

120 FERC ¶ 61,013
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.

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| PJM Interconnection, L.L.C. | Docket Nos. ER06-954-001 ER06-456-005 ER06-456-003 |
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| PJM Transmission Owners | Docket Nos. ER06-880-002 ER06-880-001 (Consolidated) |
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ORDER DENYING REHEARING

(Issued July 5, 2007)

1. In this order, the Commission denies the request for rehearing filed by the PJM Transmission Owners, (jointly, PJM TOs)¹ and also denies the request for rehearing submitted by Neptune Regional Transmission System, LLC (Neptune). In an order issued on June 19, 2006,² the Commission accepted the PJM TOs' revised tariff sheets modifying Schedule 12 of the PJM Open Access Transmission Tariff (OATT) (April 21 Filing) and suspended them, made them effective subject to refund, and consolidated this proceeding with the then pending proceeding in Docket No. ER06-456-000, *et al.*³ for purposes of settlement, hearing and decision. Both rehearing requests challenge the Commission's determination to set the issues for hearing. We deny the rehearing requests, finding no basis for reconsidering the determination to set these issues for

¹ The PJM Transmission Owners are listed in Appendix A.

² *PJM Transmission Owners*, 115 FERC ¶ 61,345 (2006) (June 19 Order).

³ *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,261 (2006) (May 26 Order).

hearing. Further, we deny the Neptune rehearing because the issues it raised were resolved by settlement.⁴

Background

2. Schedule 12 of the PJM OATT addresses the assignment of cost responsibility for transmission system expansions and upgrades pursuant to the PJM Regional Transmission Expansion Plan (RTEP). Under Schedule 12, for each transmission system expansion and upgrade, PJM designates the Transmission Owner (or owners or other entities) responsible to construct, own and/or finance each transmission upgrade included in the RTEP. PJM must also designate for purposes of cost recovery the customers that use point-to-point transmission service and/or network integration transmission service that will be subject to a Transmission Enhancement Charge (TEC) for each upgrade or expansion.

3. In the April 21 Filing, the PJM TOs proposed to modify Schedule 12 to clarify that costs allocated by PJM to a merchant transmission project will be borne by the merchant transmission owner. The PJM TOs proposed to modify Schedule 12 to provide that each TEC payable by a merchant transmission owner will be calculated as a fixed monthly charge. The PJM TOs also requested that the Commission direct PJM to modify the *pro forma* interconnection agreement, and all interconnection agreements currently on file with the Commission, to provide that, in the event PJM allocates RTEP costs to a merchant transmission facility, the merchant transmission owner shall be required to pay the TEC associated with such costs.⁵ Finally, the PJM TOs proposed to modify Schedule 12 to include a calculation of TECs for point-to-point transmission customers.

4. In the June 19 Order, the Commission accepted and suspended the PJM TOs' proposed revised tariff sheets and established hearing and settlement judge procedures. Additionally, the Commission noted that the issues raised in the April 21 Filing were similar to the issues addressed in the May 26 Order, and consolidated this proceeding with the proceeding in Docket No. ER06-456-000, *et al.*

⁴ The Commission accepted the settlement by delegated letter order issued May 3, 2007 in Docket Nos. ER07-632-000 *et al.* and ER06-880-006.

⁵ Under the current interconnection agreements, a merchant transmission owner may not be a party to the PJM Operating Agreement or a PJM transmission service agreement, and the only contractual agreement between PJM and a merchant transmission owner may be the three party-interconnection agreement.

Rehearing Requests

5. Neptune filed a timely request for rehearing of the June 19 Order contending that the PJM TOs' proposal would have the effect of opening the Neptune interconnection agreement to additional charges under Schedule 12 and that this result would contradict the Commission's prior orders. For these reasons, Neptune requested that the Commission confirm that the June 19 Order rejected the PJM TOs' request to amend all existing PJM interconnection agreements, and that the Commission did not intend to undo its prior orders establishing the scope of Neptune's interconnection costs.

6. Neptune also argued that the PJM TOs' proposal was contrary to the May 26 Order because it sought to change responsibility for Schedule 12 charges from firm transmission withdrawal rights to the project owners. Neptune stated that all firm transmission withdrawal rights for the Neptune Project have been assigned to the Long Island Power Authority (LIPA). Therefore, Neptune argued that, for the Neptune Project, the PJM TOs' proposal would allocate Schedule 12 transmission charges to a party that does not have firm transmission rights.

7. PJM TOs requested rehearing of the June 19 Order, stating that the proposed Schedule 12 modifications clarify Schedule 12 in a manner consistent with Commission precedent and should have been accepted without condition. PJM TOs explained that the proposed Schedule 12 modifications were intended to provide that, if PJM allocates RTEP costs to a merchant transmission project, the owner of that project will be responsible in the first instance for paying the TEC associated with those costs. PJM TOs contend that the method merchant transmission projects employ to recover assigned RTEP costs from their customers is irrelevant. They explain that the purpose of the proposed Schedule 12 modifications is to assure that there will not be any double charging of TECs. PJM TOs also contend that merchant transmission owners are being treated in a consistent and non-discriminatory manner because the proposed Schedule 12 modifications treat merchant transmission owners in the same manner as any other Responsible Customer under the PJM OATT.

8. PJM TOs also contended that, because the only issue presented in Docket No. ER06-880-000 is whether it is just and reasonable to require that the owners of merchant transmission projects be responsible for paying the TEC associated with the RTEP costs allocated to them by PJM, this proceeding is not similar to or interrelated with the proceeding in Docket No. ER06-456-000, *et al.* PJM TOs submitted that the Commission should not have consolidated this proceeding with Docket No. ER06-456-000, *et al.* PJM TOs further contended that the Commission could accept the proposed changes to Schedule 12 without prejudicing or prejudging the issue presented in Docket No. ER06-456-000, *et al.*

9. LIPA filed an answer to Neptune's request for rehearing and clarification.
10. On April 4, 2007, PJM filed on behalf of Neptune and the PJM TOs a Settlement of the dispute between Neptune and the PJM TOs affecting Docket Nos. ER07-632-000 and ER06-880-000. Under the terms of the Settlement, Neptune agreed that its protest of the PJM TOs' filing in Docket No. ER06-880-000 "should be deemed withdrawn based on the PJM TOs' agreement not to protest the filing of Schedule 14 (in Docket No. ER07-632 *et al.*), and that (Neptune) will not protest, oppose or object to the PJM TOs' filing in Docket No. ER06-880-000."⁶

Discussion

Procedural Matters

11. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(2006), prohibits an answer to a request for rehearing. Accordingly, we will, therefore, reject LIPA's answer.

Analysis

12. We deny the requests for rehearing. The Commission has broad discretion to structure its proceedings so as to resolve a controversy in the way it best sees fit.⁷ The

⁶ Settlement at 1. Under the terms of the Settlement, Neptune's agreement to withdraw its protest in Docket No. ER06-880-000 was to become effective as of April 26, 2007, the day after the date comments were due in Docket No. ER07-632-001.

⁷ *See, e.g., Stowers Oil and Gas Company* 27 FERC ¶ 61,001 (1984) (Commission is master of its own calendar and procedures); *Ameren Energy Generating Company*, 108 FERC ¶ 61,081 at P 23 (2004) ("The courts have repeatedly recognized that the Commission has broad discretion in managing its proceedings. . . . Based on the written submissions in this proceeding, we concluded that there were issues of material fact concerning the competitive effect of Applicants' filing that were best resolved through a trial-type evidentiary hearing"); *TRANSLink Development Company, LLC*, 103 FERC ¶ 61,208 at P 15 (2003) ("Duke Energy seeks rehearing of the Commission's decision to set for hearing issues of market power and market power mitigation measures for TRANSLink's emergency redispatch market. . . . We will deny Duke Energy's request for rehearing. . . [W]e determined that including the potential to exercise market power among the issues to be addressed at that hearing was the most administratively efficient approach to address this issue"); *accord Fla. Mun. Power Agency v. FERC*, 315 F.3d 362, 366 (D.C. Cir. 2003), *citing Telecomm. Resellers Assoc. v. FCC*, 141 F.3d 1193,

(continued)

arguments put forth by the PJM TOs and Neptune do not persuade us that these disputed matters can be resolved summarily, and we find that the issues in dispute are best resolved through the hearing and settlement judge procedures previously established.

13. Moreover, Neptune's rehearing request is denied because, after the rehearing requests were filed, the parties negotiated a Settlement that they represent resolves Neptune's protests of the PJM TOs' proposed revisions to Schedule 12 raised herein.⁸ The Settlement included a Notice of Withdrawal signed by Neptune, indicating its conditional withdrawal of its protest of the PJM's TOs filing in Docket No. ER06-880-000.⁹ Under the terms of the Settlement, Neptune agreed to withdraw its protest in Docket No. ER06-880-000 upon the condition that the PJM TOs not protest, oppose or object to PJM's filing of Schedule 14 tariff sheets in Docket No. ER07-632-000. Thereafter, the PJM TOs did not file any protests and on May 3, 2007, the Commission, through its delegated authority, accepted the Settlement in this proceeding. Accordingly, we find that the issues raised by Neptune on rehearing have been withdrawn under the terms of the Settlement, and their rehearing request is denied.

14. While the PJM TOs assert that their filing merely clarifies Schedule 12 and could have been resolved summarily, it is not clear that, absent the settlement, sufficient questions had not been raised as to the proper method for allocating costs to merchant transmission providers as to warrant setting this issue for hearing. We therefore conclude that Docket Nos. ER06-880-001 and ER06-880-002 remain subject to the outcome of the consolidated proceeding herein.

15. We also reject the PJM TOs' arguments that this proceeding should not have been consolidated with the hearing proceeding in Docket No. ER06-456-000, *et al.* In the April 21 Filing, the PJM TOs explain that their proposed changes to Schedule 12 were meant to clarify the issues raised in Docket No. ER06-456-000, *et al.* and provide that the

1196 (D.C. Cir. 1998) (administrative agencies enjoy broad discretion to manage their own dockets); *FPC v. Transcontinental Gas Pipe Line Corp.*, 423 U.S. 326, 333 (1976) (agencies can determine how best proceed to develop the needed evidence); *Richmond Power & Light v. FERC*, 574 F.2d 610, 624 (D.C. Cir. 1978) (agencies have wide leeway in controlling their calendars).

⁸PJM's Filing in Docket No. ER07-632-001 at 3. The parties also represent that the Settlement resolves their disputes regarding Schedule 14 of the PJM tariff.

⁹This filing also included proposed revised tariff sheets to Schedule 14 of the PJM tariff (originally filed in Docket No. ER07-632-000).

owner of a merchant transmission project will be responsible for the cost of transmission expansions. Although one filing addresses cost allocations to specific upgrades and the other filing proposes revisions to Schedule 12, at issue in both filings is the appropriate allocation of costs to merchant transmission projects.

The Commission orders:

The requests for rehearing are hereby denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A – List of PJM Transmission Owners

Allegheny Electric Cooperative, Inc.

American Electric Power Service Corporation on behalf of its operating companies:
Appalachian Power Company, Columbus Southern Power Company, Indiana
Michigan Power Company, Kentucky Power Company, Kingsport Power
Company, Ohio Power Company and Wheeling Power Company

Atlantic City Electric Company, Delmarva Power & Light Company, and Potomac
Electric Power Company

Baltimore Gas and Electric Company

CED Rock Springs, LLC

Dayton Power & Light Company

Duquesne Light Company

Exelon Corporation

Jersey Central Power & Light Company, Metropolitan Edison Company, and
Pennsylvania Electric Company

Monongahela Power Company, The Potomac Edison Company, and West Penn Power
Company, all doing business as Allegheny Power

Old Dominion Electric Cooperative

Public Service Electric and Gas Company

PPL Electric Utilities Corporation

Rockland Electric Company

UGI Utilities, Inc.

Virginia Electric and Power Company