

156 FERC ¶ 61,090
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket Nos. ER11-4073-003
ER11-4073-004

ORDER ON REHEARING, COMPLIANCE, AND CLARIFICATION

(Issued August 2, 2016)

1. In a December 21, 2015 order on remand from the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit), the Commission found that Section 219 of PJM Interconnection, L.L.C.'s (PJM's) Open Access Transmission Tariff (Tariff), which was in effect at the time PJM filed an unexecuted interconnection agreement assessing certain network upgrade costs to West Deptford Energy, LLC (West Deptford), should govern that interconnection agreement. Consequently, the Commission also found that Section 37.7 of PJM's Tariff, which was in effect when West Deptford entered PJM's interconnection queue but no longer in effect as of the date PJM filed the interconnection agreement, should not apply to the West Deptford interconnection agreement. The Commission directed PJM to make a compliance filing to correct its use of the incorrect tariff provision, Section 37.7, in the West Deptford interconnection agreement.¹

2. On January 20, 2016, three parties made filings in response to the December 2015 Order: (1) FPL Energy Marcus Hook, L.P. (Marcus Hook) timely sought rehearing of the December 2015 Order in Docket No. ER11-4073-004; (2) PJM made a compliance filing in Docket No. ER11-4073-003, with requested effective dates of June 17, 2011 for Original Service Agreement No. 2962 and May 14, 2014 for First Revised Service Agreement No. 2962; and (3) West Deptford sought clarification of the December 2015 Order in Docket No. ER11-4073-004.

¹ *PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,327, at P 1 (2015) (December 2015 Order) (citing *W. Deptford Energy, LLC v. FERC*, 766 F.3d 10 (D.C. Cir. 2014) (*West Deptford*)).

3. As discussed below, we deny Marcus Hook's request for rehearing, accept PJM's compliance filing, and grant West Deptford's request for clarification.

I. Procedural Matters

4. Notice of PJM's compliance filing in Docket No. ER11-4073-003 was published in the *Federal Register*, 81 Fed. Reg. 5437 (2016), with comments due on or before February 10, 2016.

5. On February 4, 2016, Marcus Hook filed an answer to West Deptford's request for clarification of the December 2015 Order. On February 10, 2016, Marcus Hook filed an answer to PJM's compliance filing. On February 19, 2016, West Deptford filed a motion for leave to answer and answer to Marcus Hook's February 4, 2016 answer.

6. Rule 212(a) of the Commission's Rules of Practice and Procedure permits a motion to be filed at any time, and we permit West Deptford's January 20, 2016 motion for clarification accordingly. Rule 213(a)(3) permits all timely answers to such motions, and we accept Marcus Hook's February 4, 2016 answer.

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept West Deptford's February 19, 2016 answer because it provided information that assisted us in our decision-making process.

II. Substantive Matters

A. Marcus Hook's Rehearing Request

8. In its rehearing request, Marcus Hook raises several arguments in support of its claim that the December 2015 Order is arbitrary and capricious. These arguments fall into two general categories: (1) whether Section 37.7 or Section 219 of PJM's Tariff applies to West Deptford and (2) assuming Section 219 applies, whether it should be read to impose cost responsibility upon West Deptford. As discussed below, we deny Marcus Hook's request for rehearing.

1. Whether To Apply Section 37.7 or Section 219 of PJM's Tariff

9. Marcus Hook first argues that the Commission fails to reconcile its position in the December 2015 Order (that Section 219 of PJM's Tariff should apply to West Deptford's

interconnection agreement) with its prior positions in 2011² and 2012³ (that Section 37.7 should apply to West Deptford's interconnection agreement), beyond a "bald notation" referencing the D.C. Circuit's decision in *West Deptford*.⁴ Marcus Hook then argues that the December 2015 Order ignores Marcus Hook's argument that the Commission lacks a nationally applicable policy to allocate costs in accordance with the tariff on file at the time an interconnection service agreement is executed, rather than when an interconnection request is under review.⁵

10. We agree that the D.C. Circuit's *West Deptford* decision did not dictate a precise outcome on remand. Nevertheless, the D.C. Circuit required the Commission to provide "additional explanation *consistent with the decision of this court*."⁶ In that decision, the court expressed significant skepticism with the Commission's determination that Section 37.7 should apply and identified numerous shortcomings in the Commission's analysis.⁷ While Marcus Hook urges the Commission to affirm the outcome of the September 2011 and June 2012 Orders as a better outcome, the Commission must act in a manner that is consistent with *West Deptford*. On remand, the Commission must review its decision in light of the court's decision and therefore has discretion to

² *PJM Interconnection, L.L.C.*, 136 FERC ¶ 61,195 (2011) (September 2011 Order).

³ *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,184 (2012) (June 2012 Order).

⁴ Rehearing Request at 18; *see also id.* at 2-5, 9-10, 21-27.

⁵ *Id.* at 10, 24-27.

⁶ *West Deptford*, 766 F.3d at 25 (emphasis added).

⁷ *See id.* at 24 ("the Commission failed, at multiple steps, to provide any reasoned explanation of how its decision conformed to the Federal Power Act and prior precedent").

reconsider its prior rulings⁸ and may reverse them so long as a reasoned explanation is provided consistent with the court's remand determination.⁹

11. In the December 2015 Order, the Commission found that, based on the D.C. Circuit's determinations, West Deptford did not receive adequate notice of PJM's intent to phase-in implementation of Section 219 based on the interconnection queue of the project.¹⁰ Marcus Hook contends that this result is inconsistent with Commission precedent permitting regional customization of interconnection procedures, including the application of cost allocation rules in effect when a project enters the interconnection queue.¹¹ But as the D.C. Circuit emphasized, customers must have sufficient notice of the applicability of any interconnection procedure that seeks to apply a different rule than the tariff on file at the date the parties sign the final interconnection agreement.¹² Here, as found in the December 2015 Order, neither PJM's Tariff nor any other statements gave West Deptford sufficient notice that PJM intended that projects in earlier queues would be subject to section 37.7.

12. Nonetheless, Marcus Hook proffers an interpretation of *Marcus Hook III*,¹³ a case applicable to PJM and network upgrade n0028 (Network Upgrade 28), in support of its contention that the tariff in effect at the time the interconnection customer entered the

⁸ See *Se. Mich. Gas Co. v. FERC*, 133 F.3d 34, 38 (D.C. Cir. 1998) (referencing *Radio Television S.A. de C.V. v. FCC*, 130 F.3d 1078, 1082-83 (D.C. Cir. 1997)) (“once FERC reacquire[s] jurisdiction, it ha[s] the discretion to reconsider the whole of its original decision.”).

⁹ See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (“the requirement that an agency provide reasoned explanation for its action [will] ordinarily demand that it display awareness that it *is* changing position”).

¹⁰ December 2015 Order, 153 FERC ¶ 61,327 at PP 14-17.

¹¹ Rehearing Request at 24-27.

¹² *West Deptford*, 766 F.3d at 20 (“explicit tariff provisions publicly identifying different effective dates for customers . . . jibes with the Federal Power Act’s unqualified directive that ‘the time when the change or changes’ in an amended tariff will displace the schedules ‘then in force’ and ‘go into effect’ must be ‘plainly’ stated in an open, accessible, and convenient manner”) (quoting 16 U.S.C. § 824d(d)).

¹³ *FPL Energy Marcus Hook, L.P. v. PJM Interconnection, L.L.C.*, 118 FERC ¶ 61,169 (2007) (*Marcus Hook III*), *order on reh’g*, 123 FERC ¶ 61,289 (2008).

queue must be applied. But in *West Deptford*, the D.C. Circuit expressly rejected that interpretation, finding that, in *Marcus Hook III*, the Commission applied the tariff in PJM in effect at the time the interconnection service agreement was executed.¹⁴

13. The D.C. Circuit provided the Commission with considerably less latitude on remand than *Marcus Hook* suggests. The court rejected the Commission's explanations in the September 2011 and June 2012 Orders for why sufficient notice existed that the PJM Tariff in effect on the date a project enters the interconnection queue should apply, instead of the tariff in effect when the interconnection agreement is filed.¹⁵ The court in *West Deptford* stated that PJM's pleading in Docket No. EL08-36-001 was unclear as to what date Section 219 of PJM's Tariff became effective and that, as a result, that filing did not provide sufficient notice of whether Section 219 or Section 37.7 of PJM's Tariff would apply to projects, like *West Deptford*, in interconnection queues earlier than the U2-queue.¹⁶ It therefore found that *West Deptford* did not have notice that a different tariff would apply.

14. The December 2015 Order found that “*West Deptford* did not receive adequate notice that PJM intended to phase in the implementation of Section 219 based on the interconnection queue of the project, rather than applying the new tariff language immediately upon the tariff's stated effective date” and that “the tariff provision in effect

¹⁴ *West Deptford*, 766 F.3d at 22 (“*Marcus Hook III* applied not the tariff in effect at the time the interconnection customer entered by the queue, but *the PJM tariff in effect at the time the Interconnection Service Agreement was executed.*”) (internal quotation omitted; emphasis in original).

¹⁵ *See West Deptford*, 766 F.3d at 20 (finding an apparent “unbroken Commission practice of holding that interconnection agreements filed after the designated effective date of an amended tariff are governed by the amended tariff, unless the amended tariff has a grandfathering provision”).

¹⁶ *Compare id.* at 18-19 (discussing PJM's transmittal letter in Docket No. EL08-31-001), 23 (discussing PJM's response to AMP-Ohio in Docket No. EL08-31-001) *with* December 2015 Order, 153 FERC ¶ 61,327 at P 16 (“We now find that these statements are not sufficiently clear to provide the necessary notice with respect to application to projects in earlier queues. None of these statements references the tariff change in question here, that is, the revision to the time period under which later queued projects would be responsible for costs of prior projects; rather, they are reasonably read to refer to other parts of the proposal.”).

at the time that the interconnection agreement was filed should have been applied to PJM's assessment of costs to West Deptford."¹⁷

15. Marcus Hook suggests that West Deptford acknowledged that the prior provision in Section 37.7 would apply during the facilities study process when it signed the Facilities Study agreement and that therefore West Deptford had sufficient notice that Section 37.7 would apply.¹⁸ The D.C. Circuit rejected this argument, and we need not revisit it here.¹⁹

16. Marcus Hook also argues that the Commission erred in its interpretation of the PJM Answer to AMP Ohio.²⁰ In the Remand Order, the Commission discussed this answer and stated: "None of these statements references the tariff change in question here, that is, the revision to the time period under which later queued projects would be responsible for costs of prior projects; rather, they are reasonably read to refer to other parts of the proposal."²¹

17. Marcus Hook correctly points out that this statement was in error as PJM later in the document provided the same clarification for Section 219 (the provision at issue here).²² However, this factual error does not change our conclusion that the PJM Answer failed to provide sufficient notice. The Commission relied on this same PJM Answer in

¹⁷ December 2015 Order, 153 FERC ¶ 61,327 at P 14.

¹⁸ See Rehearing Request at 22 n.98 ("As Marcus Hook explained in its Answer . . . , the August 2008 Facilities Study Agreement also established that costs would be allocated according to Section 37. West Deptford signed that agreement on August 21, 2008, belying any suggestion that it did not have adequate notice that Section 37.7, not Section 219, would apply to it.").

¹⁹ See *West Deptford*, 766 F.3d at 23-24.

²⁰ Rehearing Request at 28-30.

²¹ December 2015 Order, 153 FERC ¶ 61,327 at P 16.

²² "PJM proposes a modification to the PJM Tariff section 219(a) which sets forth the procedure for the allocation of costs across queues, in the May 30 filing. *These modifications are intended to be effective as of August 1, 2008, and will be initially applied to the U2-Queue.*" PJM, Answer, Docket No. EL08-36-001, at 4 (filed July 7, 2008), <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=11737699> (emphasis added).

the June 2012 Order,²³ but the D.C. Circuit concluded that the document was ambiguous and that PJM's "one-way assertions" failed to provide sufficient notice when they were not reflected in PJM's Tariff.²⁴ Marcus Hook does not provide additional justification on rehearing for finding that PJM's statement was not confusing and that West Deptford had sufficient notice that section of PJM's Tariff would not apply to it.

2. How To Interpret Section 219 of PJM's Tariff

18. Marcus Hook argues that the December 2015 Order misrepresents the parties as agreeing that, under Section 219 of PJM's Tariff, West Deptford would bear no cost responsibility for Network Upgrade 28; Marcus Hook argues that it and PJM never agreed to this view.²⁵ Marcus Hook also argues that the December 2015 Order suggests, without deciding, that Marcus Hook's argument as to the proper interpretation of Section 219 is time-barred, even though this issue has not yet been disputed in this proceeding, the D.C. Circuit did not decide it, and this argument is now at issue in the instant remand proceeding.²⁶

19. The December 2015 Order recounted the Commission's prior finding that "[t]he parties generally agree that under the [new] version of section 219, West Deptford would be exempt from paying for Network Upgrade 28" because West Deptford falls outside the five-year time period established by Section 219.²⁷ PJM and Marcus Hook did not object to this finding below. In any event, Marcus Hook's contention that the December 2015 Order misstates the parties' position is moot in light of our discussion below regarding the proper interpretation of Section 219 of PJM's Tariff.²⁸

²³ See June 2012 Order, 139 FERC ¶ 61,184 at P 31.

²⁴ *West Deptford*, 766 F.3d at 24.

²⁵ Rehearing Request at 7, 10, 31-32 & n.132.

²⁶ *Id.* at 7-8, 10, 35-37.

²⁷ December 2015 Order, 153 FERC ¶ 61,327 at P 19 n.27 (quoting September 2011 Order, 136 FERC ¶ 61,195 at P 34) (internal quotations omitted).

²⁸ See *infra* PP 22-23.

20. Section 219 reads, in relevant part:

Cost responsibility under this Section 219 may be assigned with respect to any facility or upgrade:

(a) the completed cost of which was \$5,000,000 or more, for a period of time not to exceed five years from the execution date of the Interconnection Service Agreement for the project that initially necessitated the requirement for the Local Upgrade or Network Upgrade. . . .²⁹

21. Marcus Hook contends that the dispositive question in this proceeding is which event closes the five-year cost allocation window under Section 219 of PJM's Tariff. Marcus Hook asserts that the Commission erred by assuming, without explanation, that the date an interconnection customer's interconnection service agreement is executed is the event that closes the cost eligibility window.³⁰ In addition, Marcus Hook contends that this interpretation is plainly erroneous because Section 219 is silent about the operative end date for determining cost eligibility.³¹ Marcus Hook offers several policy rationales for using the date an interconnection customer enters the queue, rather than the date an interconnection agreement is executed or filed, as the date to trigger an interconnection customer's cost responsibility for a network upgrade initially caused by another project under Section 219 of PJM's Tariff. Specifically, Marcus Hook argues that using the date an interconnection agreement is filed or executed would provide no cost predictability during the application process, would be inconsistent with Section 37.7 of PJM's Tariff, and would encourage interconnection customers to stretch the application process to avoid cost allocation for projects they necessitated, thereby "free-riding" off earlier projects.³²

22. We reaffirm the December 2015 Order's finding that the five-year window in Section 219 is measured from the date on which Marcus Hook signed its Interconnection Agreement to the date on which West Deptford signed its interconnection agreement and, therefore, that the Marcus Hook project falls outside the five-year window for cost

²⁹ PJM Interconnection, L.L.C./Intra-PJM Tariffs, 219, OATT 219 Inter-queue Allocation of Costs of Transmission Upgrades (0.0.0).

³⁰ Rehearing Request at 7-10; 19-20, 30-37 & n.127.

³¹ *Id.* at 31.

³² *Id.* at 32-34.

allocation. While Section 219 is ambiguous in that it does not explicitly identify the event that closes the five-year window, it does define the opening of that time period by reference to the date that the earlier project's interconnection agreement was filed or executed. Nowhere does Section 219 specify, as Marcus Hook argues, that the five-year end date is measured by the date a later project enters the interconnection queue. Given the tariff's failure to specify any other event for defining the five-year end date for allocating costs of earlier projects, we find the most reasonable interpretation is to use the date of signing interconnection agreements for both projects to serve as the bookends to measure the five-year window. This interpretation is consistent with the purpose of Section 219, i.e., to assign cost responsibility, since cost responsibility is assigned upon execution of the interconnection agreement. It also is consistent with the overall intent of PJM's interconnection revisions to clarify the interconnection procedures and to shorten the window of cost responsibility.³³ This interpretation further comports with the D.C. Circuit's determination that the tariff in effect on the date an interconnection agreement is executed or filed defines the tariff provisions applicable to West Deptford's interconnection.³⁴ The December 2015 Order thus reasonably concluded that "Cost responsibility under this Section 219 may be assigned with respect to any facility or upgrade" when West Deptford's interconnection agreement was filed or executed.

23. Marcus Hook alleges this interpretation could encourage interconnection customers to evade cost responsibility simply by delaying the date on which they sign an interconnection agreement. However, this appears to be the most reasonable interpretation of PJM's tariff revision in light of Marcus Hook's failure to elicit extrinsic or other evidence to suggest a contrary interpretation. Moreover, the concern with customers deliberately delaying signing an interconnection agreement to obtain a cost

³³ See PJM Proposed Tariff Filing Transmittal Letter, Docket No. EL08-36-001, at 8 (May 30, 2008) ("PJM proposes PJM Tariff revisions to simplify the inter-queue allocation of costs to apply only to Network Upgrades or Local Upgrades with a completed cost at or greater than \$5 million and only for a period of five years. PJM will count the five years starting from the execution date of the Interconnection Service Agreement, for the project, that initiates the need for the upgrade. This change will preserve inter-queue cost allocation for more expensive upgrades, which is warranted. In addition, the proposal will simplify the re-study and record management requirements for PJM. Finally, this simplified approach will provide stakeholders with one defined timeframe (five years) for when they may expect cost allocations to be adjusted, for those large projects. This proposal will improve the predictability of the cost allocation process, and allows stakeholders a better opportunity to consider pending costs.").

³⁴ See *supra* PP 12-13.

advantage does not appear to raise a significant problem. First, PJM does not make major changes to its interconnection procedures frequently. Second, PJM's Tariff imposes a time period in which customers must sign interconnection agreements. Section 213.4(a) of PJM's Tariff imposes strict timelines for interconnection customers either to execute and return a service agreement to the transmission provider "or, alternatively, request (i) dispute resolution under Section 12 of the Tariff or, if concerning the Regional Transmission Expansion Plan, consistent with Schedule 5 of the Operating Agreement, or (ii) that the Upgrade Construction Service Agreement be filed unexecuted with the Commission."³⁵ This provision reasonably ensures interconnection customers will not drag out the interconnection process.³⁶ Based on the foregoing, we affirm the December 2015 Order's interpretation of Section 219 of PJM's Tariff and reject Marcus Hook's request for rehearing on this issue.

B. PJM's Compliance Filing in Docket No. ER11-4073-003

24. PJM's compliance filing in Docket No. ER11-4073-003 revises the interconnection service agreement among PJM, West Deptford, and Atlantic City Electric Company, designated as Service Agreement No. 2962. PJM originally submitted Service Agreement No. 2962 on an unexecuted basis in Docket No. ER11-4073-000, and submitted Service Agreement No. 2962 on an executed basis in Docket No. ER14-2179-000. PJM requests effective dates of June 17, 2011 for Original Service Agreement No. 2962, and May 14, 2014, for First Revised Service Agreement No. 2962. PJM also requests waiver of the Commission's notice requirements on the grounds that these revisions are consistent with the D.C. Circuit's opinion in *West Deptford* and comply with the December 2015 Order.

25. PJM asserts that two provisions of Original Service Agreement No. 2962 must be changed to comply with the December 2015 Order: (1) Schedule F, which references the PJM Tariff in effect on the day West Deptford entered the interconnection queue (rather than the day West Deptford entered into Original Service Agreement No. 2962) and allocated to West Deptford the costs associated with Network Upgrade 28, and (2) Specifications section 4.2, which contains the \$10 million network upgrades charge and a reference to Schedule F. PJM's compliance filing addresses these matters by

³⁵ PJM Interconnection, L.L.C./Intra-PJM Tariffs, 213.4(a), OATT 219 Retaining Priority and Security (1.0.0).

³⁶ Indeed, no such protection exists for Marcus Hook's proposed end date – the date on which a customer enters the interconnection queue. Interconnection customers equally could delay their request for interconnection service if they believed that doing so would place them outside the five-year window.

replacing the language in Schedule F of Original Service Agreement No. 2962 in its entirety with “None” and removing from Specifications section 4.2 of Original Service Agreement No. 2962 the \$10 million network upgrades charge and the reference to Schedule F. PJM requests that these revisions be effective as of June 17, 2011.

26. PJM represents, however, that Original Service Agreement No. 2962 has been superseded by First Revised Service Agreement No. 2962, which PJM states Commission staff accepted in Docket No. ER14-2179-000.³⁷ PJM thus proposes similar revisions to First Revised Service Agreement No. 2962 by replacing all language in Schedule F with “None.” PJM requests that this revision be effective as of May 14, 2014.

27. We find that PJM’s filing in Docket No. ER11-4073-003 complies with the Commission’s directive in the December 2015 Order because PJM’s filing now refers to the version of the PJM Tariff on file as of the date that the original agreement was filed. Accordingly, we accept PJM’s compliance filing as filed, so that Original Service Agreement No. 2962 is effective June 17, 2011, and First Revised Service Agreement No. 2962 is effective May 14, 2014, as requested.

C. West Deptford’s Motion for Clarification

28. West Deptford requests that the Commission clarify that the refunds PJM must pay to West Deptford also include interest.³⁸ West Deptford argues that Commission and judicial precedent allow for interest to be paid when the Commission has committed legal error to put a party in the position it would have been in had the Commission not made the error.³⁹

29. Marcus Hook opposes this request, noting that West Deptford receives “the better deal” in this proceeding because, under the December 2015 Order, West Deptford need not pay for network upgrades that are required only due to West Deptford’s interconnection. Marcus Hook therefore requests that the Commission deny West

³⁷ See *PJM Interconnection, L.L.C.*, Docket No. ER14-2179-000 (Aug. 1, 2014) (delegated letter order).

³⁸ Request for Clarification at 1, 5.

³⁹ *Id.* at 6-8.

Deptford's request that PJM pay interest with its refund to West Deptford, given the Commission's equitable discretion to order refunds.⁴⁰

30. Should the Commission order PJM to pay refunds with interest to West Deptford, Marcus Hook requests that the Commission specify that PJM not bill Marcus Hook for such interest. Marcus Hook explains that there is no provision in PJM's Tariff or Marcus Hook's Interconnection Service Agreement that would permit PJM to allocate costs only to Marcus Hook for interest paid to West Deptford as part of reimbursement for Network Upgrade 28. Marcus Hook states that it received no interest on initial reimbursements for its upgrade costs in 2011 when West Deptford was initially ordered to pay PJM and PJM subsequently paid Marcus Hook for reimbursement of payments Marcus Hook made for Network Upgrade 28 in 2004.⁴¹

31. The D.C. Circuit has held that "when the Commission commits legal error, the proper remedy is one that puts the parties in the position they would have been in had the error not been made."⁴²

It is 'the general rule' of the Commission that 'a customer entitled to a refund should also be awarded interest in order to make it whole.' The purpose of ordering interest paid is so that the recipient can be made whole for the time value of money that it otherwise would have available for its use.⁴³

⁴⁰ Marcus Hook February 4, 2016 Answer at 4-7 (citing *inter alia Panhandle E. Pipe Line Co.*, 69 FERC ¶ 61,048 (1994) (*Panhandle*), *reh'g denied*, 70 FERC ¶ 61,167 (*Panhandle II*), *reh'g denied*, 71 FERC ¶ 61,039 (1995)).

⁴¹ *Id.* at 7-8.

⁴² *Pub. Utils. Comm'n of Cal. v. FERC*, 988 F.2d 154, 168 (D.C. Cir. 1993) (citations omitted).

⁴³ *H.Q. Energy Servs. (U.S.), Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 113 FERC ¶ 61,184, at P 40 (2005), *order on clarification*, 114 FERC ¶ 61,059 (2006) (footnotes omitted) (citing *Panhandle E. Pipe Line Co. v. FERC*, 95 F.3d 62, 72 (D.C. Cir. 1996); *New Charleston Power, L.P.*, 83 FERC ¶ 61,281, at 62,168 (1998)); *cf. Wash. Urban League v. FERC*, 886 F.2d 1381, 1386 (3d Cir. 1989) (noting that, under the Commission's natural gas pipeline regulations, "[s]ince the point of the refunds in the first instance is making the recipients whole, and since that does not occur if the amounts are not adjusted for inflation, we think the Commission did not err in concluding that the interest funds should be considered an aspect of the refunds themselves.")).

The Commission has stated that “[w]hile full refund under an invalid order is a sound basic rule, it may be offset, at least in part, by the lack of a mechanism to restore the full status quo ante”⁴⁴

32. We grant West Deptford’s request for clarification that PJM should include interest in its refund to West Deptford. It is undisputed that West Deptford timely paid PJM for Network Upgrade 28 and has been unable to use that money during the instant litigation and remand proceeding. Restoring the money West Deptford paid, along with interest calculated pursuant to 18 C.F.R. § 35.19a, is straightforward and will restore West Deptford to its prior position before the Commission’s legal error, consistent with precedent.

33. We reject Marcus Hook’s claim that this results in a double windfall to West Deptford—because the Commission erred and now finds that West Deptford is not responsible for Network Upgrade 28, West Deptford should not be required to pay for that error by losing the time value of money. To the extent that Marcus Hook has had use of the money paid by West Deptford, Marcus Hook should also be responsible for paying back that money to PJM and, ultimately, to West Deptford, with interest to reflect the time value of money.

The Commission orders:

(A) Marcus Hook’s request for rehearing in Docket No. ER11-4073-004 is hereby denied, as discussed in the body of this order.

(B) PJM’s compliance filing in Docket No. ER11-4073-003 is hereby accepted; original Service Agreement No. 2962 is hereby effective June 17, 2011, and First Revised Service Agreement No. 2962 is effective May 14, 2014.

⁴⁴ *Panhandle*, 69 FERC ¶ 61,048 at 61,189 (quoting *Consumer Fed’n of America v. FPC*, 515 F.2d 347, 359 (D.C. Cir. 1975)).

(C) West Deptford's request for clarification in Docket No. ER11-4073-004 is hereby granted, as discussed in the body of this order.

By the Commission

(S E A L).

Kimberly D. Bose,
Secretary.