142 FERC ¶ 61,040
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.

Hess Corporation Docket No. EL12-7-000

v.

PJM Interconnection, LLC

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued January 17, 2013)

1. On October 26, 2011, Hess Corporation (Hess) filed a petition for declaratory order, or in the alternative a complaint, against PJM Interconnection, LLC (PJM). Hess requests that the Commission determine that PJM's Open Access Transmission Tariff (OATT) allows PJM to make a minor adjustment to two phase angle regulators (PARs) owned by the Public Service Electric and Gas Company (PSEG) but under the operational control of PJM. As discussed below, the Commission denies both Hess's petition for declaratory order and Hess's complaint.

I. Background

2. Hess and its affiliates are developing the Newark Energy Center, a proposed 625 MW gas-fired electric generating facility to be located on Hess-owned property with access to energy infrastructure in Newark, New Jersey. The Newark Energy Center will be located in the Northern PSEG zone.

3. Hess states that on July 29, 2008, PJM issued its Feasibility Study, which identified approximately $340 million in upgrades associated with the interconnection of the Newark Energy Center. PJM subsequently conducted a retool of the System Impact Study in February 2011, which decreased the estimated costs that Hess would be required to fund to $185 million for network upgrades on the PSEG system and the systems of Jersey Central Power & Light Company, PPL Electric Utilities Corporation, Metropolitan Edison Company, and Baltimore Gas and Electric Company.

II. Description of Filing

4. Hess requests that the Commission determine that the most reasonable interpretation of the current PJM tariff permits PJM to make a minor adjustment to the two PARs, for purposes of modeling Hess's pending interconnection request. Hess believes that PJM must make these adjustments because PARs are Commission-jurisdictional transmission facilities subject to the Commission's Order No. 888 open access requirements, and PJM, as system operator, must provide access to such facilities on a basis that is not unduly discriminatory or preferential. Hess believes that its petition would further the Commission's policies of: (a) ensuring nondiscriminatory open access to transmission facilities; (b) promoting least-cost planning in the interconnection process; and (c) minimizing opportunities for undue discrimination and preference in the interconnection process.

5. In the alternative, if the Commission finds that PJM currently does not have the authority under its tariff to adjust PARs for purposes of studying proposed generator interconnections, Hess submits a complaint against PJM. In its complaint, Hess requests that the Commission: (a) find that the tariff results in unduly discriminatory and preferential treatment with respect to use of PARs located in PJM; and (b) order PJM to revise its tariff and/or associated manuals as necessary to require PJM to adjust PARs to accommodate generator interconnections, such as the interconnection of the Newark Energy Center, when such adjustment would not harm the reliability of the PJM system or impose costs on other PJM participants. Hess believes that ensuring that the tariff requires PJM to adjust PARs to accommodate new generator interconnections, in the same manner as PARs are currently used to accommodate existing generation, is necessitated by section 206 of the Federal Power Act's (FPA)[1] prohibition against unduly discriminatory or preferential treatment in the provision of transmission services and practices affecting or relating to those services. In further support, Hess claims that PAR adjustments are made by the New York Independent System Operator, Inc. (NYISO), where PARs are similarly installed and employed, when studying generator interconnections.

6. Hess's consultant determined that a change of only approximately 1/10th of one degree in the 230 kV Linden-Bayway PAR in the interconnection study model would reduce the overload by 2 MW and thereby obviate the need for Hess to replace a conductor on the Bayway-Federal Square 138 kV circuit, which would cost approximately $55 million. The Hess consultant also concluded that a one and a half degree adjustment to the 230 kV Essex-Aldene PAR in the interconnection study model

[1] 16 U.S.C. § 824e (2006).

would similarly obviate the need for Hess to replace the Essex 230/138 kV transformer, which would cost an additional $13.5 million. According to Hess, both the Linden-Bayway and the Essex-Aldene PARs are owned by PSEG, and are under the operational control of PJM pursuant to PJM's tariff. Hess states that on August 3, 2011, it informed PJM of the potential to use the Linden-Bayway PAR to redirect the additional flow on the Bayway-Federal Square circuit; however, PJM indicated that its analysis procedures contained in Manual 14B (PJM Region Transmission Planning Process) only allow it to adjust PARs for deliverability for existing generation, and not to accommodate new generator interconnections. Hess states that PJM also made it clear that it would not adjust the PARs to accommodate Hess's interconnection request because to do so would be contrary to PJM's interconnection study practices.

7. Hess states that, even with the PAR adjustments identified by Hess, it would still be responsible for approximately $116.5 million in network upgrades, and an additional $25 million in direct interconnection costs, for the Newark Energy Center. Hess asserts that its estimated upgrade costs would significantly exceed the Reference Unit Cost of New Entry for the RPM demand curves, which assumes only a $15.5 million upgrade cost total (which includes both network upgrades and direct interconnection facilities) for a nominal 300-500 MW combined cycle generating facility in the New Jersey region.[2] Hess points out that interconnection costs are a major impediment to the entry of new generation in New Jersey.[3]

8. Hess states that while the tariff and associated manuals provide for the use of PARs for reliability planning purposes and the operation of PARs to manage congestion and generation redispatch, they do not expressly address the use of PARs for modeling proposed generator interconnections. Hess seeks a Commission determination that, although the PJM tariff does not expressly address this issue, the most reasonable interpretation is that PJM has the authority to make minor adjustments to the Linden-Bayway and Essex-Aldene PARs for purposes of modeling Hess's interconnection request for the Newark Energy Center. Hess states that the Commission has held that "PARs are transmission facilities"[4] and that, pursuant to Order Nos. 888 and 2000, the

[2] Hess filing at 9 (citing The Brattle Group, Cost of New Entry Estimates for Combustion Turbine and Combined Cycle Plants in PJM, at 26 (Aug. 24, 2011)).

[3] According to PJM's November 21, 2012 filing in Docket No. ER13-553-000 , Hess's network upgrade charge is now $35,523,360.

[4] *Consol. Edison Co. of New York v. Pub. Serv. Elec. & Gas Co.*, 108 FERC ¶ 61,120, at P 65 (2004).

PARs owned by Consolidated Edison Company of New York, Inc. (ConEd) at the interface between the PJM and NYISO systems "must be under the control of the ISOs in whose territory they are located" and that "ISOs, not the individual utilities, must decide how the taps of the PARs are used to either facilitate or retard the flow of power through the interconnections."[5] Hess states that there is no technical difference between ConEd's interface PARs and the PARs on PSEG's system that would justify a conclusion that the Linden-Bayway and Essex-Aldene PARs are not jurisdictional transmission facilities. Hess believes that PJM, as operator of the regional transmission system, has an obligation under FPA sections 205 and 206 to provide access to PSEG's PARs in a manner that is not unduly discriminatory or preferential. Hess reiterates that PARs must be treated in accordance with the Commission's Order No. 888 open access requirement which "prohibits owners and operators of monopoly transmission facilities from denying transmission access, or offering only inferior access, to other power suppliers in order to favor the monopolists' own generation and increase monopoly profits – at the expense of the nation's electricity consumers and the economy as a whole."[6]

9. Hess argues that PJM's contention that it cannot make even minor adjustments to PARs for purposes of modeling generator interconnection requests prevents interconnection customers from obtaining access to jurisdictional facilities in clear violation of Order Nos. 888, 890, 2000 and 2003.[7] Hess states that in Order No. 2003-A,

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[5] *Consol. Edison Co. of New York v. Pub. Serv. Elec. & Gas Co.*, Initial Decision on Phase II Issues, 103 FERC ¶ 63,047, at P 35 (2003), *aff'd* 108 FERC ¶ 61,120 (2004).

[6] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,175, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

[7] *Id.*; *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 on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009); *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001);

(continued…)

the Commission expressed a preference for least-cost interconnection by requiring a Transmission Provider to coordinate its transmission and interconnection queues. Hess believes that granting its petition and requiring PJM to adjust PARs for purposes of generator interconnection modeling, when such adjustment would have no impact on reliability or impose costs on other PJM participants, is consistent with the Commission's least-cost interconnection policies since permitting the adjustments would result in a significant reduction in interconnection costs of approximately $68.5 million. Hess argues that PJM's position that it cannot make these adjustments to jurisdictional PARs is directly contrary to the Commission's generator interconnection policies, which are designed to foster increased development of economic generation.

III. Notice and Responsive Pleadings

10. Notice of this filing was published in the *Federal Register*, 76 Fed. Reg. 68,747 (2011), with interventions and protests due on or before November 25, 2011. Consolidated Edison Energy, Inc., Old Dominion Electric Cooperative, Dayton Power and Light Company, Rockland Electric Company, LS Power Associates, LP, PPL Electric Utilities Corporation,[8] and Constellation Energy Commodities Group, Inc. filed timely motions to intervene. Cleveland Electric Illuminating Company[9] filed a motion to intervene out-of-time.

Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

[8] PPL Electric Utilities Corporation includes: 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 Renewable Energy, LLC; PPL New Jersey Biogas, LLC.

[9] Cleveland Electric Illuminating Company includes: Jersey Central Power & Light, Metropolitan Edison Company, Ohio Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, Toledo Edison Company, Monongahela Power Company, Potomac Edison Company, West Penn Power Company, FirstEnergy Solutions Corporation, American Transmission Systems, Inc., Trans-Allegheny Interstate Line Company.

11. Exelon Corporation (Exelon) and Baltimore Gas and Electric Company (BG&E) filed motions to intervene and protests. Dominion Resources Service, Inc. (Dominion) filed a motion to intervene and comments. The New Jersey Board of Public Utilities filed a notice of intervention and comments. PJM and Public Service Electric and Gas Company (PSEG) filed motions to intervene and answers. Hess filed an answer. PJM filed a response to Hess's answer.

12. BG&E and Exelon argue that under PJM's tariff, PARs are operated in real time to maintain reliability and operational control and are not adjusted for expanding capacity during system planning stages. Exelon and PSEG argue that adjusting PARs for interconnection studies would create undue discrimination if two similarly situated new generators requested conflicting PARs adjustments. Furthermore, BG&E argues that adjusting PARs in the planning stages, as Hess requests, would threaten operational reliability because reliability is maintained by keeping PARs to a tap setting to control the flow at an interface at a pre-determined schedule. BG&E states that Hess is wrong to advocate that the PARs be adjusted in a way to accommodate a particular generation project because that would, in effect, be pigeonholing PJM into actually operating the PARs in accordance with this adjustment regardless of whatever the real time operating conditions call for at any given point in time.

13. Exelon states that ten PARs on Commonwealth Edison's system were installed for the primary purpose of maintaining reliable supply to the Chicago Metro Area by balancing flows on a number of cables to prevent overloads under normal, maintenance, and contingency conditions. Exelon further states that changing those PAR settings to accommodate new generator interconnections would be disruptive and could jeopardize reliable supply to the Chicago Metro Area.

14. PSEG answers that adjusting PARs for operations is fundamentally different than adjusting PARs for interconnection studies. PSEG argues that when PJM conducts interconnection studies it consistently sets the PARS for all generators. Therefore, PSEG argues that PJM is not discriminating against Hess since it is treating all new generators similarly. PSEG argues that, contrary to Hess's contention, if the Commission grants Hess's complaint and requires PJM to adjust the PARs for Hess's interconnection study, then PJM would have to adjust PARs for all new generation.

15. Dominion filed comments in support of PJM's answer arguing that not adjusting PARs during the planning stages provides flexibility during operations necessary for operational reliability.

16. Exelon, PSEG, and BG&E argue that granting Hess's complaint would effectively modify PJM's OATT. They argue that any change to PJM's tariff should follow normal procedures including the stakeholder process. PSEG asserts that PJM has been

conducting a stakeholder process to streamline the interconnection process in which Hess has been actively participating.

17. The New Jersey Board of Public Utilities supports Hess's petition arguing that PJM should consider reasonable PARs adjustments when conducting interconnection studies to ensure that the studies reflect only those upgrades necessary for reliability. The New Jersey Board of Public Utilities argues that adjusting PARs, as Hess requests, could reduce interconnection costs and encourage new generation assets in congested corridors such as New Jersey.

A. PJM's Answer

18. PJM replies that the procedures governing the use of PARs in PJM planning analyses were vetted through the PJM Planning Committee years ago and have been implemented in a consistent basis in the development of the Regional Transmission Expansion Planning (RTEP) process and the performance of generator interconnection studies. PJM states that the decision not to allow PAR adjustments with respect to individual contingencies in generator deliverability analyses in either RTEP or generator interconnection analyses was based on the need to maintain operational flexibility and to prevent the potential shifting of responsibility for baseline transmission upgrades. The potential shifting of responsibility for baseline transmission upgrades would be due to changes in electrical flow caused by PAR adjustments. PJM believes that Hess's argument that PJM adjusts PARs for existing generation and thus should do so for new generation confuses operational and planning practices.

19. PJM states that its planning process ensures the on-going deliverability of the aggregate of generation resources to the aggregate of customer load (generator deliverability test) and the ability of the transmission system to deliver energy to load pockets experiencing greater than normal generator unavailability (load deliverability test). PJM further states that violations of planning criteria with respect to either test impose obligations to reinforce the transmission system on network load, not on existing generating resources; therefore the planning analyses cannot result in discrimination in favor of existing generation because no obligation is imposed on existing generation.

20. With respect to planning, PJM develops a base case each year and pursuant to its Manuals conducts a series of analyses to determine if the system is compliant with all applicable reliability criteria.[10] PJM states that these analyses are required under the North American Electric Reliability Corporation (NERC) Transmission Planning (TPL) standards. One of these analyses, the load deliverability test, determines if a particular

[10] PJM Manual 14B: PJM Region Transmission Planning Process, Attachment D.

area can import sufficient energy during emergency conditions consistent with reliability requirements. In this analysis, adjustments are made to the system, including adjustments to PARs, to maximize the amount of power that can be imported to an area. PJM states that this test simulates emergency operational conditions, which have a lower probability of occurrence; therefore the simulation of these operational actions as a corrective measure in planning analyses is appropriate. PJM states that other tests required by the NERC TPL standards are evaluated at normal, rather than emergency, summer peak load conditions and are evaluated using PJM's generator deliverability testing procedures which do not allow for operational corrections (such as PAR adjustments) because they simulate normal peak load conditions and must preserve operational flexibility for system operators to deal with the circumstances that arise day to day.

21. PJM performs all of these tests as part of its baseline analysis. PJM states that when the baseline analysis is completed and the base case is compliant with all reliability criteria, it is locked down for purposes of studying both generator and merchant transmission interconnection projects. PJM states that locking down the base case is necessary so that all interconnection projects are studied against the same model to ensure that there is no undue discrimination or preferential treatment that would impede open access. PJM explains that to adjust PARs during the interconnection analyses stage could result in undue discrimination.

22. PJM goes on to say that Hess's portrayal of its proposal to adjust PARs for its project as an easy solution with no actual or potential impact on other customers is incorrect.[11] PJM believes that the adjustment of PARs for one interconnection customer would directly or indirectly impact other interconnection customers and for that reason alone it is not appropriate to adjust the PARs. PJM believes that if it were to adjust PARs during its interconnection studies, it would open the door to suggestions that PJM should take into account other options during the interconnection analysis to determine if an interconnection customer can avoid a violation of the planning criteria, such as adjustment of transformer taps, redispatching of generation, or opening of transmission lines. If PJM takes into account one of these adjustments for one interconnection customer, but cannot do so for another interconnection customer due to material impacts on other interconnection customers in the queue, PJM believes that it would be exposed to the very undue discrimination claim that Hess is asking the Commission to address here.

[11] Hess originally argued that PJM should adjust the Linden-Bayway PAR by 1/10 of one degree to achieve the result it seeks, and that PJM should adjust the Essex-Aldene PAR by 1.5 degrees. PJM states that PARs are not continuously adjustable; there is a discrete number of taps which are roughly equivalent to 1 degree.

23. PJM adds that if PAR adjustments are allowed during interconnection studies, it seems likely that similar adjustments would have to be allowed to obviate the need for transmission upgrades in RTEP baseline analyses. If that were to occur, PJM believes that given the limited number of taps on a PAR, the system operator's ability to adjust the flows on the system would be reduced thereby having an adverse impact on overall system reliability. Currently, Schedule 12 of PJM's tariff at section (b)(iii)(C)(8) provides that: "Transmission Provider shall not account for the ability to adjust use of phase angle regulators ("PARs") in the DFAX analysis described in subsection (b)(iii)(C) of this Schedule 12. In the DFAX analysis, all PAR angles shall be fixed at their base case settings." PJM argues that if the treatment of PARs is to be changed with respect to planning and interconnection analyses, the corresponding impacts on RTEP cost allocation procedures will also need to be re-examined.

24. PJM urges the Commission to reject Hess's alternative complaint since Hess has not shown that PJM's tariff is unjust and unreasonable or unduly preferential, and as a result, it has not met its burden of proof to support its complaint. PJM points out that due to a restudy analysis conducted pursuant to PJM's tariff, which was in progress prior to Hess's Petition initiating this proceeding, there is no longer a need for Hess to upgrade the Bayway-Federal Square 138 kV circuit, which results in approximately $55 million less in upgrade costs attributable to Hess's project.

B. Hess's Response

25. In response to PJM's answer Hess argues that no one has demonstrated that adjusting PARs as requested would actually negatively impact reliability. Hess contends that PJM's unsubstantiated reliability concerns are insufficient to deny Hess's request. Hess asserts that PJM failed to identify any specific NERC or other reliability criteria that would be violated by granting Hess's requests. Hess argues that even though the Commission generally provides deference to regional transmission organizations (RTOs) on reliability issues,[12] in this case it should not provide deference to PJM's unsubstantiated claims.

26. Hess states that under Order No. 888, PJM is required to provide access to all transmission facilities, including PAR facilities on a not unduly discriminatory or preferential basis. Hess argues that by adjusting PARs for existing generators, and not

[12] Hess Answer at 12 (citing *Milford Power Co., LLC*, 110 FERC ¶ 61,299, at P 40-43 (2005)); *Entergy Serv. Inc.*, 105 FERC ¶ 61,319, at P 42 (2003); *North Am. Elec. Reliability Corp.*, 116 FERC ¶ 61,062, at P 279 (2006).

for new generation, PJM is providing preferential treatment to one class of generators (i.e., existing generators) over another class (i.e., new generators).

27. Hess states it recognizes that adjusting PARs to accommodate interconnection requests would increase the complexity of the interconnection study process, however, that is insufficient basis to deny access to available transmission capacity. Hess believes that its requested relief would not impose any costs on other interconnection customers; however, even assuming that Hess's use of capacity from the Essex-Aldene PAR were somehow to impose costs on another generator, Hess believes those costs would be allocated to the other generator pursuant to the "but for" test for allocation of interconnection-related costs.

C. PJM's Response

28. PJM believes that Hess is attempting to further obfuscate the record with claims of undue discrimination and preferential treatment that incorrectly equate existing generators who have paid their "but for" costs and are operating in real-time on the PJM transmission system, with new interconnection customers who are moving through the interconnection study process.

29. PJM states that while the FPA prohibits unjustifiably disparate treatment of similarly situated entities under the rubric of "undue preference," differential treatment does not necessarily constitute undue preference where the difference in treatment can be justified by some factor deemed acceptable by regulators. PJM believes that in this instance adjusting a PAR on an operational basis to maintain system reliability is not the same as adjusting PARs in a planning model for interconnection of a new generator to reduce the new generator's interconnection cost at the expense of operational flexibility and reliability. PJM states that an adjustment of PARs during the interconnection study could not only benefit a new generator over another new generator but could harm the reliability of the transmission system by depleting the operational flexibility built into the system in the PJM planning process. PJM argues that if it is required to adjust PARs during the interconnection study, PJM anticipates: (i) reliability impacts (reduced operation flexibility and assurance of reliability); and (ii) cost allocation impacts (it would shift costs from one party to another). Therefore, PJM urges the Commission to reject Hess's assertion that PJM's tariff and manuals permit PJM to adjust PARs during interconnection analyses.

30. PJM believes that an existing generator could not benefit or be harmed, in the context of the planning process, by the adjustment of PARs because an existing generator does not have any further cost allocation obligation for transmission upgrades that may be required through the exercise of the planning process.

IV. Discussion

A. Procedural Matters

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[13] the timely, unopposed motions to intervene serve to make those entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,[14] we will grant the Cleveland Electric Illuminating Company'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.

32. Rule 213(a) of the Commission's Rules of Practice and Procedure[15] prohibits an answer to a protest, or an answer, unless otherwise ordered by the decisional authority. We will accept Hess's and PJM's answers because they have provided information that assisted us in our decision-making process.

B. Commission Determination

33. We deny Hess's request that the Commission determine that the most reasonable interpretation of the current PJM tariff permits PJM to make a minor adjustment to the two PARs for modeling Hess's pending interconnection request. Hess's own filing states that PJM's tariff only provides for adjusting PARs for reliability planning and operations for congestion management and generation redispatch.[16] While PJM's tariff is silent in regard to PAR adjustments for new generator interconnection studies, Schedule 12 of PJM's tariff relating to RTEP studies provides that: "[i]In the DFAX analysis, all PAR angles shall be fixed at their base case settings."[17] And since RTEP models are used to determine which facilities are required for reliability purposes, and the Tariff explicitly prohibits adjustments of PARS for such facilities studies, we find that, in the absence of

[13] 18 C.F.R. § 385.214 (2012).

[14] *Id.* § 385.214(d).

[15] *Id.* § 385.213(a)(2).

[16] Hess Filing at 11-12 (citing PJM Manual 14B, Attachment B; PJM Manual Attachment C.5 §§ 2.0, 3.2, 4.2; PJM Manual 3 §§ 1.3, 2.1 3.2, 3.5.3, 3.5.3, 5; PJM Manual 12, Attachment B; PJM Tariff, Schedule 12).

[17] PJM Tariff, Schedule 12 § (b)(iii)(C)(8).

specific provisions to the contrary, PJM's tariff cannot be interpreted as permitting PJM to make minor adjustments for modeling interconnection requests.

34. Hess also claims that by refusing to adjust PAR settings during the interconnection study process, it was denied access to PJM's transmission facilities in the same manner as existing generators are able to access PARs during operations. Hess claims that this differential treatment is unduly discriminatory and violates Commission policy. As discussed below, the Commission disagrees and finds that PJM did not unduly discriminate against Hess, or other new generation by refusing to adjust PARs during the interconnection study phase.[18]

35. Discrimination is undue when there is a difference in rates or services among similarly situated customers that is not justified by some legitimate factor.[19] Contrary to Hess's arguments that PJM adjusts PARs for existing generation and thus should do so for new interconnecting generation, in this particular case, new and existing generators are not similarly situated. Hess's argument confuses operational and planning practices.

36. PJM can adjust PARs at the beginning of its annual transmission planning process to determine the most cost effective method of ensuring the reliability of the transmission grid by allowing system operators to deal with contingencies.[20] These adjustments are not designed to reduce the cost of construction for existing generators, since these generators already have paid their upgrade costs consistent with the PJM tariff's interconnection provisions, the same provisions that are being applied to Hess.

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[18] We note that, due to additional analysis of the interconnection study by PJM, Hess' network upgrade cost responsibility for the Newark Energy Center has decreased to $35,523,360, as stated in Docket No. ER13-443-000, from the original $340 million estimate, and excludes $55 million in upgrade costs that Hess sought to avoid in its petition by adjusting the Linden-Bayway PAR.

[19] *E.g.*, *City of Anaheim, California* 113 FERC ¶ 61,091, at P 130 (2005); *El Paso Natural Gas*, 104 FERC ¶ 61,045, at P 115 (2003).

[20] PJM's November 23, 2011 Answer at 5 (citing PJM Manual 14B; PJM Region Transmission Planning Process, Att. D). PJM states that: "The decision not to allow PAR adjustments with respect to individual contingencies in generator deliverability analyses in either RTEP or interconnection analyses was based on the need to maintain operational flexibility and to prevent the potential shifting of responsibility for baseline transmission upgrades to interconnection customers." *Id.* at 4.

37. Order No. 2003 defines the scope of the transmission providers obligations with respect to generation interconnection requests. Under Order No. 2003, the transmission provider is required to make available to an interconnecting party any transmission capability that is available. However, as relevant here, the transmission provider is not required to make changes to its base case planning analysis to accommodate a generator.[21] Doing so would be essentially equivalent to changing the assumed configuration of the transmission system for each interconnection study. Requiring a transmission provider to accommodate all requests to make changes to its base case analysis would be time consuming and would make the interconnection process more complex. Potentially, PJM would have to model all tap settings for PARs in individual models, evaluate actual operational scenarios, and then reevaluate the voltage, thermal, and stability models. PJM notes that, under Hess's proposal, PJM could also be required to adjust transformer taps or open transmission lines as part of the interconnection queue study process. Unlike transmission upgrades, moreover, adjusting PAR settings does not increase available transmission capability, but instead redirects flow from one area to another. Adjusting PAR settings would require PJM to perform comprehensive planning analysis to make sure the new adjusted PAR setting does not cause problems elsewhere on the transmission system. Additional studies would only increase the time it takes for PJM to determine the required network facilities and their corresponding costs and increase the costs and time associated with conducting interconnection studies. The complexity would be magnified since all generation interconnection customers could request changes in PAR settings, each of which would need to studied. Moreover, requiring PJM to conduct such studies also could lead to situations in which an adjustment could reduce costs to one customer while increasing costs to other customers in the queue.[22] Finally, we agree with PJM that changes to PAR settings across different interconnection studies could become mutually contradictory, potentially leading to undue discrimination. For these reasons, we find that in balancing the potential benefit to one interconnecting customer against the increased burden created in allowing a changing RTEP base case and the potential effect on other interconnection customers, Hess has

[21] Order No. 2003 at P 77.

[22] For example, while Hess has requested a minor adjustment of 1/10th of one degree in the 230 kV Linden-Bayway PAR and a one and a half degree adjustment to the 230 kV Essex-Aldene PAR, both PJM and Hess's consultant[22] have stated that PARs have a discrete number of tap settings which are roughly equivalent to 1 degree; therefore the PAR settings that Hess has requested would result in even larger adjustments than the 1/10th and 1 ½ degrees mentioned by Hess. Larger adjustments could well have a greater impact on other customers.

failed to demonstrate that allowing an adjustment of PARs promotes overall system efficiency.

38. Additionally, Hess argues that PJM's refusal to adjust PARs is unreasonable because the NYISO permits similar adjustments to certain internal PARs settings, although not to all PARs:

> PARs within the applicable Capacity Region will be adjusted as necessary, in either direction and within their angle capability, to eliminate or minimize overloads without creating new ones. PARs controlling external ties and ties between the Capacity Regions will be modeled, within their angle capability, to hold the individual tie flows to their respective deliverability baseline schedules, which shall be set recognizing firm commitments and operating protocols set forth in Attachment M-1 of the Services Tariff. [23]

39. We do not find that the practice of one RTO, for reasons applicable to that specific RTO, permits some limited adjustments to PARs establishes that PJM's tariff is unjust and unreasonable for not permitting PAR adjustments. This complaint presents issues related to PJM's tariff and operations. For that reason, we find that issues related to NYISO's operations are not relevant to our decision. Furthermore, as discussed above, adjustments to the base case are not required by Order No. 2003.

: (A) The Commission denies Hess's petition for declaratory order.

(B) The Commission denies Hess's complaint against PJM.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

[23] NYISO OATT, 25.7 OATT Att S Cost Allocation Methodology for CRIS, 0.0.0, § 25.7.8.2.12.