

126 FERC ¶ 61,030
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. ER08-1170-001

ORDER DENYING REHEARING AND CLARIFICATION

(Issued January 15, 2009)

1. On September 12, 2008, the New Jersey Board of Public Utilities (New Jersey Board), the Public Service Commission of Maryland (Maryland Commission) and the Pennsylvania Public Utilities Commission (Pennsylvania Commission) timely requested rehearing of the Commission's August 13, 2008 letter order accepting the June 27, 2008 tariff filing by PJM Interconnection, L.L.C. (PJM) to establish the APSouth scarcity pricing region.¹ In this order, the Commission rejects the clarification requested by the New Jersey Board and denies the requests for rehearing by the Maryland Commission and the Pennsylvania Commission.

I. Background

2. On June 27, 2008, PJM filed revisions to its Tariff and Operating Agreement, under section 205 of the Federal Power Act, 16 U.S.C. § 824d (2006), to establish a sixth scarcity pricing region in PJM, to be called the APSouth Scarcity Pricing Region. In accordance with tariff provisions previously accepted by the Commission,² PJM proposed to make changes to section 6A.2.1 of Schedule 1 of the Operating Agreement and Attachment K of the PJM Tariff, to incorporate the new scarcity pricing region. PJM

¹ *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,158 (2008) (August 13, 2008 Letter Order).

² Section 6A of PJM's Tariff, which contains provisions for establishment of scarcity pricing regions, was added to PJM's Tariff as the result of an uncontested settlement in Docket Nos. EL03-236 and EL04-121, which the Commission accepted. *PJM Interconnection, L.L.C.*, 114 FERC ¶ 61,076 (2006).

stated that the filing came as a result of its annual review of scarcity pricing regions under section 6A.2.2 of the Operating Agreement, where it found that the APSouth region met the criteria for establishment of a scarcity pricing region.³ No parties protested the filing; however, in their comments, the Maryland Commission, the Pennsylvania Commission, the New Jersey Board and the Delaware Public Service Commission argued that the Commission should require PJM to expedite certain projects in the PJM queue, consider other lower-cost options to relieve congestion or, prior to establishing a new scarcity pricing region, demonstrate that it has exhausted other means of mitigating congestion.

3. The Commission issued a letter order on August 13, 2008 accepting the Tariff and Operating Agreement revisions and allowing the APSouth scarcity pricing region to go into effect as of the date of the letter order.

II. Requests for Rehearing and Clarification

A. New Jersey Board

4. The New Jersey Board seeks clarification that cost effective measures that may relieve a transmission constraint should be examined prior to the automatic designation of a Scarcity Pricing Region. According to the New Jersey Board, this clarification would ensure that customers do not pay for unnecessary costs. The New Jersey Board argues that Order No. 2000 supports this requested clarification, by stating that the pricing mechanisms used by an RTO should be compatible with pricing signals for short-term transmission constraint solutions so that market participants could choose the lowest cost option.⁴ A market-based effort, such as establishing a scarcity pricing region, may encourage generation and demand response within a particular area, argues the New Jersey Board, but the RTO retains ultimate responsibility for transmission infrastructure planning and should use all of the tools at its disposal to address problems. Further, the New Jersey Board emphasizes that scarcity pricing regions should not be permanent and the PJM Operating Agreement does provide a mechanism for their removal.

³ Scarcity Pricing Regions must meet the following criteria: (1) consist of at least two entire transmission zones; (2) consist of contiguous transmission zones and sub-zones; (3) transmission import or transfer must be limited by EHV (500 kV or greater) constraints; and (4) consist of pricing nodes that have a 5% or greater positive dfax relative to the constraints. See PJM Tariff, Attachment K at § 6A.2.2 (FERC Electric Tariff First Revised Sheet No. 402A.03).

⁴ New Jersey Board Request for Clarification at 2, citing *Regional Transmission Organizations*, 89 FERC ¶ 61,285, (1999).

B. Maryland Commission

5. The Maryland Commission seeks rehearing on several grounds. First, it asserts that the Commission acted in an arbitrary and capricious manner by upholding the designation of the APSouth scarcity pricing region without requiring PJM to give priority in its planning process to projects which would relieve the congestion giving rise to the scarcity pricing region. Second, it asserts that the Commission failed to articulate a reasoned basis for not requiring PJM to give such priority to projects.

6. The Maryland Commission argues that the constraint causing APSouth to be designated as a scarcity pricing region resulted from upgrades to the Beddington-Black Oak circuit, not an increase in load in the APSouth region. According to the Maryland Commission, consumers in the APSouth region are already subject to higher prices as a result of PJM's Reliability Pricing Model and higher returns on equity for existing and new transmission. The Maryland Commission argues that the scarcity pricing region designation further exposes customers to higher prices resulting from "unmitigated local market power."⁵ Designating APSouth as a scarcity pricing region, the Maryland Commission argues, means that sellers will not be subject to market power mitigation rules under defined scarcity conditions.

7. The Maryland Commission asserts that in the August 13, 2008 Letter Order, the Commission refused to address the concerns and proposals raised by the Maryland Commission and other parties, finding that these are outside of the scope of this proceeding. According to the Maryland Commission, this Commission did not provide any explanation of why expediting projects is outside of the scope of the proceeding. It asserts that this conclusion is arbitrary and capricious, with no rational connection between the Commission's actions and the record in this proceeding.

C. Pennsylvania Commission

8. The Pennsylvania Commission raises three issues on rehearing. First, it asserts that this Commission abused its discretion by approving a scarcity pricing region based on congestion which could be "promptly and expeditiously eliminated."⁶ The Pennsylvania Commission asserts that although it did not protest PJM's filing, it noted that PJM's Tariff authority to establish a scarcity pricing region depends on the existence of chronic, unrelieved congestion, and emphasized that an option exists to relieve the congestion underlying the need for the APSouth scarcity pricing region.

⁵ Maryland Commission Request for Rehearing at 5.

⁶ Pennsylvania Commission Request for Rehearing at 2.

9. Second, it asserts that since H-P Energy Company (H-P Energy) established a *prima facie* case that PJM is not directing the relief of the transmission congestion giving rise to the need for the scarcity pricing region, this Commission must order PJM to show cause why the H-P project cannot be implemented or why it would not resolve the congestion. Finally, the Pennsylvania Commission asserts that this Commission has abused its discretion by summarily approving PJM's filing when PJM has the ability to relieve the congestion giving rise to the need for a new scarcity pricing region, and any resulting increase in electricity costs is unjust and unreasonable.

D. PJM Answer

10. PJM filed a motion for leave to answer and answer to the requests for clarification and rehearing, emphasizing that its actions in establishing the APSouth scarcity pricing region were consistent with the requirements of sec. 6A.2.2 of the PJM Operating Agreement. PJM further emphasizes that no party alleges that PJM did not satisfy such requirements or that the existing requirements are unjust and unreasonable. It notes that the state commission's arguments go to the issue of whether the existing tariff rules for establishing a scarcity pricing region are adequate and argues that this proceeding is not the appropriate place to address such issues.

11. PJM explicitly addresses the H-P Energy project cited by the parties as a potential solution to the constraint that causes the APSouth region to be designated a scarcity pricing region, stating that although acceleration of the project would partially resolve the congestion problem, APSouth would continue to qualify as a scarcity pricing region. It further emphasizes, however, that the designation causes no harm if the constraint does not bind because the scarcity pricing rules will not be utilized absent a binding constraint.

III. Discussion

A. Procedural Matters

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits answers to requests for rehearings unless otherwise permitted by the decisional authority. The Commission grants PJM's motion for leave to answer the requests for rehearing and clarification, as PJM's answer has assisted us in the decision-making process.

B. Motion for Clarification and Requests for Rehearing

13. In the August 13, 2008 Letter Order, the Commission found that consideration of whether a transmission project which may relieve congestion should be expedited in PJM's planning process is outside of the scope of the proceeding. Specifically, the Commission stated:

In their various comments and answers, H-P Energy, the Maryland Public Service Commission, the Delaware Public Service Commission, the Pennsylvania Public Utility Commission and the New Jersey Board of Public Utilities requested that the Commission expedite certain projects in the PJM queue, consider other lower-cost options to relieve congestion or, prior to establishing a new scarcity pricing region, require PJM to demonstrate that it has exhausted other means of mitigating congestion. These issues are outside the scope of this proceeding and therefore will not be addressed.⁷

14. The Maryland Commission and the Pennsylvania Commission disagree with this finding that consideration of a proposed H-P Energy project to relieve the transmission constraint was outside the scope of the proceeding. Although the state commissions raise important issues that PJM should and is reviewing,⁸ they do not support their requests for rehearing. PJM's Tariff specifies well-defined criteria for designation of a scarcity pricing region and includes a process for reevaluating that determination annually. The only issue before the Commission in this proceeding is whether PJM properly applied its tariff provisions to the APSouth region. No party disputes that issue. The cause of any transmission constraint triggering sufficient congestion for designation of a scarcity pricing region, whether a proposed transmission project might alleviate the need for the designation, or whether proposals that could alleviate the constraint should receive certain priority in PJM's queue are not included in the tariff criteria for designation of a scarcity pricing region and as such, are not issues to be considered in this proceeding.⁹

15. The state commissions raise several other arguments, including the Maryland Commission's allegations that PJM's scarcity pricing mechanism exposes captive customers to the potential exercise of market power and that designation of the APSouth scarcity pricing region results in disparate treatment of ratepayers within that region as compared to other ratepayers across PJM. We note that the state commissions did not

⁷ August 13, 2008 Letter Order at P 3 n. 2.

⁸ For example, the Commission recently accepted revisions to PJM's tariff, addressing issues related to cost responsibility for the acceleration of RTEP projects. *PJM Transmission Owners*, 125 FERC ¶ 61,021 (2008).

⁹ Any challenges to the justness and reasonableness of PJM's scarcity pricing criteria and other tariff provisions must take place in accordance with the Commission's established mechanisms, such as section 206 of the Federal Power Act.

protest the PJM filing and did not raise these issues in their initial comments. A request for rehearing is not the appropriate venue to bring up such issues in the first instance.¹⁰

16. The New Jersey Board requests that the Commission clarify that transmission infrastructure upgrades can alleviate the need to designate a scarcity pricing region. As discussed above, we reject this clarification as beyond PJM's tariff provisions for establishing scarcity pricing regions and as such, outside the scope of this proceeding. Further, the New Jersey Board's argument that scarcity pricing regions should never be permanent is addressed within PJM's tariff, which requires PJM to conduct an annual review of scarcity pricing regions. We find no further clarification necessary.

The Commission orders:

The requests for rehearing and clarification are denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁰ The Commission has held that raising issues for the first time on rehearing is disruptive to the administrative process and denies parties the opportunity to respond. *Enron Energy Services Inc. v. Sellers of Energy*, 122 FERC ¶ 61,015, at P 64 n. 98 (2008), citing *Sierra Pacific Power Co.*, 96 FERC ¶ 61,050, at 61,124 (2001); *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,113, at P 188 (2006) (denying rehearing of new issues as outside the proper scope of the rehearing).