

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

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

PJM Interconnection, L.L.C.

Docket No. ER10-320-001
ER10-320-002

ORDER DENYING LATE INTERVENTIONS, DISMISSING REHEARING AND
ACCEPTING COMPLIANCE FILING

(Issued September 27, 2010)

1. In this order, we address several requests to intervene out-of-time¹ filed to seek rehearing of a Commission order issued January 22, 2010² along with a rehearing request filed collectively by the Indicated PJM EDC³. As discussed below, the Commission denies the late intervention requests and dismisses the Indicated PJM EDCs' request for rehearing.

2. On February 12, 2010, PJM filed the revised tariff sheets in compliance with the requirements in the January 22 Order. As discussed below, the Commission accepts PJM Interconnection, L.L.C.'s (PJM) proposed tariff revisions in compliance with the January 22 Order effective February 1, 2010, as requested.

I. Background

3. Section 3.6 of Schedule 1 of PJM's Amended and Restated Operating Agreement (Operating Agreement) and the parallel provisions in Attachment K-Appendix of the

¹ The late intervention requests were filed individually by Baltimore Gas and Electric Company (BGE); Pepco Holdings, Inc. and its affiliates, Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company (collectively, PHI); and PPL Electric Utilities Corporation (PPL).

² *PJM Interconnection, L.L.C.*, 130 FERC ¶ 61,058 (2010) (January 22 Order).

³ Indicated PJM EDCs are composed of the following electric distribution companies: BGE, PPL, PHI, and Public Service Electric & Gas Company (PSE&G). PSE&G did not file a motion to intervene out of time.

Open Access Transmission Tariff (OATT) provide that meter errors and corrections are reconciled at the end of the each month by a meter error correction charge or credit.⁴ Prior to the issuance of the January 22 Order, these meter errors and corrections were reported to PJM by EDCs and generators to account for any accumulated tie line and generation metering errors that have occurred during each month.⁵ However, after extensive discussions with the various PJM stakeholder committees, PJM discovered that the majority of EDCs requested that net meter error correction charges or credits be directly allocated by PJM to all load serving entities (LSE) in their respective EDC territories based on real-time load ratio shares.

4. On November 24, 2009, PJM filed proposed tariff amendments to section 3.6 of Schedule 1 of its Operating Agreement governing the pass-through of meter error correction charges or credits to provide a voluntary billing service for EDCs that elect to have PJM allocate meter correction charges or credits directly to LSEs within the respective EDC service territory. PJM expected that it would be able to implement settlement software enhancements to accommodate this service for those EDCs that elect to use this billing service by the first quarter of 2010.

5. On December 16, 2009, PJM's filing was protested by American Municipal Power, Inc. (AMP) which opposed the transfer of this billing function under the terms proposed by PJM. AMP argued that these tariff amendments would negatively impact wholesale LSEs that have their own metering points. AMP asserted that its members use hourly integrated meters resulting in known load (except in the case of a meter failure), and by contrast, meter values for other market participants within a transmission zone are estimated and adjustable. AMP averred that variations in the transmission zone meter values will not correlate to corresponding changes in the municipal system's load. AMP explained that, under PJM's proposal, municipal systems would be "lumped in" with other LSEs for purposes of meter error correction charges pass-through by PJM, and as a result, municipal systems and other wholesale customers with hourly meters would be

⁴ Schedule 1 of PJM's Operating Agreement and Attachment K-Appendix of the OATT are identical. For convenience, where proposed revisions are referenced to Operating Agreement, such references are also intended to encompass the corresponding provisions of and proposed changes to Attachment K-Appendix of the OATT.

⁵ The monthly meter error correction charge or credit is determined by the product of a positive or negative deviation in energy amounts times the load-weighted average Locational Marginal Prices for all load buses in the PJM region, as applicable for tie meter corrections, or generation meter corrections. These charges or credits were directly assigned to PJM EDCs which then pass them through to their underlying load serving entities.

required to subsidize the load served by other LSEs, such as competitive retail suppliers, and retail load served by traditional investor-owned utilities. Accordingly, AMP requested that PJM be directed to revise its proposal to eliminate the subsidy its proposal allegedly created.

6. The Commission issued the January 22 Order accepting PJM's proposed tariff amendments subject to the condition that PJM submit a compliance filing clarifying that EDCs can elect to use the optional billing service only if both the EDC and LSEs within the respective EDC zone agree to use the service.⁶ Specifically, the Commission found that PJM's opt-in proposal, while reasonable, was not "fully voluntary because LSEs who will be billed under the tariff provision [were] not provided with an opportunity to decline to participate."⁷ The Commission also agreed with AMP that an EDC's decision to participate under this system may have an adverse impact on certain LSEs that have made the investment in meters which more accurately measure the load on such systems. Therefore, the Commission required PJM to submit a revised filing within 30 days of the date of the January 22 Order that contained the clarifications expressed within the order.

II. Rehearing of the January 22 Order

A. Eligibility of Parties to Seek Rehearing

7. Under the Federal Power Act⁸ and Commission regulations,⁹ only parties have the right to seek rehearing of a Commission order.¹⁰ None of the indicated PJM EDCs was a party to this proceeding when the January 22, 2010 order was issued. Some of these companies filed late requests to intervene in order to seek rehearing and others filed requests to intervene after notice was issued of PJM's February 12, 2010 compliance filing. As discussed below, we deny the late requests for intervention and find that the requests to intervene in the compliance proceeding do not make these entities parties for the purpose of seeking rehearing of the January 22 Order in Docket No. ER10-320-000.

⁶ January 22 Order, 130 FERC ¶ 61,058 at P 13.

⁷ *Id.*

⁸ 16 U.S.C. § 8251(a) (2006).

⁹ 18 C.F.R. § 385.713(b) (2010).

¹⁰ See *Entergy Services, Inc.*, 92 FERC ¶ 61,108 at 61,397 (Commission dismissed movants request for rehearing because they were not parties and therefore, lacked standing to seek rehearing.); see also *Edison Mission Energy*, 96 FERC ¶ 61,032 (2001).

1. Filings

a. Late Interventions Filed in Root Docket No. ER10-320-000

8. On February 15, 16, and 19, 2010, respectively, BGE, PHI, and PPL filed individual requests to intervene out-of-time in root Docket No. ER10-320-000 stating that each is: a member of PJM; an electric distribution and transmission company regulated by the Commission; and a member of the Indicated PJM EDC group that is seeking rehearing of the January 22 Order. BGE, PHI, and PPL each argues that it recognizes that its intervention request is out-of-time, but claims that good cause exists to grant its respective request. BGE, PHI, and PPL each states that it will be directly affected by the outcome of this proceeding as it will have an impact on its rates and services and that it cannot adequately be represented by any other party to this proceeding. BGE, PHI, and PPL each claims that it had viewed the PJM billing proposal to be uncontested as it was unanimously endorsed by the PJM Members Committee and otherwise approved or endorsed by the lower level working groups and committees of PJM.

9. For the above reason, BGE, PHI, and PPL each contends that it did not see a need to file a timely intervention to become a party to this proceeding. BGE, PHI, and PPL each further argues that the conditions placed on PJM's filing in the January 22 Order constitute an unanticipated and adverse measure that impacts it. Finally, BGE, PHI, and PPL each states that it accepts the record as it currently exists so that no party will be prejudiced by its late intervention requests.

b. Interventions Filed in Compliance Docket No. ER10-320-001

10. Notice of PJM's compliance filing in Docket No. ER10-320-001 was issued on February 17, 2010, and was published in the *Federal Register*, 75 Fed. Reg. 8687 (2010), with protests and interventions as to the compliance filing due on or before March 5, 2010. On February 19, 22, and March 3, 2010, respectively, BGE, PSE&G, and Duquesne Light Company each filed a request to intervene. No protests were filed, however.

2. AMP Opposition to Interventions

11. On March 2, 2010, AMP filed an answer in opposition to the late motions to intervene stating that, almost three weeks after the January 22 Order, BGE, PHI and PPL have filed untimely intervention motions without sufficient reason and solely to seek rehearing of the Commission's order. AMP contends that a movant seeking late intervenor status is required to demonstrate that: a) good cause exists for the failure to file the motion within the time prescribed; b) no disruption of the proceeding will result from permitting the intervention; and c) existing parties will not be prejudiced or

burdened if late intervention is granted.¹¹ AMP argues that the movants have failed to satisfy these requirements for late intervention.¹² AMP also argues that, even assuming *arguendo* that "good cause" for late intervention exists, the movants have not met the more stringent standard for seeking intervention after issuance of a decision on the merits. AMP claims that it is well-established that movants seeking untimely intervention after issuance of a Commission decision on the merits face a particularly heavy burden.¹³ AMP states that, as the Commission has found under similar circumstances, "allowing late intervention at this point in the proceeding brings very little benefit to the proceeding and potentially would create prejudice and additional burdens on the Commission, other parties, and the applicants."¹⁴

3. Indicated PJM EDCs' Answer

12. On March 10, 2010, the Indicated PJM EDCs filed an answer to AMP's answer stating that they are timely intervenors based on the Commission's subsequent notice of PJM's compliance filing. Specifically, the Indicated PJM EDCs assert that the Commission issued notice of PJM's compliance filing on February 17, 2010, with comments and intervention requests due no later than March 5, 2010. The Indicated PJM EDCs state that, regardless of whether certain members of the Indicated PJM EDCs had requests to intervene out-of-time pending in this case, the Indicated PJM EDCs filed timely and unopposed motions to intervene well before the March 5, 2010 deadline established in the Commission's February 17 notice on PJM's compliance filing. The Indicated PJM EDCs further assert that the requests to intervene out-of-time can be deemed moot now that the Indicated PJM EDCs have submitted timely motions to

¹¹ AMP March 2 Answer at 4 (citing 18 C.F.R. § 385.214(d) (2010); *see also Bradwood Landing LLC*, 126 FERC ¶ 61,035, at P 13 (2009) (*Bradwood*)).

¹² AMP notes that, pursuant to the Commission's Rules of Practice and Procedure, only parties to a proceeding are permitted to seek rehearing. *See* 18 C.F.R. § 385.7 13 (2010). Therefore, AMP contends, PSE&G's request for rehearing in Docket No. ER10-320-000, is prohibited because it is not a party to the proceeding. Accordingly, AMP asserts that the request for rehearing should be denied. AMP March 2 Answer at 4 n. 2.

¹³ AMP March 2 Answer at 6; *see, e.g., Southwest Power Pool, Inc.*, 116 FERC ¶ 61,092, at P 5 (2006) (citing *California Independent System Operator Corp.*, 114 FERC ¶ 61,339, at P 19 (2006)) (denying late intervention for failure to demonstrate good cause); *San Diego Gas and Electric Co.*, 112 FERC ¶ 61,330, at P 7 (2005) (denying late intervention for failure to demonstrate good cause).

¹⁴ AMP March 2 Answer at 6, (citing *Bradwood*, 126 FERC ¶ 61,035 at P 15).

intervene in response to the February 17 notice. Therefore, they ask that the Commission grant them full intervenor status and act on the rehearing request forthwith.

13. First, the Indicated PJM EDCs note that AMP does not oppose the timely motions to intervene filed by the Indicated PJM EDCs in their individual capacity. In addition, the Indicated PJM EDCs cite *PJM Interconnection, L.L.C.*, where Amerada Hess Corporation (Amerada Hess) filed a “timely unopposed motion to intervene” in a particular subdocket, which was granted by the Commission.¹⁵ The Indicated PJM EDCs contend that Amerada Hess thereafter sought clarification regarding Commission orders issued in other, earlier subdockets. In that case, the Indicated PJM EDCs assert that the Commission held that “[w]e agree, and hereby clarify, that Amerada Hess’ intervention also makes it a party to all earlier-filed subdockets in this proceeding, subject to the requirement that Amerada Hess, as a late intervenor, is required to accept the record in these proceedings as the record was developed prior to Amerada Hess’ late intervention.”¹⁶

14. The Indicated PJM EDCs argue that this instant situation falls precisely within the Commission’s holding in *PJM* because the Indicated PJM EDCs filed timely motions to intervene in the subdocket “-001” and seek rehearing of the January 22 Order issued in subdocket “-000.” The Indicated PJM EDCs assert that, in these circumstances, the requirements for seeking rehearing under the Commission’s regulations are fully satisfied because the Indicated PJM EDCs have filed timely motions to intervene and a timely request for rehearing.¹⁷

15. The Indicated PJM EDCs state that, while no consideration of the earlier motions to intervene out-of-time is necessary any longer for the reasons explained above, AMP’s arguments in opposition to allowing late intervention are specious. The Indicated PJM EDCs argue that equitable considerations related to fundamental due process favor late intervention.

¹⁵ Indicated PJM EDCs March 10 Answer at 3 (citing *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,201, at P 2 (2005) (*PJM*)).

¹⁶ *Id.* at P 4.

¹⁷ *Id.* (citing *Niagara Mohawk Power Corp.*, 55 FERC ¶ 61,006 (1991) (*Niagara Mohawk*) (Commission allowed consideration of timely rehearing request filed the same day as a timely intervention)).

4. AMP's Answer

16. On March 25, 2010, AMP filed an answer to the Indicated PJM EDCs' answer, stating that there is no merit to the argument that intervention in the compliance phase allows a party to seek rehearing of a merits order. AMP asserts the docketing system makes a clear distinction between a "root" docket, which is created by a jurisdictional entity's initial filing, and subsequent subdockets created to address subsequent matters (e.g., compliance, rehearing, refunds, etc.). AMP states that, although parties who have intervened in the root docket do not have to re-intervene in the various subdockets of the proceedings,¹⁸ a party who has failed to intervene in a root docket cannot use intervention in the subdocket as a "mulligan."

5. Commission Decision

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits answers to protests and answers unless otherwise ordered by the decisional authority. We will accept AMP's and the Indicated PJM EDCs' answers because they have provided information that assisted us in our decision-making process.

Late Interventions

18. We deny the late intervention requests of BGE, PHI, and PPL because they have failed to show good cause for late intervention. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, the movants bear a higher burden to demonstrate good cause for granting such late intervention.¹⁹ The filing of late interventions after the issuance of the Commission order undermines the

¹⁸ AMP March 25 Answer at 4 (citing *California Independent System Operator Corp*, 127 FERC ¶ 61,233, at n.7 (2009)) (parties previously granted intervention in a root docket were already parties to a compliance subdocket).

¹⁹ See *City of Orrville, Ohio and Pike Island Hydro Associates v. FERC*, 147 F.3d 979, 988 (1998) ("Further, when a late intervention motion is filed after the proceeding to which the motion is addressed has produced a final decision, the Commission has repeatedly stated that it will act favorably on the motion only in extraordinary circumstances."); see also *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003); *ISO New England, Inc. and New England Power Pool*, 90 FERC ¶ 61,053 (2000).

orderly processing of cases, depriving both the Commission and other parties of the opportunity to consider issues and arguments timely.²⁰

19. BGE, PHI, and PPL have not met this higher burden with their assertions that they were unaware that the Commission would modify PJM's filing in this manner as they believed the filing to be uncontested. BGE, PHI, and PPL are longstanding and sophisticated EDC members of PJM with significant experience appearing before this Commission. PJM submitted its filing to the Commission on November 24, 2009; AMP protested the filing on December 16, 2009. The Commission issued its order about a month later on January 22, 2010. Other parties filed timely intervention requests to protect their interests in the proceeding; however, the movants who now seek late intervention chose not to protect their interests. In *Transcontinental Gas Pipe Line Corp.*, the Commission rejected a late request for intervention in comparable circumstances: "any litigated proceeding before the Commission may serve as a vehicle for precedential decisions, and movants are not justified in sitting on their rights, passively anticipating a regulatory outcome favorable to their own interests."²¹ Despite the filing of a protest, and the passage of a month, these movants still did not seek intervention prior to the issuance of the Commission order.

20. Only after the Commission issued its order did these movants seek to intervene, and apparently sought such intervention solely to seek rehearing to overturn that order. Allowing intervention in such circumstances, without good cause, would encourage parties to choose not to intervene timely, but to adopt a "wait and see" attitude. As the Commission stated in *Florida Power & Light Co.*:

The Florida Commission, like any other potential party, must take the appropriate steps to protect its interests. Adapting a "wait and see" attitude and moving to intervene once the result of Commission deliberation is known falls far short of

²⁰ See *Summit Hydropower*, 58 FERC ¶ 61,360, at 62,200 (1992) (A key purpose of intervention deadlines is to determine, early in the proceeding, who the interested parties are and what information and arguments they can bring to bear. Interested parties are not entitled to hold back awaiting the outcome of the proceeding or relying on a particular outcome, only to intervene once events take a turn not to their liking.).

²¹ 77 FERC ¶ 61,270, at 62,135 (1996); see also *California Trout v. FERC*, 572 F.3d 1003, 1022 (9th Cir. 2009) ("the Commission made clear that petitioners lacked any viable reason for their failure to intervene earlier in the proceedings, and was justified in denying their motions for late intervention solely on that basis, even if, as petitioners claim, no prejudice would result from their untimely intervention").

the demonstration of good cause that would support a late intervention request.²²

21. Moreover, even if we were to grant the late interventions, such a determination would not permit a party to seek rehearing of an order issued prior to its becoming a party. Section 385.214(d)(3)(ii) (2010) of the Commission's regulations provides: "Except as otherwise ordered, a late intervener must accept the record of the proceeding as the record was developed prior to the late intervention." Indeed, these movants commit themselves to taking the record as they find it.²³ A Commission order is no less a part of "the record of the proceeding" as any other filing or evidence. Indeed, it may be the most important part of the record as it is the Commission decision that is appealable to the U.S. Court of Appeals. Thus, a late intervenor is not entitled to seek rehearing of any order issued prior to its intervention (unless the Commission specifically grants such a right, which we do not find appropriate here). In sum, we find that BGE, PHI, and PPL have not demonstrated sufficient cause to be permitted to intervene to challenge the January 22 Order.

6. Interventions in the Compliance Proceeding in Docket No. ER10-320-001

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,²⁴ the timely motions to intervene in PJM's Docket No. ER10-320-001 compliance proceeding serve to make the movants parties. But that intervention is limited to the compliance subdocket and all future subdockets and does not provide party status with respect to the root docket; further, these parties do not have the right to seek rehearing of the January 22 Order, because it was issued prior to our granting the motions to intervene.

23. *PJM*, cited by Indicated PJM EDCs, does not establish a universal rule that all unopposed interventions at the compliance stage of a proceeding make the intervenor a party with the right to seek rehearing of an order issued prior to its intervention, absent a specific Commission finding granting such a right.²⁵ In *PJM*, Amerada Hess only sought

²² 99 FERC ¶ 61,318, at P 9 (2002).

²³ See Motion to Intervene Out Of Time Of Baltimore Gas And Electric Company, at 3 ("BGE will accept the record as it currently exists"); Out-of-Time Motion to Intervene of PPL Electric Utilities Corporation ("PPL Electric agrees to accept the record as it currently exists").

²⁴ 18 C.F.R. § 385.214 (2010).

²⁵ To the extent that the case could be read to establish such a policy, we find that there are good reasons, as discussed above, for changing that policy here.

intervention in order to be assured that it would be served with future reports and data requests and responses regarding those reports in the proceeding.²⁶ In that context, the Commission found that Amerada Hess became a party to the proceeding. But the Commission did not address the question of whether such interventions would entitle Amerada Hess to seek rehearing of an order issued prior to its intervention.

24. Under Rule 714 of the Commission's Rules of Practice and Procedure, any motion to intervene "after the end of any time period established under Rule 210 [the rule providing for notice]" is deemed to be a request for late intervention and therefore must be approved as a late intervention by the Commission or decisional authority. The interventions here were filed after the time period established by the notice for the initial filing (December 16, 2009)²⁷ and therefore are not timely with respect to the root docket and the January 22 Order. While the Commission found it appropriate in the context of the *PJM* case to afford Amerada Hess party status in earlier parts of the proceeding, we find that our regulations does not establish that an unopposed motion to intervene in a compliance proceeding necessarily establishes party status in the root docket or any earlier subdockets for the purpose of seeking rehearing of an earlier order.

25. Indeed, even if the interventions filed in the compliance subdocket were considered to make the Indicated PJM EDCs parties to the root docket for purposes of seeking rehearing, they still would not be eligible to seek rehearing of the January 22 Order. Under our regulations, party status is conveyed 15 days after the filing of an unopposed intervention.²⁸ Accordingly, at the time the 30 day period for seeking rehearing expired (February 22, 2010), the Indicated PJM EDCs would not yet have been parties and therefore had no right to seek rehearing.

26. Moreover, even if the intervention were to be considered timely with respect to Docket No. ER10-320-000 (a position we reject), AMP Ohio opposed the intervention

²⁶ Amerada Hess Corp., Motion of Amerada Hess Corporation for Clarification or, in the Alternative, Reconsideration, Docket No. RP03-1101-001 *et. al.*, at 3 (filed Jan. 19, 2005) ("Hess' motion to intervene in subdocket -003 indicated Hess' interest in the filing of the March 22, 2004 follow-up and initial six-month report; this interest clearly would extend to the data requests and responses concerning *those very reports* issued, filed and noticed in subdocket -004.").

²⁷ Combined Notice Of Filings # 1, Docket No. ER10-320-000 (December 1, 2009).

²⁸ 18 C.F.R. § 385.214(c) (2010) (if no answer in opposition to a timely motion to intervene is filed within 15 days after the motion to intervene is filed, the movant becomes a party at the end of the 15 day period).

within the 15-day period prescribed by the regulations. For the reasons discussed above, we find that such opposition is warranted, and we deny the request to intervene in Docket No. ER10-320-000 solely for the purpose of seeking rehearing of the January 22 Order.

27. Finally, as reflected in our regulations and discussed in *PJM*, cited by the Indicated PJM EDCs, the parties granted intervention at the compliance stage of a proceeding must accept the record created prior to their intervention.²⁹ In fact, a compliance proceeding is assigned a separate subdocket number, such that any party intervening at that stage is intervening only in that, and any subsequent, subdockets.³⁰ The intervening party's participation at the compliance stage is thus restricted to the scope of the compliance filing and does not include the right to seek rehearing of earlier orders in the root or other subdockets.

B. Even Assuming the Validity of the Rehearing Request, the Request Would Be Denied

28. Even assuming *arguendo* that the Indicated PJM EDCs have a right to seek rehearing, a position that we reject as explained above, we would still deny their request for rehearing on the merits.

29. In their rehearing request, the Indicated PJM EDCs argue that PJM's original proposal: 1) would result in an equitable allocation of meter error corrections to all LSE customers in a rate zone: those who receive default standard offer service (SOS or default customers), those who receive service from competitive retail suppliers, and those who receive service from separately metered municipalities and cooperative distributors and 2) correctly allows the EDC to make the voluntary selection of behalf of all LSEs in its EDC zone because a single LSE could veto the choice of the majority of LSEs in the service territory.

30. The Indicated PJM EDCs claim that, within their respective rate zones, SOS customers are assigned all or a substantial portion of the meter error correction because they do not have the necessary relationship with third-party LSEs (and in some cases

²⁹ *PJM*, 111 FERC ¶ 61,201 at P 4.

³⁰ For ease of administration, the Commission ordinarily does not require parties that have intervened in the root docket or an earlier subdocket to intervene again in later subdockets. *But see Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 16 (2010) (in circumstances in which a compliance filing is made in a different root docket, parties are required to intervene in compliance proceedings). While our practice is that interventions generally carry over to all *later* stages (subdockets) of a proceeding, the opposite is not true.

may be contractually prevented) to efficiently invoice and collect payment for meter errors. Thus, the Indicated PJM EDCs assert that SOS customers are forced to subsidize third-party supplier LSEs. Therefore, the Indicated PJM EDCs state that, giving these LSEs veto power over the EDC's selection of the voluntary billing service option does not eliminate a subsidy, it perpetuates one.

31. Finally, the Indicated PJM EDCs aver that hourly and monthly meters can be equally accurate or equally inaccurate. The Indicated PJM EDCs state that, contrary to AMP's statements otherwise, billing adjustments also apply to AMP's load even though it has hourly meters. The Indicated PJM EDCs contend that a share of the billing adjustments is allocated to customers with hourly meters to take into account system-wide losses. For each day of a given month, the Indicated PJM EDCs state that the EDC submits an "E-schedule" of a preliminary calculation of loads for the previous day (based on total system demand) including a factor for system losses as previously approved by the state commission having jurisdiction and specified in their tariffs. The Indicated PJM EDCs claim that this loss factor apply to all customer classes, including those that use hourly meters.

32. We do not find the Indicated PJM EDCs' arguments on rehearing persuasive. Our decision in the January 22 Order accepting PJM's voluntary opt-in billing proposal ensured that what PJM described as a "voluntary opt-in" was fully voluntary because all interested parties would have to agree to such an arrangement.³¹ It did not permit one sector, the EDCs, to dictate the result. Our determination balanced the interests of both the EDCs and the LSEs. It allows those EDCs and LSEs that want to use this billing convention to do so, while not upsetting existing agreements or state determinations that contemplate a different mechanism. Although the Indicated PJM EDCs allege that allocation of these costs as PJM proposed would result in a more equitable division between LSEs and SOS customers in their states, this is a state issue that should not be resolved by a PJM tariff provision.

III. PJM Compliance Filing

A. PJM Filing

33. On February 12, 2010, PJM submitted a filing in compliance with the January 22 Order. PJM asserts that, as directed by the January 22 Order, it is revising section 3.6 of the Operating Agreement and its OATT to clarify that EDCs can opt in to use this optional billing service only if both the EDC and the LSEs in the respective EDC zone agree to use this service. PJM states section 3.6.2 is revised as follows (with the revisions underlined):

³¹ See January 22 Order, 130 FERC ¶ 61,058 at P 13.

No such adjustment may be made if the accounting for the Operating Day in which the interchange occurred has been completed by the Office of the Interconnection. *If this is not practical, the error shall be accounted for by a correction at the end of the billing cycle. The Market Participants experiencing the error shall account for the full amount of the discrepancy and an appropriate debit or credit shall be applied to the Market Participants. For Market Participants that are Electric Distributors that request the debit and credit to be further allocated to all Network Service Users in their territory (as documented in the PJM Manuals), where all Load Serving Entities in the respective Electric Distributor territory agree, the appropriate debit or credit shall be applied among Network Service Users in proportion to their deliveries to load served in the applicable territory.*³²

PJM also states that section 3.6.3 is revised as follows:

The Market Participant with the tie meter or generator experiencing the error shall account for the full amount of the discrepancy and an appropriate debit or credit shall be applied among Electric Distributors that report hourly net energy flows from metered tie lines in the Pre-Expansion Zones (excluding Allegheny Power) in proportion to the load consumed in their territories. *The error shall be accounted for by a correction at the end of the billing cycle. For Market Participants that are Electric Distributors that request the debit and credit to be further allocated to all Network Service Users in their territory (as documented in the PJM Manuals), where all Load Serving Entities in the respective Electric Distributor territory agree, the appropriate debit or credit shall be applied among Network Service Users in proportion to their deliveries to load served in the applicable territory.*³³

³² PJM section 3.6.2, Substitute Fourth Revised Sheet No. 122, Superseding Fourth Revised Sheet No. 122 (emphasis included in original).

³³ PJM section 3.6.3, Substitute First Revised Sheet No. 390A, Superseding First Revised Sheet No. 390A (emphasis in original).

Finally, PJM requests an effective date of February 1, 2010 for the revisions, consistent with the effective date established in the January 22 Order.

B. Protests

34. No protests were filed in response to PJM's compliance filing.

C. Commission Decision

35. In its compliance filing, PJM adds the phrase "where all Load Serving Entities in the respective Electric Distributor territory agree" to both sections 3.6.2 and 3.6.3 of the PJM Operating Agreement and OATT, which clarifies that EDCs can opt-in to use PJM's voluntary billing serving only if both the EDC and the LSEs in the respective EDC zone agree to use the service. We accept PJM's uncontested compliance filing as in compliance with the directives in the January 22 Order effective February 1, 2010, as requested.

The Commission orders:

(A) The requests for late intervention are hereby denied, as discussed in the body of this order.

(B) The request for rehearing is hereby dismissed, as discussed in the body of this order.

(C) PJM's February 17, 2010 compliance filing is hereby accepted as in compliance with the January 22 Order, effective February 1, 2010 as requested.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.