

127 FERC ¶ 61,092
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket Nos. ER06-456-016

PJM Interconnection, L.L.C

ER06-954-012
ER06-1271-011
ER07-424-007
EL05-121-005

(not
consolidated)

ORDER DENYING REHEARING AND CLARIFICATION

(Issued April 28, 2009)

1. In this order, the Commission denies a rehearing request filed by Old Dominion Electric Cooperative (Old Dominion) regarding the allocation of costs for specific enumerated projects approved as part of PJM Interconnection, L.L.C.'s (PJM) Regional Transmission Expansion Plan (RTEP). The Commission also denies a request for clarification by PJM and Exelon Corporation (PJM/Exelon) of a Commission order regarding the proper allocation of costs for transformers with a low-side voltage below 500 kV.

Background

2. The Commission has accepted a cost allocation methodology that assigns cost responsibility for new transmission facilities that operate at or above 500 kV on a region-wide basis.¹ Other transmission facilities in the RTEP process are allocated based on a

¹ *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063, at P 76 (2007); *order on reh'g and compliance filing*, Opinion No. 494-A, 122 FERC ¶ 61,082 (2008) (January 31, 2008 Order); *order on reh'g*, 124 FERC ¶ 61,033 (2008) (July 17, 2008 Order).

determination of the parties that benefit from the project using a powerflow distribution factor (DFAX). PJM submitted a filing to amend Schedule 12 of its FERC Electric Tariff, Sixth Revised Volume No. 1 (Tariff), pursuant to Opinion No. 494 (May 21, 2007 Compliance Filing). PJM added a new subsection to its Tariff that defines the two types of facilities that will be assigned cost responsibility on a region-wide basis: (1) regional facilities, and (2) necessary lower voltage facilities.² PJM's Tariff, Schedule 12 § (b)(i) provides:

Regional Facilities and Necessary Lower Voltage Facilities. Transmission provider shall assign on a region-wide basis cost responsibility for Required Transmission Enhancements included in the Regional Transmission Expansion Plan that are (1) Transmission Facilities as defined in section 1.27 of the Consolidated Transmission Owners Agreement (Rate Schedule FERC No. 42) that operate at or above 500 kV ("Regional Facilities"), or (2) new Transmission Facilities or expansions or enhancements to existing Transmission Facilities that operate below 500 kV that must be constructed or strengthened to support new Regional Facilities, based on the planning criteria used by the Transmission Provider in developing the applicable Regional Transmission Expansion Plan ("Necessary Lower Voltage Facilities")

3. In the May 21, 2007 Compliance Filing, PJM proposed to exclude from region-wide cost allocation: (1) transformers with low-side voltages below 500 kV, and (2) transmission facilities that operate below 500 kV and deliver energy from a 500 kV facility to load. PJM stated that transformers with low-side voltages below 500 kV are viewed as delivering energy from a regional facility to load.³ PJM provided an exception to the general cost allocation rule for transformers that are an "integral component of a regional facility." PJM explained that integral transformers do not deliver energy to load; rather, they facilitate the connection of a regional facility. PJM reasoned that, since such transformers are, in essence, a part of the regional facility, they should be allocated on the same basis as regional facilities.⁴ PJM Tariff Schedule 12, section (b)(i)(C) provides:

(1) Except for transformers that are an integral component of a Regional Facility, transformers with low-side voltages below 500 kV shall not be considered Regional Facilities or Necessary Lower Voltage Facilities; and (2) Transmission Facilities that operate below 500 kV and deliver energy from a Regional Facility to load shall not be considered Necessary Lower Voltage Facilities.

² Tariff, Schedule 12 § (b)(i).

³ May 21, 2007 Compliance Filing Explanatory Letter at 5-6.

⁴ *Id.* at 6.

4. The Commission accepted the May 21, 2007 Compliance Filing, finding that so long as PJM determines that facilities are necessary for the construction of a 500 kV and above project, such facilities should be included as part of the project.⁵

5. Old Dominion Electric Cooperative (Old Dominion) had requested rehearing of the January 31, 2008 Order insofar as the Commission accepted PJM's proposal to exclude transformers with a low-side voltage below 500 kV from the class of facilities that receive PJM-wide cost allocation,⁶ and on July 17, 2008, the Commission denied Old Dominion's request for rehearing,⁷ and PJM/Exelon have requested clarification.

6. PJM also had submitted revisions to the cost responsibility assignments in Schedule 12-Appendix to reflect the region-wide allocations required by Opinion No. 494. On March 7, 2008, the Commission conditionally accepted the revised cost assignments.⁸ The Commission directed PJM to submit a further compliance filing demonstrating that the cost allocation assignments were consistent with the revised cost allocation provisions of the PJM Tariff that the Commission had accepted in Opinion No. 494-A.

7. On April 21, 2008, PJM submitted a compliance filing (April 21, 2008 Compliance Filing) explaining that thirty-two of the thirty-seven projects at issue consisted entirely of facilities eligible for region-wide cost allocation under Opinion No. 494. The five remaining projects, according to PJM, consisted of both regional facilities and lower voltage facilities that are not necessary to support the higher voltage facilities. The lower voltage facilities included in these five projects comprised 500/230 kV and 500/138 kV transformers, and 230 kV and 138 kV circuits, which are all lower voltage facilities that deliver energy to load.⁹ On September 18, 2008, the Commission

⁵ Opinion No. 494-A, 122 FERC ¶ 61,082 at P 89.

⁶ Old Dominion sought rehearing (alternatively, clarification) of Opinion No. 494. The Commission addressed Old Dominion's requests in the January 31, 2008 Order.

⁷ *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,033 at P 7.

⁸ *PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,217 (2008).

⁹ The disputed transformers are associated with Projects B0210, B0231, B0269, B0321 and B0329.

accepted the April 21, 2008 Compliance Filing,¹⁰ and Old Dominion has requested rehearing.

A. Request for Rehearing of the September 18, 2008 Order

8. Old Dominion contends that the Commission erred in excluding the disputed transformers from assignment of cost responsibility on a region-wide basis. In support of its argument, Old Dominion contends that the September 18, 2008 Order is inconsistent with two recent Commission rulings. First, Old Dominion argues that in the July 17, 2008 Order, the Commission noted that, while the function of non-integral transformers is to deliver energy to load, the distinction between an integral and a non-integral transformer will also depend on the transformer's physical configuration. Old Dominion further contends that the Commission explained that where transformers are part of and support the construction of the 500 kV PJM-wide facilities, they will be regarded as integral transformers. According to Old Dominion, in the July 17, 2008 Order, the Commission clarified that parallel transformer facilities that are required to support or strengthen the regional facilities should be allocated on a regional basis. Therefore, Old Dominion contends that the September 18, 2008 Order is inconsistent with the July 17, 2008 Order.

9. Old Dominion also contends that the Commission should have evaluated whether any of the disputed transformers should be deemed integral transformers because they are part of and support the construction of the 500 kV PJM-wide facilities, or are parallel facilities that are required to support or strengthen the regional facilities. Accordingly, Old Dominion argues that the Commission should have determined whether each of the transformers was part of a project, that as a whole would provide significant regional benefits, and whether the project could achieve its stated objectives without the transformer.

10. Second, Old Dominion argues that, in a Virginia Electric Power Company (VEPCO) incentive proceeding,¹¹ the Commission indicated that the 500/230 kV transformer bank (included as part of the Carson-Suffolk-Thrasher project (Project B0329, one of the disputed transformers) for which VEPCO requested incentive rates)

¹⁰ *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,241 (2008) (September 18, 2008 Order).

¹¹ *Virginia Electric and Power Co.*, 124 FERC ¶ 61,207 (2008), *reh'g pending* (VEPCO Incentives Order).

should be deemed an “integral” facility.¹² Old Dominion states that the Commission (*citing* the July 17, 2008 Order) found that the Carson-Suffolk-Thrasher transformer bank is integral to the Carson-Suffolk-Thrasher line. Old Dominion contends that if, as the Commission concluded in the VEPCO Incentives Order, the Carson-Suffolk-Thrasher 500/230 kV transformer is an integral transformer, then it was an error not to assign the cost responsibility for this transformer on a region-wide basis in the September 18, 2008 Order.

B. Request for Clarification of the July 17, 2008 Order

11. PJM/Exelon request that the Commission clarify footnote 22 of the July 17, 2008 Order, which states:

When transformers connecting a lower voltage line are in parallel with the 500 kV system, there are multiple paths for the flow of electricity from source to load. Therefore, the loss of the 500 kV system would result in electricity flow over the lower voltage lines. In this case, the transformer is integral to the 500 kV system because it provides for greater reliability. In contrast, when the transformer is connected in series with the lower voltage lines, the loss of the 500 kV line results in the loss of the flow of energy on the lower voltage facilities.¹³

PJM/Exelon maintain that the Commission should clarify that this footnote was not intended to change the Commission’s determination that, based on their functionality as determined by PJM, the only transformers with a below 500 kV low-side voltage that are classified as regional facilities are those that are integral to the 500 kV and above facility, such as those that connect dynamic reactive devices to a 500 kV and above line.¹⁴ PJM/Exelon state that due to the looped nature of transformers with a high-side voltage at or above 500 kV that are connected at substations to lower voltage lines and/or load, an

¹² In the VEPCO Incentives Order, VEPCO explained that it will construct a new 500 kV transmission line from Carson to Suffolk County. In addition, VEPCO will install a 500/230 kV transformer and construct a new 21.5-mile 230 kV transmission line from the Suffolk substation to the Thrasher substation (together, the Carson-Suffolk-Thrasher project). *Virginia Electric and Power Co.*, 124 FERC ¶ 61,207 at P 6.

¹³ PJM/Exelon request for clarification at 4, *citing PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,033 at n.22.

¹⁴ PJM/Exelon request for clarification at 5, *citing* Opinion No. 494-A, 122 FERC ¶ 61,082 at P 88, 90.

interpretation that reliability stands on equal footing or overrides functionality would confuse the test for identifying integral transformers.¹⁵

12. Old Dominion filed an answer in opposition to the request for clarification of PJM/Exelon. Old Dominion contends that the functional test is neither as narrow nor as prescriptive as PJM/Exelon suggests.¹⁶ Old Dominion contends that the Commission's reference to greater reliability makes sense in the context of transformers that are necessary to support the construction of facilities that are to receive region-wide cost support.¹⁷

C. Discussion

13. We deny Old Dominion's request for rehearing. The allocation of transformers must be made by PJM in accordance with its Tariff. PJM's Tariff provides generally that all facilities of 500 kV or greater are considered regional facilities, and that lower voltage facilities may be included in regional facilities if they are Necessary Lower Voltage facilities.¹⁸ The Tariff, however, contains a specific provision with respect to transformers with a low-side voltage of less than 500 kV. It provides that "except for transformers that are an integral component of a Regional Facility, transformers with low-side voltages below 500 kV shall not be considered Regional Facilities or Necessary Lower Voltage Facilities."

14. In determining whether a transformer is integral to a regional high voltage project, we must look at both the Tariff provision in context as well as the orders leading up to the

¹⁵ PJM/Exelon request for clarification at 4.

¹⁶ Old Dominion answer at 2.

¹⁷ *Id.* at 3.

¹⁸ Schedule 12 provides:

Transmission provider shall assign on a region-wide basis cost responsibility for Required Transmission Enhancements included in the Regional Transmission Expansion Plan that are (1) Transmission Facilities as defined in section 1.27 of the Consolidated Transmission Owners Agreement (Rate Schedule FERC No. 42) that operate at or above 500 kV ("Regional Facilities")

Tariff, Schedule 12 § (b)(i).

acceptance of the Tariff provision. Based on such review, we conclude that a transformer with a low-side voltage of less than 500 kV that is constructed to serve load is not eligible for regional allocation.

15. Because the introductory clause using the term “integral” is considered an exception to the general rule, the Tariff contemplates that most transformers with low-side voltages below 500 kV are excluded from regional allocation. Only those transformers that are essential to building the Regional Facility (greater than 500 kV) will be entitled to regional treatment. The general purpose of regional allocation is to allocate to the entire PJM region those high voltage facilities that form the “backbone” of the PJM system.¹⁹ Many if not most transformers with low-side voltages below 500 kV are installed to step down voltage so that power can be transmitted from the high voltage long-distance lines to the lower voltage lines that bring energy to load and are not strengthening the backbone of the system. Thus, a transformer with a low-side voltage of less than 500 kV that is constructed to deliver energy to load would not be eligible for regional allocation.²⁰

16. This interpretation of the Tariff is consistent with the second provision of Schedule 12 § (b)(i)(C), which provides that: “Transmission Facilities that operate below 500 kV and deliver energy from a Regional Facility to load shall not be considered Necessary Lower Voltage Facilities.” A transformer with a low-side voltage less than 500 kV, therefore, is treated as any other lower voltage facility that delivers energy to load. The Commission confirmed this understanding of the definition in its order accepting the provision: “the Commission agreed with PJM that transformers with a low-side voltage below 500 kV are sending energy directly to load, and the costs of these transformers should be allocated locally.”²¹

¹⁹ *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,063 at P 79-80.

²⁰ Under the tariff, an integral transformer with a high side voltage of 500 kV and a low side voltage of less than 500 kV (i.e., that is not constructed to serve load) can be “considered Regional Facilities or Necessary Lower Voltage Facilities.” For example, a transformer with a high-side voltage of 500 kV and a low side voltage of less than 500 kV that is used to connect the components of a dynamic reactive device to the 500 kV transmission system is a regional facility. *See PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,082 at P 90. Other transformers with low side voltages of less than 500 kV (that are not constructed to serve load) would be allocated regionally if they are Necessary Lower Voltage facilities.

²¹ *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,033 at P 8.

17. In the April 21, 2008 Compliance Filing, PJM addressed the specific projects for which Old Dominion requests rehearing and explained that all of the disputed transformers deliver energy to load and so are not an integral component of the regional facilities. Old Dominion has not challenged PJM's determination nor provided evidence that the purpose of these facilities is other than to delivery energy to load.²²

18. Instead, citing clauses of prior Commission orders, Old Dominion argues that the Commission should have determined whether each of the transformers was part of a project that as a whole would provide significant regional benefits, and whether the project could achieve its stated objectives without the transformer.²³ For example, it states that the transformer associated with RTEP Project No. B0321, for instance, should receive regional cost allocation because, as with RTEP Project No. B0329 at issue in VEPCO, it is part of a major new transmission project – the Trans-Allegheny Interstate Line (“TrAIL”) – that the Commission has indicated should provide regional benefits. Presumably, Old Dominion argues, the TrAIL Project could not achieve its objectives without the associated 500/138 kV transformer that is part of the TrAIL facilities.

19. But this argument to define “integral” as any facility that is part of the regional project reiterates an argument that the Commission rejected in prior proceedings. The objective of any high voltage line ultimately is to serve load somewhere, so under Old Dominion's proposed definition all such high voltage lines would be considered part of the regional facility. As discussed above, such a position is at odds with the Tariff provision, which presumes that most transformers with low-side voltages below 500 kV will not be considered part of the regional project. As we stated in the July 17, 2008 Order in responding to the same argument, “in essence, Old Dominion is seeking to have all transformers treated as “integral” transformers; it would have the exception swallow the rule.”²⁴

²² In our January 31, 2008 Order, we required PJM to identify all the relevant facilities on its website, so that the engineering analysis would be available. *PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,082 at P 89.

²³ But as we discuss below, these were just examples taken from PJM's filings, and were not intended to establish the test for whether transformers would be allocated regionally. In any event, to the extent these phrases are not consistent with the prior analysis of the Tariff, we do not find them to be the appropriate test for whether a transformer is allocated regionally.

²⁴ *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,033 at P 9 n.21. The Commission further stated that the appropriate test is “to allocate the costs based on the *function* of the

20. With respect to one particular project (Project B0329), Old Dominion contends that the September 18, 2008 Order is inconsistent with the VEPCO Incentives Order in which the Commission used the word “integral” with respect to providing transmission incentives to a transformer that was part of the Carson-Suffolk-Thrasher project.

21. The VEPCO Incentives Order dealt with an entirely different statutory and regulatory issue: whether a project satisfies the test to qualify for construction incentives. Under § 35.35(d), a project can qualify for an incentive if the applicant can demonstrate that the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion consistent with the requirements of section 219, that the total package of incentives is tailored to address the demonstrable risks or challenges faced by the applicant in undertaking the project, and that resulting rates are just and reasonable.²⁵ The criteria for incentives are unrelated to whether the facility costs are allocated system-wide or to beneficiaries based on the DFAX methodology. Both system-wide and DFAX allocated costs can qualify for incentives as long as the project meets the statutory and regulatory criteria.

22. In this context, the Commission found in the VEPCO Incentives Order that the transformer at issue was an integral component of the entire project that met the incentives criteria, irrespective of how the individual facilities were treated for allocation purposes.²⁶ Indeed, the difference in criteria is illustrated by the VEPCO Incentives Order’s approval of an incentive for the entire Carson-Suffolk-Thrasher Project, including the 230 kV line connected to the transformers at issue.²⁷ For the purposes of incentives, the VEPCO Incentives Order considered the transformer integral, but that does not require that it be considered integral to the 500 kV regional project for the

transformer, and the function of non-integral transformer facilities that operate below 500 kV is to deliver energy to load.” *Id.*

²⁵ For example, the Commission stated that “the Carson-Suffolk-Thrasher line is needed to ensure reliability and to serve load in the South Hampton Roads area.” *Virginia Electric Power Co.*, 124 FERC ¶ 61,207 at P 57.

²⁶ *See Hibbs v. Winn*, 542 U.S. 88 (2004) (“the cardinal rule that statutory language must be read in context”). *See also United States v. Ressam*, 128 S. Ct. 1858, 1865 (2008) (Breyer J., dissenting) (“words alone [cannot] explain every nuance of their intended application. Context matters”); *Nix v. Hedden*, 149 U.S. 304 (1893) (defining tomatoes as vegetables with respect to the Tariff Act of 1883).

²⁷ *See Virginia Electric Power Co.*, Docket No. ER08-1207-000, Request for Transmission Investment Incentive, at 11-12 (July 1, 2008).

purposes of cost allocation under Schedule 12 of the PJM tariff.²⁸ The issue in the VEPCO Incentive Order is, therefore, distinct from that involved in determining under the provisions of PJM's tariff whether the costs of the transformer (including the incentives) should be allocated system-wide or zonally, and the use of the term "integral" in the VEPCO Incentives Order does not require a reversal of the allocation of that transformer.

23. We deny the requested clarification with respect to footnote 22. Footnote 22 merely paraphrases part of an explanation provided by PJM in the May 21, 2007 Compliance Filing Explanatory Letter.²⁹ The criteria for allocating the cost of transformers with low-side voltages below 500 kV is the test proscribed by the Tariff as discussed earlier. We agree that the Tariff itself is vague and may be difficult to apply in some cases, but the proper solution for such difficulty is for PJM to make a filing under section 205 of the Federal Power Act (FPA) proposing a clearer demarcation, rather than requesting clarification.

The Commission orders:

The requests for rehearing and clarification are denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁸ April 21, 2008 Compliance Filing, Docket No. ER06-456-014, at 7 (an allocation unchallenged by any party).

²⁹ "Transformers with low side windings below 500 kV are viewed as delivering energy from the Regional Facility to load, i.e. they are in series with the Regional Facility rather than in parallel, the general characteristic of a Necessary Lower Voltage Facility. Integral transformers, on the other hand, do not deliver energy to load, rather they facilitate the connection of a Regional Facility." May 21, 2007 Compliance Filing Explanatory Letter at 5-6.