

111 FERC ¶ 61,180
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

American Electric Power Service Corporation on Docket No. EL05-74-000
Behalf of:

Appalachian Power Company
Columbus Southern Power Company
Indiana Michigan Power Company
Kentucky Power Company
Kingsport Power Company
Ohio Power Company
Wheeling Power Company

Commonwealth Edison Company and
Commonwealth Edison Company of Indiana, Inc.

Dayton Power and Light Company

ORDER ON RATE FILING

(Issued May 6, 2005)

1. On March 8, 2005, American Electric Power Service Corporation (AEP), Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (ComEd), and the Dayton Power and Light Company (Dayton) (collectively, the Companies, or Applicants) jointly filed under Federal Power Act (FPA) section 206¹ to recover approximately \$31.6 million of expansion expenses incurred by PJM Interconnection, L.L.C. (PJM) and reimbursed by the Companies, as set forth in new Schedule 13 to the PJM Open Access Transmission Tariff (OATT). This order accepts the proposed Schedule 13, subject to conditions.

¹ 16 U.S.C. § 824e (2000).

BACKGROUND

2. Proposed Schedule 13 is designed to recover the non-capital expenses incurred by PJM, and funded by the Companies, to develop the systems and infrastructure necessary to integrate the Companies into PJM. The expansion expenses include non-capital costs incurred by PJM associated with additions and modifications to PJM's systems and facilities in connection with the Companies' integration, plus carrying charges. Under proposed Schedule 13, the expansion costs would be collected by charging point-to-point and network transmission customers serving load a charge of \$0.007 per MWh times the total quantity of energy delivered to all load within the PJM footprint. The costs would be amortized over a 10 year period, and the charge would be discontinued when the total amount has been recovered.

3. The application includes a copy of the Agreement To Implement Expansion of PJM West Region (Implementation Agreement), which requires PJM to incur expansion costs associated with additions and modifications to its systems and facilities in connection with the Companies' integration. The Implementation Agreement also requires the Companies to fund the non-capital costs of the project to enable PJM to avoid carrying those costs pending rate recovery. Pursuant to the Implementation Agreement, PJM began billing the Companies in September 2002. They provide verification that, as of the date of the filing, a total of \$31,661,263 had been billed to the Companies.

4. Expansion costs, as defined in the Implementation Agreement, consist of four cost categories, three of which are pertinent here: Capitalized Expansion Costs, Directly Assigned Expansion Costs, Expensed Expansion Costs. The first category of expenses is being recovered by PJM under Schedule 9 of the PJM Tariff. The Companies are seeking in the instant application recovery of Directly Assigned Expansion Costs and Expensed Expansion Costs, which were incurred by PJM and billed to them. The Implementation Agreement explains that the cost recovery provisions of the agreement enabled PJM to avoid carrying the costs pending rate recovery after the Companies were integrated.²

5. Applicants state that the expansion of PJM brings a significant decrease in the administrative costs for PJM load-serving entities (LSEs). They also assert that the expansion resulted in other significant benefits to customers region-wide, such as increased generating capacity located within PJM and increased transmission access and competition. Therefore, Applicants propose to spread the costs among all PJM LSEs. Applicants assert that the proposed methodology is consistent with the methodology approved by the Commission for Allegheny Power's (Allegheny) application to recover

² See Application at 5, Appendix A at 15.

its share of PJM start-up costs,³ and note that the Commission permitted region-wide recovery of the original PJM start-up costs incurred by PJM associated with the purchase of computer hardware and software.

6. Applicants further note that in *Ameren Services Company*,⁴ the Commission approved rates under the Midwest ISO Open Access Transmission and Energy Market Tariff (TEMT) that effectively permitted members of the former Alliance RTO to recover their Alliance RTO start-up costs.⁵ Applicants contend that *Ameren* supports the region-wide recovery of PJM integration costs in the instant proceeding because the regional benefits provided by the PJM expansion to market participants in PJM are greater than any regional benefits provided from the Alliance start-up costs to the Midwest ISO market participants.

7. Applicants explain that they sought authorization to file the proposed Schedule 13 under FPA section 205⁶ in accordance with applicable PJM Transmission Owners Agreements, but the motion did not receive sufficient support; thus, they are filing the proposal under FPA section 206. Applicants request waiver of the notice requirements to permit an effective date of May 1, 2005.

INTERVENTIONS, COMMENTS AND PROTESTS

8. Notice of the filing was published in the *Federal Register*, 70 Fed. Reg. 15,075 (2005), with protests and interventions due on or before March 29, 2005. Notices of intervention or timely motions to intervene were filed by the parties listed on Appendix A. In addition, Consumers Energy Company filed a motion to intervene out-of-time. Applicants and the Public Utilities Commission of Ohio (Ohio Commission) filed answers.

³ See Application at 1-2 and 22, citing *PJM Interconnection, L.L.C. and Allegheny Power*, 96 FERC ¶ 61,060 (2001) (*Allegheny*).

⁴ 101 FERC ¶ 61,320 (2002) (*Ameren*), order on reh'g, 103 FERC ¶ 61,178 at P 9 and 20 (2003).

⁵ Application at 9.

⁶ 16 U.S.C. § 824d (2000).

9. The PJM Members Group⁷ protests Applicants' proposed Schedule 13. First, the PJM Members Group contends that the proposal, which will impose charges on PJM Members outside the service territory of Applicants, is prohibited by the PJM Operating Agreement. They note that Schedule 3 of the PJM Operating Agreement provides:

(e) An entity accepted for membership in the LLC shall pay all costs and expenses associated with additions and modifications to its own metering, communication, computer, and other appropriate facilities and procedures needed to effect the inclusion of the entity in the operation of the Interconnection.[⁸]

10. Second, the PJM Members Group contends that Applicants are requesting treatment that no other PJM transmission owner has received. For example, the original PJM transmission owners were not permitted to shift their non-capital costs of reforming PJM into an independent system operator in 1997 to a region-wide charge. The PJM Members Group takes exception to Applicants' statement that Allegheny was permitted to recover start-up costs. Although Allegheny had proposed to include start-up costs in a surcharge to then-existing PJM entities, according to PJM Members Group, the Commission found in *Allegheny* that it was inappropriate to require the existing PJM members to share in the start-up costs incurred by Allegheny in joining PJM. The PJM Members Group also disputes whether the original PJM transmission owners recovered start-up costs incurred by PJM; they contend that recovery was permitted for capital costs but not non-capital integration expenses, as are sought in this proceeding. Accordingly, the PJM Members Group contends that it would be unduly discriminatory for Applicants to receive preferential treatment.

11. Third, the PJM Members Group contends that accepting Schedule 13 would penalize the original PJM transmission owners for being pioneers in RTO formation, and reward the Companies for lagging behind. It notes that the original PJM Transmission Owners incurred numerous expenses in the creation of the RTO, especially in the areas of

⁷The PJM Members Group consists of: Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Allegheny Electric Cooperative, Inc., Baltimore Gas and Electric Company, Pepco Holdings, Inc. and its public utility affiliates Potomac Electric Power Company, Delmarva Power & Light Company and Atlantic City Electric Company, PPL Electric Utilities Corporation, Public Service Electric and Gas Company, Rockland Electric Company, Southern Maryland Electric Cooperative, Inc., and UGI Utilities, Inc.

⁸ PJM Members Group at 3, *citing* Schedule 3 of the PJM Operating Agreement, Third Revised Rate Schedule FERC No. 24.

market development, transmission planning, and reliability. It asserts that singling out new entities such as Applicants for special treatment could encourage utilities in other regions that are forming RTOs to abstain from participating in the initial formation efforts in the hope of attracting a better deal at a later date. Therefore, the PJM Members Group requests that the Commission reject the proposed Schedule 13.

12. Virginia Electric Power Company (Dominion) opposes Applicants' proposal to assess the proposed new Schedule 13 charge to load in Dominion's zone (PJM South). It states that it would be fundamentally unfair and unreasonable to require Dominion to pay a portion of Applicants' PJM expansion costs on top of its own allocation of nearly \$12 million for the same start-up expenses. Dominion estimates that the LSEs in Applicants' zones would realize at least a 60 percent reduction in their non-capital expansion costs, whereas Dominion and the other LSEs in the Dominion zone, would be subject to an increase in their non-capital expansion costs of at least 40 percent. Dominion avers that such a significant cost shift is fundamentally unfair and should not be permitted by the Commission. However, it urges that if the Commission accepts Applicants' proposal, in order to remedy the inherent unfairness to LSEs in the Dominion zone, the Commission should require that Schedule 13 be modified to not apply to load within the Dominion zone.

13. American Municipal Power-Ohio (AMP-Ohio) protests the proposed Schedule 13 charge, which would "pile yet another charge on LSEs in the broad area covered by PJM."⁹ AMP-Ohio contends that the "excessive charges that the Commission has permitted to take effect, subject to refund years in the future, threaten the viability of LSEs throughout much of the country and will inflict irreparable harm on their customers, to the extent that they are able to and choose to pass these charges on."¹⁰ AMP-Ohio contends that Applicants did not show that the new charge is not duplicative of costs already buried in their transmission rates. Further, AMP-Ohio contends that those who benefit from the expansion of PJM, such as generators and AEP, should be the same entities as those who pay. It notes that limiting the proposed fee to load is unduly discriminatory. In addition, it contends that if interest is allowed, the maximum rate should be the Commission's refund rate. Finally, AMP-Ohio seeks clarification that Schedule 13 would be assessed only on the transmission billing demand of network customers. If not, AMP-Ohio protests the application of Schedule 13 to load that makes no use of the PJM transmission network.

⁹ AMP-Ohio at 1.

¹⁰ *Id.* at 2.

14. The Detroit Edison Company (Detroit Edison) and Wisconsin Electric Power Company (Wisconsin Electric) request clarification that the proposed Schedule 13 will only be imposed on PJM load and not on load in the Midwest ISO service territory that utilizes PJM point-to-point transmission service. Similarly, the WPS Companies¹¹ oppose any attempt to collect PJM expansion costs from load within the MISO footprint. They claim that there is no reasonable argument that the MISO region has benefited by the expansion of PJM to include these transmission owners, and thus, no basis for sharing the PJM expenses outside of PJM.

15. The North Carolina Electric Membership Corporation (NCEMC) states that the proposal to allocate the expense portion of the expansion costs to all load within the PJM footprint on the basis of the benefits argument, as opposed to a cost causation argument, is flawed. It claims that costs should be spread among all market participants, including generators, wholesale marketers, and transmission owners, who benefit from the expansion. It therefore requests that the Commission reject the filing for failure to allocate the costs to all who benefit from the expansion. In the alternative, it requests that the cost allocation issue be set for hearing or technical conference.

16. The City and Towns of Hagerstown, Thurmont, and Williamsport, Maryland, and Town of Front Royal, Virginia (the Cities) protest the filing as contrary to the public interest, unjust, unreasonable, unduly discriminatory, and therefore unlawful under the Federal Power Act. They request that the filing be rejected, or, in the alternative, that it be set for hearing.

ANSWERS

17. On April 13 and 14, 2005, the Companies and the Ohio Commission, respectively, filed answers. The Companies and the Ohio Commission both make the point that Schedule 3 of the PJM Operating Agreement does not apply to the expansion costs that are the subject of this filing because Schedule 3 (e) refers to costs and expenses incurred to upgrade a PJM member's facilities, not for additions and modifications to PJM's facilities. According to the Companies, none of the costs they are seeking to recover in this filing were incurred by the Companies.

¹¹ The WPS Companies are: Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Energy Service, Inc., and its subsidiary, WPS Power Development, LLC.

18. The Ohio Commission and the Companies counter that the requested treatment is consistent with the practice approved by the Commission with respect to Allegheny's integration costs. The Companies note that, in *Allegheny*, the Commission found it inappropriate to require existing PJM members to share in the start-up costs incurred by Allegheny, but that the order did not preclude region-wide recovery of the non-capital costs incurred by PJM that Allegheny funded on behalf of PJM. Thus, they believe that proposed Schedule 13 is consistent with the practice adopted when Allegheny joined PJM.

19. The Companies also reiterate that the Commission permitted region-wide recovery of original PJM start-up costs incurred by PJM associated with its purchase of computer hardware and software. They continue:

If the Companies are required, as Certain PJM TOs urge, to recover the PJM non-capital costs from within their own zones, then customers located in the pre-expansion PJM zones will not contribute to recover of any of the non-capital costs incurred by PJM, and the responsibility for costs that result in PJM-wide benefits will be shifted entirely to customers within the Companies' own zones. Such an outcome is unduly discriminatory . . .^[12]

The Companies assert that the PJM Members Group is attempting to shift costs and to get something for nothing.

20. The Ohio Commission urges that, to be consistent with the treatment of capital costs incurred by PJM, which are recovered through Schedule 9, the Companies should be allowed to recover these non-capital costs incurred by PJM.

21. Regarding the question of whether the proposed charge should apply to generators and marketers in addition to load raised by AMP-Ohio and NCEMC, the Companies state that this is a policy question for the Commission. They believe that a load-based charge is reasonable and consistent with the approach taken by the Commission in other orders,¹³ and note the potential impact on competition if some sellers are required to pay a charge that others located outside PJM are not required to pay.

¹² Companies' Answer at 7.

¹³ See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 105 FERC ¶ 61,212 (2003); *Ameren Services Co.*, 105 FERC ¶ 61,216 (2003) (discussing the Seams Elimination Cost-Charge Adjustment/Allocation (SECA) for intra-RTO lost revenue recovery).

22. The Companies also provide several clarifications in response to the protests. First, regarding Wisconsin Electric and Detroit Edison's question whether the proposed charge would apply only to customers serving load within PJM, the Companies clarify that it would. Second, the Companies confirm for AMP-Ohio that the proposed charge would only be assessed on the transmission billing demand of network customers, and that contract demand network customers would only be billed for their contract demand and not their total load. Regarding Dominion's question whether the proposal excludes the non-capital expenses allocated to Dominion, the Companies clarify that that is not correct. They propose that, upon Dominion's integration into PJM, its allocated share of non-capital expenses would be included for recovery under Schedule 13. They note that it was their intention to include Dominion's share of PJM's non-capital costs, but that they did not have sufficient information at the time the proposal was filed to include those expenses.

DISCUSSION

Procedural Matters

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant Consumers Energy's motion to intervene out-of-time, given its interest in this proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Ohio Commission's and Applicants' answers because they have provided information that assisted us in our decision-making process.

Allocation of Certain RTO Implementation Costs

25. In this proceeding, Applicants propose to recover approximately \$31.6 million of costs associated with the development of system and infrastructure (*e.g.*, computer equipment and telecommunication links) necessary to integrate the Companies into PJM. The costs are "non-capitalized costs incurred by PJM during the project, including the costs of vendors, consultants, independent contractors, and PJM employees (including only allocable compensations and general and administrative overhead)."¹⁴ Applicants

¹⁴ Appendix B to Application, Affidavit of Dennis W. Bethel, at 5, lines 2-5.

propose to recover the costs through a \$0.007/MWh surcharge applied to all energy deliveries to load within the PJM region. Once the costs, plus carrying charges, are recovered, the surcharge would no longer be applicable.

26. The threshold question raised by this proceeding is whether the costs should be applied throughout the PJM region or whether the costs should be applied only to the “new class” of members, *i.e.*, AEP, ComEd, and Dayton. Applicants want the costs spread out to (or socialized among) all load within the PJM footprint; opponents want the costs directly assigned to those entities for whom the costs were incurred. We find that the non-capital costs associated with the integration of new members into PJM should be recovered from the “new class” of PJM members. There are several factors supporting this determination.

27. First, we find that these costs were “incurred” in connection with the integration of a new class of customers into PJM. PJM, the members of the new class, or any third party under the direction of PJM and/or the member of the new class, would have not have incurred these costs except for the integration. Our determination properly assigns the non-capital costs associated with the integration to those parties directly responsible for such costs.

28. Second, our determination is consistent with our ruling in *Allegheny* regarding similar integration costs. In its application in Docket No. RT01-98-000, Allegheny proposed to recover through a transitional surcharge \$10.1 million of certain costs, including costs for communication links, which PJM incurred in order to integrate Allegheny into PJM. In its protest, GPU Energy noted that current PJM members already pay for their fair share of these costs and that they should not have to pay Allegheny’s share as well.¹⁵ It was clear from Allegheny’s application that PJM would incur expenses to develop necessary systems and facilities upgrades for Allegheny’s integration, and that Allegheny would seek to recover those costs through the transitional surcharge.¹⁶ Thus,

¹⁵ April 20, 2001 Protest at 8-9.

¹⁶ See Transmittal Letter filed March 15, 2001 in Docket No. RT01-98-000 at 15.

the Commission's determination to exclude them "from surcharges applicable to existing PJM entities,"¹⁷ indicated that we did not intend to socialize those costs. Although this case was eventually resolved by an uncontested settlement, our intent was clear in the Allegheny order as to how integration costs should be assigned.¹⁸

29. In *Allegheny*, we did provisionally approve Allegheny's recovery of lost revenues associated with the termination of through and out service.¹⁹ While Applicants' recovery of lost through and out revenues is not at issue in this proceeding, we note that they have sought and received approval for such recovery in another proceeding.²⁰

30. Third, our determination is consistent with PJM's OATT, Operating Agreement and other documents. Under PJM's procedures, a new member is responsible for costs and expenses associated with additions and modifications to *its own* metering, communication and computer equipment, as specified in Schedule 3(e) to PJM's Operating Agreement. Furthermore, according to section 4.1.4.1 of the Implementation Agreement, a new member is responsible for the costs incurred by PJM to effectuate the integration:

"Directly Assigned Expansion Costs" are, with respect to each Participant, (a) all Expansion Costs PJM incurs to bring such Participant's internal systems into conformity with PJM's technology and communications requirements, and for PJM to establish telecommunication links with such Participant, and (b) any other Expansion Costs that may not properly be capitalized under GAPP

¹⁷ *Allegheny*, 96 FERC ¶ 61,060 at 61,222.

¹⁸ In its September 10, 2001 compliance filing, Allegheny explained that it had not "incurred" any start-up costs in PJM. Rather, Allegheny reimbursed PJM for the costs PJM incurred for the integration of Allegheny into PJM. Allegheny further stated that it did not know what the Commission meant in its order. However, Allegheny did not ask for clarification of the order. Protestors claimed that Allegheny had patently not complied with the order. The treatment of Allegheny's start-up costs was set for hearing. *PJM Interconnection, L.L.C. and Allegheny Power*, 98 FERC ¶ 61,072 (2002). The case was resolved by an uncontested settlement. *PJM Interconnection, L.L.C. and Allegheny Power*, 100 FERC ¶ 61,088 (2002).

¹⁹ *See Allegheny*, 96 FERC ¶ 61,060 at 61,217-23.

²⁰ *See Application at 2-3.*

We recognize that under the Implementation Agreement, the technological and telecommunication costs are directly assigned to help PJM manage its cash flow. Nevertheless, we find that in accordance with PJM's Operating Agreement and Implementation Agreement, the costs are to be directly assigned to the party for which they were incurred. Thus, the direct assignment of non-capital costs associated with the integration of new members is appropriate and reasonable in this case.

31. Regarding AEP's assertion that we approved recovery of start-up costs for the former Alliance members in the Midwest ISO, we find that the PJM OATT and the Midwest ISO TEMT have different methods for collecting and allocating RTO start-up and integration costs. PJM allocates some costs system-wide and some costs are directly assigned. On the other hand, Schedule 10 of the Midwest ISO TEMT provides that all integration costs are socialized.

32. Finally, the direct assignment of non-capital costs does not mean that all costs associated with the integration of new members into PJM are directly assigned to the class of customer for whom the costs were incurred. Under Schedule 9 of PJM's OATT, capital costs associated with the expansion of the PJM system are shared by all PJM members. Thus, contrary to the Companies' contention in their Answer that the PJM Members Group is attempting to shift costs and get the benefits of integration "for nothing," all member of PJM – old and new – are contributing towards integration costs. The Commission finds that PJM's allocation of integration costs, whereby capital costs are socialized among all PJM members and non-capital costs specifically incurred to effectuate integration into PJM are directly assigned, is a reasonable allocation method. In addition, this method appropriately recognizes that the PJM system changes over time. Moreover, as a matter of policy, we do not wish to discourage transmission owners from joining a regional transmission organization at its inception or at a later date in order to avoid paying integration expenses of others entities.

33. We want to emphasize that the \$31.6 million of costs may be recovered through the PJM OATT. They just may not be assessed to all PJM customers. In conclusion, based on the discussion above, we accept for filing the proposed Schedule 13, effective May 1, 2005, subject to Applicants refiling the schedule within 30 days of the date of this order to limit the applicability of the surcharge.

Other Issues

34. Applicants state that the costs at issue in this case were incurred for them and for Dominion. Dominion integrated into PJM on May 1, 2005. If Dominion wishes to be included in this class of PJM members and to recover the non-capital expenses incurred by PJM on its behalf in Schedule 13, a compliance filing must be submitted detailing the costs to be recovered, which should include a revised Schedule 13.

35. AMP-Ohio contends that the carrying charges on the implementation costs should be consistent with the Commission's maximum refund rate. We agree that a 9 percent carrying charge is excessive. In the compliance filing, Applicants are directed to recalculate the surcharge using the Commission refund rate in section 35.19a(a)(2)(iii) of the Commission's Regulations.²¹

36. Several parties oppose Applicants' proposal to assess the surcharge only to load. They request that the proposed surcharge be applied to marketers and generators in addition to load or, in the alternative, that the case be set for hearing or technical conference. However, the protestors have not explained why Applicants' proposal is not reasonable nor have they provided an alternative explaining how marketers and generators should be charged. Therefore, we deny their requests.

The Commission orders:

(A) Schedule 13 is conditionally accepted for filing, effective May 1, 2005, as discussed in the body of this order.

(B) Applicants are hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

²¹ 18 C.F.R. 35a(a)(2)(iii) (2004).

APPENDIX A

Allegheny Electric Cooperative, Inc.
 Allegheny Power
 American Municipal Power-Ohio, Inc.
 City and Towns of Hagerstown, Thurmont, and Williamsport, Maryland, and Town of
 Front Royal, Virginia
 Detroit Edison Company
 District of Columbia Office of the People's Counsel
 FirstEnergy Companies *
 Illinois Municipal Electric Agency
 Maryland Office of the People's Counsel
 North Carolina Electric Membership Corporation
 Pennsylvania Office of Consumer Advocate
 PHI Companies **
 PJM Interconnection, L.L.C.
 PPL Electric Utilities Corporation
 PSEG Companies ***
 Public Utilities Commission of Ohio
 Rockland Electric Company
 Southern Maryland Electric Cooperative, Inc.
 Virginia Electric and Power Company
 Wisconsin Electric Power Company
 WPS Companies ****

* FirstEnergy Companies include: Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

** PHI Companies include: Pepco Holdings, Inc., Potomac Electric Power Company, Atlantic City Electric Company and Delmarva Power & Light Company

*** PSEG Companies include: Public Service Electric and Gas Company and PSEG Energy Resources & Trade LLC

**** WPS Companies include: Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Energy Services, Inc., and WPS Power Development, LLC