

140 FERC ¶ 61,012
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

PJM Interconnection, L.L.C.

Docket No. ER12-1761-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued July 9, 2012)

1. On May 10, 2012, PJM Interconnection, L.L.C. (PJM), pursuant to section 205 of the Federal Power Act, filed proposed revisions to Schedule 10 of the PJM Open Access Transmission Tariff (PJM OATT). The proposed revisions establish terms and conditions for recovering from end users costs allocated to PJM under the Midwest Independent Transmission System Operator, Inc.'s (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) for the portion of the revenue requirement for phase angle regulator (PAR) transmission facilities owned and operated by International Transmission Company (ITC) at the Bunce Creek Station on the Michigan-Ontario Interface (ITC PAR). PJM further requests a waiver of the Commission's regulations pertaining to the 60-day notice requirement.¹ In this order, we accept the proposed revisions to be effective April 5, 2012, subject to revision and further compliance, and grant the requested waiver.

I. Background

2. This proceeding relates to the issue of loop flows around Lake Erie caused by the difference between scheduled and actual power flows between markets in that region. Among the long-term solutions to the loop flow issue is the installation of PARs on the Michigan-Ontario interface.² On December 30, 2010, the Commission accepted and suspended, to become effective January 1, 2011, subject to refund, proposed revisions to the MISO Tariff and established hearing and settlement judge procedures.³ The revisions

¹ 18 C.F.R. § 35.3(a)(1) (2011).

² See Docket No. ER08-1281-000 *et al.*

³ *Midwest Independent Transmission System Operator, Inc.*, 133 FERC ¶ 61,275 (2010) (December 30, 2010 MISO Order), *reh'g pending*. An evidentiary hearing is scheduled to commence on August 13, 2012. See *Midwest Independent Transmission*

(continued...)

to the MISO Tariff established a methodology to calculate the revenue requirement and allocate the costs of the ITC PARs among three regions: New York Independent System Operator, Inc. (NYISO), PJM, and MISO.⁴ MISO proposed cost allocation and charges based on what it described as each region's contribution to the Lake Erie loop flows that would occur if the ITC PARs were not operational.⁵

3. On November 9, 2011, PJM filed a petition for declaratory order in which it requested guidance as to how it should recover from its members the costs allocated to PJM pursuant to the December 30, 2010 MISO Order. PJM also requested expedited action to ensure that a cost-recovery mechanism would be in place when the ITC PARs entered into service or an interim order stating that PJM would not have to pay any amounts billed by MISO to PJM related to the ITC PARs while the Commission considered the PJM petition. The Commission addressed the PJM petition April 6, 2012, in part by citing to potential methods PJM might use to allocate costs, including an allocation to all PJM participants.⁶

II. PJM Filing

4. PJM proposes to add a new "Schedule 10 – Michigan-Ontario Interface (Phase Angle Regulating Transformers Owned by International Transmission Corporation)" to govern the billing and collection of the fees charged by MISO for the ITC PARs. PJM states that the method used to calculate the rate is based on MISO's calculated annual transmission revenue requirement (ATRR) for the ITC PAR facilities pursuant to Schedule 36 and Attachment SS of the MISO Tariff. PJM observes that MISO posts the projected ATRR for the upcoming calendar year on or before September 1 each year and that MISO bills PJM monthly, on behalf of its customers, one twelfth of PJM's allocated percentage share for the calendar year. Under PJM's proposal, PJM calculates an ITC PARs Rate by dividing the MISO monthly charge by the total monthly megawatt-hours of energy delivered to load under Network Integration or Point-to-Point Transmission Service in the PJM region. According to PJM's proposal, the ITC PARs Rate will be levied to customers on a megawatt-hour basis each month. PJM states that it proposes to allocate charges across the PJM region on the basis of transmission usage to each

System Operator, Inc., Order Establishing Revised Procedural Schedule, Docket No. ER11-1844-002 (issued April 3, 2012).

⁴ The proposed tariff provisions consist of new attachments, Attachments SS and SS-1, and a new schedule, Schedule 36, to the MISO Tariff.

⁵ December 30, 2010 MISO Order, 133 FERC ¶ 61,275 at P 10.

⁶ *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,024 (2012) (April 6, 2012 Order).

network integration and point-to-point transmission service customer because it is unable to design a beneficiary pays type rate.⁷

5. PJM also notes that the proposal relieves PJM of any responsibility for pursuing deficiencies on remittances to PJM of some portion or all of the amount allocated by MISO to PJM, including measures such as declaring a customer in default under the PJM OATT. PJM represents, however, that it will cooperate with MISO and the Commission by providing any information appropriate, relevant and necessary to resolve any collection disputes.⁸ PJM further states that the proposed revisions to Schedule 10 are consistent with the Commission's acceptance of the current "Schedule 10 – NERC" and "Schedule 10 – RFC."⁹

6. PJM requests a waiver of the Commission's regulations requiring 60-days notice before the effective date of a tariff provision.¹⁰ PJM contends that good cause exists for granting the waiver because the Commission authorized MISO to begin charging PJM once the ITC PAR transmission facilities became operational, which occurred on April 5, 2012. PJM also states that in order to make timely payments to MISO, Commission action is required because PJM currently has no means of recovering the costs from its members.

III. Notice of Filing and Responsive Pleadings

7. Notice of PJM's filing was published in the *Federal Register*, 77 Fed. Reg. 29,628 (2012), with interventions and protests due on or before May 31, 2012.¹¹ Timely motions to intervene were filed by American Municipal Power, Inc., Exelon Corporation, Illinois Commerce Commission, Old Dominion Electric Cooperative, FirstEnergy Companies,¹²

⁷ PJM contends that none of its members benefit from the ITC PARs. PJM May 10, 2012 Filing at 5.

⁸ PJM states that its proposal does not prejudice its pending requests for rehearing of the December 30, 2010 MISO Order in Docket No. ER11-1844. PJM May 10, 2012 Filing at 6.

⁹ PJM May 10, 2012 Filing at 6 (*citing PJM Interconnection, L.L.C.*, Docket No. ER07-294-000 (Jan. 16, 2007) (delegated letter order)).

¹⁰ 18 C.F.R. § 35.3(a)(1).

¹¹ While PJM requested a shortened response period of fourteen days with which to intervene and file comments, as noted above, the Commission's notice of PJM's filing provided 21 days to respond.

¹² The FirstEnergy Companies consist of Cleveland Electric Illuminating Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Ohio
(continued...)

PHI Companies,¹³ Dominion,¹⁴ PPL PJM Companies,¹⁵ PSEG Companies,¹⁶ and AEP.¹⁷ Timely comments were filed by Indicated PJM Transmission Owners.¹⁸

8. Timely motions to intervene and protest were filed by ITC and MISO.
9. On June 4, 2012, DC Energy Mid-Atlantic, LLC moved for leave to intervene out of time.
10. On June 15, 2012, American Municipal Power, Inc. filed a motion for leave to answer, and an answer, to MISO's protest. On June 25, 2012, PJM filed a motion for leave to answer, and an answer, to the protests of MISO and ITC.

Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, The Toledo Edison Company, Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, FirstEnergy Solutions Corp., American Transmission Systems, Inc., and Trans-Allegheny Interstate Line Company.

¹³ The PHI Companies consist of Pepco Holdings, Inc., Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company.

¹⁴ Dominion consists of Dominion Resources Services, Inc., Dominion Energy Marketing, Inc., Elwood Energy, LLC, Kincaid Generation, LLC, and Dominion Virginia Power.

¹⁵ The PPL PJM Companies consist of PPL Electric Utilities Corporation, PPL EnergyPlus, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC, PPL Martins Creek, LLC, PPL Montour, LLC, PPL Susquehanna, LLC, Lower Mount Bethel Energy, LLC, PPL New Jersey Solar, LLC, PPL New Jersey Biogas, LLC; PPL Ironwood, LLC and PPL Renewable Energy, LLC.

¹⁶ The PSEG Companies consist of Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC.

¹⁷ AEP consists of American Electric Power Service Corporation, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company, AEP Appalachian Transmission Company Inc., AEP Indiana Michigan Transmission Company Inc., AEP Kentucky Transmission Company Inc., AEP Ohio Transmission Company Inc., and AEP West Virginia Transmission Company.

¹⁸ Indicated PJM Transmission Owners consist of AEP Companies, First Energy Companies, PHI Companies, PPL PJM Companies, including PPL University Park, LLC, PSEG Companies, and Dominion Virginia Power.

IV. Comments and Protests

A. Comments

11. While they do not oppose PJM's proposed tariff revisions, the Indicated PJM Transmission Owners state that they continue to oppose MISO's allocation of the ITC PARs costs to PJM, and therefore they do not waive their rights to contest the legality of MISO's allocation of costs to PJM for the PAR transmission facilities in Docket No. ER11-1844.

B. Protests

12. MISO and ITC assert that section (f) of proposed Rate Schedule 10 improperly limits the obligation of PJM to pay the MISO ITC PARs charges to the amount, if any, that PJM end users actually pay pursuant to proposed Schedule 10. Further, they assert that section (f) improperly relieves PJM of any responsibility for pursuing deficiencies in its end users' payments of Schedule 10 charges. They also contend that section (f) is inconsistent with the December 30, 2010 MISO Order because it effectively transforms the ITC PARs transmission facilities charge to PJM into optional rather than mandatory obligations. MISO and ITC also assert that PJM erroneously relies on the limited payment and collection obligations in the PJM OATT pertaining to end user charges to support the operations of the North American Electric Reliability Corporation (NERC) and ReliabilityFirst Corporation (RFC) to claim that the proposed limitations in section (f) are consistent with existing Commission-approved "Schedule 10 – NERC" and "Schedule 10 - RFC." ITC contends that these charges are different because the charges to support the operations of NERC and RFC are pass through charges, whereas the ITC PARs transmission facilities costs are not, and instead, are valid approved charges to PJM. ITC agrees that PJM can seek to recover its costs from its members but states that PJM cannot reduce its own liability to the extent its end users decline to reimburse PJM. MISO and ITC state that the proposed PJM rate filing should be accepted conditioned on the removal of section (f).

13. In addition, MISO maintains that PJM's proposed Schedule 10 does not require payment of amounts currently invoiced, but only the amounts invoiced after the proposed revisions are approved. MISO asks that the Commission order PJM to pay MISO's invoices in full and develop an appropriate mechanism to address any shortfalls in PJM's recovery of costs from its members. In contrast, American Municipal Power, Inc. states in its answer that PJM should not be obligated to undertake the role of guarantor of its members, and it is MISO and ITC that should take action for underpayments for ITC PARs charges against individual PJM members at the Commission or in court.

14. In its answer, PJM states that it intends to collect funds from its members and pay all invoices once it has a Commission-approved mechanism in place. Regarding section (f), PJM asserts that its proposal is no different from what the Commission has previously approved in Schedule 22 of the MISO Tariff (Seams Elimination Charge/Cost Adjustments/Assignments (SECA) charges) under which PJM states MISO has failed to

pay PJM for nearly seven years.¹⁹ PJM also states that ITC does not cite to Commission orders that obligate PJM to finance, on its own, potential under collections. PJM asserts that the plain language of the MISO Tariff leads to the conclusion that PJM customers are responsible for the ITC PARs costs and not PJM. PJM also states that its May 10, 2012 filing should have included parallel revisions where Schedule 10 is referenced in other parts of the tariff, specifically section 6A.6 and Attachment HH of the PJM OATT and section 3.3(g) and Schedule 13(f) of the PJM Amended and Restated Operating Agreement (PJM Operating Agreement). Accordingly, PJM requests the Commission condition acceptance of the instant filing subject to a compliance filing to include these revisions.

V. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings.

16. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), the Commission will grant DC Energy Mid-Atlantic LLC's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers of American Municipal Power, Inc. and PJM because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

18. In the December 30, 2010 MISO Order, the Commission accepted MISO's proposed allocation of a portion of the revenue requirement associated with the ITC PARs to PJM, subject to the outcome of ongoing evidentiary hearing procedures and refund. Under the instant proposed revisions to the PJM OATT, PJM will recover these costs from its transmission service customers. We accept the proposed rate schedule, subject to the conditions set forth below, to be effective on April 5, 2012.

19. PJM proposes to calculate an ITC PARs rate by dividing the MISO monthly charge by the estimate of total megawatt-hour transmission usage of all PJM network

¹⁹ June 25, 2012 Answer of PJM at 3-4 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168 (2004)).

integration or point-to-point transmission service customers. PJM will then levy this rate on each network integration and point-to-point transmission service customer on the megawatt-hours of energy delivered to the load each customer serves in the PJM region for the month. We find this proposal to be just and reasonable. We note that while PJM and other parties continue to preserve objections raised on rehearing of the December 30, 2010 MISO Order,²⁰ no party argued in the instant proceeding that PJM's proposed cost allocation method is unjust and unreasonable if MISO may assign costs associated with the ITC PARs to the PJM region.

20. However, as noted by PJM, section (f) of the proposed rate schedule contains a provision that limits PJM's liability and relieves PJM of any responsibility for pursuing deficiencies on remittances to PJM. That provision reads as follows:

The liability of PJM Settlement or PJM Interconnection to make payments to MISO from amounts charged under this Schedule 10 - Michigan-Ontario Interface shall be limited to the aggregate of such charges for which PJM Settlement or PJM Interconnection receives payments from its customers charged under this Schedule 10 - Michigan-Ontario Interface. PJM will not deem any PJM customer in default under the PJM Tariff for failure to pay any charges under this Schedule 10 - Michigan-Ontario Interface.

21. PJM responds to the protests regarding section (f) by stating that the "plain language of the MISO Tariff [Schedule 36] leads to the conclusion that the parties ultimately responsible for paying the ITC PAR-related charges are PJM's customers."²¹ PJM states that Schedule 36 of the MISO tariff states that MISO "shall bill PJM, on behalf of its customers," and does not require that PJM be responsible for paying charges if its customers fail to pay PJM. PJM maintains that Schedule 22 of the MISO tariff relating to the SECA charges is a similar provision, which states that MISO "shall bill and collect SECA charges on a monthly basis," with the funds "sent monthly to PJM for distribution to the PJM transmission owners."²² PJM states that in the case of SECA, MISO's customers have not paid the SECA charges to MISO, and that MISO, under this

²⁰ See *supra* note 3.

²¹ June 25, 2012 Answer of PJM at 4 (quoting MISO Tariff Schedule 36 Regional Charge to Recover Costs of ICTransmission Phase Angle Regulators (New PARs) from PJM and NYISO RTO Regions Version: 0.0.0 ("Transmission Provider shall bill PJM, on behalf of its customers")).

²² Schedule 22 of the MISO Tariff provides that "Midwest ISO shall charge and collect Seams Elimination Charge/Cost Adjustments/Assignments ("SECA") charges from Customers" and "Midwest ISO shall bill and collect SECA charges on a monthly basis," See MISO Tariff, Schedule 22 SECA Charges to Midwest ISO Zones, Sub-Zones, And Customers Version: 2.0.0.

provision, has failed to pay PJM for those charges. PJM argues that its proposed section (f) is reasonable since under a similar interpretation of Schedule 36 and Schedule 22, it is required to bill and collect funds from the PJM transmission customers, but is not responsible for paying funds in the event that its customers fail to pay.

22. We reject proposed section (f). Whether PJM is responsible for paying MISO in the case of a PJM customer's failure to pay PARs-related charges, just as whether MISO is responsible for paying SECA charges in the case of a failure of its customers to pay, is outside the scope of this proceeding. PJM can raise the first issue at the hearing established in the December 30, 2010 MISO Order in Docket No. ER11-1844. Therefore, our acceptance of this filing is conditioned on PJM refiling Rate Schedule 10 – Michigan-Ontario Interface to remove section (f) within 30 days from the date of this order. With the removal of section (f), until the conclusion of any hearing that decides otherwise, PJM has no exemption from deeming any PJM customer in default under the PJM Tariff for failure to pay any charges under Schedule 10 – Michigan-Ontario Interface and, therefore, must treat any customer default under proposed Schedule 10 in the same manner that it would treat defaults under other rate schedules in the PJM OATT.

23. We also reject as beyond the scope of this proceeding parties' claims regarding the justification for charges associated with the ITC PARs. Those claims are properly being addressed in Docket No. ER11-1844.

24. PJM, in its answer, notes that the revisions to its proposed rate schedule require parallel revisions to other parts of the PJM OATT and the PJM Operating Agreement that it overlooked in its original filing.²³ We direct PJM to include these revisions in the compliance filing directed above.

The Commission orders:

(A) PJM's proposed tariff revisions are hereby accepted for filing, effective April 5, 2012, subject to revision and further compliance, as discussed in the body of this order.

(B) PJM is directed to make a compliance filing within 30 days from the date of this order, as discussed in the body of this order.

²³ June 25, 2012 Answer of PJM at 5.

(C) PJM's request for waiver of the 60-day prior notice requirement is hereby granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.