

139 FERC ¶ 61,024
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. EL12-10-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued April 6, 2012)

1. On November 9, 2011, PJM Interconnection, L.L.C. (PJM) filed a petition for declaratory order in which it requested that the Commission provide guidance as to how PJM can recover the costs associated with phase angle regulator (PAR) transmission facilities that are allocated to PJM pursuant to the Commission's order of December 30, 2010.¹ For the reasons discussed below, we grant the petition on a limited basis.

I. Background

2. The December 30 Order accepted and suspended, to become effective January 1, 2011, subject to refund, proposed revisions to the Midwest Independent Transmission System Operator, Inc.'s (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff. The revisions established a methodology to allocate the costs of PAR transformers installed by the International Transmission Company (ITC) among three regions that cause the Lake Erie loop flow problem and benefit from its mitigation: New York Independent System Operator, Inc. (NYISO), PJM, and MISO. The cost allocation proposed in the December 30 Order was based on each region's contribution to the Lake Erie loop flow problem that would occur if the PARs were not operational.² In addition, the December 30 Order established hearing and settlement judge procedures, which are currently pending.

II. PJM Filing

3. PJM requests guidance as to how it should recover from its members the costs that have been allocated to PJM pursuant to the December 30 Order. PJM seeks declaratory

¹ *Midwest Independent Transmission System Operator, Inc.*, 133 FERC ¶ 61,275 (2010) (December 30 Order).

² *Id.* P 10.

relief because it contends that: (1) it has no tariff mechanism for recovering the PARs costs from its members because the PAR facilities were not approved under the PJM Open Access Transmission Tariff (PJM Tariff) or under the interregional planning process established by the Joint Operating Agreement (JOA) between PJM and MISO; (2) there is no existing Commission precedent to guide PJM in developing a recovery mechanism; and (3) PJM must recover from its members all costs it incurs, including the charges MISO will assess PJM for the PARs, because it operates on a revenue-neutral basis. PJM argues that a declaratory order is appropriate in these circumstances as it will remove uncertainty as to how PJM should recover the charges allocated to it stemming from the PAR facilities.

4. PJM also requests either an expedited order to ensure that a cost-recovery mechanism is in place when the ITC PAR facilities enter into service or an interim order that PJM does not have to pay any amounts billed by MISO to PJM related to the PAR facilities while the Commission considers this petition.

III. Notice of Filing and Responsive Pleadings

5. Notice of PJM's petition was published in the *Federal Register*, 76 Fed. Reg. 72,699 (2011), with interventions and protests due on or before December 2, 2011. Timely motions to intervene were filed by the Maryland Public Service Commission, Old Dominion Electric Cooperative, Linden VFT, LLC, Rockland Electric Company, AEP Companies,³ PPL PJM Companies,⁴ PHI Companies,⁵ MISO, American Municipal

³ The AEP Companies consist of American Electric Power Service Corporation, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company, AEP Appalachian Transmission Company Inc., AEP Indiana Michigan Transmission Company Inc., AEP Kentucky Transmission Company Inc., AEP Ohio Transmission Company Inc., and AEP West Virginia Transmission Company.

⁴ The PPL PJM Companies consist of PPL Electric Utilities Corporation, PPL EnergyPlus, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC, PPL Martins Creek, LLC, PPL Montour, LLC, PPL Susquehanna, LLC, Lower Mount Bethel Energy, LLC, PPL New Jersey Solar, LLC, PPL New Jersey Biogas, LLC, and PPL Renewable Energy, LLC.

⁵ The PHI Companies consist of Pepco Holdings, Inc., Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company.

Power, Inc., DC Energy Mid-Atlantic, LLC, Constellation,⁶ and Dominion.⁷ A motion to intervene out of time was filed by the North Carolina Electric Membership Corporation.

6. Timely motions to intervene and comments in support of the petition were filed by NYISO, New York Transmission Owners,⁸ PSEG Companies,⁹ FirstEnergy Companies,¹⁰ and Exelon.¹¹

7. A timely motion to intervene and protest was filed by ITC.

8. On March 29, 2012, PJM filed a request for Commission action in this proceeding.

IV. Comments and Protest

9. The FirstEnergy Companies, NYISO, Indicated Transmission Owners, PSEG and the New York Transmission Owners (collectively, Commenters) filed comments in support of PJM. The FirstEnergy Companies, Indicated Transmission Owners, and

⁶ Constellation consists of Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.

⁷ Dominion consists of Dominion Resources Services, Inc., Dominion Energy Marketing, Inc., Dominion Energy Kewaunee, Inc., Dominion Energy Retail, Inc., Elwood Energy, LLC, Fairless Energy, LLC, State Line Energy, LLC, Kincaid Generation, LLC, and Virginia Power.

⁸ The New York Transmission Owners consist of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

⁹ The PSEG Companies consist of Public Service Electric and Gas Company, PSEG Power, LLC, and PSEG Energy Resources & Trade LLC.

¹⁰ The FirstEnergy Companies consist of Cleveland Electric Illuminating Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Ohio Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, The Toledo Edison Company, Monongahela Power Company, The Potomac Edison Company and West Penn Power Company, FirstEnergy Solutions Corp., American Transmission Systems, Inc. and Trans-Allegheny Interstate Line Company.

¹¹ Exelon submitted comments on behalf of the AEP Companies, FirstEnergy Companies, Dominion, PHI Companies, PPL PJM Companies, and Old Dominion Electric Cooperative (collectively, Indicated Transmission Owners).

PSEG Companies agree with PJM that neither the PJM Tariff nor the JOA address the allocation of costs of the PAR facilities to PJM's stakeholders.¹² Further, the First Energy Companies and NYISO concur with PJM that there is no basis in Commission precedent for MISO to involuntarily impose the costs of the PARs on PJM or its stakeholders.¹³ Commenters also contend that the unilateral allocation of costs to PJM in this case is inconsistent with Order No. 1000.¹⁴ The FirstEnergy Companies state that if the Commission decides that costs associated with the PARs should be allocated to PJM members, the Commission must ensure that such allocation is consistent with the Commission's "well established cost causation and beneficiaries pay principles as most recently articulated by the Commission in Order No. 1000."¹⁵

10. Indicated Transmission Owners, New York Transmission Owners, and PSEG Companies ask the Commission to grant their pending rehearing requests¹⁶ of the December 30 Order, which they contend would render this petition moot.¹⁷ Otherwise, Indicated Transmission Owners, PSEG Companies, and FirstEnergy Companies support PJM's request for an interim order deferring PJM's obligation to pay MISO pending resolution of the petition.¹⁸ The New York Transmission Owners state that, at a minimum, the Commission should clarify that no charges can be passed on to PJM or NYISO customers pending the outcome of the evidentiary hearing ordered by the Commission in the December 30 Order.¹⁹

¹² FirstEnergy Companies Comments at 3-4; Indicated Transmission Owners Comments at 3-4; PSEG Comments at 4-5.

¹³ FirstEnergy Companies Comments at 4; NYISO Comments at 6.

¹⁴ NYISO Comments at 7; FirstEnergy Companies Comments at 4-5; Indicated Transmission Owners Comments at 4; PSEG Comments at 4; *see Transmission Planning and Cost Allocation by transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011).

¹⁵ FirstEnergy Companies Comments at 3.

¹⁶ The pending rehearing requests argue generally that no costs associated with the PARs can be unilaterally allocated to PJM or NYISO.

¹⁷ Indicated Transmission Owners Comments at 4; New York Transmission Owners Comments at 7; and PSEG Comments at 6.

¹⁸ Indicated Transmission Owners Comments at 4; First Energy Companies Comments at 6; PSEG Comments at 6.

¹⁹ New York Transmission Owners Comments at 7.

11. NYISO states that any guidance the Commission provides in this matter would be useful to it because NYISO is in the same situation as PJM.²⁰ NYISO states that it intends to submit its own petition requesting similar guidance to that of PJM in the near future.

12. ITC urges the Commission to dismiss or deny PJM's petition because PJM failed to provide the Commission with a cost allocation proposal to review and approve, and instead asked the Commission to develop a method on its own.²¹ ITC argues that PJM is more familiar with its tariff and thus better suited than the Commission to develop a method to recover its costs. Moreover, ITC states that PJM had ample time to develop and propose a method to recover the PAR facilities costs at issue.

13. ITC maintains that the issue of "whether, and to what extent, and under what terms PJM's payment obligations should be delayed or deferred should be left to the parties to resolve in the settlement discussions that are underway in [Docket No. ER11-1844-000]."²² If PJM's deferral request is granted, ITC states that the Commission should not eliminate PJM's payment obligations indefinitely, but should give PJM the option of making the required payments as scheduled or deferring them and allowing them to accrue for up to six months, with applicable interest.

V. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings.

15. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), the Commission will grant North Carolina Electric Membership Corporation's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

²⁰ NYISO Comments at 6.

²¹ ITC Protest at 3.

²² ITC Protest at 6.

B. Substantive Matters

16. The Commission has discretion as to whether to issue a declaratory order, and if so, what level of detail to provide.²³ Here, we find that the petition contains insufficient information on which to provide the detailed guidance PJM seeks.²⁴

17. We note, however, that there are a number of potential methods that may result in a reasonable allocation of the costs to those that benefit. For example, PJM could propose to allocate costs using a flow-based distribution factor (DFAX) methodology model modified to include parameters similar to those used in the underlying ITC allocation proceeding. Alternatively, PJM could attempt to demonstrate that the PARs costs are properly considered “PJM costs” that should be borne by all PJM participants and that PJM may recover under article I, section 9.2 of its OATT. While these options are not exclusive, PJM would need to make a filing under section 205 of the Federal Power Act proposing whatever cost allocation method it determines allocates costs in a manner roughly commensurate with benefits.

The Commission orders:

PJM’s petition for declaratory order is hereby granted on a limited basis, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²³ *USGen New England, Inc.*, 118 FERC ¶ 61,172, at P 19 (2007) (“As the Commission has stated, section 554(e) of the Administrative Procedure Act provides that an agency in its sound discretion may issue a declaratory order to terminate a controversy or remove uncertainty”).

²⁴ *Compare Morgan Stanley Capital Group, Inc.*, 119 FERC ¶ 61,298 (2007) (finding insufficient basis for issuing a declaratory order where the filers simply recounted the conflicting positions taken by their counterparties and asked the Commission to adopt one position or the other), *with Nicole Gas Prod. Ltd.*, 103 FERC ¶ 61,328, at P 13 (2003) (petition for declaratory order seeking interpretation of gas tariff); and *Colonial Pipeline Company*, 116 FERC ¶ 61,078, at P 10 (2006) (petition for declaratory order seeking pre-approval regarding future use of certain proposed rate methodologies to facilitate a proposed mainline pipeline expansion.).