

122 FERC ¶ 61,130
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 No. ER08-229-000

ORDER ON COST ALLOCATION REPORT

(Issued February 13, 2008)

1. On November 16, 2007, PJM Interconnection, L.L.C. (PJM) in accordance with Schedule 12 of the PJM Open Access Transmission Tariff (OATT or Tariff) and Section 1.6 of Schedule 6 of the PJM Operating Agreement, filed amendments to reflect the assignments of cost responsibility for three baseline upgrades that will operate at or above 500 kV and are included in the most recent update to the Regional Transmission Expansion Plan (RTEP) approved by the PJM Board of Managers (PJM Board) (November 16, 2007 filing).¹ In addition, PJM requested a waiver of the 30-day tariff filing provision for cost responsibility assignments for upgrades included in the RTEP that as planned will operate below 500 kV. In this order, we accept for filing PJM's revised tariff sheets, suspend them for a nominal period to become effective February 14, 2008, subject to refund and subject to the outcome of further proceedings. In addition, the Commission grants a waiver of the 30-day tariff filing provision for facilities that operate below 500 kV.

I. Background

2. PJM files cost responsibility assignments for transmission upgrades that have been approved by the PJM Board as part of PJM's RTEP, in accordance with Schedule 12 of the PJM OATT (Schedule 12) and section 1.6 of Schedule 6 of the PJM Operating Agreement (Schedule 6), and pursuant to section 205 of the Federal Power Act.² The RTEP provides 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 economic and operational efficiency of PJM's wholesale electricity markets.

¹ On October 17, 2007, the PJM Board approved changes to the RTEP, which include approximately \$2.1 billion in electric transmission upgrades and additions.

² 16 U.S.C. § 824d (2000).

3. PJM has previously filed cost responsibility assignments in Docket No. ER06-456, Docket No. ER06-954, Docket No. ER06-1271, Docket No. ER07-424, and Docket No. ER07-1186.³ The Commission set for hearing and settlement judge procedures the allocation of cost responsibility for specific projects and PJM's proposed cost allocations to merchant transmission projects in the RTEP orders.

4. On April 19, 2007, the Commission issued an order on rehearing of Docket No. ER06-456, *et al.* (April 19, 2007 Rehearing Order).⁴ Also on April 19, 2007, the Commission contemporaneously issued Opinion No. 494.⁵ In Opinion No. 494, the Commission accepted a methodology that allocates, on a region-wide basis, the costs of new, centrally-planned facilities that operate at or above 500 kV.⁶ The Commission ordered PJM to submit a compliance filing within 30 days "implementing the necessary revisions to PJM's Tariff and Operating Agreement" to effectuate the regional cost allocation methodology.⁷

5. In the April 19, 2007 Rehearing Order, the Commission expanded the scope of the hearings previously established in the RTEP proceedings to include the appropriate methodology to be added to the PJM Tariff to implement the allocation of costs of upgrades that operate below 500 kV in the RTEP based on a "beneficiary pays"

³ Docket Nos. ER06-456, ER06-954, ER06-1271 have been consolidated (Docket No. ER06-456, *et al.*, or RTEP proceedings). Additionally, on April 10, 2007, the Commission consolidated the hearing set in Docket No. ER07-424 with the ongoing hearing procedures established in Docket No. ER06-456, *et al.* See *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,033 (2007); *order on reh'g*, 120 FERC ¶ 61,193 (2007).

On October 19, 2007, the Commission accepted the RTEP filing in Docket No. ER07-1186, subject to the outcome of further proceedings, but did not consolidate this proceeding with the other RTEP proceedings. See *PJM Interconnection, L.L.C.*, 121 FERC ¶ 61,034 (2007).

⁴ *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,067 (2007); *reh'g pending*. In this proceeding, the Commission also established an investigation under section 206 of the Federal Power Act, (16 U.S.C. § 824e (2000 & Supp. V 2005)) regarding PJM's cost allocation methodology for economic upgrades (Docket No. EL07-57). Docket No. EL07-57 was consolidated with the proceeding in Docket No. ER06-456, *et al.*

⁵ *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063 (2007); *order on reh'g*, 122 FERC ¶ 61,082 (2008).

⁶ Opinion No. 494, 119 FERC ¶ 61,063 at P 76.

⁷ *Id.* P 83, Ordering Paragraph (C).

approach.⁸ The Commission further ordered PJM to submit proposed revisions to its cost allocations set forth in Schedule 12-Appendix of the tariff to reflect the allocations required by Opinion No. 494.⁹

6. On May 21, 2007, as directed by Opinion No. 494, PJM submitted revisions to Schedule 12 to allocate cost responsibility for facilities that operate at or above 500kV and the lower voltage facilities necessary to support such facilities (May 21, 2007 compliance filing, Docket No. EL05-121). Additionally, on May 21, 2007,¹⁰ PJM submitted revised tariff sheets to reflect the reallocation of cost responsibility for 39 projects on a region-wide basis as directed by Opinion No. 494.

7. On January 31, 2008, the Commission denied rehearing of Opinion No. 494 and accepted the May 21, 2007 compliance filing.¹¹

II. PJM's Filing

8. The November 16, 2007 filing is PJM's sixth filing of cost responsibility assignments for RTEP baseline upgrades. It includes amendments to Schedule 12-Appendix of the PJM tariff, to reflect assignments of cost responsibility for three baseline upgrades that will operate at or above 500kV. These baseline upgrades were included in the most recent update to RTEP, with an estimated cost of approximately \$2.1 billion.

9. PJM files cost responsibility assignments for network upgrades b0495, b0498, and b0512. These upgrades include a new 500 kV transmission line, a 500 kV line upgrade and a 500 kV transformer upgrade at the Kammer Substation near Moundsville, West Virginia.¹² Consistent with Opinion No. 494 and as detailed in the May 21, 2007

⁸ April 19, 2007 Rehearing Order at P 16. A contested settlement on certain issues in Docket No. ER06-456, *et al.* has been certified to the Commission, other issues have been set for hearing.

⁹ *Id.* Ordering Paragraph (C).

¹⁰ As amended on July 26, 2007.

¹¹ *PJM Interconnection, L.L.C.*, Opinion No. 494-A, 122 FERC ¶ 61,082 (2008).

¹² The new 500 kV transmission line will run from the Possum Point Station at Dumfries, Virginia through the Delmarva Peninsula and terminate at Salem Station in Lower Alloways Creek Township, New Jersey (MAAP Project) at an estimated cost of \$1.05 billion. The 500 kV upgrade will loop the Salem/East Windsor circuit into the New Freedom 500 kV substation in New Jersey at an estimated cost of \$17 million. The 500 kV transformer upgrade is estimated to cost \$42 million.

compliance filing, the assignments of cost responsibility for facilities that operate at or above 500 kV included in the revised tariff sheets are determined on a region-wide basis based on a load ratio share using the applicable zonal loads at the time of the annual peak from the 12-month period ending October 31 of the preceding year.¹³ Cost responsibility assignments to owners of merchant transmission facilities are based on the Firm Transmission Withdrawal Rights (withdrawal rights) associated with existing or planned merchant transmission facilities for which the owners have executed an interconnection service agreement.¹⁴

10. For upgrades that operate below 500 kV, PJM requests waiver of the Schedule 12 requirement that PJM within 30 days file a report with the Commission designating the customers using transmission services that will be subject to a transmission enhancement charge. In support for its request for a waiver, PJM states that the methodology to determine the cost responsibility assignment for facilities that operate below 500kV is actively under consideration in the proceeding established in the previous RTEP orders. Accordingly, PJM is not including cost responsibility assignments for below 500 kV upgrades in this filing.¹⁵

11. PJM requests that the revised tariff sheets become effective on February 14, 2008.

III. Procedural Issues

A. Notice

12. Notice of PJM's filing was published in the *Federal Register*, 72 Fed. Reg. 67,928 (2007), with interventions and protests due on or before December 17, 2007.¹⁶

B. Interventions

13. Notices of intervention were filed by the Illinois Commerce Commission (ICC) and the Maryland Public Service Commission.

¹³ See May 21, 2007 compliance filing at 4-5 and Attachment A, PJM Tariff Schedule 12 § (b)(i)(A).

¹⁴ See *id.* at 5 and Attachment A, PJM Tariff Schedule 12 § (b)(i)(B).

¹⁵ PJM requests authority to file the report after the issuance of, and in accordance with, a subsequent order, including an order on settlement of Docket No. ER06-456, *et al.*

¹⁶ See November 30, 2007 Notice Extending Comment Period.

14. Timely motions to intervene were filed by Exelon Corporation (Exelon), Allegheny Power and Trans-Allegheny Interstate Line Company (collectively, Allegheny Energy Companies),¹⁷ Neptune Regional Transmission System (Neptune) with Hudson Transmission Partners (Hudson) (together, the Joint Petitioners), Long Island Lighting Company d/b/a LIPA (LIPA), Old Dominion Electric Cooperative (ODEC), Public Service Enterprise Group Companies (PSEG),¹⁸ Pepco Holdings, Inc. Companies (PHI Companies),¹⁹ Dominion Resources Services, Inc. (Dominion),²⁰ and PPL Electric Utilities Corporation, the NRG Companies,²¹ the FPL Energy Generators,²² and the Illinois Municipal Electric Agency.

15. An untimely motion to intervene was filed by American Municipal Power-Ohio (AMP-Ohio).

C. Requests to Consolidate Proceedings

16. Requests to consolidate were filed by LIPA and the Joint Petitioners.

17. The Joint Petitioners request that Docket No. ER08-229 be consolidated with the consolidated RTEP proceedings, and with the proceeding in Docket No. EL05-121. LIPA requests that Docket No. ER08-229 be consolidated with the consolidated RTEP proceedings, and if the Commission denies its motion to consolidate, that the cost allocations proposed in this filing be subject to the outcome of the ongoing hearing proceeding in Docket No. ER06-456, *et al.*

¹⁷ Allegheny Power for Monongahela Power Company, Potomac Edison Company and West Penn Power Company.

¹⁸ For Public Service Electric and Gas Company, PSEG Power LLC and PSEG Energy Resources & Trade LLC.

¹⁹ The PHI Companies are Potomac Electric Power Company, Delmarva Power and Light Company, and Atlantic City Electric Company.

²⁰ On behalf of Virginia Electric and Power Company.

²¹ NRG Power Marketing, Conemaugh Power, Indian River Power, Keystone Power, NRG Energy Center Dover, NRG Energy Center Paxton, NRG Rockford, NRG Rockford II, and Vienna Power.

²² FPL Energy Marcus Hook, North Jersey Energy Associates, Doswell Limited Partnership, Backbone Mountain Windpower, Mill Run Windpower, Somerset Windpower, Meyersdale Windpower, Waymart Wind Farm, and Pennsylvania Windfarms.

D. Protests

18. Protests were filed by the ICC, Exelon, LIPA, Joint Petitioners, and ODEC.

19. ICC recommends that the Commission reject the filing's proposed cost allocation to the ComEd zone on the basis that PJM's proposed transmission projects will not provide benefits to electricity customers in Illinois. ICC argues that the three projects proposed herein would result in approximately \$339 million being allocated to customers in the ComEd zone for projects to be built in New Jersey, Pennsylvania, West Virginia, and Maryland. ICC contends that neither the Commission nor PJM has provided support for the conclusion that the benefits of transmission facilities at and above 500kV are sufficient to support a PJM-wide postage stamp cost allocation.

20. ICC further states that this is a departure from Commission precedent that costs should be allocated to those responsible for imposing the burdens or receiving the benefits from the underlying project. Moreover, the ICC contends that the proposed projects may actually harm Illinois electricity customers in the form of higher locational marginal prices in the ComEd zone. ICC claims that PJM will continue to allocate costs to ComEd customers for transmission projects that they cannot expect to obtain any benefits from, until the Commission finds these cost allocations unjust and unreasonable.²³

21. Exelon submits a limited protest to preserve ComEd's and PECO's right to refunds with interest for any inappropriate charges allocated to those zones in the event that the Commission or a court ultimately determines that socializing the costs of 500kV and above projects is inappropriate. Exelon notes that it filed for rehearing of Opinion No. 494 on the grounds, *inter alia*, that Opinion No. 494 will allocate to ComEd costs of new 500kV and above transmission projects in eastern PJM that do not accrue benefits to load in the ComEd zone, but that primarily provide economic benefits to eastern PJM zones and solve reliability problems involved in moving less expensive power from western PJM to eastern PJM. As a result of the allocations shown in this filing and thus far in Docket No. ER06-456, *et al.* and in Docket No. ER07-1186, ComEd will be allocated an estimated \$130,900,000 per year for regional facilities from which it receives no benefits. In particular, Exelon argues that project b0512 illustrates the focus on building transmission in eastern PJM because the PJM board approved that project without even determining an in-service date.

22. ODEC supports the region-wide cost allocations proposed in PJM's November 16, 2007 filing for facilities operating at 500 kV or above. ODEC likewise supports PJM's proposal to defer cost allocations for facilities operating below 500 kV pending a

²³ ICC notes and repeats the arguments raised in its request for rehearing of Opinion No. 494.

Commission order in Docket No. ER06-456, *et al.* ODEC is compelled to protest PJM's November 16, 2007 filing, however, to the extent that PJM does not propose region-wide cost allocation for certain upgrades that ODEC has maintained are entitled to such rate treatment under Opinion No. 494.

23. ODEC notes herein the protests it has raised to the May 21, 2007 compliance filing. Specifically, ODEC has challenged PJM's proposal to exclude transformers with a high side voltage of 500 kV or above from the class of "Regional Facilities" that are to receive region-wide cost allocations under Opinion No. 494. Further, ODEC has argued that PJM defines "Necessary Lower Voltage Facilities" too narrowly and improperly excludes certain facilities "necessary to construct a particular new project at 500 kV and above" from regional cost treatment.

24. ODEC notes that PJM's November 16, 2007 filing applies the cost allocation provisions that ODEC has protested in the May 21, 2007 compliance filing, and consistent with those protests, ODEC objects to PJM's November 16, 2007 filing to the extent PJM has excluded transformers with a high side voltage of 500kV or above, or any lower voltage facilities that are necessary to construct a new project at or above 500kV, from the class of "Regional Facilities" entitled to a region wide cost allocation. ODEC requests that the Commission condition the acceptance of PJM's November 16, 2007 filing upon the resolution of, *inter alia*, ODEC's protest in the May 21, 2007 compliance filing.

25. The Joint Petitioners incorporate by reference the protests Neptune made to the May 21, 2007 compliance filing. Specifically, Neptune explained that PJM's proposed language to Schedule 12 does not treat merchant transmission facilities or their owners consistently or comparable to other transmission owners because owners of merchant transmission facilities are assigned costs based on the withdrawal rights associated with existing or planned merchant transmission facilities for which they have executed an interconnection service agreement, while all other transmission owners will be assigned costs based on a historic annual load-ratio share.

26. The Joint Petitioners note that the methodology set forth in the May 21, 2007 compliance filing has not been approved by the Commission, thus PJM should not be permitted to file cost allocations based on that methodology. The Joint Protesters state that the Commission should direct PJM to revise and refile the merchant transmission provisions in its May 21, 2007 compliance filing and the annual cost allocations set forth in its November 16, 2007 filing to be fully consistent and comparable with the treatment accorded to all other customers, or should, as discussed above, consolidate this proceeding with the other consolidated RTEP proceedings and the proceeding in Docket No. EL05-121, and make acceptance of the November 16, 2007 filing dependent on the outcome of those proceedings.

27. The Joint Petitioners support PJM's request for waiver of the requirement to file within 30 days cost assignments for network transmission upgrades that will operate below 500kV. However, the Joint Protesters state that the Commission should clarify that the waiver is without prejudice to customers' ability to protest the assignments of cost responsibility PJM will ultimately file.

IV. Discussion

A. Procedural Matters

28. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,²⁴ the notices of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

29. Given the early stage of the proceeding, its interests, and the absence of undue prejudice or delay, we will grant the motion to intervene of AMP-Ohio.

B. Commission Determination

30. As discussed below, we will accept and suspend PJM's filing for the projects of 500 kV and above to become effective February 14, 2008, subject to refund, and to the outcome of the proceeding in Docket No. ER06-456 regarding allocation of costs to merchant transmission facilities. We will grant PJM the requested waiver with respect to the time for it to file its report for projects below 500 kV.

31. PJM has allocated costs to three projects that will operate at or above 500 kV on a region-wide basis, consistent with the methodology set forth in the May 21, 2007 compliance filing accepted by the Commission.²⁵ PJM allocated costs to merchant transmission facilities based on the withdrawal rights associated with existing or planned merchant transmission facilities for which an interconnection service agreement has been executed, as proposed in the May 21, 2007 compliance filing. In accepting the May 21, 2007 compliance filing, the Commission noted that merchant issues were set for hearing in Docket No. ER06-456, *et al.*²⁶ and accepted the May 21, 2007 compliance filing

²⁴ 18 C.F.R. § 385.214 (2007).

²⁵ November 16, 2007 filing at 5-6.

²⁶ The Commission set for hearing "PJM's proposed cost allocations to merchant transmission projects... 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 contribution to the need for such reliability upgrades."

subject to the outcome of those proceedings. Accordingly, we will conditionally accept the November 16, 2007 filing and suspend it, to become effective subject to refund and to the outcome of the proceeding in Docket No. ER06-456, *et al.* We do not see a need to consolidate PJM's November 16, 2007 filing with the proceeding established in the previous RTEP proceedings at this time.

32. Exelon and ICC protest in this proceeding the identical issues that they raised on rehearing of Opinion No. 494. Specifically, Exelon and ICC protest the cost allocation methodology established in Opinion No. 494 for new, centrally-planned transmission facilities that will operate at or above 500 kV. The Commission denied the identical requests for rehearing of Opinion No. 494. Accordingly, the protest of issues in this proceeding are denied.

33. ODEC recognizes that PJM's November 16, 2007 filing applies the cost allocation methodology set forth in the May 21, 2007 compliance filing. However, ODEC protests the instant filing to the extent that PJM has excluded transformers with a high side voltage of 500 kV or above from the class of "Regional Facilities" entitled to region-wide cost allocation. ODEC also contends that PJM improperly excluded certain facilities operating below 500 kV from regional cost allocation because PJM defines necessary lower voltage facilities too narrowly. ODEC states that these issues were raised in its protests to the May 21, 2007 compliance filing. We have accepted the May 21, 2007 compliance filing. Accordingly, we reject the protest of ODEC in this case based on the resolution of the issue in the Opinion No. 494-A.

34. The methodology for allocating costs to upgrades that operate below 500 kV is currently under consideration in the proceedings established in the previous RTEP orders. Therefore, we find that it is appropriate to grant PJM a waiver of its tariff provision that requires the filing of a report of cost responsibility within 30 days after PJM Board approval of allocations. We direct PJM to make the required filing of assignments of cost responsibility for facilities that operate below 500 kV within 30 days of a resolution in the proceedings established in Docket No. ER06-456, *et al.*

The Commission orders:

(A) PJM's November 16, 2007 revised tariff sheets are hereby accepted for filing and suspended for a nominal period to become effective on February 14, 2008, subject to refund and to the outcome of further proceedings, as discussed in the body of this order.

(B) PJM's request for a waiver of its tariff provision is granted as discussed in the body of the order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.