

130 FERC ¶ 61,167
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

PJM Interconnection, L.L.C.

Docket No. OA08-32-005

ORDER ACCEPTING COMPLIANCE FILING

(Issued March 9, 2010)

1. In this order, the Commission accepts PJM Interconnection, L.L.C.'s (PJM's) compliance filing, which further clarifies the local transmission planning process, as directed by the Commission in its May 21, 2009 Order.¹ We will accept PJM's proposed tariff sheets to become effective December 7, 2007.

Background

2. In Order No. 890,² the Commission reformed the *pro forma* open access transmission tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. One of the Commission's primary reforms was designed to address the lack of specificity regarding how customers and other stakeholders should be treated in the transmission planning process. To remedy the potential for undue discrimination in planning activities, the Commission directed all transmission providers to develop a transmission planning process that satisfies nine principles and to clearly describe that process in a new attachment to their OATT (Attachment K).

3. The nine planning principles each transmission provider was directed by Order No. 890 to address in its Attachment K planning process are: (1) coordination;

¹ *PJM Interconnection, L.L.C.*, 127 FERC ¶ 61,166 (2009) (May 21, 2009 Order).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), Order No. 890-D, 129 FERC ¶ 61,126 (2009).

(2) openness; (3) transparency; (4) information exchange; (5) comparability;³ (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. The Commission explained that it adopted a principles-based reform to allow for flexibility in implementation of and to build on transmission planning efforts and processes already underway in many regions of the country. The Commission also explained, however, that although Order No. 890 allows for flexibility, each transmission provider has a clear obligation to address each of the nine principles in its transmission planning process and all of these principles must be fully addressed in the tariff language filed with the Commission. The Commission emphasized that tariff rules, as supplemented with web-posted business practices when appropriate,⁴ must be specific and clear in order to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.

4. As for Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) with Commission-approved transmission planning processes already on file, such as PJM, the Commission explained that when it initially approved these processes, they were found to be consistent with or superior to the existing *pro forma* OATT. However, because the *pro forma* OATT was being reformed by Order No. 890, the Commission found that it was necessary for each RTO and ISO either to reform its planning process or show that its planning process is consistent with or superior to the *pro forma* OATT, as modified by Order Nos. 890 and 890-A.⁵

5. The Commission accepted PJM's revisions to Schedule 6 of the Operating Agreement,⁶ effective December 7, 2007, subject to PJM making a compliance filing to: (1) address how PJM will determine comparability for purposes of transmission planning; (2) clarify that Supplemental Projects are not eligible for Schedule 12 cost allocation; (3) provide more clarity, specificity, and transparency regarding how the PJM transmission owners' local planning processes fit into PJM's planning process; (4)

³ In Order No. 890-A, the Commission clarified that the comparability principle requires each transmission provider to identify, as part of its Attachment K planning process, how it will treat resources on a comparable basis and, therefore, how it will determine comparability for purposes of transmission planning. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55.

⁵ *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 439; Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 174-75.

⁶ The Amended and Restated Operating Agreement of PJM governs how it operates and members sign this agreement to become a part of PJM.

correct the inconsistency between its transmittal letter and the Operating Agreement definition of Subregional Regional Transmission Expansion Planning (RTEP) Projects; and (5) verify that its Business Practices Manuals (Manuals) have been updated to include descriptions of the Subregional RTEP Committee, Regional and Subregional RTEP Projects, and Supplemental Projects, and that the updated Manual(s) have been posted on the PJM website.⁷ On August 13, 2008, in Docket No. OA08-32-002, PJM filed its proposed changes to Schedule 6 of the Operating Agreement to comply with the May 15, 2008 Order.

6. In its May 21, 2009 Order, the Commission accepted PJM's revisions to Schedule 6 of the Operating Agreement, effective December 7, 2007, subject to PJM making a further compliance filing to include: (1) a requirement that transmission owners provide the models used in developing their local plans; and (2) provisions that allow for earlier stakeholder participation at the transmission owners' local planning level.⁸

7. On September 28, 2009, PJM made its compliance filing, which is discussed below.

Notice of Filing and Responsive Pleadings

8. Notice of PJM's September 28, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 51574 (2009), with interventions and protests due on or before October 19, 2009. Old Dominion Electric Cooperative (ODEC) filed comments.

Discussion

9. Although the Commission will accept PJM's compliance filing, the Commission remains interested in the development of transmission planning processes and will continue to examine the adequacy of the processes accepted to date. We reiterate the encouragement made in prior orders for further refinements and improvements to the planning processes as transmission providers, their customers, and other stakeholders gain more experience through actual implementation of the processes. As part of the Commission's ongoing evaluation of the implementation of the planning processes, the Commission in September 2009 convened three regional technical conferences to determine if further refinements to transmission planning processes are necessary. Based on the input received at the technical conferences, the Commission, on October 8, 2009,

⁷ *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,163 (2008) (May 15, 2008 Order).

⁸ On July 6, 2009, the Commission issued a Notice of Extension of Time granting PJM's requested extension of time to comply with the Commission's May 21, 2009 Order until September 28, 2009 (*PJM Interconnection, L.L.C., Notice of Extension of Time*, Docket No. OA08-32-002).

issued a notice of request for comments in Docket No. AD09-8-000, seeking additional input on questions relating to enhancing regional transmission planning processes and allocating the cost of transmission.⁹

A. PJM Transmission Owner Local Planning System

1. May 21 Planning Order

10. In the May 21, 2009 Order, the Commission found that, with modifications, PJM's compliance filing provided sufficient clarity and specificity with respect to locally planned transmission projects and how they will fit into the PJM regional planning process. However, the Commission directed PJM to make a compliance filing to provide that the models each transmission owner uses in its planning process will be made available, consistent with confidentiality restrictions or copyright limitations, in addition to the criteria and assumptions the transmission owner uses in its local planning.¹⁰ The Commission also directed PJM to submit a compliance filing containing a provision for stakeholders to review and comment on the criteria, assumptions, and models used in the local planning activities prior to finalization of the Local Plan.¹¹

2. PJM Filing

11. In compliance with the May 21, 2009 Order, PJM proposes to amend subsections 1.5.4(a) and (g) of Schedule 6 of the Operating Agreement to require that transmission owners provide their criteria and assumptions, including the models used in their Local Plan. Specifically, these amended subsections of Schedule 6 of the Operating Agreement now clarify that the transmission owner's criteria, assumptions, and models used in developing its local planning process will be made available consistent with: (1) applicable confidentiality provisions as set forth in section 18.17 of the Operating Agreement; (2) the Critical Energy Infrastructure Information (CEII) process; and (3) any

⁹ See also Docket No. AD09-8-000, Transmission Planning Processes Under Order No. 890, Notice Granting Extension of Time, Issued October 30, 2009.

¹⁰ May 21, 2009 Order, 127 FERC ¶ 61,166 at P 27.

¹¹ The Local Plan is the plan developed by a PJM transmission owner that includes, at a minimum, Subregional RTEP Projects (i.e., a transmission expansion or enhancement rated below 230 kV which is required for compliance with system reliability, operational performance, or economic criteria) and Supplemental Projects (i.e., a Regional or Subregional RTEP Project which is not required for compliance with system reliability, operational performance, or economic criteria) identified by the transmission owner within its respective zone. See section 1.18A (Local Plan) Schedule 6 (RTEP) of the Operating Agreement.

applicable copyright limitations. PJM explains that these terms and conditions will provide that Local Plan information designated as confidential may be shared with a third party upon agreement by the transmission owner and upon execution of a non-disclosure agreement.

12. PJM also proposes to revise subsection 1.3(d) and (f) to specifically include: (1) an opportunity for stakeholders through the Subregional RTEP Committee to review and comment on the transmission owner's criteria, assumptions, and models prior to finalizing the Local Plan; (2) a provision for the scheduling of Subregional RTEP Committee meetings to accommodate such reviews; and (3) a statement that any unresolved stakeholder issues stemming from the local planning process will be addressed in the Subregional RTEP Committee.

3. Comments

13. ODEC supports PJM's filing as complying with the Commission's directive in its May 21, 2009 Order. However, ODEC asserts that it is concerned that the confidentiality provisions under section 18.17 of the Operating Agreement might be used to defeat the Commission's intent that local planning information be made available to stakeholders to allow for meaningful comments prior to finalization of the local plans.¹² ODEC explains that section 18.17 of the Operating Agreement contains confidentiality provisions that afford transmission owners the unilateral right to deem documents, data, or other information confidential and thereby protect them from disclosure to other members. ODEC contends that while the Commission has indicated that PJM is ultimately responsible for ensuring that stakeholder issues are addressed, PJM's ability to do so is limited because the current Operating Agreement does not give PJM the authority to ensure that materials are not being inappropriately marked confidential or to require the transmission owner to provide the information if the stakeholder is willing to sign a confidentiality agreement. Thus, ODEC argues that PJM cannot override the confidentiality claims of a transmission owner under section 18.17 of the Operating Agreement and will need to work within the confines of this section in attempting to resolve disputes. ODEC requests that the Commission urge transmission owners to resolve any confidentiality concerns so that local planning information can be made available as contemplated in the May 21, 2009 Order.

¹² In spite of this concern, ODEC presumes it unlikely that transmission owners will withhold local planning information on a claim of confidentiality.

4. Commission Determination

14. We find that PJM's filing complies with the May 21, 2009 Order and Order No. 890's planning requirements by requiring transmission owners to provide the models used in developing their local plans and providing for earlier stakeholder participation.¹³

15. With respect to ODEC's comment that transmission owners have the ability to withhold local planning information with an inappropriate claim of confidentiality, we are not convinced that PJM's planning process will allow transmission owners to engage in this type of behavior, and indeed ODEC presumes it unlikely that transmission owners will withhold local planning information on a claim of confidentiality.

16. In the event that ODEC or any other stakeholder believes that PJM or a transmission owner has denied access to relevant planning information, they are free to utilize PJM's dispute resolution procedures or file a complaint with the Commission under section 206 of the Federal Power Act¹⁴ to resolve any confidentiality or other concerns with PJM and the transmission owner. Accordingly, we find PJM's proposed revisions to Schedule 6 of its Operating Agreement complies with the Commission's May 21, 2009 Order. We therefore, accept the proposed tariff changes with no further modifications. However, we strongly encourage ODEC to work together with PJM through the stakeholder process to discuss its concerns.

The Commission orders:

PJM's compliance filing is hereby accepted, effective December 7, 2007, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹³ Subsections 1.3(d)(f) (Establishment of Committees) and 1.5.4(a)(g) (Supply of Data) Schedule 6 (RTEP) of PJM's Operating Agreement.

¹⁴ 16 U.S.C. § 824e (2006).