May 2004. In the annual allocation filing, we will consider whether this mitigation measure should be continued or if there are other measures that could be used by these customers through their nominations to receive a full allocation of FTRs.

[8] We are interested in determining in that filing whether this or other measures will provide an effective way for these customers to receive FTRs or ARRs equivalent to their firm contract levels.

[9] Since PJM has adopted the mitigation measure for short-term firm contracts suggested in our earlier order, we believe no additional measures are needed for short-term firm customers.

The Commission orders:

The proposal filed by PJM is accepted, to become effective the later of May 1, 2004, or the date on which Com Ed integrates, subject to the condition that PJM implement the mitigation measure, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.