

123 FERC ¶ 61,087
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. ER07-1205-002

ORDER GRANTING REHEARING AND ACCEPTING AGREEMENT FOR FILING

(Issued April 28, 2008)

1. On January 4, 2008, PJM Interconnection, L.L.C. (PJM) and WM Renewable Energy, L.L.C. (WM Renewable) requested rehearing of the Commission's December 5, 2007 Order,¹ which dismissed PJM's submittal for lack of jurisdiction. In this order the Commission grants the requests for rehearing and accepts the interconnection service agreement for filing, as discussed below.

I. Background

2. On July 26, 2007, as amended on October 22, 2007, PJM submitted an executed interconnection service agreement among PJM, WM Renewable, and Virginia Electric and Power Company (VEPCO). The interconnection service agreement facilitates the interconnection to the PJM transmission system via distribution facilities of WM Renewable's thirteen megawatt landfill gas generating facility.

3. On October 22, 2007, PJM responded to a September 21, 2007 deficiency letter (Deficiency Letter). In its response, PJM stated that "[t]here are no other generators already interconnected to the distribution facilities shown in Schedule B of the WM Renewable [interconnection service agreement]. However, the WM Renewable project is

¹ *PJM Interconnection, L.L.C.*, Docket Nos. ER07-1205-000 & ER07-1205-001 (Dec. 5, 2007) (unpublished letter order) (December 5 Letter Order).

a qualifying facility (“QF”) that will make jurisdictional wholesale sales (i.e. to the PJM market).”²

4. In its December 5 Letter Order, the Division Director dismissed PJM’s submittal for lack of jurisdiction. The December 5 Letter Order explained that the Commission does not have jurisdiction over interconnections to local distribution facilities unless there is a preexisting interconnection and a wholesale transaction over the local distribution facilities prior to the new interconnection request being made, which conditions are not presented in PJM’s submittal.³

II. Requests for Rehearing

5. PJM and WM Renewable request that the Commission grant rehearing and accept for filing the WM Renewable interconnection service agreement. PJM contends that the Commission failed to consider that the generating facility that is the subject of the WM Renewable interconnection service agreement is the type of QF over which the Commission exercises interconnection jurisdiction. PJM notes, as it did in its October 22, 2007 amended filing, that Order No. 2003-A provides that “[i]f a QF seeks interconnection to a non-OATT [Open Access Transmission Tariff] ‘distribution’ facility to make jurisdictional wholesale sales, the Commission exercises jurisdiction over these interconnections, even though Order No. 2003 does not apply.”⁴ PJM points out that the December 5 Order acknowledged that the WM Renewable project is a QF that will make jurisdictional wholesale sales.⁵ Further, PJM distinguishes *PJM Interconnection, L.L.C.*, which was cited by the Commission in its September 21, 2007 deficiency letter. PJM states that here, in contrast, the WM Renewable project is a QF that seeks interconnection not to make sales to the host utility (as was the case there) but to make jurisdictional wholesale sales, and thus falls within the exception set forth in Order No. 2003-A.⁶

² PJM Amendment to Filing at 3-4.

³ December 5 Letter Order at 2.

⁴ PJM Request for Rehearing at 5-6 (quoting *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, at P 735 n.168 (2004), which cites to *Western Massachusetts Electric Co. v. FERC*, 165 F.3d 922, 926 (D.C. Cir. 1999)).

⁵ *Id.* at 6 (referring to December 5 Order at 1-2).

⁶ *Id.* at 7.

6. WM Renewable avers that paragraph 735 of Order No. 2003-A, which WM Renewable characterizes as the “antecedent rule,” applies only to interconnection agreements involving generators other than QFs.⁷ WM Renewable contends that this “is simply the wrong test to apply.”⁸ WM Renewable contends, citing Commission precedent, that a QF interconnection agreement for a transmission- or distribution-level interconnection is jurisdictional if the QF sells or plans to sell at least some of its output over the interconnected utility’s facilities at wholesale to a third party.⁹

III. Discussion

7. Upon further consideration of the WM Renewable interconnection service agreement, representations by the parties, and the applicable provisions of Order Nos. 2003 and 2003-A, we find that the WM Renewable project is a QF that seeks interconnection to a non-OATT “distribution” facility to make jurisdictional wholesale sales and, as such, the Commission has jurisdiction over this interconnection, even though Order No. 2003 does not apply.¹⁰ Accordingly, we will grant the requests for rehearing and accept the interconnection service agreement for filing, as discussed below.

8. On July 26, 2007, in ER07-1205-000, PJM filed an executed service agreement among PJM, WM Renewable, and VEPCO, which was designated as Original Service Agreement No. 1703. The WM Renewable interconnection service agreement contained non-standard terms and conditions, set forth in Schedule F. Schedule F discussed VEPCO providing whole distribution service to WM Renewable, and Schedule F provided an estimated rate. In the Deficiency Letter, the Commission requested information for Schedule F. Specifically, the Commission asked for an explanation of how the proposed wholesale distribution charges were derived in accordance with section 35.12(b) of the Commission’s regulations.¹¹ We asked for PJM to provide appropriate documentation, e.g., cost of service studies.

⁷ WM Renewable Request for Rehearing at 2; *see also id.* at 4.

⁸ *Id.* at 5.

⁹ *Id.* at 5, 6.

¹⁰ Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 735 n.168.

¹¹ 18 C.F.R. § 35.12(b) (2007).

9. On October 22, 2007, in ER07-1205-001, PJM amended the filing and re-designated the WM Renewable interconnection service agreement as Substitute Original Service Agreement No. 1703. The Substitute Original Service Agreement No. 1703 is identical to Original Service Agreement No. 1703 except for the revised Schedule F. The revised Schedule F states that the rates, terms, and conditions of the wholesale distribution service will be pursuant to a separate contractual agreement, which will be filed with the Commission by VEPCO.

10. We accept for filing the Substitute Original Service Agreement No. 1703 that includes revised Schedule F with the deletion of the originally-proposed estimated rate for wholesale distribution service. PJM explained that it submitted this nonconforming interconnection service agreement for filing because the parties required non-standard terms and conditions to accommodate the unique circumstances related to the interconnection.¹² Accordingly, we find this nonconforming agreement to be just, reasonable, not unduly discriminatory or preferential, and not otherwise unlawful.¹³ We will not here examine whether the proposed wholesale distribution charges were derived in accordance with section 35.12(b) of the Commission's regulations. As PJM has stated, VEPCO will file a separate contractual agreement that provides the rate, explanation, and cost support for the estimated charges for the wholesale distribution service.

¹² PJM Transmittal Letter, Docket No. ER07-1205-000, at 1, 4.

¹³ See, e.g., *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,168 (2006); *Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 61, 262, at P 10-11 (2006) (explaining nonconforming agreement standard); see also *Midwest Indep. Transmission Sys. Operator, Inc.*, 112 FERC ¶61,281, at P 16 (2005).

The Commission orders:

The requests for rehearing are hereby granted and the WM Renewable interconnection service agreement is accepted for filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.