UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Transmission Owners	Docket No. ER06-880-000
PJM Interconnection, L.L.C.	Docket Nos. ER06-456-000 ER06-456-001 ER06-456-002

ORDER ON PROPOSED TARIFF MODIFICATIONS, ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES AND CONSOLIDATING PROCEEDINGS

(Issued June 19, 2006)

1. On April 21, 2006, the PJM Transmission Owners, acting through the Consolidated Transmission Owners Agreement,[1] (jointly, PJM TOs) submitted modifications to Schedule 12 of the PJM Open Access Transmission Tariff (PJM OATT).[2] The proposed modifications seek to clarify Schedule 12 regarding: (1) the allocation of transmission expansion costs to merchant transmission owners; and (2) the calculation of Transmission Enhancement Charges (TECs) for point-to-point transmission customers. In this order, we accept for filing the PJM TOs' revised tariff sheets and suspend them, to become effective June 20, 2006, subject to refund. We also consolidate this proceeding with the pending proceedings in Docket Nos. ER06-456-000, -001, and -002 for hearing and settlement judge procedures.

Background

2. Schedule 12 of the PJM OATT addresses the assignment of cost responsibility for transmission system expansions and upgrades pursuant to the PJM Regional Transmission Expansion Plan (RTEP) or the Midwest Independent Transmission System

[1] The PJM Transmission Owners are listed in Appendix A.

[2] The PJM Transmission Owners state that section 9(d) of the PJM OATT gives them the exclusive and unilateral right to file modifications to Schedule 12.

Operator (MISO)/PJM Coordinated System Plan. For each transmission system expansion and upgrade, PJM must designate the Transmission Owner (or owners or other entities) responsible to construct, own and/or finance each transmission upgrade included in the RTEP. PJM also designates the PJM market participants responsible for bearing the costs of the facility or upgrade. According to Schedule 12, after the PJM Board of Managers approves a new or updated RTEP that includes system upgrades or expansions, PJM will designate (in the Schedule 12 Appendix) the customers using point-to-point transmission service and/or network integration transmission service (referred to as Responsible Customers) that will be subject to a TEC for the recovery of costs of each planned upgrade. The TEC is to be filed and established by each Transmission Owner in a separate filing. Schedule 12 also provides that PJM will file a report of the designation of Responsible Customers with the Commission.

3. On January 5, 2006, as amended on March 1, 2006 and March 29, 2006, PJM filed an Allocation Report in Docket Nos. ER06-456-000, -001, and -002 (RTEP Proceeding) pursuant to these Schedule 12 requirements. Thus far, PJM has assigned costs on a zonal basis (with the exception of the merchant transmission interconnections) and allocated transmission project costs to all load serving entities in a particular zone. The report indicated that PJM allocated a portion of certain transmission upgrade costs to two merchant transmission projects with firm transmission withdrawal rights—Neptune Regional Transmission System (Neptune) and East Coast Power, L.L.C. (ECP). PJM's allocations were based on a determination that the withdrawals from PJM at Neptune's point of interconnection with the system contribute to the need for certain upgrades to maintain system reliability, and Neptune should bear responsibility for a portion of these costs. However, PJM indicated that its allocation report did not address whether the costs allocated to Neptune should be paid by Neptune, Neptune's transmission customers, or the PJM Market Participants that deliver power to Neptune's point of withdrawal.

4. The Commission accepted PJM's proposed cost allocations and established a hearing and settlement judge procedures, which, in relevant part, will consider the appropriateness of the cost allocations to merchant transmission providers.

<u>The Filing</u>

5. The PJM TOs propose to modify Schedule 12 to clarify the recovery of transmission expansion costs allocated to merchant transmission projects. Under this proposal, costs allocated by PJM to a merchant transmission project will be borne by the merchant transmission owner. In addition, the applicants propose to modify Schedule 12 to provide that each TEC payable by a merchant transmission owner will be calculated as a fixed monthly charge.

6. The PJM TOs state it is possible that a merchant transmission owner may not be a PJM Market Participant or transmission customer, and therefore not be a party to the PJM

Operating Agreement or a PJM transmission service agreement. Applicants state that in some instances, the only contractual agreement between PJM and a merchant transmission owner may be the three-party interconnection agreement. If this were the case, PJM would have the authority to collect a TEC from such a merchant transmission owner only by means of a charge assessed under the merchant transmission interconnection agreement. To remedy the possibility of this limitation, the PJM TOs request that the Commission direct PJM to modify the *pro forma* interconnection agreement, and all merchant interconnection agreements currently on file with the Commission, to provide that, in the event PJM allocates RTEP costs to a merchant transmission facility, the merchant transmission owner shall be required to pay the TEC associated with such costs.

7. Finally, the PJM TOs propose to modify Schedule 12 to include a calculation of TECs for point-to-point transmission customers. The PJM TOs state that Schedule 12, section (b) provides for the possibility of allocating expansion costs to point-to-point transmission customers, but does not have a provision for calculating TECs for those customers. Thus, they propose a revision to Schedule 12, section (c)(5) that provides for a monthly calculation of TEC for point-to-point transmission service.

Procedural Matters

8. Notice of this filing was published in the *Federal Register*, 71 Fed. Reg. 27,487, with interventions and protests due on or before May 12, 2006. Timely motions to intervene or protest were filed by the PJM Industrial Customer Coalition, PSEG Companies, PPL Electric Utilities Corporation, PJM, Long Island Power Authority and Long Island Lighting Company (LIPA), Old Dominion Electric Cooperative, and Dominion Resources Services, Inc. A motion to intervene and comments was filed by Wisconsin Electric Power Company (Wisconsin Electric), and a motion to intervene and protest by Neptune. Reliant Energy, Inc. filed a motion to intervene out of time. On May 30, 2006, the PJM TOs filed a motion for leave to answer and answer.

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. The Commission finds that granting all late-filed motions to intervene will not delay, disrupt, or otherwise prejudice this proceeding, or place an additional burden on existing parties.

10. Rule 213(a) (2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a) (2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the PJM TOs' answer because it provides information that will assist us in our decision-making process.

Comments and Protests

11. Wisconsin Electric filed comments regarding the proposed addition of Schedule 12, section (c)(5), which provides for the calculation of TECs for point-to-point transmission customers. Wisconsin Electric states that it takes Network Integrated Transmission Service from MISO and is also a point-to-point customer of PJM. Wisconsin Electric states that, as proposed, Schedule 12 can be interpreted to result in the imposition of a TEC from PJM relating to its point-to-point service and also a charge from MISO by virtue of taking network service. Wisconsin Electric states that customers under the MISO tariff should not be billed a TEC by PJM in connection with taking PJM's point-to-point service. Wisconsin Electric asks the Commission to require the PJM TO's to clarify that this result is not the intention of proposed section (c)(5).

12. Neptune protests the proposed tariff revisions and asks the Commission to reject the PJM TOs' filing. Neptune asserts that the proposed modifications are contrary to the existing PJM tariff and prior Commission orders and, thus, they are unnecessary because the existing tariff is both adequate and working properly.

13. Neptune argues that the allocation of TECs to merchant transmission owners is contrary to the PJM tariff because the existing tariff language assigns TECs to Responsible Customers. Neptune asserts that a merchant transmission owner under Part IV of the tariff is not the same as a PJM transmission service customer under Part II or III of the tariff; and therefore, merchant transmission owners cannot be classified as Responsible Customers under Schedule 12. Neptune asserts that the definition of Responsible Customers provided in Schedule 12 is consistent with the structure of the tariff; and as such, merchant transmission owners cannot be classified as Responsible Customers. Neptune states that the proposed modifications attempt to allocate RTEP costs to Neptune through its Interconnection Agreement and that these costs are not interconnection costs associated with the System Impact Study.

14. Neptune also argues that the PJM TOs' proposal is contrary to prior Commission orders which held that reliability upgrade charges are to be assigned to transmission customers when they seek transmission service. Neptune cites the February 10, 2005 order[3] (Neptune Order) in which the Commission held that PJM could not allocate additional system upgrade costs to Neptune as an interconnection customer. Neptune avers that the order states that reliability upgrade costs are to be assigned to transmission service customers, and allocated in accordance with the PJM tariff. Neptune asserts that the Commission recognized that these reliability costs are associated with transmission

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[3] *Neptune Regional Transmission System, LLC v. PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,098 (2005), *reh'g denied*, 111 FERC ¶ 61,455 (2005), *appeal pending sub nom. Pub. Svc. Elec. & Gas Co. v. FERC*, No. 05-1325 (D.C. Cir. Filed August 16, 2005).

service, and not based on mere ownership or interconnection service, and therefore are allocated to customers seeking transmission services from PJM.

15. Neptune argues that the Neptune Order clearly states that RTEP charges are to be allocated to transmission customers taking point-to-point or network transmission service. Neptune argues that the order recognizes that the transmission customers taking PJM service to the Neptune line could include the merchant transmission owner, its customer, or other PJM customers delivering energy to the line. However, Neptune argues the order does not state that merchant transmission owners are the only entities allowed to take PJM transmission service to the Neptune line.

16. Further, Neptune asserts that the existing PJM tariff is adequate and does not require modification as proposed by the PJM TOs. Neptune argues that under the existing PJM tariff, PJM designates transmission customers taking point-to-point transmission service as Responsible Customers. Neptune states that the Responsible Customers for a particular transmission owner's zone are those transmission customers taking transmission service that sinks in that zone. Neptune argues that the PJM TOs' proposal unfairly singles out merchant transmission owners from all other transmission owners in PJM and is unduly discriminatory and in violation of the Federal Power Act. Neptune argues that the PJM TOs have failed to present any valid reason to treat the two differently. Further, Neptune argues that the PJM TOs' proposal, if accepted, will have a chilling effect on further development of merchant transmission in PJM by establishing open-ended transmission service charges that would continue to flow through Interconnection Agreements.

PJM Transmission Owners' Answer to Protests

17. On May 30, 2006, the PJM TOs filed an answer requesting that the Commission deny the protests of Wisconsin Electric and Neptune. The PJM TOs argue that Neptune has framed the issue incorrectly. The PJM TOs state that Section 9(d) of the PJM tariff gives them the exclusive and unilateral right to modify Schedule 12 of the tariff, and that they are simply exercising that right by seeking to clarify Schedule 12 to make it consistent with Commission precedent that it is appropriate to allocate RTEP upgrade costs and collect TECs from merchant transmission owners. PJM TOs argue that this conclusion is supported by a recent Commission order regarding PJM.[4]

18. The PJM TOs assert that under Schedule 12, costs are allocated to load serving entities, and that for a merchant transmission project, the merchant transmission owner serves the function of a load serving entity with regard to transmission upgrades. The PJM TOs state that a merchant transmission owner acts, as do load serving entities, as the gatekeeper to the retail customers who are the ultimate beneficiaries of transmission

[4] *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,261 (2006).

expansion. Further, the PJM TOs assert that Neptune or any other merchant transmission owner has the option to recover the costs of the TEC from its users.

19. The PJM TOs assert that their filing is intended to satisfy the issue raised in the RTEP Proceeding, *i.e*., who bears responsibility for TEC costs allocated to a merchant transmission owner. The PJM TOs assert that their proposal is not unduly discriminatory because it is consistent with prior Commission orders. The PJM TOs argue that Neptune's interpretation of Commission orders relating to cost allocation to Neptune is incorrect. The PJM TOs assert that the orders cited by Neptune address the allocation and recovery of costs associated with interconnecting Neptune to the PJM transmission system, and not system upgrade costs that may be incurred later. The PJM TOs assert that their proposed modifications do not change the essence of Section 12, but simply clarify the calculation of the TEC to transmission customers.

20. Regarding the issue raised by Wisconsin Electric, the PJM TOs state that Wisconsin Electric's interpretation of Schedule 12, section (b) is incorrect. According to the PJM TOs, that section addresses the situation where MISO participants are allocated RTEP costs but, because PJM has no contractual relationship with MISO participants, PJM cannot collect the costs. Thus, Schedule 12 provides that in those instances, MISO is the Responsible Customer from whom PJM will collect the TEC, and MISO will then pass the cost on to its members. In the case of Wisconsin Electric, the PJM TOs state that it is a point-to-point customer under the PJM tariff and the cited section of Schedule12 does not apply to it.

Discussion

21. The Commission accepts and suspends the PJM TOs' proposed revised tariff sheets for a nominal period, to become effective June 20, 2006, subject to refund, sets the proposed modifications for hearing and settlement judge proceedings, and consolidates this proceeding with the ongoing hearing in the RTEP Proceeding in Docket Nos. ER06-456-000, *et al*. The issues presented in this filing are directly related to those presented in the RTEP Proceeding and the resolution of these issues must be coordinated.

22. In the RTEP Proceeding, PJM filed a report pursuant to Schedule 6 of the PJM Operating Agreement and Schedule 12 of the PJM OATT allocating cost responsibility for certain transmission upgrades as part of the RTEP. On May 26, 2006 the Commission issued an order in this proceeding setting certain issues for further investigation.[5] Among the issues set for hearing was one relating to merchant transmission facilities, in particular, Neptune and ECP. In the May 26 Order, the Commission stated that "[w]e will set for hearing PJM's proposed cost allocations to the

[5] *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,261 (2006) (May 26 Order).

merchant transmission projects, Neptune and ECP, to ensure that the method by which PJM has allocated costs to these Responsible Customers is not unduly discriminatory or preferential, and that the proposed allocation directly correlates to their contributions to the need for such reliability upgrades."[6]

23. Applicants state that they are modifying Schedule 12 to clarify the method by which the transmission owners will recover the cost of RTEP upgrades that are assigned by PJM to merchant transmission providers through the TEC.[7] This issue is similar to the issue of cost allocation in the RTEP Proceeding which is dealing with the appropriateness of allocating costs to merchant transmission projects, as Responsible Customers, by PJM. As discussed in the May 26 Order, merchant transmission projects with firm withdrawal rights may be included along with network and point-to-point customers as Responsible Customers in an affected zone that can be allocated RTEP upgrade costs.[8] An issue there was whether these costs should be allocated to merchant transmission owners as if they are separate zones, or whether these costs should be first allocated to zones, of which the merchant transmission owners (or their customers) would be a part. The Commission found that "while merchant transmission providers and their customers should be allocated an appropriate share of network upgrades, we cannot determine based on this record whether PJM has allocated appropriate costs to these entities or has done so in an unduly discriminatory manner."[9]

24. Moreover, in this filing, the PJM TOs have singled out merchant transmission facilities in developing the TEC. In the RTEP Proceeding, PJM specifically stated that it was not concluding whether the costs assigned to the merchant owners should be paid by the merchant owner, its transmission customers, or the entity that delivers energy to the merchant interconnection. According to the existing Schedule 12, this determination is to be made when the transmission owner files with the Commission a TEC to recover these costs, at which time the amount and structure of its rates would be determined. In this filing, merchant transmission providers are assigned these costs. It is not clear what method merchant transmission facilities would be able to use to recover assigned RTEP costs from their customers, or whether their customers would be subject to charges from both the merchant owner and the transmission owner from which they may take transmission service to get energy to the merchant transmission facility; and therefore, whether merchant transmission owners and customers are being treated in a consistent and non-discriminatory manner by the Schedule 12 RTEP process. These additional

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[6] May 26 Order at P 51.

[7] Filing at 2.

[8] May 26 Order at P 49.

[9] *Id*. at P 51.

issues raised by the instant filing should not be addressed in isolation from the Schedule 12 issues in the RTEP Proceeding.

25. Thus, the Commission finds that the PJM TOs' filing has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will conditionally accept and suspend for a nominal period, subject to refund, the tariff sheets filed by the PJM TOs, to be effective June 20, 2006, and set them for hearing and settlement judge procedures as ordered below. In addition, given common issues of law and fact, we consolidate this proceeding with the ongoing proceeding pending in Docket No. ER06-456-000. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced, and encourage the parties to participate in any settlement proceedings conducted in Docket Nos. ER06-456-000 *et al*.

The Commission orders:

(A) We accept and suspend for a nominal period the proposed tariff modifications, to become effective June 20, 2006, subject to refund, and to the outcome of a hearing.

(B) 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 the Federal Power Act, particularly sections 205 and 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 concerning the justness and reasonableness of the PJM TOs' proposed filing. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in paragraphs (C) and (D) below.

(C) Docket No. ER06-880-000 and Docket No. ER06-456-000 are hereby consolidated for purposes of settlement, hearing and discussion.

(D) The settlement judge or presiding judge, as appropriate, designated in Docket No. ER06-456-000, shall determine the procedures best suited to accommodate the consolidation.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix A – List of PJM Transmission Owners

Allegheny Electric Cooperative, Inc.

American Electric Power Service Corporation on behalf of its operating companies: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company

Atlantic City Electric Company, Delmarva Power & Light Company, and Potomac Electric Power Company

Baltimore Gas and Electric Company

CED Rock Springs, LLC

Dayton Power & Light Company

Duquesne Light Company

Exelon Corporation

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

Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, all doing business as Allegheny Power

Old Dominion Electric Cooperative

Public Service Electric and Gas Company

PPL Electric Utilities Corporation

Rockland Electric Company

UGI Utilities, Inc.

Virginia Electric and Power Company