

108 FERC ¶ 61,318
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

PJM Interconnection, L.L.C., American Electric Power Service Corporation, Dayton Power & Light	Docket Nos.	ER04-1068-000 ER04-1068-001
Allegheny Power, American Electric Power Service Corporation, Commonwealth Edison Company, Dayton Power & Light Company (DP&L), and PJM Interconnection, L.L.C.		ER04-1074-000
Dayton Power & Light Company		ER04-1079-000 ER04-1079-001

ORDER ACCEPTING FILINGS

(Issued September 28, 2004)

1. In this order, the Commission accepts a number of filings by Allegheny Power¹ (Allegheny), American Electric Power Service Corporation² (AEP), Commonwealth Edison Company (ComEd), the Dayton Power & Light Company (DP&L), and PJM Interconnection, L.L.C. (PJM), related to the integration of AEP and DP&L into PJM.

¹ Allegheny Power includes West Penn Power Company, Monongahela Power Company and The Potomac Edison Company.

² On behalf of its operating companies Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company.

This order benefits the public because it will continue the process of bringing the benefits of Regional Transmission Organization (RTO) membership to the customers of these new PJM members.

Background

Prior Orders

2. After the issuance of the Commission's Order No. 2000,³ several Midwestern utilities sought to form the Alliance RTO (Alliance).⁴ Because the Alliance proposal lacked sufficient scope to exist as a stand-alone RTO, the Commission did not permit Alliance to go forward, and it required the companies forming Alliance to make compliance filings as to their plans to join an RTO in the future.⁵ Several former Alliance companies then decided to integrate into PJM, including AEP, DP&L, ComEd and Virginia Electric and Power Company (Dominion) (New PJM Companies). In a subsequent order issued on July 31, 2002, the Commission accepted proposals by the New PJM Companies to join PJM.⁶

³ Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom.* Public Utility District No. 1 of Snohomish County, Washington v. FERC 272 F.3d 607 (D.C. Cir. 2001).

⁴ The Alliance Companies are: AEP, Ameren Service Company, Consumers Energy Company, ComEd, DP&L, Detroit Edison Company, FirstEnergy Corp., Illinois Power Company, Northern Indiana Public Service Company, National Grid USA and Virginia Electric and Power Company.

⁵ Alliance Companies, 97 FERC ¶ 61,327 (2001).

⁶ Alliance Companies, 100 FERC ¶ 61,137 (2002).

The Instant Filings

3. AEP and DP&L propose to integrate their facilities into PJM on October 1, 2004. On that date, AEP and DP&L will integrate into the PJM energy markets and transfer to PJM operational control of their transmission facilities. Transmission service over those facilities will then be provided pursuant to PJM's Open Access Transmission Tariff (OATT).⁷

4. In Docket No. ER04-1068-000, as amended, PJM, AEP and DP&L filed various conforming tariff revisions associated with their integration into PJM. They propose revisions to PJM's OATT to add their revenue requirements and zonal rates.⁸ PJM also submitted in Docket No. ER04-1068-000 various minor conforming revisions to the terms and conditions of PJM's OATT and the Reliability Assurance Agreement among Load Serving Entities in the PJM West Region (West RAA).⁹

5. In Docket No. ER04-1074-000, Allegheny, AEP, ComEd, DP&L, and PJM filed proposed changes to the PJM West Transmission Owners Agreement and section 9 of PJM's OATT. The proposed changes to the PJM West Transmission Owners Agreement include: (1) incorporating language allocating section 205 filing rights between PJM and the PJM Transmission Owners and among the PJM Transmission Owners, which was approved by the Commission in the settlement agreement between PJM and certain PJM East Transmission Owners (PJM East Settlement Agreement);¹⁰ (2) incorporating

⁷ Docket Nos. ER04-1068-000, ER04-1074-000, and ER04-1079-000 were filed on July 30, 2004. Docket No. ER04-1068-000 was amended on August 6, 2004, Docket No. ER04-1074-000 was amended on August 30, 2004 and Docket No. ER04-1079-000 was amended on August 19, 2004.

⁸ See Schedule 1A; Schedule 2; Schedule 7; Schedule 8; Attachment H-14; and Attachment H-15.

⁹ See West RAA, sections 1.26A; 1.32F; Schedule 6A; Attachment C-1; Attachment J; and Attachment L.

¹⁰ *PJM Interconnection, L.L.C., et al.*, 105 FERC ¶ 61,294 (2003), *reh'g denied*, 108 FERC ¶ 61,032 (2004). See PJM West Transmission Owners Agreement, articles 2.2.6, 3.2, 5.1.2, 5.2.1, 5.3, and 6.5.1.

references to the Commission-approved Going Forward Principles and Procedures¹¹ into the description of the PJM rate design and revenue distribution;¹² (3) specifying that a party's representative on the Administrative Committee shall be an officer having binding authority with respect to the transmission affairs of the party;¹³ and (4) revising Article 10 to clarify that the necessary prerequisites for the agreement's effectiveness as to a party and to establish an effective date of October 1, 2004, to correspond with the date that AEP and DP&L will transfer operational control over their transmission facilities to PJM and become voting transmission owners under the PJM West Transmission Owners Agreement. The proposed changes to section 9 of PJM's OATT include incorporating references to the PJM West Transmission Owners Agreement into the OATT's description of the PJM West Transmission Owners' rights to file pursuant to section 205 of the FPA and various minor conforming revisions.

6. In Docket No. ER04-1079-000, as amended, DP&L filed a Notice of Cancellation of its OATT, effective as of the date that its transmission facilities are integrated into PJM and PJM begins providing service over those facilities pursuant to PJM's OATT.

Notice of Filing, Interventions and Protests

7. Notices of the filings were published in the *Federal Register*. Comments, protests, and motions to intervene for Docket Nos. ER04-1068-000, ER04-1074-000, and ER04-1079-000 were due on or before August 20, 2004. 69 Fed. Reg. 50,378-79 (2004). For Docket Nos. ER04-1068-001 and ER04-1079-001, comments, protests, and motions to intervene were due on or before August 27, 2004 and September 9, 2004, respectively. 69 Fed. Reg. 51,660 and 53,057.

¹¹ *Midwest ISO, Inc., et al.*, 106 FERC ¶ 61,262 (2004) (*Going Forward Principles and Procedures*); Order accepting Agreement establishing Going Forward Principles and Procedures; *Midwest ISO, Inc.*, 106 FERC ¶63,024 (2004) Report of the Chief Judge and Request of Parties for Expedited Approval of Going Forward Principles and Procedures.

¹² See PJM West Transmission Owners Agreement, articles 1.21, 1.23A, 5.1, and 5.1.3.

¹³ See *id.*, article 6.2.

8. In Docket No. ER04-1068-000, Consumers Energy Company, Allegheny Power and Allegheny Energy Supply Company, LLC, North Carolina Electric Membership Corporation, Borough of Chambersburg, Pennsylvania, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, and FirstEnergy Solutions Corporation filed motions to intervene. Wisconsin Electric Power Company (Wisconsin Electric), Exelon Corporation (Exelon),¹⁴ and Detroit Edison Company (Detroit Edison) filed motions to intervene and comments. Duke Energy North America, LLC and Duke Energy Trading and Marketing, L.L.C. (Duke), Ormet Primary Aluminum Corporation (Ormet), The Blue Ridge Power Agency, Indiana Municipal Power Agency, the Cities of Dowagiac and Sturgis, Michigan (AEP TDUs), and American Municipal Power-Ohio (AMP-Ohio) filed motions to intervene and protests.

9. In Docket No. ER04-1074-000 Detroit Edison, Consumers Energy Company, Rockland Electric Company, PEPCO Holdings, Inc. (on behalf of Potomac Electric Power Company, Atlantic City Electric Company, and Delmarva Power & Light), FirstEnergy Solutions Corp., and Public Service Electric and Gas Company filed motions to intervene. PJM Transmission Owner Agreement-Administrative Committee and PPL Electric Utilities Corporation (PPL) filed comments. The Coalition of Municipal and Cooperative Users of New PJM Companies' Transmission (Coalition)¹⁵ filed a motion to intervene and a conditional protest.

10. In Docket No. ER04-1079-000, AMP-Ohio, Inc. filed a motion for leave to intervene.

11. In Docket No. ER04-1068-000, AEP and DP&L filed an answer on September 13, 2004 and PJM filed an answer on September 15, 2004. AEP, DP&L and Exelon filed an answer in Docket No. ER04-1074-000 on September 8, 2004.

¹⁴ Exelon Corporation is a registered holding company, which owns ComEd, PECO Energy Company of Philadelphia, Exelon Generation, L.L.C. and Exelon Power Team.

¹⁵ The Coalition consists of AMP-Ohio, Blue Ridge Power Agency, ElectriCities of North Carolina, Inc., Old Dominion Electric Cooperative (ODEC), and Virginia Municipal Electric Association No. 1.

Discussion

Procedural Issues

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers submitted by AEP, DP&L, Exelon and PJM because they have provided information that assisted us in our decision-making process.

Analysis

Docket Nos. ER04-1068-000 and ER04-1068-001

14. In Docket No. ER04-1068-000, as amended, the Commission accepts the tariff sheets for filing effective the date that AEP's and DP&L's facilities are transferred to PJM's operational control, subject to modification and subject to the outcome of the Regional Through and Out Rate proceedings in Docket Nos. EL02-111-004 and EL03-212-002. Schedule 1A(B) is accepted. The ComEd rates are accepted subject to the compliance filing discussed herein and to the outcome of the ComEd rate case proceeding in Docket No. ER03-1335-000,¹⁶ effective October 1, 2004, or the date that AEP's and DP&L's facilities are transferred to PJM's operational control.¹⁷

¹⁶ In Commonwealth Edison Company et al., Docket Nos. ER03-1335-000, ER04-367-000 and ER04-367-001, the Commission set for hearing ComEd's proposed revised transmission service rates and ancillary service rates for its current OATT (Phase 1 rates) and the rates for the ComEd pricing zone under the PJM OATT. This docket is currently in Settlement Judge proceedings.

¹⁷ In Docket Nos. ER03-262-002, *et al.*, the Commission granted in part and denied in part requests for rehearing and clarification of an earlier order accepting tariff sheets relating to the integration of the New PJM Companies into PJM. In addition, the Commission set for hearing the issue of whether AEP's cost-of-service once it joins PJM should be reduced to reflect the fact that its annual charges will now be collected through PJM's tracking mechanism.

Schedule 1A(B)

15. In Schedule 1A(B), AEP and DP&L propose adding rates for transmission customers serving Zone Load in the AEP and DP&L zones. The proposed rates are based on the existing revenue requirements of AEP and DP&L. In addition, AEP and DP&L recalculated the zonal rates to reflect their integration into PJM, which resulted in a revision to ComEd's zonal rate. The ComEd rate, as a result of revised billing determinants, decreased from \$.3436/MWh to \$.2538/MWh. In its intervention, Exelon states that it fully supports the tariff revisions filed in this docket and encourages prompt approval by the Commission. Wisconsin Electric requests that the Commission direct PJM and ComEd to revise Schedule 1A(B) of the filing to reflect the settlement agreement that has been reached in Docket No. ER03-1335-000 regarding ComEd's revenue requirements.¹⁸

16. On September 13, 2004, the Chief Judge granted the Settling Parties'¹⁹ motion to collect the settlement rates in Docket No. ER03-1335-000 on an interim basis effective September 1, 2004, subject to refund, pending final Commission action on the settlement. The ALJ went on to say that in the event that the settlement is not approved, the filed rates in Docket No. ER03-1335-000 would be reinstated. Accordingly, we will grant Wisconsin Electric's request and direct ComEd and PJM to revise Schedule 1A(B) to reflect the interim settlement rate in Docket No. ER03-1335-000.

FTR Allocation

17. PJM, AEP and DP&L propose revisions to the existing Open Access Same-Time Information System (OASIS) conversion guidelines in Attachment C-1. The revisions include inserting AEP's and DP&L's names and adding language addressing the firm point-to-point transmission service.

¹⁸Commonwealth Edison Company, *et al.*, 105 FERC 61,186 (2003).

¹⁹The Settling Parties consist of the following parties: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Cities of Batavia, St. Charles, Rochelle and Geneva, City of Naperville, Constellation NewEnergy, Inc., Illinois Municipal Electric Agency, Illinois Industrial Energy Consumers, MidAmerican Energy Company, and Wisconsin Electric Power Company.

18. In its protest, Duke argues that the proposed initial FTR allocation and conversion process is flawed and protests the lack of transitional mechanisms contained in Docket No. ER04-1077-000.²⁰ Further, Duke protests the lack of a termination provision similar to the plan implemented when PJM West²¹ was formed and requests that existing AEP transmission customers such as Duke be allowed to terminate their current reservation and to select a service that is offered under PJM's OATT.

19. This protest is not germane to this proceeding and is rejected. Allocation of FTRs and mitigation were addressed in a Commission order issued on September 17, 2004, in Docket No. ER04-1077-000.

Long-Term Pricing Proceeding

20. PJM, AEP and DP&L propose various revisions to PJM's OATT, including correcting various typos in Schedules 7 and 8, maintaining the PJM border rate at \$1.574/kw/mo, and inserting the revised revenue distribution ratios for the period of October 1, 2004 through November 30, 2004 in Attachment R.

21. Detroit Edison filed comments stating that several issues raised here are closely related to subjects now at issue in negotiations to develop a long-term transmission pricing structure for the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and the PJM region. Detroit Edison requests that the Commission ensure that the current filing is coordinated with the results of the long-term transmission pricing proceeding.²²

22. PJM's OATT will have to be revised to reflect any changes developed pursuant to the Going Forward Principles and Procedures, and the instant filings, therefore, are subject to the outcome of the Regional Through and Out Rate proceedings in Docket Nos. EL02-111-004 and EL03-212-002.

²⁰ On July 30, 2004, in Docket No. ER04-1077-000, PJM submitted the annual allocation of Financial Transmission Rights (FTRs) for the zones of AEP and DP&L for the period from October 1, 2004, to May 31, 2005.

²¹ PJM West was initially composed of the members of Allegheny Power System.

²² See Midwest Independent Transmission System Operator, Inc., *et al.*, 106 FERC ¶ 61,262 (2004).

AEP's Stated Rates for Network Service

23. In Attachment H-14, AEP proposes to switch from a rolling 12 monthly average coincident peak demand (CP) load ratio share to a 1-CP stated rate, which will be applied to AEP's previously approved, stated, net revenue requirement of \$347 million, consistent with the Commission's order in *New PJM Companies*.²³ In addition, AEP proposes to charge a transitional rate for October and November 2004 in order to mitigate the impact of cost shifts that could result from the movement to a 1-CP rate.²⁴

Protests

24. AEP TDUs state that there are three phases of network service rates applicable to load in AEP's zone.²⁵ AEP TDUs argue that while the Phase I rates are reasonable given the mitigation of the impact of cost shifts, unless the mitigation is extended or the Commission orders a mechanism to hold existing network customers harmless until at least November 2005 as a result of the change in rate design, the use of a stated rate in Phases II and III would be unreasonable. In addition, AEP TDUs request that AEP be directed to file annual updates of the AEP-zone rate divisor, consistent with the Commission's order in *Southwest Power Pool, Inc.*²⁶ AEP TDUs state that this directive

²³ American Electric Power Service Corporation, *et al.*, 103 FERC ¶ 61,008 at P 48 (2003) (*New PJM Companies*).

²⁴ AEP proposes to calculate customers' bills using both the 1-CP rate reflected in Attachment H-14 and the 12-CP method used in AEP's currently effective OATT and to charge customers the lower of the two bills for the months of October and November 2004.

²⁵ Phase I: During October and November 2004, AEP will switch from a rolling 12-CP load ratio share to a 1-CP stated rate which is applied to AEP's previously approved, stated, net revenue requirement of \$347 million. Phase II: During December 2004 until mid-2005, AEP will make a rate filing based on the current level of revenues from out-of-zone sources under the new pricing structure, which will become effective December 1, 2004. Phase III: By March 2005, AEP will make a rate filing that will take into account recovery of costs for in-load zones and external loads pursuant to the December 1, 2004 pricing structure.

²⁶ 96 FERC ¶ 61,034 (2001).

should be superseded if a filing by the existing PJM Transmission Owners establishes a reasonable, regional approach to harmonizing the pre-integration charges, the integration charges, and the post-integration charges. However, if the 1-CP rate divisor is accepted without an annual update requirement and lasts longer than the mitigation period, then AEP TDUs request that AEP be required to use a Period II (calendar 2005) projected peak, rather than the August 21, 2003 1-CP that it relies on its filing.

25. The protests of Ormet and AMP-Ohio request that the Commission direct AEP to develop a mechanism to hold all network customers harmless from its change from load ratio share to network rates. In support of their protest, Ormet and AMP-Ohio point out that in a previous rate case, the Commission found that AEP's switch to a stated rate for network service could result in a significant over-recovery of costs by AEP as the demand on its system increases after it joins PJM and, consequently, directed AEP to develop a mechanism to hold all network customers harmless from its change from load ratio share to network rates.²⁷ Ormet's protest also requests that the Commission direct AEP to provide an annual true-up to its stated rate similar to the true-up required by the Commission in previous orders.

26. Finally, Ormet's protest states that it is particularly vulnerable to any rate increase and requests that AEP's grandfathered agreements be considered in determining network rates.²⁸ While Ormet is not a party to any of the grandfathered agreements, it is concerned that the grandfathered agreements may be for a substantial amount of transmission capacity at a low rate, which, if canceled, could have a substantial effect on network rates. Ormet's protest notes that the list of grandfathered agreements does not state the number of megawatts associated with each of the grandfathered agreements. Ormet states that to the extent that the amounts of megawatts are *de minimis*, it has no concern about the grandfathered agreements; however, if the number of megawatts is substantial, Ormet urges the Commission to review these grandfathered agreements to determine if they are still just, reasonable, and non-discriminatory in the post-RTO world.

²⁷ American Electric Power Company, Inc., 103 FERC ¶ 61,009 (2003) (*AEP*).

²⁸ The filing in this docket includes a list of 17 AEP grandfathered agreements involving the provision of transmission service under terms and conditions that differ from those contained in AEP's OATT.

AEP's Answer

27. In its answer to the protests of AEP TDUs and Ormet, AEP states that, while it is not willing to extend its proposal beyond November 30, 2004, it is willing to revise its network service rates to reflect a 1-CP rate divisor based on 2004 loads, effective on January 1, 2005, if new rates have not otherwise been established by that date. AEP states that it believes that this offer is consistent with the request of AEP TDUs and Ormet that AEP submit annual updates of the rate divisor. AEP states that it will be submitting a new cost-of-service and transmission rate filing by April next year, and requests that the Commission not require on-going annual updates to the 1-CP divisor beyond January 2005.

Commission Determination

28. AEP's 1-CP rate is accepted. In *Alliance Companies*,²⁹ the Commission found that a stated rate for network transmission service is reasonable as it provides greater rate certainty for suppliers and customers. Further, in *New PJM Companies*,³⁰ the Commission stated that using a 1-CP method for FTR allocation and a 12-CP method for ratemaking is inconsistent with previous Commission decisions and directed New PJM Companies to revise the proposed rates to be consistent with the CP method used for FTR allocations. We find that AEP's proposal to use a stated rate based on the 1-CP method for ratemaking in the instant filing is consistent with our orders in *Alliance Companies* and in *New PJM Companies*.

29. We will reject AEP TDUs' request that AEP be directed to file annual updates of the AEP-zone rate divisor consistent with the Commission's directive in *Southwest Power Pool, Inc.*³¹ because the rationale underlying that order does not apply to this filing. In *Southwest Power Pool*, we accepted Southwest Power Pool's (SPP) proposal to develop a stated network integration transmission service rate. SPP proposed language that would automatically modify the proposed stated network integration transmission service rate annually. Therefore, the Commission directed SPP to develop its current rate by recalculating the billing determinants from each previous calendar year and applying

²⁹ 94 FERC ¶ 61,070 (2001), *order on reh'g*, 95 FERC ¶ 61,182 (2001).

³⁰ 103 FERC ¶ 61,008 (2003).

³¹ 96 FERC ¶ 61,034 (2001).

those billing determinates to the effective transmission revenue requirement. Unlike *Southwest Power Pool*, AEP's proposed transmission rate is a continuation of its prior just and reasonable transmission rate, without any automatic modification. Therefore, there is no basis for requiring AEP to annually update its stated transmission rate.

30. We will also reject Ormet's request that the Commission direct AEP to provide an annual true-up to its stated rate similar to the recalculated billing determinants ordered by the Commission in previous decisions³² and the request of Ormet and AMP-Ohio that the Commission direct AEP to develop a mechanism to hold all network customers harmless, consistent with its previous order in *AEP*. Ormet's and AMP-Ohio's interpretation of the Commission's order in *AEP* is incorrect. First, in *AEP*, the Commission required AEP to hold network customers harmless for a discrete period of time (Day 1, which is from the date AEP transfers functional control of its facilities to the date AEP fully integrates with PJM or May 1, 2003, whichever is later). But in this case, there is no need to hold customers harmless for the transfer period because AEP will fully integrate into PJM on October 1, 2004.

31. Second, in *AEP*, AEP proposed several factors that were significant to the Commission's decision to hold AEP customers harmless for Day 1 rates. Specifically, AEP proposed to adopt its stated point-to-point rate for network service without cost support or justification and requested that it be held harmless from this rate, which it had not cost-justified. Those circumstances do not apply here. AEP does not propose to change its existing revenue requirement, which was accepted in Docket No. ER98-2786-000, nor does it propose to adopt a stated rate with no underlying cost support. Rather, the cost support for the stated rate was approved by the Commission through evidentiary proceedings.³³ Further, AEP, as a member of PJM, must comply with the rate design

³² See, e.g., *Southwest Power Pool*, 96 FERC ¶ 61,034 at 61,094 (2001), *reh'g denied*, 96 FERC ¶ 61,307 (2001); *Wisconsin Electric Power Company*, 80 FERC ¶ 61,299 (1997), *reh'g denied*, 81 FERC ¶ 61,200 (1997).

³³ *American Electric Power System*, 85 FERC ¶ 61,201 (1998), *on compliance*, 91 FERC 61,208 (2000).

being developed pursuant to the *Order on Going-Forward Principles and Procedures*, which is currently scheduled to become effective December 1, 2004.³⁴ Therefore, we will accept AEP's proposal to file a new rate divisor to become effective January 1, 2005.

32. Finally, we will reject as premature Ormet's protest concerning grandfathered agreements. AEP's proposed network rate is a stated rate based on its existing revenue requirement. AEP's stated rate will not change if the grandfathered agreements are cancelled. In order to change its existing rate, AEP would have to propose a rate change³⁵ under section 205, and at that point Ormet as an interested party could file with the Commission a complaint under section 206.

Transitional Market Expansion Charge

33. Under Schedule 11 of PJM's OATT, PJM charges Generation Providers and transmission customers a Transitional Market Expansion Charge (TMEC). The TMEC is a transitional charge which recovers a portion of the lost revenues and start-up costs associated with PJM West's integration into PJM.³⁶ None of the parties have proposed to revise Schedule 11 in this filing.

³⁴ See *Order on Going Forward Principles and Procedures*, 106 FERC ¶ 61,262 at P 1, 6-7 (2004).

³⁵ See Bethel Affidavit at 7. AEP states that it may file a revised network transmission rate, once it sees the effect of the Going-Forward Principles on its rate design and transmission revenues.

³⁶ Allegheny's integration into PJM formed PJM West, which was provisionally approved in *PJM Interconnection, LL.C., et al.*, 96 FERC ¶ 61,060 (2001). In that order the Commission conditionally approved Allegheny's proposal to recover part of its lost revenues and start-up costs by charging for each megawatt hour of energy input into the combined PJM and PJM West transmission systems and for each megawatt hour of energy delivered from the combined PJM and PJM West transmission systems pursuant to the PJM OATT.

34. AMP-Ohio requests clarification that the TMEC will not apply to its existing transmission service from AEP to First Energy³⁷ once it is converted to PJM service.³⁸ AMP-Ohio points out that the *Order on Going Forward Principles and Procedures* states that the TMEC in Schedule 11 “will not be charged within the pricing zones of Commonwealth Edison, AEP or DP&L at any time following their integration into PJM.” AMP-Ohio is concerned that once this service is converted to a PJM service, it might no longer be considered by PJM to be “within the pricing zone” of AEP and will be assessed the Schedule 11 charge.

35. In its answer, PJM states that no change has been proposed to Schedule 11, which provides that PJM will assess the charge in that schedule on energy delivered for export from the PJM region. In compliance with Schedule 11 of the PJM OATT, PJM imposes TMEC on all exports from the PJM region. However, PJM states that it is only authorized to collect \$84.9 Million under Schedule 11, which it expects to recover before the end of 2004.

36. As PJM points out, Schedule 11 of PJM’s OATT still contains a charge for TMEC, which is properly assessed until a filing is made to implement the *Order on Going Forward Principles and Procedures*. AMP’s request for clarification on this point is therefore denied.

Contract Demand Network Service

37. AEP proposes to modify Attachment H-14 of PJM’s OATT to include a revised contract demand network service (CDR).³⁹ These modifications would revise AEP’s existing CDR to: (1) extend the termination date from December 31, 2006 to

³⁷ First Energy is located in Midwest ISO’s area.

³⁸ AMP-Ohio originally protested the application of the PJM border rate and the TMEC to its transmission from Allegheny to First Energy in Docket No. RT01-98. This issue is still pending rehearing.

³⁹ CDR was added to AEP’s OATT as a result of a 1999 settlement between AEP and its customers (AEP Settlement Agreement). CDR is designed for network transmission service customers with behind-the-meter generation, which enables AMP-Ohio members with behind-the-meter generation to contract for an amount of network service less than their total load.

December 31, 2007; (2) state that service must commence not later than January 1, 2005; and (3) allow extensions of the initial term consistent with any behind-the-meter provisions established generally in the PJM Region.⁴⁰ Under both AEP's existing CDR provisions and the proposed CDR provisions in Attachment H-14, there is language stating that the minimum term for CDR is three years.

38. AMP-Ohio's protest states that it is concerned that the PJM treatment of behind-the-meter generation that will eventually replace the CDR provisions may not be equivalent to the service it currently receives from AEP and requests that the Commission encourage the continuation of CDR. In addition, AMP-Ohio also seeks clarification that the December 31, 2004 "new customer" limits do not include new delivery points for AMP-Ohio or other existing AEP CDR customers and that PJM will only bill CDR customers ancillary services based on the CDR load, not their total load.

39. PJM's answer states that it agreed as a transitional matter to honor all existing agreements for AEP's CDR service through the remainder of their initial terms and to allow the execution of new agreements under this service for three months after AEP's integration. PJM asserts that this commitment provides certainty and a reasonable transition period for AEP's existing CDR customers, without adding a new, special open-access rate schedule to PJM's OATT, which would always be open to new customers whose service sinks in the AEP zone.⁴¹ Further, PJM points out that AMP-Ohio's request that it be allowed to add new delivery points is inconsistent with section 22.2 of PJM's OATT, which provides that a firm change in delivery points is a new request for service,

⁴⁰ In *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,113 (2004), the Commission recently accepted PJM's behind-the-meter generation proposal. In addition, the treatment of municipal distribution systems is currently going through the stakeholder process. A status report is due to the Commission on January 1, 2005.

⁴¹ *See* PJM West RAA, Schedule 7. The provisions of the West RAA require all load-serving entities to provide capacity based on the summer peaks of the load for which they are responsible. However, those rules also grant load-serving entities an adjustment to their capacity obligations to reflect active load management (ALM), including qualifying self-generation. PJM states that the ALM credit is available to CDR customers, if they meet the West RAA requirements, including showing that their loads can be timely served by their behind-the-meter generation. Further, those rules also grant load-serving entities an adjustment to their capacity obligations to reflect ALM, including qualifying self-generation.

and would inappropriately reserve for AMP-Ohio an open-ended ability to expand a special service that is not available to any other customer under PJM's OATT. PJM addressed AMP-Ohio's concern that PJM will only bill CDR customers for ancillary services based on their CDR load and not their total load by stating that most of the ancillary services under PJM's OATT are based on the energy delivered to load, rather than on the peak load or reservation quantity. However, Schedules 2 and 6A are based on the same peak load calculations used for network transmission service.

40. We find that AEP's proposal is generally consistent with the terms of the AEP Settlement Agreement. When AMP-Ohio entered into the AEP Settlement Agreement, it knew that the CDR provisions were not permanent and could be terminated at the end of the agreement. AEP and PJM are honoring the terms of that agreement and, in fact, have extended the CDR's for three months after integration. AMP-Ohio, therefore, is not entitled to extend these contracts.

41. In fact, AMP-Ohio knew when it entered into the settlement that AEP would be integrating into PJM in the near future and that, once AEP joined PJM, transmission service will be provided to AEP's transmission customers pursuant to PJM's existing OATT. AMP-Ohio's concerns regarding future PJM behind-the-meter generation proposals are outside the scope of this filing and are best addressed through PJM's stakeholder process on behind-the-meter generation.

42. However, we agree with AMP-Ohio, that during the term of its agreement, it should be entitled to choose new delivery points pursuant to the AEP Settlement Agreement. Section 5(b)(v) of the CDR provisions permits the Transmission Customer to change delivery points for the second or subsequent year provided they provide at least 90 days prior notice and provided that any decrease in the CDR for any delivery point shall not exceed 30% of the existing CDR in any year. We direct PJM to honor the CDR provisions and allow CDR customers to change delivery points.

Loss Factor

43. AEP proposes to retain its existing loss factor of 3.3% in Schedule H-14. AEP points out that all PJM transmission customers serving load in the AEP zone will be assessed this loss factor based on the quantities of energy received onto the transmission system for delivery to their delivery points.⁴²

⁴² Bethel Affidavit at 9.

44. AEP TDUs state that AEP's proposal to retain its existing loss factor of 3.3% raises a double collection concern since it appears that PJM proposes to recover this loss factor in both Schedule H-14 and Attachment K.⁴³ In addition, AEP TDUs contend that, once the revenue requirement is updated to include recent or future additions, the loss factor should be re-examined as well.

45. PJM states that the referenced loss factors in Attachment K of the PJM OATT are intended for service that is not associated with a specific zone internal to PJM, i.e., "non-zone" network service, or point-to-point service. For network service to specific PJM zones, the electric distribution company for the zone increases the loads reported to PJM by a loss factor specific to each zone. In AEP's zone, the proposed loss factor in Attachment H-14 will be 3.3%.

46. We accept PJM's explanation as to why its proposed tariff revisions will not result in a double recovery of AEP's proposed loss factor of 3.3%. Consequently, we reject AEP TDUs protest on this point.

DP&L Attachment H-15

47. PJM and DP&L propose to incorporate the settlement agreement reached in Docket No. EL03-56-000⁴⁴ (EL03-56 Settlement Agreement), which addressed the treatment of transmission services under agreements among AMP-Ohio, DP&L and PJM.⁴⁵

⁴³ AEP TDUs state that while currently PJM collects losses through the LMP price in Attachment K§ A.3, AEP herein proposes that PJM adjust network loads upwards by 3.3% of energy received for transmission service under Attachment H-14 and, since there is no exception for AEP zone loads, also charge losses thru the LMP.

⁴⁴ The settlement in Docket No. EL03-56-000 resolved issues relating to DP&L's integration into PJM in thirteen long-term agreements between DP&L, PJM, AMP-Ohio the Cities and Villages of Arcanum, Celina, Eldorado, Jackson Center, Lakeview, Mendon, Minster, New Bremen, Piqua, Tipp City, Versailles, Waynesfield and Yellow Springs.

⁴⁵ These revisions would add a footnote in both Schedule 1A, "Transmission Owner Scheduling, System Control and Dispatch Service" and 2, "Reactive Supply and Voltage Control from Generation Sources Services", as well as Attachment H-15, section
(continued)

48. AMP-Ohio requests that the Commission either direct PJM and DP&L to modify the PJM OATT to incorporate all of the provisions of the EL03-56 Settlement Agreement or, alternatively, to declare unequivocally that any inconsistency between the PJM OATT and the EL03-56 Settlement Agreement must be resolved in favor of the EL03-56 Settlement Agreement.

49. In its answer, DP&L states that it does not object to AMP-Ohio's request. PJM confirms that the provisions of the EL03-56 Settlement Agreement govern the provision of network losses and short-term firm service to the municipal customers that were parties to the settlement.

50. Since DP&L does not object to AMP-Ohio's request to include the terms of the EL03-56 Settlement in the PJM OATT, we direct DP&L and PJM to modify the PJM OATT to include these terms.

5 to state:

“Charges for Network Integration Transmission Service to customers of the Dayton Power and Light Company that are subject to the provisions of the October 14, 2003 Stipulation and Agreement of Settlement approved in FERC Docket No. EL03-56-000 shall be governed by such settlement.”

Belleville Project

51. In PJM, capacity resources⁴⁶ are accredited pursuant to procedures set forth in the Reliability Assurance Agreement.⁴⁷ AMP-Ohio states that the Belleville plant was a designated resource in a municipal network in the AEP system and requests that PJM be required to certify the Belleville plant as a capacity resource. PJM states that it has been working with AMP-Ohio on this issue. However, PJM states that AMP-Ohio is subject to PJM's generally applicable capacity resource and deliverability requirements in PJM's OATT.⁴⁸

52. AMP-Ohio has not adequately justified its request that we override PJM's approved process, as memorialized in the PJM OATT, for certifying the Belleville plant as a capacity resource at this time. While the Belleville plant was a designated resource in AEP's system, it must still meet PJM's requirements in order to be accredited a capacity resource in PJM.

Reliability Assurance Agreement

53. AMP-Ohio points out that, while DP&L, AEP and AMP-Ohio have been added as parties to Schedule 16 of the PJM West RAA ("Parties to the PJM West Reliability Assurance Agreement"), other load-serving entities in the AEP zone have not. AMP-Ohio requests clarification as to the standards for amendment of and inclusion in Schedule 16.

⁴⁶ Under PJM's OATT, a capacity resource is the net capacity from owned or contracted for generating facilities.

⁴⁷ Schedule 10, Procedures for Establishing Deliverability of Capacity Resources states in part:

"Capacity Resources must be deliverable, consistent with a loss of load expectation as specified by the Reliability Principles and Standards, to the total system load, including portion(s) of the system in the PJM Region that may have a capacity deficiency at any time."

⁴⁸ See PJM Interconnection, L.L.C., 106 FERC ¶ 61,253 at P 49-50 (2004).

54. PJM states that Schedule 16 will shortly be modified to list all of the newly added load serving entities for the AEP and DP&L zones consistent with Article 2 of the West RAA.⁴⁹ Therefore, we direct PJM to file such changes within 60 days of the date of this order.

Annual Charges

55. In this filing AEP has not proposed any changes to PJM's existing procedures for recovery of Commission annual charges, so Commission annual charges for AEP's zone will be collected under Schedule 9 of PJM's OATT.

56. AEP TDUs' protest expresses concern that PJM may double-collect Commission annual charges because AEP's existing rates, which were established in a settlement in ER98-2776, also recover annual charges. AEP TDUs point out that AEP does not intend to file a rate case effective before March 2005. They request that PJM be directed to revise Schedule 9 to state that customers that are paying transmission charges based directly upon AEP's revenue requirement and stated rate established in the Docket No. ER98-2776 settlement are excluded from charges under Schedule 9.

57. PJM response states that, because it is not proposing any change in this proceeding to Schedule 9, AEP TDUs' protest should be rejected as a collateral attack on a prior Commission order.⁵⁰ The Commission stated that the PJM OATT should be used for the recovery of Commission annual charges attributable to the ComEd and AEP zones. PJM adds that the Commission billed PJM for all fiscal year 2004 annual charges attributable to loads in the ComEd zone. Therefore, PJM contends that there is no question that it will be billed for annual charges attributable to loads in the AEP zone for the Commission's fiscal year 2005, which coincidentally begins on the date of AEP's integration into PJM. PJM requests that the Commission reject AEP TDUs' proposal, as PJM would not collect sufficient funds to cover the Commission's 2005 annual charges.

58. We reject AEP TDUs' protest. We agree with PJM that Schedule 9 of PJM's OATT is the appropriate mechanism to recover annual charges, which are billed to PJM.⁵¹ In *New PJM Companies*⁵² the Commission recognized that AEP had no current

⁴⁹ Article 2 states that all Load Serving Entities serving load in the PJM West Region must become and remain parties to the PJM West RAA.

⁵⁰ See *New PJM Companies*, 108 FERC ¶ 61,140 at P 27-28 (2004).

⁵¹ See *New PJM Companies*, 108 FERC ¶ 61,140 at P 27-28 (2004).

tracker for collecting annual charges, and set for hearing the issue of whether AEP's total cost-of-service once it joins PJM should be reduced to reflect the fact that its annual charges will now be collected through PJM's tracking mechanism. However, in that case, AEP had filed to increase its rates, which had already been set for hearing, subject to refund.⁵³ Here, AEP has not filed to increase its rates, and the AEP TDUs have not demonstrated that AEP's existing rates result in excess revenues. The Commission audits all transmission-owning public utilities for appropriate revenue levels. If AEP's rates are found to be excessive, the Commission will address that matter.

Docket No. ER04-1074-000

59. In Docket No. ER04-1074-000, the Commission accepts the tariff sheets for filing effective the date that AEP's and DP&L's facilities are transferred to PJM's operational control, subject to the outcome of the Regional Through and Out Rate proceedings in Docket Nos. EL02-111-004 and EL03-212-002.

Section 205 Rights

Protests

60. Coalition filed a motion to intervene and a conditional protest with respect to the language allocating filing rights between PJM and the PJM Transmission Owners. Specifically, the Coalition seeks clarification as to whether the filing parties in this docket intended that requests by non-parties (including the Commission acting *sua sponte* on behalf of non-parties) under section 206 to modify the allocation of filing rights set forth in the proposed revisions of the West Transmission Owners Agreement and PJM OATT would be subject to the "just and reasonable" standard of review or if, instead, they intend that such third party requests would be governed by the more stringent *Mobile-Sierra* "public interest" standard of review. If the parties intended to impose the "public interest" standard, then the Coalition would find it necessary to protest the filing.

61. Coalition contends that the "just and reasonable" standard of review should apply to non-party requests to modify the allocation of filing rights contained in the PJM West Transmission Owners Agreement and PJM OATT. Coalition first notes that the allocation of filing rights language proposed for the PJM West Transmission Owners Agreement is

⁵² *Id.*, 108 FERC ¶ 61,140 at P 28-29 (2004).

⁵³ American Electric Power Service Corporation, 103 FERC ¶ 61,008 (2003).

similar to language contained in the PJM East Settlement Agreement and objected to by one of Coalition's members, Old Dominion Electric Cooperative (ODEC), on the grounds that it impermissibly limited third-party rights to seek modification in the filing rights allocation by subjecting any such modification to the "public interest" test under *Mobile-Sierra*. Coalition contends that, in approving this provision on rehearing, the Commission expressly relied on the fact that the parties had entered into a contract (i.e., the PJM East Settlement Agreement), imposing this standard on all modification requests initiated by third parties. Coalition asserts that here, with respect to most of the affected transmission owners, the filing is not premised on a similar PJM East Settlement Agreement or other contract purporting to establish a legal standard for modification requests that is more stringent than the legal standard already set forth in the Federal Power Act, namely, the "just and reasonable" standard of review. Second, Coalition points out that several provisions of the modified PJM West Transmission Owners Agreement and PJM OATT continue to recognize the rights of third parties to seek modifications under section 206.⁵⁴ Based on the absence of language purporting to change the applicable legal standard, Coalition concludes that the "just and reasonable" standard continues in force. If this is the case, then Coalition does not protest the filing.

62. The PJM Transmission Owners Agreement-Administrative Committee⁵⁵ also filed comments to clarify the nature and extent of their approval of the proposed revisions to the PJM OATT and PJM West Transmission Owners Agreement. PJM East Transmission Owners Agreement-Administrative Committee states that in approving the proposed amendments, its members, the PJM East Transmission Owners, did not endorse or approve a modification to the PJM OATT that would permit the PJM West Transmission Owners acting unilaterally without the requisite vote of the PJM East Transmission Owners Agreement-Administrative Committee to file under section 205 any change to the provisions of the PJM OATT governing the establishment and recovery of the PJM East Transmission Owners' transmission revenue requirements, transmission rate design under the PJM OATT, or the recovery of transmission-related costs incurred by the PJM East Transmission Owners. Furthermore, PJM East Transmission Owners Agreement -Administrative Committee's approval did not constitute a cession of its

⁵⁴ See PJM West Transmission Owners Agreement, sections 5.1.2(c), 5.2.1(c); PJM OATT 9.2(c).

⁵⁵ For the sake of clarity, the PJM Transmission Owner Agreement-Administrative Committee will be referred to in this discussion as the PJM East Transmission Owner Agreement-Administrative Committee.

members' section 205 rights, nor does it permit the PJM West Transmission Owners, acting on their own pursuant to the PJM West Transmission Owners Agreement, to propose under section 205 any change to the transmission rates, transmission cost recovery or transmission rate design that would affect the PJM East Transmission Owners.⁵⁶

New PJM West Transmission Owners' Answer

63. With respect to Coalition's conditional protest, the answer filed by Exelon, AEP and DP&L (New PJM West Transmission Owners' Answer) states that they were not parties to the PJM East Settlement Agreement and that AEP and DP&L filed motions to intervene and protest the PJM East Settlement Agreement, which were denied by the Commission. Their answer also states that it is their understanding that the *Mobile-Sierra* public interest standard applies to filings by non-parties to change provisions of the PJM East Settlement Agreement.

64. With respect to the PJM Transmission Owners Agreement-Administrative Committee's comments, the New PJM West Transmission Owners' Answer states that the proposed changes to the PJM West Transmission Owners Agreement simply reflect parallel provisions contained in the PJM East Transmission Owners Agreement, consistent with the PJM East Settlement Agreement. Their answer notes that the PJM OATT, as it stands, gives exclusive rights to the PJM East Transmission Owners to make section 205 filings to change the transmission rate design for the PJM region, while the New PJM West Transmission Owners have no right to file such changes. The New PJM West Transmission Owners' Answer thus contends that, to be consistent with the PJM East Settlement Agreement and to rectify the current state of affairs, the PJM OATT must be revised to reflect the section 205 filing rights of the PJM West Transmission Owners Agreement-Administrative Committee. Finally, the New PJM West Transmission Owners' Answer asserts that if the suggestion contained in PJM East TOA-Administrative Committee's comments were adopted, the PJM transmission rate design would be bifurcated into PJM East and PJM West regions, which is inconsistent with the security-constrained economic dispatch energy market operated by PJM.

⁵⁶ The PJM East Transmission Owners further state that they do not believe that, acting on their own pursuant to the PJM East Transmission Owners Agreement, they may propose, pursuant to section 205, any change to the transmission rates, transmission cost recovery, or transmission rate design under the PJM OATT that would affect the PJM West Transmission Owners.

Commission Determination

65. We reject Coalition’s protest that the *Mobile-Sierra* public interest standard of review should not apply to non-party requests to modify the allocation of filing rights between PJM and the PJM Transmission Owners. In the order accepting the PJM East Settlement Agreement,⁵⁷ we approved the proposed changes to section 9.4 of the PJM OATT, which set forth the allocation of section 205 filing rights between PJM and the PJM Transmission Owners and provided that the Commission’s right to change the parties’ agreed-upon allocation of their section 205 filings is to be in accordance with the *Mobile-Sierra* public interest standard. ODEC, a Coalition member, sought rehearing of the December 18 Order under the same reasoning. We rejected ODEC’s request for rehearing in the July 9 Order, concluding that “there is no Commission or court precedent that supports a finding that a non-signatory may unilaterally seek changes to a *Mobile-Sierra* ‘public interest’ contract under the ‘just and reasonable’ standard of review.”⁵⁸

66. The Coalition contends that this tariff provision should not be applied to the PJM West Transmission Owners Agreement, because, unlike the PJM East Transmission Owners, there was no explicit settlement agreement among the PJM West Transmission Owners that provided for *Mobile-Sierra* treatment for third party objections to the allocation of filing rights. However, section 9.4 of the PJM OATT provision specifically provides that the Commission’s ability to modify the agreement of all transmission owners is governed by the public interest standard. This provision is not just applicable to the PJM East Transmission Owners, but applies to all transmission owner filings. Moreover, the PJM West Transmission Owners specifically stated that their filing “incorporate[s] language approved by the Commission” in the PJM East Transmission Owners agreement, thus manifesting the PJM West Transmission Owners agreement to the same *Mobile-Sierra* standard as the East Transmission Owners. In their answer, the New PJM West Transmission Owners (i.e., AEP, Exelon and DP&L) confirmed that they meant this standard to apply to filings by non-parties to change the proposed revisions incorporating the language from the PJM East Settlement Agreement into the PJM OATT

⁵⁷ PJM Interconnection, L.L.C., *et al.*, 105 FERC ¶ 61,294 (2003) (December 18 Order), *reh’g denied*, 108 FERC ¶ 61,032 (2004) (July 9 Order).

⁵⁸ PJM Interconnection, L.L.C., *et al.*, 108 FERC ¶ 61,294 at P 7 (2004).

and PJM West Transmission Owners Agreement.⁵⁹ Moreover, under *Atlantic City Electric Company, et al. v. FERC*,⁶⁰ utilities are permitted to make their own section 205 filings, and the public interest standard as adopted the utilities here sets an appropriate standard for the Commission to make changes to the utilities' joint agreement to allocate section 205 filing rights within PJM.

67. The other provisions of the OATT cited by the protesters are inapposite. These provisions reserve the right of all parties to protest any tariff filing made by the utilities; they do not reserve the right to protest the allocation of filing rights. The Coalition's rights to protest any tariff filing made by the utilities pursuant to their agreement is preserved, and the Commission retains its full authority under the FPA to act on such a filing.

68. The PJM East Transmission Owners Agreement-Administrative Committee filed comments clarifying that, in approving the revisions to PJM's OATT regarding filing rights, it did not intend this provision to authorize the PJM West Transmission Owners acting on their own to make section 205 filings that change the rates of the PJM East Transmission Owners. The PJM OATT provision in question, section 9.1(a) states, in relevant part:

⁵⁹ Section 3.4 of the PJM East Settlement Agreement provides that "the Parties share the mutual understanding that pursuant to section 9.18 of the PJM West Transmission Owners Agreement ..., the signatories of the West Transmission Owners Agreement have committed to make conforming parallel changes to the West Transmission Owners Agreement ..." In their response, AEP and DP&L have confirmed that their intent is to incorporate the terms of the PJM East Settlement Agreement, including the *Mobile-Sierra* public interest standard of review into the proposed revisions to the PJM West TOA. Thus, while the PJM East Settlement Agreement is not binding on non-parties, the New PJM Companies have expressed their intent to accept the same obligations as those that the PJM East Transmission Owners are subject to, as set forth in the PJM East Settlement Agreement, apparently without exception, by submitting the instant filing.

⁶⁰ 295 F.3d 1 (D.C. Cir. 2002) (*Atlantic City*).

The Transmission Owners may only file under Section 205 to change the transmission rate design for the PJM region pursuant to a filing approved in accordance with Section 6.5.1 of the Transmission Owners Agreement or Section 6.5.1 of the West Transmission Owners Agreement.

69. The New PJM West Transmission Owners' appear to mischaracterize the position of the PJM East Transmission Owners when they contend that the PJM East Transmission Owners Agreement-Administrative Committee seeks to retain exclusive authority to file changes to the rate design for the PJM region and to perpetuate the existing asymmetry in filing rights between the two groups of transmission owners. The comments filed by PJM East Transmission Owners Agreement-Administrative Committee acknowledge that one group of transmission owners cannot make unilateral filings that would affect the rate design of the other transmission owners without their agreement. The PJM East Transmission Owners explicitly disclaim any right to file unilaterally to change the rate design of the PJM West Transmission Owners.⁶¹ The PJM East Transmission Owners, therefore, recognize that in order for either group of transmission owners to change a rate design affecting the other group that both groups will need to approve of such a change.

70. However, we find that PJM's tariff provision is ambiguous on this point. We will therefore require PJM to make a compliance filing within 30 days of the date of this order to provide that with respect to changes to "the transmission rate design for the PJM region", such changes will have to be approved by both sets of Transmission Owners. We also agree with the PJM West Transmission Owners that this process in the long run will run more efficiently if the parties negotiate a single Transmission Owner Agreement, and we strongly encourage the parties to continue on their negotiations toward this end.

⁶¹ "Similarly, the PJM [East] Transmission Owners do not believe that, acting on their own pursuant to section 6.5.1 of the PJM [East] Transmission Owners Agreement, they may propose, pursuant to section 205 of the FPA, any change to the transmission rates, transmission cost recovery, or transmission rate design under the PJM Tariff which would affect the West Transmission Owners." PJM East Transmission Owners Agreement-Administrative Committee Comments at 3, n.9.

Docket No. ER04-1079-000

Notice of Cancellation

71. The Commission accepts DP&L's Notice of Cancellation of its OATT filed in Docket No. ER04-1079-000 and ER04-1079-001, effective as of the date that its transmission facilities are integrated into PJM and PJM begins providing service over those facilities pursuant to PJM's OATT.

The Commission orders:

(A) Docket Nos. ER04-1068-000, ER04-1068-001, ER04-1074, ER04-1079 and ER04-1079-001 are accepted effective as of the date AEP's and DP&L's facilities are transferred to PJM's operational control.

(B) The tariff sheets filed by PJM, AEP and DP&L in Docket Nos. ER04-1068-000, ER04-1068-001 and ER04-1074-000 are accepted, subject to the outcome of the Regional Through and Out Rate proceedings in Docket Nos. EL02-111-004 and EL03-212-002.

(C) We direct AEP, DP&L and PJM to file within 30 days of the date of this order, to make the revisions as discussed in the body of this order, including filing a revised Schedule 16, filing revised rates to reflect the commitment it made in its answer to adopt a 1-CP rate divisor based on 2004 loads, effective on January 1, 2005, filing to revise section 9.1 to provide that with respect to changes to "the transmission rate design for the PJM region", such changes will have to be approved by both sets of Transmission Owners.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.