110 FERC ¶ 61,254
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

PJM Interconnection, L.L.C. Docket Nos. ER04-742-003
EL04-105-001

ORDER ACCEPTING FILING SUBJECT TO MODIFICATIONS

(Issued March 7, 2005)

1. In this order, the Commission accepts, subject to modification, amendments submitted by PJM Interconnection, L.L.C. (PJM) to its Open Access Transmission Tariff (OATT) and to its Amended and Restated Operating Agreement (Operating Agreement) to revise the rules related to the allocation of Auction Revenue Rights (ARRs) and Financial Transmission Rights (FTRs) on PJM's system, effective March 8, 2005. PJM filed these proposals in response to a section 206 proceeding instituted by the Commission in Docket No. EL04-105 to inquire into whether PJM's method of allocating FTRs/ARRs is just and reasonable. Acceptance of PJM's proposal will provide network and point-to-point customers with comparable and balanced FTR/ARR allocation rules.

Background

2. On May 28, 2004, in Docket No. ER05-742-000, the Commission accepted PJM's initial allocation of FTRs and ARRs for the transmission zone of Commonwealth Edison Company (ComEd) which had integrated into PJM on May 1, 2004 (May 28 Order).[1] While the Commission did not require any changes to the FTRs allocated by PJM, it established certain mitigation measures for long term point-to-point transmission customers that had been allocated fewer FTRs than they requested. In the May 28 Order, the Commission also instituted a section 206 proceeding in Docket No. EL04-105-000 to conduct a stakeholder process and to file a report within 120 days which responded to concerns that PJM's existing tariff rules allocated ARRs/FTRs differently to point-to-point and network integration transmission customers.

[1] *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,223 (2004).

Proposal

3. PJM states that the proposal it and its stakeholders have developed balance revisions to FTR/ARR allocation rules that protect loads in other regions using point-to-point service to access resources that historically served such loads while addressing concerns about the impact of FTR auctions of unlimited FTR/ARR allocation. Further, PJM states that the May 28 Order found that the first stage of PJM's ARR allocation process provided network customers preferential access to capacity and energy resources over point-to-point customers and that, as a result, PJM pro-rated customers holding firm point-to-point reservations to a greater degree that network service users. PJM states that its proposed revisions directly address and eliminate the alleged preference by changing the allocation rules to allow network and point-to-point customers to participate on the same basis in the first stage of the allocation.

4. Specifically, PJM proposes the following revisions. First, PJM proposes to revise section 7.4.2 of Schedule 1 of the Operating Agreement to allow point-to-point customers to request ARRs in stage 1 based on the megawatts of firm service provided between the receipt and delivery points for which the transmission customer had point-to-point transmission during the historical reference year. PJM states this provision corresponds to an existing provision which allows network customers to request ARRs in stage 1 from a subset of the historical generation resources that were designed to be delivered to load based on the historical reference year in the zone. PJM states that the historical reference year will depend on the zone but point-to-point and network customers within a zone will have the same historical reference year. Further, PJM states that just as a network customer's allocated stage 1ARRs is limited to its peak load for the zone (*i.e.*, by the determinant used for its network service charge), the point-to-point customer's allocated stage 1 ARRs will be limited to the megawatts of service it had under its point-to-point contract (*i.e.*, by the determinant used for its point-to-point transmission charge).

5. PJM also states that the revised tariff rules establish that point-to-point transmission customers eligible to participate in the stage 1 allocation must be long-term firm point-to-point customers; that they may have points of receipt points either inside or outside the PJM; and that they have points of delivery at loads either inside or outside the PJM region. To ensure that the point-to-point customer participates on the same basis as network customers that are allocated ARRs in the same historic reference year, point-to-point customers must still hold, either by term, renewal, or rollover, the long-term firm point-to-point contract it had in the historic reference year. If the point-to-point customer has reduced its contracted level of service between the specified points of receipt and delivery since the reference year, then its stage 1 ARR allocated is limited by the lower level of contracted service.

6. If a point-to-point customer's current contract path differs from its historic contract path, then it may obtain ARRs in stage 2 of the allocation for the current contract path. PJM states this provision places point-to-point customers on the same basis as network customers which can seek ARRs in stage 2 that differ from its historic reliance on zonal network resources. In stage 2 of the allocation process, long-term firm point-to-point customers that have historic reservations and pay through-and-out rates pursuant to a transitional arrangement may amend their historic reservations to use different source or sink points (*i.e.*, redirect service) without paying a transmission charge. Network service users may request ARRs/FTRs from different resources (different from its historic reliance on zonal network resources) in stage 2 of the allocation process.

7. PJM states that a customer meeting the above criteria may participate in either or both stages of the annual ARR allocation whether or not it pays a base transmission charge for point-to-point service. PJM claims this change is necessary to comport with the Commission's November 18, 2004, Order in Docket No. EL02-111-010, *et al.*, eliminating, *inter alia*, the base transmission charge for PJM's point-to-point through-and-out service to the Midwest Independent System Operator, Inc. (MISO).[2] PJM states that the November 18 Order found that it was not unreasonable to continue to allocate FTRs/ARRs to through-and-out reservations for which no rate is paid because load in each zone pays the license plate rate for that pricing zone and receives reciprocal access to service over the entire regional transmission system, including firm service, at non-pancaked rates. Therefore, PJM argues, its proposed tariff provisions protect reciprocal access by load in either regional transmission organization (RTO) to the other RTO's transmission system by allocating ARRs/FTRs to point-to-point service that, based on reasonable criteria, is associated with that load.

8. PJM states that its proposed allocation rules reasonably identify point-to-point service associated with service to MISO loads by allocating ARRs/FTRs to point-to-point service from resources that historically serve loads in other control areas. Because this method is already used by PJM's ARR allocation rules to associate particular network service paths with particular network loads, PJM states that it is reasonable to use this same method to determine the qualifying point-to-point paths with external point-to-point loads. PJM states that its current methodology does not allocate ARRs to network customers in stage 1 based on their expected resources or expected delivery paths for the upcoming year covered by each annual auction. Instead, PJM states the objective method used to allocate stage 1ARRs on a non-discriminatory basis among all network customers

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[2] *Midwest System Operator, Inc.*, 109 FERC ¶ 61,168 (2004) (November 18 Order).

is to look at all customers' actual reliance on resources and paths in a common reference year. PJM avers this objective and non-discriminatory method provides a reasonable means of determining the point-to-point service paths that are associated with MISO loads and that therefore should be allocated ARRs in stage 1 to hedge service to those loads, even though the customer no longer pays a point-to-point rate to PJM for service out to those loads. PJM states that as a necessary corollary, its proposed rules establish that customers that do not take service reasonably identified with historic service loads in MISO and that do not pay for transmission service, are not entitled to claim an allocation of ARRs.

9. PJM states that this rule is essential to preserve the viability of its FTR auctions. If FTRs/ARRs were allocated without charge to any party, regardless of the party's need to hedge congestion charges on their firm deliveries to load, PJM states that it is inevitable that FTRs on such paths will be no longer obtained at auction. PJM further states that parties that can obtain such FTRs/ARRs for free (by obtaining no-charge transmission service) will not pay to buy them at auction in secondary markets.

Procedural Matters

10. Notice of the filing was published in the *Federal Register* on January 26, 2005, with comments, protest, and interventions due on or before January 28, 2005.[3]

11. Timely motions to intervene in Docket No. EL04-105-000 were filed by Allegheny Power and Allegheny Energy Supply Co. LLC; Old Dominion Electric Cooperative (ODEC); and MidAmerican Energy Company. Timely motions to intervene in Docket No. EL04-105-001 were filed by American Municipal Power-Ohio, Inc. (AMP-Ohio); North Carolina Electric Membership Corp. (NCEMC); Borough of Chambersburg, Pennsylvania; Madison Gas and Electric Company; and Wisconsin Electric Power Co. (Wisconsin Electric). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Exelon Corporation (Exelon) filed a late intervention in Docket No. EL04-105-001. Pursuant to Rule 214, any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.[4]

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[3] 70 Fed. Reg. 3,695 (January 26, 2005).

[4] The following entities are also parties in Docket No. ER04-742-000:

(continued)

12. AMP-Ohio filed a protest. Wisconsin Electric filed comments and a conditional protest.

13. On February 14, 2005, PJM filed an answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PJM's answer because it has provided information that assisted us in our decision-making process.

Protests and Comments

14. AMP-Ohio argues that instead of preserving Load Serving Entities' (LSE) entitlements to all FTRs and ARRs on through-and-out transmission paths, PJM has done so only where the LSE is using historic receipt and delivery points. AMP-Ohio contends that there is no preservation of FTRs and ARRs for legitimate LSEs that must or choose to modify their historic transmission paths. AMP-Ohio asserts that while PJM properly seeks to prevent market speculators from hoarding no-cost FTRs and ARRs, its tariff language goes too far by its broad application to legitimate LSEs. AMP-Ohio argues that this is an especially troubling provision for AMP-Ohio and its members, since the MISO/PJM seams splits Ohio and thus requires countless cross-seam transactions by these Ohio entities.

15. Wisconsin Electric protests the filing as continuing to provide an undue preference to PJM network integration transmission service customers to the extent the following assertions are incorrect: (1) Wisconsin Electric is a "Qualifying Transmission Customer;" (2) all of its transmission service arrangements, both historic and new, will be granted comparable treatment in the first and second stage of the ARR/FTR allocation process to those of PJM network customers; and (3) once an entity is designated a "Qualifying Transmission Customer" that entity cannot lose that designation for any reason. Wisconsin Electric asserts that PJM must offer Wisconsin Electric comparable access to ARR/FTR allocations on the PJM transmission system for all of its transmission service arrangements irrespective of whether Wisconsin Electric is subject to the Base Transmission Charge under the PJM tariff.

MidAmerican Energy Company, Borough of Chambersburg, Pennsylvania; Madison Gas and Electric Company; Wisconsin Electric; and Exelon. *PJM Interconnection, LLC*, 107 FERC ¶ 61,223 at P 23-24 (2004). ODEC and NCEMC filed late motions to intervene in Docket No. ER04-742-000 which were denied. *PJM Interconnection, LLC*, 108 FERC ¶ 61,269 at P 4-5 (2004). However, the Commission stated that they could file motions to intervene in this docket, Docket No. EL04-105-000.

16. Wisconsin Electric asserts that to the extent that PJM does not provide such clarification, the Commission must direct PJM to submit an ARR/FTR allocation mechanism that does not discriminate against point-to-point transmission service customers in any manner, consistent with its directives in this and other related proceedings. Wisconsin Electric requests that the Commission also take this opportunity to clarify that when the fully integrated approach to FTR allocation throughout the Combined PJM/MISO Region is implemented, any transmission service customer that pays a network zonal rate under either the Midwest ISO or PJM OATT will be afforded equal, non-discriminatory access to ARR/FTR allocations under both tariffs for all service throughout the Combined Region irrespective of whether that customer pays a Base Transmission Charge, or similar charge, under the other tariff.

PJM's Answer

17. PJM states that Wisconsin Electric's understanding of the filed tariff sheets is incorrect. PJM explains that the tariff language Wisconsin Electric cites from section 7.4.2(d) merely allows for the possibility in stage 2 that a customer with an historic point-to-point reservation may exercise the option under the tariff to amend the receipt or delivery points in that reservation. PJM argues that the filed language does not allow a customer, as suggested by Wisconsin Electric, to obtain ARRs/FTRs in stage 2 "for any new point-to-point transmission service reservation on the PJM transmission system," regardless of whether the customer pays for those new reservations. Similarly, PJM contends that Wisconsin Electric is wrong when it suggests that a customer could continue to receive ARRs/FTRs at no cost forever, without regard to whether it continues to take service under the historic point-to-point reservation. Rather, PJM states that the filed tariff changes grant such rights only if the historic point-to-point reservation "is to continue in effect for the period addressed by the allocation, either by its term or by renewal or rollover."

18. PJM explains that in the case of Wisconsin Electric, this means that it may request ARRs/FTRs in the first stage of the allocation for the paths and megawatts in the point-to-point firm agreements it had in place during the reference year, which PJM understands to be the four Wisconsin Electric OASIS reservations shown in the attachment to the January 7 Filing, so long as those reservations continue, including by renewal or rollover. Similarly, PJM states that if Wisconsin Electric maintains those reservations but amends the service thereunder to use different source or sink points, it may seek ARRs/FTRs for the modified points under those reservations in stage 2 of the allocation. PJM states that the same principles apply to AMP-Ohio and the long-term agreements it had in place during the reference, which PJM understands to be the reservations shown in the attachment to the January 7 Filing.

19. PJM argues that by allowing redirected service under those reservations to participate in stage 2 of the allocation, the filed tariff sheets allow customers some flexibility to change their service and still receive an allocation of ARRs/FTRs. Thus, PJM states that AMP-Ohio is wrong in asserting that the filed rules harm customers that "choose to . . . modify their resource portfolio."

20. PJM states that if the Commission is concerned that customers such as Wisconsin Electric and AMP-Ohio should have more access to ARRs/FTRs from non-historic sources without paying a transmission charge, then there would need to be some other means of assuring that the ARRs/FTRs are to hedge specific loads in MISO to avoid the unlimited cost-free allocation of ARRs/FTRs that otherwise would undermine the FTR auctions. PJM suggests that one possible means of accomplishing this would be to allow PJM point-to-point transmission customers that are also taking firm transmission service under MISO (either network or firm internal point-to-point, subject to verification) to serve loads in MISO to participate in PJM's ARR/FTR allocation.

Discussion

21. The Commission will accept PJM's proposal as a just and reasonable response to the Commission's section 206 investigation, subject to the condition discussed below. PJM has reached general consensus on treating network customers and point-to-point customers equally in the allocation of FTRs and no protests were received on this aspect of PJM's proposal.

22. Protesters, however, have questioned the manner in which PJM is allocating ARRs/FTRs with respect to point-to-point service associated with through and out service for which no charge will be applied as a result of the elimination of through and out rates in Docket Nos. EL02-111-000 and EL03-212-000.[5] They argue they should be entitled to request ARRs/FTRs in stage 2 for new point-to-point reservations associated with through-and-out service. In other words, protesters contend that a requested increase in the MWs reserved for transactions that source in PJM and sink in MISO should be eligible for ARRs/FTRs in stage 2 which would place them in the same position as network service customers that can request ARRs/FTRs from non-historic resources in the stage 2 allocation process.

[5] *Midwest Independent Transmission System Operator, Inc.*, 104 FERC ¶ 61,105 (2003).

23. In its answer PJM reiterates its concern regarding the potential for hoarding ARRs/FTRs and whether additional ARRs/FTRs are needed to hedge service to actual loads. However, PJM proffers that if the Commission believes customers like Western Electric and AMP-Ohio should have access to ARRs/FTRs from non-historic resources, then PJM would be willing to allow greater access to ARRs/FTRs for these customers by allowing them to participate in stage 1 of PJM's allocation for service from their historic sources, in a manner similar to PJM's network customers. For service from non-historic sources, these customers could participate in stage 2, but in no event could they receive an allocation of ARRs/FTRs from PJM greater than their firm service to loads in MISO.

24. The Commission finds that the proposal in PJM's answer will provide a reasonable resolution to the primary objections raised by WEPCO and AMP-Ohio to the proposed allocation method. By allowing point-to-point customers the opportunity in stage 2 to obtain the necessary FTRs/ARRs to meet load obligations in MISO, this alternative proposal along with the proposed option of redirect service in stage 2 affords point-to-point customers the comparable opportunity as network service customers to access additional FTRs/ARRs from non-historic resources to serve load. Moreover, we find that the requirement that the FTR/ARR allocation be limited to the LSE's firm service obligation in MISO adequately addresses concern about the potential hoarding of ARRs/FTRs by LSEs. To implement PJM's proposed revision in its answer, we direct PJM to file, within 10 days of the date of this order, revised language stating:

> PJM transmission Customers that serve load in MISO may participate in stage 1 of PJM's allocation for service from their historic sources, in a manner similar to PJM's network customers. For service from non-historic sources, these customers may participate in stage 2, but in no event can they receive an allocation of ARRs/FTRs from PJM greater than their firm service to loads in MISO.

25. As to Wisconsin Electric's other request for clarification of its designation as a qualifying transmission customer under the revised ARR/FTR allocation procedures, we find that PJM's answer and the Commission's findings herein provide sufficient clarification.

26. Wisconsin Electric and AMP-Ohio request that the Commission clarify that when the PJM/MISO Combined Region is fully integrated it will require that ARRs/FTRs be allocated to all customers who pay a license plate rate. We find that the ARR/FTR allocation process for the PJM and MISO common market is not before us and we will not rule on such a process in this order.

27. For the reasons discussed above, the Commission finds that PJM has addressed concerns that the annual allocation process for ARRs/FTRs was unjust and unreasonable. The Commission finds under section 206 of the FPA that the revisions PJM proposes, together with the modifications specified in this order, serve to revise the allocation process so that it is just and reasonable by providing comparable treatment for network customers and point-to-point customers. Consequently, the Commission accepts PJM's proposed revised annual allocation procedures to be effective March 8, 2005, subject to the modifications in this order.

The Commission orders:

(A) PJM's proposed tariff sheets, in the PJM Operating Agreement, Third Revised Sheet No. 126, Third Revised Sheet No. 126A, Fourth Revised Sheet No. 127A, Second Revised Sheet No. 136, First Revised Sheet No. 136A, Third Revised Sheet No. 137, Original Sheet No. 137A, and in the PJM OATT, Fifth Revised sheet No. 396, First Revised sheet No. 396.01, Seventh Revised Sheet No. 397, Second Revised Sheet No. 408, Second Revised Sheet No. 408A, Third Revised Sheet No. 409, and Original Sheet No. 409.01, are accepted, subject to the modifications in Ordering Paragraph B below to become effective March 8, 2005.

(B) PJM is required to file revised provisions, as discussed above, within 10 days of the date of this order, to reflect its alternate proposal in its answer for stage 2 allocation from non-historic resources.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.