

125 FERC ¶ 61,021
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

PJM Transmission Owners

Docket No. ER08-1378-000

ORDER ON PJM OPEN ACCESS TRANSMISSION TARIFF REVISIONS

(Issued October 7, 2008)

1. On August 8, 2008, PJM Transmission Owners (Transmission Owners) submitted for filing, pursuant to section 205 of the Federal Power Act (FPA), modifications (Proposed Revisions) to section 217.3 of the PJM Open Access Transmission Tariff (PJM OATT), addressing the responsibility of cost associated with constructing a Regional Transmission Expansion Plan (RTEP) project on an advanced schedule.¹ Specifically, Transmission Owners propose to modify the PJM OATT to: 1) clarify the language in 217.3 to ensure that where a New Service Request calls for acceleration of an RTEP project,² the New Service Customer is responsible for *all* costs that would not have been incurred under RTEP “*but for*” that customer’s New Service Request; and 2) conform the language of section 217.3 to language used elsewhere in the PJM OATT and other PJM documents.
2. For the reasons discussed below, we accept the Proposed Revisions to section 217.3 of the PJM OATT to become effective October 7, 2008.

¹ PJM OATT section 9.1 provides for the Transmission Owners to have exclusive and unilateral rights to file changes to the establishment and recovery of Transmission Owners’ transmission revenue requirements or the transmission rate design.

² The purpose of RTEP is to provide for the construction of expansions and upgrades to PJM’s transmission system in order to comply with reliability criteria, and to maintain and enhance the efficiency of PJM’s wholesale electricity markets. PJM updates RTEP with input from the Transmission Expansion Advisory Committee (TEAC) and the Planning Committee.

I. Background

3. Section 217.3 of the OATT currently obligates a customer making a New Service Request to pay for all costs necessary to accommodate the upgrade request “that would not have been incurred under the [RTEP] but for such New Service Request.” The current 217.3 goes on to state, however, that when a New Service Request “is limited solely to advancing the construction” schedule, then “[n]otwithstanding” the usual provisions, responsibility for costs “shall be limited solely to the time value of advancing the required investment to the party(ies)” responsible for executing the request.

4. Transmission Owners propose to remove the language that limits costs of acceleration of projects in the RTEP to the time value of advancing the acceleration. Transmission Owners state in this filing, as they have argued in prior proceedings before the Commission, that the phrase “time value of advancing the required investment” is not synonymous with the phrase “time value of money.”³ Transmission Owners state that the “time value of money” is but one component of the costs associated with constructing an RTEP project on an advanced schedule, and that, in fact, “[t]here are many factors such as overtime scheduling, siting issues, and others that bear on the ability of a Transmission Owner to accelerate a project and the cost of accelerating that project.”⁴

5. According to Transmission Owners, these clarifications are needed because without them, Transmission Owners, who have prepared their capital budgets consistent with their obligations under the RTEP, might be required to advance the costs of accelerating an RTEP project. Advancing the costs of such accelerations might necessitate unanticipated additional borrowing or the diversion of funds from other projects.

6. Transmission Owners state that the revised language in section 217.3 is just and reasonable because the proposed language: 1) is consistent with PJM’s interpretation of the existing language in section 217.3; 2) is consistent with a fundamental principle in the PJM Tariff regarding cost responsibility that has been approved by the Commission, namely, that “the Interconnection Customer bears the cost of all facilities and upgrades

³ Transmission Owners Application at 4.

⁴ *Id.* at 6 (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh’g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh’g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh’g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff’d sub nom. Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007)).

that would not be needed but for the interconnection of the new [facility];”⁵ 3) will facilitate a transmission owner’s ability to plan and manage capital expenditures by removing any uncertainty regarding who will be responsible for the costs of accelerating RTEP projects; and 4) appropriately captures all costs associated with constructing an RTEP project on an advanced schedule, rather than limiting cost responsibility to the “time value of money,” which is only one component of those costs.

7. Transmission Owners state that they presented their intention to file these Tariff revisions at the June 25, 2008 meeting of the PJM Members Committee and in the published agenda for that meeting.

II. Notice of Filings and Responsive Pleadings

A. Notice and Interventions

8. The Commission gave notice of PJM Transmission Owners’ filing on August 12, 2008, which was published in the *Federal Register*, 73 Fed. Reg. 49,180, on August 20, 2008. Interventions and protests were due on or before August 29, 2008.

9. Allegheny Power and Trans-Allegheny Interstate Line Company, Ameren Services Company (Ameren), Baltimore Gas and Electric Company, Dominion Resources Services, Inc. (Dominion), Exelon Corporation, Neptune Regional Transmission System LLC, Old Dominion Electric Cooperative, Pepco Holdings, Inc. (PHI), PJM Interconnection, L.L.C. (PJM), PPL Electric Utilities Corp., and PSEG Companies filed timely motions to intervene.⁶ FirstEnergy Service Company (FirstEnergy) filed a motion to intervene with supporting comments. Strategic Transmission, LLC (Strategic) filed a timely motion to intervene and a protest. Hudson

⁵ *Id.* at 6.

⁶ Ameren intervenes on behalf of its affiliates Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Company, Illinois Power Company, Ameren Energy Marketing Company, Ameren Energy Generating Company, and Ameren Energy Resources Generating Company. Dominion intervenes on behalf of its affiliate Virginia Electric and Power Company. FirstEnergy intervenes on behalf of its affiliates Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company. PHI intervenes on behalf of its affiliates Potomac Edison Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company. PSEG Companies consist of Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade.

Transmission Partners, LLC filed a motion to intervene out of time. On September 15, 2008, the Indicated Transmission Owners⁷ answered Strategic's protest.

B. Protest of Strategic

10. Strategic protests the Proposed Revisions on several grounds. First, it argues that the Proposed Revisions is not consistent with other tariff language as the Commission recently ordered.⁸ Second, Strategic maintains the current tariff that Strategic maintains measures acceleration costs at the time value of money is appropriate. Strategic believes that Transmission Owners' proposal to remove the part of existing section 217.3, which limits the acceleration of costs to the time value of advancing the required investment, is unreasonable because this provision "reflects the common-sense idea that doing something sooner rather than later should be compensated at the time value of money." Strategic equates the time value of advancing the investment with the time value of money. Strategic notes that the existing provision is "a simple, transparent, and timely way to determine the cost of accelerating reliability-based upgrades."⁹ Strategic also states that the Proposed Revisions "would allow PJM transmission owners to control acceleration projects."¹⁰ In Strategic's view, allowing all "but for" costs allows Transmission Owners unilateral control over costs, both cost levels and when they are billed, which may be after the upgrade is installed. Strategic notes that delayed billing can "create unlimited risk for the merchant developer." As support, Strategic cites its

⁷ The Indicated PJM Transmission Owners include: Monongahela Power Company, The Potomac Edison Company and West Penn Power Company, all doing business as Allegheny Power; Trans-Allegheny Interstate Line Company; Baltimore Gas and Electric Company; Virginia Electric and Power Company, doing business as Dominion Virginia Power; Commonwealth Edison Company; PECO Energy Company; FirstEnergy Service Co., on behalf of its affiliate operating utility companies, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company; Old Dominion Electric Cooperative; PPL Electric Utilities Corporation; and Public Service Electric and Gas Company.

⁸ Strategic Protest at 3. *See also id.* at 3 n.3 ("The Commission, in ... *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,051, at P. 94 (2008), directed PJM, among other things, to 'review all of its tariff provisions relating to cost estimates for accelerated projects to make sure that they reflect a consistent approach' and to submit a compliance filing clarifying these provisions.").

⁹ *Id.* at 10.

¹⁰ *Id.* at 11.

complaint in another docket,¹¹ in which Strategic alleged that unsubstantiated costs were billed.

11. Strategic also states that Transmission Owners' claim that the Proposed Revisions are justified by the possibility of "additional borrowing or the diversion of funds from other projects" is a "red herring"¹² because additional borrowing in existing section 217.3 is directly compensated at the time value of money. Strategic notes that a well capitalized company with a large internal cash flow and ample lines of credit should not claim that an acceleration of a relatively small project will divert funds from other projects.

12. Strategic objects to the stakeholder process in this proceeding. Strategic states that the Proposed Revisions will be "replaced by vague language of [the Transmission Owners] own choosing."¹³ Strategic states further that Transmission Owners presented the Proposed Revisions as a '*fait accompli*' when presented at the Members Committee meeting on June 25, 2008, and "no substantive comments or objections by stakeholders were invited or entertained."¹⁴

13. Strategic states that the cost of reliability-based upgrades arises in merchant projects and the economic planning process.¹⁵ It "urges the Commission to decide the acceleration cost determination issue in Docket No. ER06-1474-000 [hereinafter "RTEP Proceeding"] and apply that determination here to achieve [] consistency."¹⁶

¹¹ Strategic May 21, 2007 Complaint, Docket No. EL07-63-000. In this complaint, Strategic requested that the Commission direct PJM to identify the Incremental Capacity Transfer Rights (ICTRs) for Strategic's merchant transmission project S16 so that its project could move forward to meet the lead-time claimed by PJM. Strategic also requested that PJM provide an appropriate Upgrade Construction Service Agreement that includes the project cost. The Commission "dismiss[ed] the complaint because PJM already ha[d] provided the ICTR information to Strategic, and [was] not obligated to provide the project cost estimate" at that time. *Strategic v. PJM*, 120 FERC ¶ 61,224, at P 27 (2007).

¹² *Id.* at 17.

¹³ *Id.* at 3.

¹⁴ *Id.* at 3 n.2.

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 7.

14. Should the Commission accept the Proposed Revisions, Strategic offers alternative language for cost limitation in section 217.3, providing safeguards against an asserted risk of anti-competitive conduct. In this regard, Strategic argues that acceleration benefits should be deducted from acceleration costs. For example, Strategic argues acceleration of transmission projects can reduce congestion. Reasoning that congestion can be a precursor of a reliability problem, Strategic states that reducing congestion can increase reliability, and it will lower congestion costs. Strategic also states that part of the value of acceleration could result simply from earlier expenditures that will not experience inflation. For example, Strategic notes, an upgrade with a capital cost of \$10 million in 2012 may cost \$8 million in 2009 because of inflation. In this example, Strategic concludes that one benefit of acceleration is a revenue requirement reduction of \$2 million.¹⁷

15. To protect against potential abuse by transmission owners, Strategic suggests an amendment in existing section 217.3a which allows for “but for” costs net of benefits to be included in accelerations if costs are submitted within 30 days of a request from the Office of the Interconnection.

C. Comments of FirstEnergy

16. FirstEnergy supports Transmission Owners filing. FirstEnergy contends that the revised language: properly reflects “the Commission’s clear and long-standing precedent allocating costs to parties that cause the costs and benefit from the facilities for which costs were incurred;”¹⁸ is consistent with PJM’s interpretation of the existing tariff language;¹⁹ will “avoid future disputes;”²⁰ and will assure that “the [Transmission Owners] and their customers are not required to assume costs and risks of a project acceleration request by and benefiting the New Service Customer.”²¹

17. FirstEnergy enumerates various costs that accelerating an RTEP project might engender other than the “time value of money.” These possible costs include indirect costs as well as: “incremental labor and contractor costs, material acceleration costs, cost associated with obtaining siting approvals and permits on an expedited basis, vendor

¹⁷ *Id.* at 20.

¹⁸ First Energy Comments at 4.

¹⁹ *Id.* at 5.

²⁰ *Id.* at 6.

²¹ *Id.* at 7.

incentive payments, incremental engineering costs, carrying charges for costs incurred earlier than scheduled, costs due to differences between original design . . . and actual design of the accelerated project, and abandonment costs.”²²

18. Finally, FirstEnergy proffers what it characterizes as “a simple way” to assure that a party requesting acceleration pays only the costs of project acceleration while minimizing disputes.²³ Under FirstEnergy’s approach, the party requesting acceleration would pay for all the actual construction costs as they are incurred, and would be reimbursed by the constructing transmission owner for the costs of the project that would have been incurred in the absence of acceleration “at the time those costs would have been incurred as contemplated in the RTEP.”²⁴

D. Answer of Indicated PJM Transmission Owners

19. Indicated Transmission Owners, in answering Strategic’s protest, contend that the Proposed Revisions in the Transmission Owners’ August 8 filing was made properly pursuant to the Transmission Owners Agreement, (Transmission Owners Agreement) and that its clarification of section 217.3 is consistent with the RTEP Proceeding; that Strategic’s “unique” interpretation of section 217.3 language is at odds with PJM’s position and supported by none other than itself.²⁵

20. Indicated Transmission Owners state that, in response to an April 17, 2008 Order in the RTEP Proceeding,²⁶ PJM was filing amendments to Schedule 6 of the Amended and Restated Operating Agreement (Operating Agreement), which defines “but for” enhancement costs and reflects acceleration costs. Indicated Transmission Owners state that their Proposed Revisions are consistent with the compliance filings in the RTEP Proceeding.²⁷

21. Concerning the propriety of Transmission Owners amending the PJM OATT, Indicated Transmission Owners state that the Proposed Revisions were made properly to

²² *Id.*

²³ *Id.* at 8.

²⁴ *Id.*

²⁵ Indicated Transmission Owners Answer at 5.

²⁶ *PJM Interconnection, LLC*, 123 FERC ¶ 61,051.

²⁷ Indicated Transmission Owners Answer at 4.

the Transmission Owners Agreement and consistent with section 9.1 of the PJM Tariff, which permits Transmission Owners to make unilateral section 205 filings. Further, Indicated Transmission Owners note that the stakeholder process allowed PJM members the opportunity to ask questions or comment on the Proposed Revisions at the June 26, 2008 presentations, and no questions were asked nor comments made.²⁸

22. Indicated Transmission Owners state that Strategic's interpretation of existing section 217.3 limiting compensation for acceleration to "time value of advancing the required investment" acceleration to the "time value of money," is incorrect. Indicated Transmission Owners note that PJM has stated to the Commission that the "time value of advancing the required investment" includes not just interest but also "but for" costs.²⁹

23. Strategic's argument regarding transmission owners' control of RTEP project acceleration, according to Indicated Transmission Owners, "ignores completely the fact that" under section 4.1.4 of the Transmission Owners Agreement, "PJM, not the Transmission Owners, is fully responsible for regional planning."³⁰ Furthermore, state Indicated Transmission Owners, "[t]o the extent any party disagrees with any aspect of PJM's determinations with respect to a New Service Request calling for acceleration of an RTEP project, including determinations regarding project costs, the party may avail itself of PJM's dispute resolution procedures."³¹ According to Indicated Transmission Owners, such dispute resolution procedures are necessary "because the costs associated with each project are very case-specific, must be addressed between the relevant parties, and cannot be determined in a generic manner."³²

24. Indicated Transmission Owners also state that Strategic's concerns that they have an interest in preserving congestion are completely misplaced. They note again that PJM, not individual Transmission Owners, are responsible for the RTEP. Further, they state that Strategic's allegations assume that transmission owners violated the functional separation under Order No. 889,³³ and Strategic has presented no evidence to support its

²⁸ *Id.* at 6-7.

²⁹ *Id.* at 4 n.18 (citing PJM October 24, 2007 Answer, Docket No. EL07-63).

³⁰ *Id.* at 8.

³¹ *Id.* at 8.

³² *Id.* at 8-9.

³³ *Id.* at 10 (citing *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. Preambles January 1991-June 1996 ¶ 31,035, *clarified*, 77 FERC ¶ 61,335 (1996), *order on reh'g*, Order No. 889-A, FERC

claims. Third, not all transmission owners benefit from congestion. Some transmission owners are affiliated with load serving entities, which do not benefit from congestion.

III. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³⁴ timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

26. In view of the early stage of this proceeding, its interest, and the absence of undue prejudice or delay, we will grant Hudson Transmission Partners, LLC's motion to intervene out of time.

27. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure³⁵ prohibits an answer to a protest or another answer unless otherwise ordered by the decisional authority. We will accept Indicated Transmission Owners' answer because it provided information that assisted us in our decision-making process.

B. Substantive Matters

28. We will accept the revisions to section 217.3, to become effective October 7, 2008. These revisions apply the "but for" test used by PJM to assess all transmission projects to proposals to expedite project construction. We agree that while the time value of money is an appropriate component of any assessment of the costs of an acceleration project, it may not be the only relevant cost applicable to an expansion project. As First Energy points out, such costs may include the costs of additional overtime, expediting permits, or "rush" fees for capital equipment. Just as PJM considers such costs in evaluating the "but for" analyses under its tariff, consideration of those costs are appropriate in the context of acceleration projects as well.

29. Strategic requests, if the proposed tariff is accepted, that the Commission modify the tariff to clarify that benefits from acceleration are included in the "but for" calculus as provided in section 217.3. We find that the "but for" provisions of section 217.3 already

Stats. & Regs., Regs. Preambles July 1996-December 2000 ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997)).

³⁴ 18 C.F.R. § 385.214 (2008).

³⁵ 18 C.F.R. § 385.213(a)(2) (2008).

apply to acceleration projects, because section 217.3(a) is denominated “general” meaning it applies to all the specific applications, such as acceleration projects.³⁶ Under section 217.3(a) an acceleration customer is required to pay the “but for” costs necessary to accommodate its request “net of benefits resulting from the construction.” Section 217.3 defines the costs and benefits to include:

those associated with accelerating, deferring, or eliminating the construction of Local Upgrades and Network Upgrades included in the Regional Transmission Expansion Plan either for reliability, or to relieve one or more transmission constraints and which, in the judgment of the Transmission Provider, are economically justified; the construction of Local Upgrades and Network Upgrades resulting from modifications to the Regional Transmission Expansion Plan to accommodate the New Service Request; or the construction of other Local Upgrades and Network Upgrades that are not and do not formally become part of the Regional Transmission Expansion Plan.³⁷

The Proposed Revisions do not exempt acceleration projects from this language; rather, acceleration projects are subject to the same consideration of costs and benefits as all other projects. Thus, the Proposed Revisions already satisfy Strategic’s request for “a true ‘but for’ test.”³⁸

30. Strategic raises concerns about the transparency of the cost process and what it characterizes as vaguely specified costs. It maintains that the transmission owner’s control of costs can lead to what it terms potential anticompetitive activities of transmission owners, and suggests revisions to the tariff provision to address this concern.

31. However, under section 6 of the Operating Agreement, PJM through the Office of the Interconnection controls the RTEP process, not the Transmission Owners. As the

³⁶ See Proposed Revisions (section 217.3(a) is labeled “general,” and therefore applies to the acceleration scenario detailed in section 217.3(b)).

³⁷ See *FPL Energy Marcus Hook, L.P. v. PJM Interconnection, L.L.C.*, 118 FERC ¶ 61,169 (2007), *order on reh’g*, 123 FERC ¶ 61,289 (2008) (*FPL Energy*) (Commission discussed the proper interpretation of benefits under a similar provision of the PJM OATT).

³⁸ Strategic Protest at 20.

Commission made clear in Order No. 2003, RTOs are permitted greater leeway in utilizing the “but for” pricing test for interconnection cost determination because the RTO is independent of the transmission owners.³⁹

32. Strategic’s concerns about the inclusion and determination of the costs of specific projects should be addressed in specific cases.⁴⁰ The PJM OATT already contains detailed provisions with respect to the determination and allocation of costs for New Service Requests.⁴¹ This proceeding addresses only the criteria to be used in assessing the costs for acceleration projects. Consideration of specific concerns about the determination of costs is beyond the scope of this proceeding and needs to be addressed in specific proceedings in which they arise.⁴² Accordingly, we reject Strategic’s request that its proposed revisions so-called anticompetitive measures, namely the suggested amendment to section 217.3a, be added to the Proposed Revisions.

33. First Energy suggests that one method of resolving Strategic’s concerns that transmission owners will overestimate the estimates of acceleration costs and neglect to include cost savings from earlier construction is for the party requesting acceleration to pay actual project costs as incurred and for the transmission owner to reimburse that party for the costs on a schedule reflecting the original proposed dates of construction. While we do not see the need for including such a provision in the tariff, if an accelerating party seeks such a provision as protection against overestimation of acceleration costs, we

³⁹ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Statutes and Regulations, Regulations Preambles 2001-2005 ¶ 31,146, at 677, 693-95 (2003) (Order No. 2003). *See generally*, *FPL Energy*, 118 FERC ¶ 61,169 (2007), *order on reh’g*, 123 FERC ¶ 61,289 (2008) (discussing the role of RTO determination in costs and benefits).

⁴⁰ Strategic and the Transmission Owners also argue over whether additional borrowing is a legitimate cost. This is a cost specificity argument that is beyond the scope of this proceeding.

⁴¹ These portions of the PJM OATT include: interconnection procedures and feasibility studies, which describe feasibility studies to determine, feasibility and cost of the proposed interconnection (section 36.2); interconnection service agreement, including cost reimbursement procedures (sections 212-214) and cost responsibility for necessary facilities (section 217, including section 217.3).

⁴² The provision of cost information for the specific project cited by Strategic was addressed in that specific case. *Strategic Transmission, LLC v. FERC*, 120 FERC ¶ 61,224 (2007) (finding that PJM was not obligated to provide information on the schedule proposed by Strategic).

would expect transmission owners and PJM to negotiate the provisions of such a provision in good faith.

34. Strategic maintains this filing is not consistent with other tariff language regarding acceleration projects. We find this proposal just and reasonable for the reasons discussed above. Moreover, we find that the proposed language ensures that acceleration projects are considered using the same “but for” criteria that the tariff applies to all other projects.⁴³

35. Strategic finally argues that the Transmission Owners failed to abide by the stakeholder process in submitting this filing. Section 9.1 of the PJM OATT gives Transmission Owners the exclusive right to make section 205 filings “for any changes in or relating to the establishment and recovery of the Transmission Owners’ transmission revenue requirements or the transmission rate design under the PJM Tariff.”⁴⁴ Thus, this filing is appropriately made under PJM’s tariff, and we find that this language is just and reasonable.

The Commission orders:

The Proposed Revisions to the PJM OATT are accepted, to become effective October 7, 2008.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴³ PJM has made a compliance filing in the RTEP Proceeding to more specifically include acceleration projects, and we will consider that filing in a separate order. PJM Interconnection, LLC June 16, 2008 Compliance Filing, Docket No. ER06-1474-006.

⁴⁴ PJM OATT, section 9.1(a).