

118 FERC ¶ 61,154
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. ER06-456-006
ER06-954-002
ER06-1271-001

PJM Transmission Owners

Docket No. ER06-880-003

ORDER GRANTING INTERLOCUTORY APPEAL, HOLDING HEARINGS IN
ABEYANCE PENDING FURTHER ORDER ON THE MERITS

(Issued February 27, 2007)

1. On January 31, 2007, the Presiding Judge denied a motion by Allegheny Power, American Electric Power Service Corporation, Dayton Power and Light Company, Dominion Resources, Inc. and Exelon Corporation for reconsideration, or in the alternative, to permit an interlocutory appeal of an order issued by the Presiding Judge on December 29, 2006. On February 7, 2007, American Electric Power Service Corporation, Dayton Power and Light Company and Exelon Corporation (collectively, the Companies) filed an interlocutory appeal. On February 12, 2007, Chairman Kelliher, as Motions Commissioner, referred the matter to the Commission. For the reasons set forth, the Commission grants the appeal solely for the purpose of ordering that the hearings be held in abeyance, pending further order of the Commission on the merits of the appeal.

Background

2. Pursuant to Schedule 12 of the PJM tariff and Schedule 6 of the PJM Operating Agreement, PJM allocates cost responsibility for project upgrades that are determined in PJM's Regional Transmission Expansion Plan (RTEP) as necessary to ensure systemwide reliability. Three of these consolidated dockets, Docket Nos. ER06-456, ER06-954 and ER06-1271 involve specific RTEP projects. Docket No. ER06-880 was submitted by the PJM Transmission Owners to amend the provisions of Schedule 12 regarding allocation of costs for merchant transmission projects. Protests were filed regarding the allocation

of costs for specific individual projects, as well as the methodology by which PJM determined cost allocations. The Commission set the protested projects for hearing and, in each of these orders, limited the hearings to the protested projects. The Commission explained:

We are setting for hearing the allocation of cost responsibility for specific projects listed herein where parties have raised specific issues of fact relating to their respective project allocations . . . 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.¹

3. At hearing, trial staff filed a motion for determination of scope of hearing in which staff argued that several issues raised in the parties' protests presented challenges to PJM's RTEP cost allocation methodology and, therefore, were not set by the Commission for hearing. PJM's cost allocation method is based on its calculation of a power distribution factor, or DFAX, which represents a measure of the effect of each zone's load on the transmission constraint that requires the mitigation upgrade. On December 29, 2006, the Presiding Judge issued the Scope Order,² ruling that parties would not be allowed to raise general challenges to the PJM methodology, but would be allowed to litigate specific protested projects with regard to the methodology applied by PJM, including among others, the use of DFAX and zonal netting. Following the Presiding Judge's issuance of the Scope Order, the Companies filed a motion for reconsideration and, in the alternative, to permit interlocutory appeal. The Presiding Judge denied the requests for reconsideration or to permit interlocutory appeal with an explanation that the scope issues were already before the Commission as motions for clarification and rehearing of each of the orders issued in these dockets. The Presiding Judge also invited the Commission to provide direction: "I am confident that, with the motions before it as well as my Scope Order and the instant order, if the Commission disagrees with my rulings, it will realize the participants to this proceeding will benefit from its determination of the scope as soon as practicable."³

¹ See *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,261 at P 56, *PJM Interconnection, L.L.C.*, 116 FERC ¶ 61,118 at P 38 and *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,058 at P 49.

² *PJM Interconnection, L.L.C.*, 117 FERC ¶ 63,054 (2006).

³ January 31 Order at P 6.

4. On February 7, 2007, the Companies filed an appeal to the Motions Commissioner from the Presiding Judge's January 31 Order in which they argue that for several reasons an interlocutory appeal is the appropriate remedy and should be granted by the Commission. They contend that the Scope Order will cause irreparable harm to them because they will incur substantial expenditures of time and money addressing issues they contend the Commission did not intend to set for hearing. They also argue that these RTEP cost allocations are before the Commission for the first time and, therefore, the scope issue is one of first impression. They also argue that there is uncertainty as to the intended scope of the hearings. By granting the interlocutory appeal, the Companies argue that the Commission could clarify its intent and resolve all the pending motions for clarification with one order.

5. More specifically, the Companies argue that the Scope Order improperly allows direct challenges to PJM's DFAX methodology. The Companies contend that by expanding the scope of these hearings, the Scope Order converts these proceedings into a general review of PJM's cost allocation methodology, the very type of inquiry that the Commission sought to prevent. The Companies argue that the Scope Order permits consideration of issues that are direct challenges to the DFAX methodology if the challenge is tied to a specific project. Specifically, they argue the Scope Order improperly permits litigation concerning the socialization of the costs of high voltage transmission facilities. The Companies argue that this issue is a challenge to the DFAX methodology and inconsistent with the PJM tariff because it would allow the Presiding Judge to reject the use of the DFAX methodology. Additional challenges to the DFAX methodology, according to the Companies, include arguments that short circuit upgrades should be localized, and therefore the DFAX methodology would not be used for short circuit upgrades. Further, the Companies argue that proposed alternatives to zonal netting, including proposals to allocate costs to "electrically cohesive areas" and the "highest violation" theory, are also challenges to the DFAX methodology.

6. The Companies maintain that the issue of whether DFAX should be replaced by a different cost allocation approach belongs in a different forum. The Companies point out that the Commission has been considering alternatives to PJM's cost allocation process in Docket No. EL05-121-000,⁴ and comment that "[I]t stands to reason that the Commission would not want the justness and reasonableness of PJM's use of the DFAX methodology to be litigated in two separate proceedings."⁵

⁴ *PJM Interconnection, L.L.C.*, 116 FERC ¶ 63,007 (2006).

⁵ Interlocutory Appeal at P 28

7. On February 14, 2007, Indicated Transmission Owners filed an answer in opposition to the interlocutory appeal, arguing that the hearings should not be limited. Indicated Transmission Owners assert that the issues to which the Companies object need to be examined at the hearings to determine whether the allocation of costs for the proposed projects comply with the requirements of PJM's tariff and Operating Agreement.

Discussion

8. The Commission will grant the interlocutory appeal solely for the purpose of holding the hearings in these consolidated dockets in abeyance, to permit further consideration of the merits of the appeal in light of the issues in Docket No. EL05-121-000 that relate to the issues raised in these consolidated dockets.

9. As the Companies and Judge Lawrence Brenner have recognized, the issues as to the proper methodology for allocating the cost of existing and new transmission facilities are before the Commission on appeal from an Initial Decision, in Docket No. EL05-121-000. Some of the issues raised in Docket No. EL05-121-000 may bear upon the methodology for allocating the costs of the projects at issue in these proceedings as well as the possible scope of the hearing in these proceedings. In order to ensure that the parties do not spend unnecessary time and resources in continuing litigation in these proceedings, the Commission finds that the better course is to defer ruling on the merits of the interlocutory appeal at this time and hold the hearings in these consolidated dockets in abeyance, pending the Commission's decision in Docket No. EL05-121-000. The Commission will address these issues in subsequent orders.

The Commission orders:

The interlocutory appeal is granted solely for the purpose of holding the hearings in abeyance, pending further order of the Commission.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.