124 FERC ¶ 61,187
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

PJM Interconnection, L.L.C. Docket No. OA08-32-001

ORDER DENYING REHEARING

(Issued August 27, 2008)

1. On June 13, 2008, Public Service Electric and Gas Company, PSEG Power LLC and PSEG Energy Resources & Trade LLC (collectively PSEG Companies or PSEG) filed a request for rehearing of an earlier order[1] accepting the Order No. 890[2] compliance filing of PJM Interconnection, L.L.C. (PJM). In this order, the Commission denies the request for rehearing.

Background

2. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. One of the Commission's primary reforms was designed to address the lack of specificity regarding how customers and other stakeholders should be treated in the transmission planning process. To remedy the potential for undue discrimination in planning activities, the Commission directed all transmission providers to develop a transmission planning process that satisfies nine principles and to clearly describe that process in a new attachment (Attachment K) to their OATTs.

3. Principle 9, the cost allocation principle, requires that transmission providers address in their Attachment K the allocation of costs of new facilities that do not fit under existing rate structures. In Order No. 890, the Commission did not impose a particular

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[1] *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,163 (May 15, 2008 Order).

[2] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), 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), 73 Fed. Reg. 39,092 (2008).

allocation method for such projects and, instead, permitted transmission providers and stakeholders to determine the criteria that best fits their own experience and regional needs.

4. The Commission suggested that several factors be weighed in determining whether a cost allocation methodology is appropriate. First, a cost allocation proposal should fairly assign costs among participants, including those who cause them to be incurred and those who otherwise benefit from them. Second, the cost allocation proposal should provide adequate incentives to construct new transmission. Third, the cost allocation proposal should be generally supported by state authorities and participants across the region. The Commission stressed that each region should address cost allocation issues up front, at least in principle, rather than have them relitigated each time a project is proposed.[3] In Order No. 890-A, the Commission also made clear that the details of proposed cost allocation methodologies must be clearly defined, as participants seeking to support new transmission investment need some degree of certainty regarding cost allocation to pursue that investment.[4]

5. PJM in its compliance filing asserted that it complies with the cost allocation principle by relying on the cost allocation methods recently approved by the Commission and further detailed in its OA, OATT, and Manuals. PSEG Companies protested PJM's compliance filing in regard to the cost allocation principle. PSEG Companies advocated the adoption of a voting mechanism for economic transmission projects similar to that in the New York Independent System Operator's (NYISO) compliance filing, which requires a super-majority vote of support by identified beneficiaries of an economic transmission project for the project to receive funding under the NYISO tariff. In support, PSEG Companies argued that market participants should not be forced to pay for an economic project they did not ask for and may not want, and which may not be an economic project from their perspective. PSEG Companies added that without a voting mechanism in place, a market participant who may have already paid to hedge against congestion on a specific transmission path would have to then pay again to address the same congestion issue if forced to pay for a new project aimed at alleviating this congestion.

6. In its answer to the PSEG Companies' protest, PJM stated that the Commission in Order No. 890 neither mandated, nor suggested, that a voting mechanism such as that suggested by PSEG Companies is required to comply with the order. In addition, PJM stated that a settlement is pending before the Commission which sets forth the cost allocation procedures for most economic-based projects, without any voting mechanism.

[3] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 557-561.

[4] Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 251.

PJM also stated that PSEG Companies put forth its voting proposal in a prior docket, as well as throughout the stakeholder processer for the Order No. 890 compliance filing and that the proposal did not gain majority support from stakeholders.

7. The Commission in the May 15, 2008 Order stated that Order No. 890 does not mandate any type of voting mechanism in this context but provides that such a mechanism can be adopted if stakeholders desire;[5] however, in this instance, the voting mechanism proposal was considered by stakeholders and failed to garner majority support. The Commission emphasized its finding in Order No. 890 that "regional solutions that garner the support of stakeholders, including affected state authorities, are preferable"[6] and added that PSEG Companies are free to suggest a voting mechanism in the upcoming stakeholder process for economic-based projects below 500kV.

8. The Commission found that PJM's cost allocation methodologies currently on file with the Commission provide certainty as to who will pay for investments in transmission projects, adequately incentivize the pursuit of new transmission investment, and avoid relitigation each time costs are allocated.

Request for Rehearing

9. PSEG Companies request rehearing on the grounds that the Commission erred in failing to require PJM to incorporate a voting mechanism in its Order No. 890 compliance filing and that the Commission's action is not reasoned decision-making in that it: (1) runs contrary to the language and spirit of Order No. 890; (2) may result in unjust and unreasonable rates for economic transmission; (3) will further exacerbate the already-problematic seam that exists between PJM and NYISO; and (4) attaches undue significance to the fact that a voting mechanism did not obtain support from a majority of PJM stakeholders.

10. In support of the first point above, PSEG Companies cite Order No. 890 that "[a]s a general matter, we believe that the beneficiaries of any [economic upgrade] projects **should agree** to support the costs of such projects" (emphasis added).[7] PSEG Companies state that PJM's economic planning process contains absolutely no mechanism for beneficiaries of an economic upgrade to agree on whether an economic upgrade is needed or appropriate and that without such a process, PJM's economic planning process may result in transmission projects that ignore, among other things,

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[5] *Citing* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 242–43, 252.

[6] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 561.

[7] *Id.*

state environmental policies and economic hedging activities on behalf of load. PSEG Companies add that the PJM economic process places PJM in the position of determining what is best from an economic standpoint fifteen years into the future without giving those that are going to pay any choice in the matter. PSEG Companies contend that in the May 15, 2008 Order, the Commission summarily dismisses PSEG Companies' request for inclusion of a voting mechanism and does not even attempt to reconcile this complete lack of any choice with the Commission's own Order No. 890 provisions that seek to encourage choice. According to PSEG Companies, such an approach does not constitute reasoned decision-making.

11. PSEG Companies also argue that failing to include voting in the economic transmission planning process is inconsistent with the open, coordinated, and transparent process mandated by Order No. 890[8] in that it puts the Regional Transmission Organization (RTO) such as PJM "behind the curtain," making decisions for market participants rather than letting those participants have a role in approving or rejecting those decisions. PSEG Companies reiterate the request they made in the initial proceeding for the inclusion of a "30/30 voting rule," such as that used in Argentina, but also state that they are not wed to that particular proposal; rather it is critical that some type of voting mechanism be included in PJM's transmission planning process.

12. PSEG Companies further contend that the lack of a voting mechanism could result in certain customers effectively paying twice for economic transmission, which is an unjust and unreasonable outcome. PSEG Companies state that parties who have paid to hedge against congestion[9] and have locked in their energy/capacity and transmission rights for forward periods would essentially end up paying twice if economic transmission is built along a particular path against which they have already hedged, and would thus not receive any direct benefits from the construction.

13. PSEG Companies also argue that the May 15, 2008 Order ignores the fact that NYISO's revised attachment Y filing in Docket No. OA08-52-000 with the Commission incorporates a voting mechanism into its economic planning process. PSEG Companies assert that having significantly different planning rules in place between PJM and NYISO

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[8] *Citing* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 252.

[9] PJM auctions Financial Transmission Rights (FTRs) to assist market participants in hedging price risk when delivering energy on the grid. An FTR is a financial instrument, awarded to a bidder in the FTR Auctions that entitles the holder to a stream of revenues (or charges) based on the hourly Day Ahead energy price differences across the path.

will only serve to further frustrate any efforts to resolve cross-RTO/ISO planning and coordination "seams" issues that have been occurring between these two regions, and highlight the absence of joint planning and cost allocation rules between the two regions.

14. Finally, PSEG Companies submit that the Commission erred in placing undue emphasis upon the fact that a voting mechanism failed to garner majority support from the underlying stakeholder group process. PSEG Companies contend that the stakeholder process, which lacked formal voting rules and contained participants who do not even own assets in PJM, should not serve as the litmus test for evaluating the justness and reasonableness of a PJM compliance filing.

<u>Commission Determination</u>

15. We will deny rehearing. As we stated in the May 15, 2008 Order,

> Order No. 890 does not mandate any type of voting mechanism in this context. While we stated in Order No. 890-A that such a mechanism could be adopted *if stakeholders desire*, the voting mechanism proposal offered by PSEG was considered by PJM members but failed to garner majority support among stakeholders. Further, we emphasize our finding in Order No. 890 that "regional solutions that garner the support of stakeholders, including affected state authorities, are preferable."[10]

16. PSEG Companies' current filing is a collateral attack on Order No. 890. PSEG Companies requested a voting mechanism for economic upgrades in the Order No. 890 proceeding, and we stated that a voting mechanism could be adopted if stakeholders desire.[11] We did not find it a prerequisite for an open and transparent planning process. PJM's stakeholders did not choose to adopt such a mechanism. PSEG Companies have simply reiterated their position that a voting mechanism should be imposed as a generic requirement, yet the Commission specifically rejected that proposition in Order No. 890. The fact that, in other RTOs, stakeholders may have chosen to implement a voting mechanism is not dispositive here where a majority of PJM stakeholders did not support the inclusion of a voting mechanism and the implementation of a voting mechanism was not otherwise required by Order No. 890.

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[10] May 15, 2008 Order, 123 FERC ¶ 61,163 at P 114 (*citing* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 242–43, 252; Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 561).

[11] Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 242–43, 252.

17. Likewise, with regard to PSEG Companies' argument that the absence of a voting mechanism will exacerbate a problematic seam between PJM and NYISO, PSEG Companies have provided no support for its contention that this potential difference will interfere with cross-RTO planning. The fact that different procedural mechanisms are used in each RTO to govern stakeholder involvement in the planning process does not mean joint planning efforts will be undermined. We do not believe that we should circumvent PJM stakeholders and mandate a voting mechanism in the PJM planning process simply to create a match between PJM and NYISO's anticipated planning rules.

18. PSEG Companies also argue that the May 15, 2008 Order in its failure to require PJM to incorporate a voting mechanism is contrary to the spirit of Order No. 890 and the Commission's statement in paragraph 561 that, "[a]s a general matter, we believe that the beneficiaries of any such project should agree to support the costs of such projects." The quote is taken out of context. The section of Order No. 890 (paragraphs 557-561) in which it is found refers to the importance of including a specific principle regarding cost allocation because an understanding of who will pay the costs contributes to transmission providers' and customers' support for the construction of new transmission. The Commission further states that when considering a dispute over cost allocation, one of the factors considered is "whether the proposal is generally supported by state authorities and participants across the region."[12] Following the quote at issue, the Commission reiterates that it believes that "regional solutions that garner the support of stakeholders, including affected state authorities, are preferable."[13] Nowhere does the Commission state that beneficiaries should have a vote on economic projects, rather the emphasis is on the general understanding of stakeholders across the region as to costs and cost allocation.

19. PSEG Companies further argue that the absence of a voting mechanism is inconsistent with an open and transparent planning process required in Order No. 890. We do not agree. It is information and the ability to participate in the process, rather than implementation of voting mechanisms, that are essential to an open and transparent planning process.[14] As we stated in the May 15, 2008 Order, "the transparency principle

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[12] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 559.

[13] *Id*. P 561.

[14] We note that informal (i.e., straw) voting is not prohibited under the governance provisions in PJM's Operating Agreement. We also note that PSEG could use the interactive stakeholder process to raise its concerns about voting procedures. For example, the PJM Governance Working Group is in the process of developing voting guidelines to enhance member communications. *See* www.pjm.com/committees/working-groups/gwg/gwg.html.

requires transmission providers to reduce to writing and make available the basic methodology, criteria, and processes used."[15] Likewise, openness relates to access to meetings and information, rather than to voting.[16]

20. We find unpersuasive PSEG's allegation that the lack of a voting mechanism for economic projects will cause PJM to ignore, among other things, state environmental policies. As early as 2005, the PJM Environmental Information Services, Inc., a subsidiary of PJM, has operated an environmental and emissions tracking system for electric generation in the PJM region, the Generation Attributes Tracking System (GATS).[17] This tracking system is used to meet the information disclosure requirements of states' fuel mix and emissions disclosure (e.g., carbon dioxide) or renewable portfolio standard requirements.[18] Given that the states of New Jersey and Pennsylvania have renewable portfolio standards and access to GATS, which captures emissions and fuel attributes, they could work with PJM and other stakeholders to identify environmental policies to be considered in the planning process and the development of solutions (such as demand response or renewable energy resources) to achieve environmental goals.

21. In addition, PJM's load response programs (emergency and economic) help maintain reliability by reducing system demand and wholesale prices by eliminating the need to run higher cost generating units.[19] Further, by reducing system demand, the load response programs should help address environmental concerns. We fail to see how the lack of a voting mechanism would cause PJM to ignore state environmental policies with respect to economic planning when the GATS was developed through a collaborative stakeholder process that included state environmental and regulatory bodies, and those same entities can participate as stakeholders in the PJM transmission planning process.

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[15] May 15, 2008 Order, 123 FERC ¶ 61,163 at P 29.

[16] *Id*. P 26.

[17] *See* "PJM EIS Launches Environmental Tracking System For Electric Generation," April 15, 2005 news release located at: www.pjm.com/contributions/news-releases/2005/20050415-GATS-launched.pdf.

[18] *See* PJM Environmental Information Services presentation dated March 14, 2007 located at: www.pjm.com/committees/stakeholders/peer/downloads/20080314-gats-overview.pdf.

[19] *See* Schedule 1 section 1.5A and 3.3A (Economic Load Response Participant) of the PJM Operating Agreement. *See also* the Emergency Load Response Program Original Sheet No. 142 to Fourth Revised Sheet No.148 in the PJM Operating Agreement.

Additionally, we are not convinced that market participants' reduction of load during periods of peak demand will adversely impact wholesale prices in New Jersey and Pennsylvania, and PSEG fails to provide sufficient evidence to support its allegations.

22. Finally, PSEG Companies contend that parties who have acquired FTRs as a hedge against congestion might end up paying twice if economic transmission is built along the particular path for which they have FTRs, and that outcome would be unjust and unreasonable. We do not agree. An FTR is not a guarantee of a particular dollar figure of revenue, nor does it provide protection against the future construction of transmission projects or any other reduction in congestion; it does not provide a right to veto future projects, nor would a voting mechanism necessarily eliminate the scenario PSEG Companies describe.

23. Accordingly we will deny PSEG's request for rehearing.

The Commission orders:

The request for rehearing of the May 15, 2008 Order is hereby denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.