

129 FERC ¶ 61,265
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

BJ Energy, LLC
Franklin Power, LLC
GLE Trading, LLC
Ocean Power, LLC and
Pillar Fund, LLC

Docket Nos. EL08-49-004
EL08-49-005

v.

PJM Interconnection, LLC

ORDER ON REQUEST FOR REHEARING
AND REFUND REPORT

(Issued December 22, 2009)

1. On November 2, 2009, the Tower Companies¹ filed a request for rehearing of the Commission order issued October 2, 2009.² As discussed below, we explain here our reasons for denying the Tower Companies' request. On November 2, 2009, PJM Interconnection, LLC (PJM) filed a refund report to comply with the October 2 Order (November 2 Report). As discussed below, we accept PJM's November 2 Report.

Background

2. In the underlying complaint, Tower Companies argued that PJM should be required to return collateral and other funds that PJM was holding as collateral for the

¹ BJ Energy LLC, Franklin Power LLC, GLE Trading LLC, Ocean Power LLC, and Pillar Fund LLC.

² *BJ Energy LLC, et al. v PJM Interconnection, LLC*, 129 FERC ¶ 61,010 (2009) (October 2 Order).

default by Power Edge, one of Tower Companies' affiliates.³ The Commission agreed and ordered PJM to return the funds to the Tower Companies. PJM returned the funds and filed a refund report with the Commission. Tower Companies protested the refund report asserting that PJM had applied an incorrect interest rate to the withheld funds.

3. In the October 2 Order, the Commission addressed the Tower Companies' protest to PJM's refund report stating that for the funds that were provided by the Tower Companies as financial security, PJM was required to pay interest at the overnight bank rate as required by its tariff.⁴ However, with respect to all other funds withheld, PJM must pay interest in accordance with section 7.2 of its tariff, the Commission's interest rate.

4. In its rehearing request, the Tower Companies' argue that the money PJM was withholding fell into three categories: (1) revenues earned by the Tower Companies'; (2) collateral paid by Tower Companies; and, particularly relevant here, and (3) collateral provided by the Tower Companies and retained by PJM (as part of a dispute with Tower Companies) after Tower Companies filed a request for the return of the collateral. Tower Companies request rehearing of the Commission's ruling on the interest due regarding the funds in this third category. The Tower Companies argue that, once the latter funds that the Tower Companies had originally posted as collateral were no longer necessary for collateral, those funds became excess money improperly withheld. The Tower Companies argue that, once they requested the return of the excess collateral from PJM, those funds converted to an unpaid balance under PJM's tariff.

5. The Tower Companies quote section 7.2 of PJM's tariff, which provides that:

Interest on Unpaid Balances: Interest on any unpaid amounts shall be calculated in accordance with the methodology specified for interest on refunds in the Commission's regulations at 18 C.F.R. § 35.19a(a)(2)(iii).⁵

³ For a complete background see *BJ Energy, LLC*, 127 FERC ¶ 61,006; *order on motion*, 127 FERC ¶ 61,182, *order on reh'g and clarification*, 129 FERC ¶ 61,010 (2009). See also *PJM Interconnection, LLC, v. Accord Energy, LLC*, 127 FERC ¶ 61,006, *order on reh'g and clarification*, 129 FERC ¶ 61,010 (2009).

⁴ Attachment Q, Section VI, A provides: "Cash provided by a Participant as Financial Security will be held in a depository account by PJM with interest earned at PJM's overnight bank rate, and accrued to the Participant." October 2 Order, 129 FERC ¶ 61,010 at P 34.

⁵ PJM Tariff, section 7.2, First Revised Sheet No. 50A.

The Tower Companies assert that, since the withheld collateral funds converted to an unpaid balance, similar to the revenue that PJM improperly withheld, they should have received similar treatment, i.e. the Commission's section 35.19a interest rate. Accordingly, as to the withheld collateral funds the Tower Companies contend that the Commission erred in not requiring PJM to pay the Commission's section 35.19a interest rate on the withheld financial security funds.

6. In answer to the Tower Companies' rehearing request, PJM states that it correctly calculated the interest due on the two different types of funds as directed in the October 2 Order. PJM maintains that in accordance with its tariff the interest due on withheld collateral is the actual interest earned in the depository account.⁶

7. On November 23, 2009, the Tower Companies' filed a protest to PJM's November 2 Report raising the same arguments as it does in its rehearing request.

Discussion

8. The Tower Companies' request for rehearing was denied by operation of law on December 3, 2009. In this order, we explain our reasons for denying rehearing.⁷

9. Contrary to the Tower Companies' assertions, the October 2 Order discussed two categories of monies, not three: the funds Tower Companies provided to PJM as financial security and all other monies. Attachment Q, Section VI.A of the PJM tariff specifies that "cash *provided as Financial Security* will be held in a depository account by PJM with interest earned at PJM's overnight bank rate" or through other investment options chosen by the participant. That is, this provision of the tariff provides that, for monies provided as financial security, the applicable interest rate is PJM's overnight bank rate. And even the Tower Companies agree that the funds at issue here are monies that the Tower Companies provided as financial security.⁸ The tariff does not specify that a different rate will apply after a particular period of time or that the interest rate will change if the funds are not returned when a request is made or if there is a dispute over the funds. In sum, since the Tower Companies provided these funds as financial security for its trading positions, under PJM's tariff, the interest rate owed on those funds is PJM's overnight bank rate, and not the Commission's section 35.19a interest rate.

⁶ *Id.* Attachment Q, section VI.A.

⁷ *Maritimes & Northeast Pipeline, LLC*, 126 FERC ¶ 61,119, at P 1 n.4 (2009) (providing an explanation after a request for rehearing was denied by operation of law).

⁸ Tower Companies Rehearing Request at 8.

10. We accept PJM's November 2 Report, as in compliance with the Commission's October 2 Order. As required, PJM returned to the Tower Companies the Commission-directed additional interest associated with the Tower Companies' trading revenues that PJM held. For the reasons explained above, we find PJM returned the withheld collateral with the correct interest, and therefore, we will not require PJM to instead pay the Commission's section 35.19a interest rate and we will not require PJM to file a revised refund report, as Tower Companies request.

The Commission orders:

Tower Companies' request for rehearing was properly denied and PJM's November 2 Report is hereby accepted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.