

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER05-1209-000

ORDER ACCEPTING TARIFF PROVISIONS

(Issued September 9, 2005)

1. In this order, we accept for filing, effective September 12, 2005 as requested, proposed revisions to the PJM Interconnection, LLC (PJM) Open Access Transmission Tariff (PJM Tariff). The revisions to Article 10 of the PJM Tariff amend the “Indemnification” section and add a new section 10.2 entitled “Liability.”

Background

2. On July 12, 2005, PJM filed a proposal to amend its Tariff to add limitation of liability provisions to protect PJM, its Transmission Owners and Generation Owners, acting in good faith on PJM’s instructions against liability to any Transmission customer or third-party for direct damages arising out of ordinary negligence associated with services provided under the PJM Tariff. PJM states that the purpose of its filing and proposed amendments is to implement in its Tariff the principles articulated by the Commission in the Standard Market Design White Paper, the Reliability Policy Statement and previous Commission orders granting Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and RTO New England (RTO-NE) similar limitation of liability provisions. PJM also states that it has received strong support from its stakeholders for including the limitation of liability provisions in the tariff.

3. Specifically, PJM’s proposed tariff amendments would add a limitation of liability provision (section 10.2) that provides that PJM, its Transmission Owners and Generation Owners, would not be held liable to any Transmission customer or third-party for damages arising out of ordinary negligence associated with services provided under the PJM Tariff when acting in good faith to implement PJM’s directives. The liability for PJM, its Transmission Owners and Generation Owners would be limited to direct

damages resulting from gross negligence or willful misconduct.

4. The proposed amendments would also extend the existing indemnification of PJM and its Transmission Owners against third parties' claims to include owners and operators of generation facilities acting in good faith to implement or comply with directives of PJM.

Notice of Filing and Pleadings

5. Notice of PJM's filing was published in the *Federal Register*. Several parties¹ filed motions to intervene. Baltimore Gas & Electric Company (BG&E) filed a motion to intervene and comments supporting PJM's filing. Exelon Corporation and Consumers Energy Company filed motions to intervene out-of-time. Rockland Electric Company filed a motion to intervene out-of-time and comments. In addition to supporting PJM's filing, BG&E's comments requested that the Commission approve the proposed tariff revisions and add the term "gross" before "negligence" in section 10.3 of the proposed tariff language. Additionally, BG&E requests that an additional sentence be added in section 10.3 outlining the method for obtaining and implementing the indemnification.² Rockland Electric Company comments that it supports BG&E's proposal.

Discussion

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure³, the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding. The Commission will grant Exelon Corporation, Rockland Electric

¹ The PSEG Companies, FirstEnergy Companies (including Jersey Central Power & Light Co., Metropolitan Edison Company and Pennsylvania Electric Co.), American Electric Power Service Corporation, Allegheny Power with Allegheny Energy Supply Co., LLC, and Duke Energy North America, LLC., all filed motions to intervene.

² Specifically, BG&E requests that the following sentence be added to section 10.3: "The Transmission Provider, each Transmission Owner, and each Generation Owner acting in good faith to implement or comply with the directives of the Transmission Provider, seeking indemnification for such third-party claims pursuant to this section 10.3 of the Tariff may file with the Commission for acceptance of an appropriate charge from all Transmission Customers under this Tariff."

³ 18 C.F.R. § 385.214 (2005).

Company, and Consumer Energy Company's motions to intervene out-of-time given their interest in and the early stage of the proceeding.

7. The Commission has previously stated that, since Order No. 888, restructuring changes have occurred within the electric industry and that limited liability provisions may be appropriate for inclusion in Commission tariffs under certain circumstances, such as, where there is no liability protection under state law.⁴ Specifically, the Commission determined that without adequate limitation of liability provisions, the ISO/RTO and its Transmission Owners would be exposed to potentially excessive damage awards. Such risk would be reflected in higher insurance premiums (to the extent that adequate liability coverage is even available) and higher cost of capital, which, in turn, would be borne by customers and could result in inequities among customers.⁵

8. PJM must provide service to all eligible customers, and cannot deny service to particular customers based on the risk of potential damages associated with interruption of service to those customers. Nor can PJM easily quantify the potential risk associated with service to such customers and price such service accordingly. Therefore, all customers would ultimately bear the cost associated with the risk of such service, including those customers that do not have special reliability needs.⁶

9. Therefore, we accept PJM's proposed tariff revisions to amend Article 10 of the PJM Tariff to add Section 10.2, a limitation of liability provision stating that PJM, its Transmission Owners and Generation Owners, when acting in good faith to implement PJM's directives, would not be liable to any Transmission customer or third-party for damages arising out of ordinary negligence associated with services provided under the PJM Tariff. Transmission customers and third parties may still seek direct damages resulting from gross negligence or willful misconduct on the part of PJM and its Transmission and Generation Owners.

10. The Commission also accepts PJM's proposal to amend its Tariff to extend the existing indemnification of PJM and its Transmission Owners against third-party claims

⁴ *Midwest Independent Transmission System Operator, Inc.*, 100 FERC ¶ 61,144 at 24 (2002).

⁵ *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,164 at 30 (2005).

⁶ *Id.* at 32.

to include owners and operators of generation facilities acting in good faith to implement and comply with the directives of PJM.

11. We find that BG&E's proposed tariff language is outside the scope of this current proceeding. However, if there is interest in further amending the tariff along the lines suggested by BG&E, we encourage PJM to initiate a stakeholder process to support any such tariff revisions.

The Commission orders:

PJM's proposed tariff revisions are hereby accepted for filing, effective September 12, 2005.

By the Commission. Commissioner Kelly dissenting with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

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PJM Interconnection LLC

Docket No. ER05-1209-000

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KELLY, Commissioner, *dissenting*:

As I have written previously,¹ I believe that appropriate liability limitation provisions can strike a proper balance between reasonable customer rates and the rights of harmed parties to seek recovery for certain acts by jurisdictional utilities. For the same reasons I enumerated in *Midwest ISO*, however, I do not think that the proposal accepted by this order achieves such a balance.

Accordingly, I respectfully dissent.

	_____ Sudeen G. Kelly
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¹ See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,164 (2005) (*Midwest ISO*).