

152 FERC ¶ 61,178  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Philip D. Moeller, Cheryl A. LaFleur,  
Tony Clark, and Colette D. Honorable.

PJM Interconnection, L.L.C.

Docket No. ER15-994-002

ORDER DENYING REHEARING

(Issued September 3, 2015)

1. Mr. Eric S. Morris has requested rehearing of a June 15, 2015 letter order<sup>1</sup> that accepted PJM Interconnection, L.L.C.'s (PJM) April 17, 2015 submittal of an annual informational report concerning collections and distributions of certain operational penalties.<sup>2</sup> For the reasons discussed below, we will deny rehearing.

**Background**

2. On February 5, 2015, PJM filed a revision to its Open Access Transmission Tariff (Tariff) to incorporate a mechanism to distribute to what has been characterized as non-offending transmission customers the penalty revenues that PJM collected from what has been characterized as offending transmission customers because of their unreserved use of transmission service (February 5 Filing). Such tariff revision was required by Order No. 890,<sup>3</sup> which also required transmission providers to report annually to the

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<sup>1</sup> *PJM Interconnection, L.L.C.*, Docket No. ER15-994-001 (June 15, 2015) (delegated letter order) (June 15 Order).

<sup>2</sup> *PJM Interconnection, L.L.C.*, Informational Filing, Docket No. ER15-994-001 (filed April 17, 2015) (April 17 Informational Report).

<sup>3</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 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), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009) (Order No. 890).

Commission the penalties that they assessed for unreserved use of their transmission systems and how the revenues so collected were distributed.

3. Acting under delegated authority, Staff accepted the February 5 Filing in an April 1, 2015 letter order.<sup>4</sup> The April 1 Order, while specifically acknowledging Mr. Morris's intervention and comments, stated that no adverse comments had been filed.

4. The April 17 Informational Report that PJM filed, pursuant to Order No. 890, presents PJM's report of unreserved-use penalty assessments and distributions for the period January 1, 2014 through December 31, 2014. It lists penalty revenue from only one utility and describes, in a table, how PJM distributed that revenue.<sup>5</sup>

5. Mr. Morris submitted, on April 20, 2015, a filing that he titled, "Comments regarding PJM's Unreserved Use Filing" (April 20 Filing). In this filing, Mr. Morris listed five questions. The questions asked: (1) whether PJM knows that it had no duty to identify the offending utility; (2) whether PJM knows that it has sullied the utility's name; (3) whether PJM and the Commission believe that the April 17 Informational Report is the first unreserved-use annual filing that PJM has needed to make, stating that entities other than PJM have previously filed reports on unreserved use of the transmission system; (4) whether it was believable that this is the first unreserved use of such a large transmission system since adoption of Order No. 890, stating that other transmission providers have regular minimal unreserved use of their systems; and (5) whether the information in the April 17 Informational Report was the result of allegations that Mr. Morris made to the Commission's Office of Enforcement in July 2014. Mr. Morris also asked to have Commission representatives discuss the five questions with him, and stated his concern over whether PJM is administering its Tariff properly.

6. The June 15 Order acknowledged Mr. Morris' April 20 Filing, describing it as presenting a series of questions rather than an argument contesting PJM's April 17 Informational Report. Therefore, the June 15 Order concluded that Mr. Morris' comments did not constitute a protest.

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<sup>4</sup> *PJM Interconnection, L.L.C.*, Docket No. ER15-994-000 (Apr. 1, 2015) (delegated letter order) (April 1 Order).

<sup>5</sup> Notice of the April 17 Informational Filing was published in the *Federal Register*, 80 Fed. Reg. 22,990 (2015), with protests and interventions due on or before May 8, 2015.

### **Rehearing Request**

7. On rehearing, Mr. Morris objects to the June 15 Order's conclusion that the questions in his April 20 Filing did not constitute a protest. Mr. Morris states that he wanted to start a dialogue with PJM or the Commission, and that he styled his April 20 Filing as comments, rather than as a protest, because Rule 213 of the Commission's Procedural Rules<sup>6</sup> prohibits answers to protests. Mr. Morris states that he could not jump to the next stage of his argument until PJM or the Commission provided answers. Mr. Morris requests, as relief, that the Commission view his comments as the first step of Socratically contesting the April 17 Informational Report. He further requests that the Commission either require PJM to answer the questions posed in his April 20 Filing or else rule itself on the questions, as appropriate.

### **Discussion**

8. We will deny rehearing. The sole purpose of PJM's April 17 Informational Report was to provide, pursuant to Order No. 890, information about the operational penalties that PJM collected and distributed during the calendar year 2014.<sup>7</sup> Mr. Morris does not dispute that the utility named by PJM made unreserved use of the PJM transmission system during 2014 nor the amount of the assessed penalty. Nor does he dispute PJM's tabular description of how it distributed the penalty revenue. Thus, the accuracy of the information in the April 17 Informational Report is not in question. Mr. Morris's Socratic questions do not constitute an argument nor do they raise issues that warrant setting the filing for hearing.<sup>8</sup> Accordingly, the rehearing request is denied.

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<sup>6</sup> 18 C.F.R. § 385.213(a)(2) (2015).

<sup>7</sup> See *Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,279, at P 22 (2003).

<sup>8</sup> See *General Motors Corp. v. FERC*, 656 F.2d 791, 798 n.20 (D.C. Cir. 1981) ("where a party requesting an evidentiary hearing merely offers allegations or speculations [that there is a dispute as to a material fact] without an adequate proffer to support them, the Commission may properly disregard them"); see also *BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,239, at P 35 (2007) ("The Commission is not required to hold a hearing when issues of material fact are not in dispute. Disputed facts cannot be mere allegations, the complainant must make an adequate proffer of evidence to support the facts").

The Commission orders:

Mr. Morris's request for rehearing of the June 15 Order is hereby denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.