

157 FERC ¶ 61,190
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket Nos. ER14-1485-007
ER14-1485-008
ER14-1485-009

ORDER DENYING REHEARING, DENYING CLARIFICATION, AND REJECTING
A COMPLIANCE FILING

(Issued December 9, 2016)

1. On April 22, 2016, the Commission issued an order denying rehearing of the Commission’s acceptance of cost responsibility assignments for the Sewaren Project.¹ Noting that the Commission had accepted a revision to the PJM Open Access Transmission Tariff (Tariff or OATT) to allocate 100 percent of the costs of projects that are included in the PJM Interconnection, L.L.C. (PJM) Regional Transmission Expansion Plan (RTEP) solely to address an individual transmission owner Form No. 715 local planning criteria to the zones of the individual transmission owners whose Form No. 715 local planning criteria underlies the project, the Commission also directed PJM to revise the cost responsibility assignments for the Sewaren Project to reflect the Tariff on file.² PJM made a compliance filing (Compliance Filing), and sought clarification of the

¹ *Consolidated Edison Company of New York, Inc. v. PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,088 (2016) (April 2016 Order). In addition, the Commission denied rehearing of a complaint by Consolidated Edison Company of New York, Inc. (Con Edison) and a separate cost allocation report proceeding (Docket Nos. EL15-18 and ER14-972, respectively).

² The PJM Tariff defines Required Transmission Enhancements as “[e]nhancements and expansions of the Transmission System that (1) a Regional Transmission Expansion Plan developed pursuant to Schedule 6 of the Operating Agreement...” PJM, Intra-PJM Tariffs, OATT, § 1.38C (R - S, OATT Definitions – R - S, 6.0.0).

April 2016 Order. Public Service Electric and Gas Company (PSEG) filed a request for rehearing and protested the Compliance Filing.³

2. In this order, we deny rehearing, deny clarification and reject the Compliance Filing, as discussed in the body of this order.

I. Background

3. PJM, pursuant to section 205 of the Federal Power Act (FPA),⁴ files cost responsibility assignments for transmission upgrades that the PJM Board of Managers (PJM Board) approves as part of PJM's RTEP in accordance with Schedule 12 of the PJM Tariff and Schedule 6 of the Amended and Restated Operating Agreement of PJM (Operating Agreement).⁵ Schedule 6 of the Operating Agreement sets forth the process by which transmission expansions and enhancements (Required Transmission Enhancements) are identified and developed. The RTEP provides for the development of expansions and upgrades to PJM's transmission system in order to comply with reliability criteria, including North American Electric Reliability Corporation (NERC) Reliability Standards, Regional Entity reliability principles and standards, and local transmission owner planning criteria, as well as to maintain and enhance the economic and operational efficiency of PJM's wholesale electricity markets. Types of Reliability Projects⁶ selected

³ PSEG and PJM filed their requests in Docket Nos. ER14-972 and EL15-18. Docket Nos. ER14-972 and EL15-18 will be addressed separately.

⁴ 16 U.S.C. § 824e (2012).

⁵ In accordance with the Tariff and the Operating Agreement, PJM is required to make a filing with the Commission under section 205 of the FPA that includes, among other things, the: (1) expansion or enhancement projects the PJM Board approved for inclusion in the RTEP; (2) estimated costs of the projects; (3) entities responsible for paying the costs of the projects; and (4) the entity PJM has designated to develop the projects. *See* Operating Agreement, Schedule 6, § 1.6 (b) and PJM Tariff, Schedule 12, § (b)(viii).

⁶ Reliability Projects are defined as Required Transmission Enhancements included in the Regional Transmission Expansion Plan to address reliability violations or operational adequacy and performance issues. PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(i)(A)(2)(a) (Regional Facilities and Necessary Lower Voltage Facilities) (5.0.0).

in the RTEP for purposes of cost allocation include Regional Facilities,⁷ Necessary Lower Voltage Facilities,⁸ and Lower Voltage Facilities.⁹

4. Schedule 12 of the Tariff provides for the assignment of cost responsibility for Required Transmission Enhancements. In its orders addressing the PJM Transmission Owners' proposed Tariff revisions to comply with the regional cost allocation requirements of Order No. 1000,¹⁰ the Commission accepted a hybrid regional cost allocation method for Regional Facilities and Necessary Lower Voltage Facilities selected in the RTEP for purposes of cost allocation.¹¹ As approved, one half of the costs of such facilities are allocated on a load-ratio share basis and one half of the costs are allocated based on a solution-based distribution factor analysis (DFAX).¹² All of the

⁷ Regional Facilities are defined as Required Transmission Enhancements included in the Regional Transmission Expansion Plan that are transmission facilities that (a) are AC facilities that operate at or above 500 kV; (b) are double-circuit AC facilities that operate at or above 345 kV; (c) are AC or DC shunt reactive resources connected to a facility from (a) or (b); or (d) are DC facilities that meet the necessary criteria as described in section (b)(i)(D). PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(i) (Regional Facilities and Necessary Lower Voltage Facilities) (6.1.0).

⁸ Necessary Lower Voltage Facilities are defined as Required Transmission Enhancements included in the Regional Transmission Expansion Plan that are lower voltage facilities that must be constructed or reinforced to support new Regional Facilities. PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(i).

⁹ Lower Voltage Facilities are defined as Required Transmission Enhancements that (a) are not Regional Facilities and (b) are not "Necessary Lower Voltage Facilities." PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(ii) (Lower Voltage Facilities) (6.1.0).

¹⁰ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011) (Order No. 1000), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

¹¹ The Commission accepted the regional cost allocation method as part of PJM's Order No. 1000 compliance filings. *See, PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 (2013), *order on reh'g and compliance*, 147 FERC ¶ 61,128 (2014), *order on reh'g and compliance*, 150 FERC ¶ 61,038, and *order on reh'g and compliance*, 151 FERC ¶ 61,250 (2015).

¹² Schedule 12, section (b)(1)(A).

costs of Lower Voltage Facilities are allocated using the solution-based DFAX method. These assignments of cost responsibility are included in Schedule 12-Appendix A of the Tariff.¹³ The Commission subsequently accepted a PJM Transmission Owner Tariff revision to allocate 100 percent of the costs for Required Transmission Enhancements that are included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria to the zone of the individual transmission owner whose Form No. 715 local planning criteria underlie the project.¹⁴

II. March 2014 Filing

5. On March 13, 2014, as amended on July 7, 2014, PJM filed revisions to Schedule 12-Appendix A of the PJM Tariff (March 2014 Filing). The Tariff revisions incorporate cost responsibility assignments for 19 baseline upgrades included in the recent update to the RTEP that the PJM Board approved on February 12, 2014. PJM also amended the cost responsibility assignments for projects b2276, b2276.1, and b2276.2,¹⁵ three baseline upgrades previously approved by the PJM Board and accepted by the Commission.¹⁶ PJM stated that the Sewaren Project cost responsibility assignments were being amended as there was an error in the original modeling used in calculation of the DFAX analysis (i.e., the model used did not include the new bus number for the phase angle regulators located at the Farragut station in Brooklyn, New York).

¹³ Cost responsibility assignments for RTEP upgrades approved prior to the Commission's acceptance of the PJM Transmission Owners' Order No. 1000-compliant cost allocation method are included in Schedule 12-Appendix of the Tariff.

¹⁴ See *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,096 (2016) (February 2016 Tariff Revision Order).

¹⁵ The RTEP projects listed are referred to as the Sewaren Project (i.e., b2276, b2276.1, and b2276.2). These Required Transmission Enhancements are described in Schedule 12, Appendix A of the PJM Tariff.

¹⁶ These cost responsibility assignments were originally filed in Docket No. ER-274-000. See *PJM Interconnection, L.L.C.*, Docket No. ER14-274-000 (Jan. 15, 2014) (delegated letter order).

6. On September 11, 2015, the Commission accepted the revised cost responsibility assignments for the Sewaren Project, to become effective on June 11, 2014.¹⁷ The Commission stated that the only revision regarding the Sewaren Project is to correct an error in the modeling used in the calculation of the DFAX analysis. The Commission found that PJM had shown that the modeling correction is consistent with its Tariff. Con Edison and Linden VFT, LLC, (Linden) have requested rehearing.

7. In the April 2016 Order, the Commission found that Con Edison and Linden presented no persuasive arguments and denied the requests for rehearing of the Sewaren Order. The Commission further found that the Sewaren Project was included in the RTEP solely to address PSEG's Form No. 715 local planning criteria.¹⁸ Because the Commission accepted revisions to Schedule 12 of the PJM Tariff that assign cost responsibility for projects that are included in the RTEP solely to address transmission owner Form No. 715 local planning criteria to the zone of the individual transmission owner whose Form No. 715 local planning criteria underlies the project,¹⁹ the Commission directed PJM to make a compliance filing to revise the Tariff sheets to reflect the cost responsibility assignments for the Sewaren Project, consistent with the current Tariff on file.²⁰

¹⁷ See *PJM Interconnection, L.L.C.*, 152 FERC ¶ 61,187 (Sewaren Order) (accepting modeling revisions to the Sewaren Project cost allocation).

¹⁸ The Commission noted that the criteria test for the Sewaren Project is listed as PSEG criteria. April 2016 Order, 155 FERC ¶ 61,088 n.74. See Docket No. ER14-1485-000, March 13, 2014 PJM Filing, Attachment. A.

¹⁹ *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,096. Con Edison filed a motion to lodge, in this proceeding, the Commission order accepting these Tariff provisions. PSEG filed comments opposing Con Edison's motion. Because we accepted the Tariff revision to assign 100 percent of the cost responsibility of projects that are included in the RTEP solely to address transmission owner Form No. 715 local planning criteria to the zone of the individual transmission owner, Con Edison's request for rehearing of the June 18, 2015 Order denying the motion to lodge the proposed Tariff revisions is moot.

²⁰ See *West Deptford Energy, LLC v. FERC*, 766 F.3d 10 (D.C. Cir. 2014) (applying the rate on file, absent some type of grandfathering provision).

III. Pleadings

A. PSEG Rehearing Request

8. In seeking rehearing, PSEG argues that the April 2016 Order deprives it of a due process opportunity to be heard on a material issue of fact.²¹ Specifically, PSEG contends that the Sewaren Project addressed both aging infrastructure and short circuit issues, and that the pleadings in this proceeding provided the Commission with sufficient information to support its position.²² PSEG argues that while PJM identified PSEG criteria as the criteria test of the Sewaren Project, it would have protested the PSEG criteria designation had it known the significance of PJM's identification; specifically, the acceptance of Tariff revisions to Schedule 12 of the PJM Tariff in the February 2016 Tariff Revision Order that assigns 100 percent cost responsibility of projects that are included in the RTEP solely to address transmission owner Form No. 715 local planning criteria to the zone of the individual transmission owner whose Form No. 715 local planning criteria underlies the project.

9. PSEG further contends that the April 2016 Order engages in retroactive ratemaking by changing the cost allocation method for the Sewaren Project to undo the previously effective cost allocation. PSEG argues that changes to cost allocation should only apply prospectively because parties to whom the rate design changes apply cannot alter past decisions made in reliance on a rate design then in effect.²³

10. PSEG also contends that applying the new cost allocations to previously effective cost allocations for individual transmission owner Form No. 715 local planning criteria driven projects is not consistent with the Order No. 1000 requirement for the establishment of *ex ante* cost allocation rules to be applied to all transmission planning project categories. PSEG contends that the purpose of this requirement is to ensure that project developers and other stakeholders (e.g., state commissions, market participants, end-use customers) are well aware of and understand the cost impacts of projects being proposed in the regional transmission planning process, and in turn increase the

²¹ PSEG Rehearing Request at 6.

²² *Id.* at 7 (referencing PJM April 14, 2016 Answer).

²³ *Id.* at 8-9 (citing *Occidental Chemical Corporation v. PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,378, at P 10 (2005); *Consumers Energy Company*, 89 FERC ¶ 61,138, at 61,138 (1999); and *Union Electric Company*, 58 FERC ¶ 61,247 (1992) *Great Lakes Gas Transmission, L.P.*, 57 FERC ¶ 61,140, at 61,443 (1991); *Tennessee Gas Pipeline Company*, 46 FERC ¶ 61,113, at 61,443 (1989)).

likelihood that transmission facilities selected in regional transmission plans for purposes of cost allocation are actually constructed, rather than later encountering cost allocation disputes that prevent their construction. PSEG argues that altering a project's effective cost allocation based on a subsequent revised method does not aid that objective, and that it will undermine the regional process, given the lack of confidence stakeholders will have in the resulting cost allocations discussed during the RTEP process.²⁴

11. Finally, PSEG argues that it would be consistent with precedent to apply the Tariff revisions to projects that are included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria that come after the effective date of the Tariff.²⁵

B. PJM Request for Clarification

12. PJM sought clarification of the April 2016 Order. Linden filed an answer to the request for clarification, and PSEG and Linden filed responsive pleadings. PSEG filed a request for rehearing of the April 2016 Order and protested the Compliance Filing. Con Edison also protested the Compliance Filing.

13. PJM seeks clarification of the effective date for revisions to the Tariff sheets for the Sewaren Project. Additionally, PJM states that compliance directives relative to the Tariff sheets to revise the cost responsibility assignments to be consistent with Form No. 715 were targeted to specific RTEP projects (i.e., the Sewaren project), and seeks clarification that it would update the cost allocation for such projects at the time of its annual RTEP updates.

14. Linden answers that the Commission directed PJM to revise the Tariff sheets so that the allocation of costs of the Sewaren Project would be consistent with Tariff on file, and did not require updating of the cost allocation through an annual update. Linden contends that no annual update is necessary. PSEG answers that the Tariff on file includes an annual rate adjustment mechanism, as this is the only approach contemplated or permitted by the Tariff. Linden argues that PSEG is incorrect in stating that the annual adjustment mechanism is the only approach contemplated or permitted by the Tariff, and

²⁴ *Id.* at 9 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014)).

²⁵ *Id.* at 10 (citing *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,097 (2016)).

that PSEG is essentially asking the Commission to invalidate the effective date of the Tariff to an annual update filing process.

C. Compliance Filing

15. In protesting the Compliance Filing, PSEG contends that PJM unnecessarily explains that 100 percent of the cost of the Sewaren Project is allocated to PSEG “because the sole purpose of the upgrade is to address Transmission Owner planning criteria.”²⁶ As previously noted, PSEG contends that the Sewaren Project addresses not only a PSEG criteria, but short circuit problems.

16. Con Edison protests the Compliance Filing because PJM did not propose an effective date, but rather requested clarification by the Commission. Con Edison contends that the Tariff revisions became effective on May 25, 2015.

IV. Determination

A. PSEG Request for Rehearing Relating to Criteria Test

17. We deny PSEG’s request for rehearing. PSEG contends that the Sewaren Project addresses both aging infrastructure and short circuit issues, and that the pleadings in this proceeding provided the Commission with sufficient information to support its position. Specifically, seeking to retain the previously effective cost allocation, PSEG argues that the Sewaren Project also addressed short circuit issues on the 138 kV system.²⁷ In support, PSEG points to the PJM April 14, 2014 Answer that states that “[t]he solution for the short circuit issues would have required new 138 kV circuit breakers; however, in order to resolve the storm hardening and aging infrastructure issues, that solution required replacing the Sewaren 138 kV system with a 230 kV project, which eliminated the need for the 138 kV circuit breaker replacement project but resolved the underlying short circuit criteria violations.”²⁸ PJM’s answer further states that “the driver for the ultimate Sewaren Project was PSEG’s FERC Form No. 715 aging infrastructure and storm hardening criteria, which obviated the need for and replaced a replaced 138 kV

²⁶ PJM Compliance Filing, Att. A (Cost Responsibility Summary Sheet).

²⁷ PSEG Rehearing Request at 6 (citing PJM Staff Whitepaper, October 2013 at 7).

²⁸ PJM April 14, 2016 Answer at 2 (footnote omitted).

short circuit project,”²⁹ and the Tariff sheets identify the criteria test for the Sewaren Project as “PSEG Criteria.”

18. Schedule 12 provides that cost responsibility for any Required Transmission Enhancements that are included in the Regional Transmission Expansion Plan, but which would not have otherwise been so included but for the fact that they address individual Transmission Owner FERC filed planning criteria as filed in FERC Form No. 715 are allocated to the zone of the individual transmission owner whose Form No. 715 local planning criteria underlie the project.³⁰ However, as indicated in the PJM statements identified by PSEG, the reason for developing the Sewaren Project was PSEG’s Form No. 715 local planning criteria related to storm hardening and aging infrastructure. PSEG’s reference to the PJM Staff Whitepaper, while identifying short circuit concerns on the 138 kV system, does not contradict PJM’s statements regarding the criteria test for the Sewaren Project. In this case, PJM found the single driver for the Sewaren Project was PSEG’s Form No. 715 local planning criteria, aging infrastructure and storm hardening.³¹ Based upon PJM’s analysis of the Sewaren Project, we affirm our finding that the Sewaren Project was included in the RTEP solely to address PSEG’s Form No. 715 local planning criteria.

B. Request for Rehearing and Clarification Relating to the Effective Tariff Applicable to the Sewaren Project

19. PSEG contends that applying the new cost allocation method to previously effective cost responsibility assignments constitutes retroactive ratemaking as applied to a project that was planned prior to the effective date of the Tariff change, May 25, 2015. In denying rehearing of the February 2016 Tariff Revision Order, the Commission previously responded to these arguments, finding that notwithstanding the date on which a project may have been planned or approved by PJM, Schedule 12 (b)(xv) is not retroactive, as it applies prospectively to all costs allocated after its effective date.³² In that order, the Commission also addressed PSEG’s argument that applying the new cost

²⁹ *Id.* at 2-3.

³⁰ *See* February 2016 Tariff Revision Order.

³¹ PJM has identified multiple drivers when it finds the project is not included in the RTEP solely to address local transmission owner planning criteria as filed in FERC Form No. 715. *See, e.g.*, Linden June 27, 2016 Compliance Filing Answer at 5, (noting that PJM lists additional criteria test for project b2006.1.1).

³² *PJM Interconnection, LLC*, 157 FERC ¶ 61,192 (2016).

allocations to previously effective cost allocations for individual transmission owner Form No. 715 local planning criteria projects is not consistent with the Order No. 1000 requirement for the establishment of *ex ante* cost allocation rules, and for the same reasons, we deny the rehearing request in this docket.

20. PJM seeks clarification that it would update the cost allocation for other projects included in RTEP as a result of individual transmission owner Form No. 715 local planning criteria at the same time as it makes its annual RTEP updates. We deny the request for clarification and require PJM to update the cost allocation for these projects as of May 25, 2015 in accordance with its Tariff. In addressing PJM's earlier request for clarification of the February 2016 Tariff Revision Order,³³ the Commission stated that PJM must apply the Tariff on file to all charges imposed from the date the Tariff provision became effective, which was May 25, 2015. As the Commission found, the Tariff provision itself provides that the cost allocations for prospective costs is not governed by the date of the annual cost update and will apply "notwithstanding" those provisions.³⁴

C. Compliance Filing

21. In the Compliance Filing, PJM submits the revised Tariff sheets for the Sewaren Project, reassigning 100 percent of the cost responsibility for the project to the PSEG zone. PJM requests an effective date as determined by the Commission upon acceptance of this Compliance Filing. As discussed above, the effective date of the Tariff revisions is May 25, 2015. The Tariff records filed in the Compliance Filing do not reflect the correct effective date applicable to cost allocations for the Sewaren Project. In providing clarification of the February 2016 Tariff Revision Order, we have required PJM to make a compliance filing to revise its Tariff records to reflect the May 25, 2015 effective date for projects to address an individual transmission owner Form No. 715 local planning

³³ *PJM Interconnection, L.L.C.*, 157 FERC ¶ 61,192 (2016).

³⁴ Schedule 12(b)(xv) provides: "*notwithstanding Sections (b)(i), (b)(ii), (b)(iv) and (b)(v) [provisions requiring annual updates]*, cost responsibility for any Required Transmission Enhancements that are included in the Regional Transmission Expansion Plan, but which would not have otherwise been so included but for the fact that they address individual Transmission Owner FERC filed planning criteria as filed in FERC Form No. 715 and posted on the PJM website, shall be assigned to the Responsible Customers in the Zone of the Transmission Owner that filed such planning criteria." (emphasis added). Schedule 12, OATT Schedule 12 (7.0.0), <http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=1731&sid=176905>.

criteria, including the Tariff records relating to Sewaren Project. We therefore reject the Tariff record filed in the Compliance Filing, and Con Edison's protest is moot.

22. PSEG contends that the Compliance Filing transmittal letter incorrectly states "The cost for this upgrade is allocated 100 percent to PSEG because the sole purpose of the upgrade is to address FERC Form No. 715 Transmission Owner planning criteria." The transmittal letter is not part of the Tariff, which correctly allocates the costs pursuant to (b)(xv) of Schedule 12, and therefore no change is necessary. Moreover, the transmittal correctly indicates that the criteria test for the Sewaren Project is PSEG's Form No. 715 local planning criteria.

The Commission orders:

- (A) We deny the PSEG request for rehearing, as discussed in the body of this order.
- (B) We deny the PJM clarification, as discussed in the body of this order.
- (C) PJM's Compliance Filing is rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.