

136 FERC ¶ 61,060
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

PPL EnergyPlus, LLC

Docket No. EL11-25-001

v.

PJM Interconnection, L.L.C.

ORDER DENYING REHEARING

(Issued July 27, 2011)

1. This order addresses a request for rehearing of the Commission's March 31, 2011 order¹ filed by PPL EnergyPlus, LLC (PPL), and PSEG Energy Resources and Trade LLC and Public Service Electric and Gas Company (PSEG Companies) (collectively, PPL Parties). PPL Parties argue that the Commission erred in dismissing a complaint (Complaint) filed by PPL regarding PJM Interconnection, L.L.C.'s (PJM) modeling of outages of two months or more in its simultaneous feasibility tests for financial transmission rights (FTR) and auction revenue rights (ARR). For the reasons discussed below, the Commission denies the request for rehearing.

I. Background

2. On March 2, 2011, PPL filed the Complaint against PJM, which alleged that PJM violated its Open Access Transmission Tariff (Tariff) by failing to model the Meadowbrook-Morrisville 500 kV construction-related transmission outage (the Meadowbrook Outage) in the simultaneous feasibility tests conducted for the 2010/2011 Annual FTR Auction. PPL requested that the Commission: 1) find that PJM violated its Tariff by failing to model all planned outages of two months or more in its simultaneous

¹ *PPL EnergyPlus, LLC v. PJM Interconnection, L.L.C.*, 134 FERC ¶ 61,263 (2011) (March 31, 2011 Order).

feasibility tests for the 2010/2011 FTR Auction and ARR allocation, 2) direct PJM to follow the Tariff in the upcoming Annual FTR Auction beginning on April 5, 2011, and 3) require that market participants who were harmed by PJM's Tariff violations be made whole.²

3. PPL argued that the Tariff provides that FTR auctions and ARR allocations will be conducted in accordance with sections 7.4 and 7.5 of the Tariff and with the PJM Manuals.³ PPL stated that PJM Manual 6 provides that transmission line outages "expected to last 2 months or more will be included in the determination of simultaneous feasibility for the Annual FTR Auction."⁴ PPL argued that by opting not to model the Meadowbrook Outage, which lasted for more than two months, PJM caused revenue inadequacy for the 2010/2011 planning period and violated the conditions of its Manual and Tariff. PPL stated that, as a result of PJM's actions, market participants suffered: 1) reduced ARR revenues due to over-allocation of ARRs and therefore dilution of ARR revenues, and 2) increased uplift costs to pay for the resulting underfunding of FTRs associated with the over allocation of ARRs.

4. PPL argued that PJM is exercising, and is planning to continue to exercise, discretion that its Tariff does not give it in deciding whether to model outages expected to last for two months or more in its simultaneous feasibility tests conducted for the ARR allocation and FTR auction process. PPL stated that PJM intended not to model two outages of two months or more in the 2011/2012 Annual FTR Auction (the Burches Hill – Chalk Point and Burches Hill – Possum Point outages). PPL also argued that PJM acted in a discriminatory manner by taking actions with regard to the outages that it models in its simultaneous feasibility test that directly benefit certain market participants

² The Tariff provides that all FTRs and ARRs awarded must be simultaneously feasible. The goal of the simultaneous feasibility determination is to ensure that there are sufficient revenues from Transmission Congestion Charges to satisfy all FTR obligations for the auction period under expected conditions and to ensure that there are sufficient revenues from the annual FTR auction to satisfy all ARR obligations. The Tariff provides that simultaneous feasibility determinations "shall be based on reasonable assumptions about the configuration and availability of transmission capability during the period covered by the auction...." PJM Tariff, Attachment K-Appendix §§ 7.1.1(a), 7.4.2.(h), 7.5(a).

³ Complaint at 2 (citing PJM Tariff, Attachment K-Appendix §§ 7.3.1, 7.4.2(a)).

⁴ *Id.* (citing Manual 6, Sec. 9 at 54).

at the expense of other market participants, and that PJM is pursuing a goal of allocating as many ARR's as possible, instead of the Tariff's stated goal of revenue adequacy.

5. PJM responded to the Complaint by arguing that it complied with the Tariff and Manual 6 when conducting the 2010/2011 simultaneous feasibility test. PJM disagreed with PPL's assertion that the Tariff requires PJM to model all transmission outages expected to last for two months or more. PJM argued that the Tariff provides PJM with the discretion to determine whether to include such outages in its simultaneous feasibility determinations. PJM further argued that the power flow model element of the simultaneous feasibility test determines the physical capability of the system to flow power at a single point in time, and that each ARR is necessarily allocated for the entire year, even though most outages do not occur for a full year. PJM explained that, therefore, modeling all outages of two months or longer would understate the available transmission capability and limit the availability of transmission rights, and furthermore, it is not technically feasible to model all outages of two months or longer in a single annual power flow case because this would likely result in failure of the optimization program due to a power imbalance. PJM also asserted that it had not acted in an unduly discriminatory manner, but merely had made its best effort to strike the appropriate balance between meeting its responsibility to ensure FTR revenue adequacy and its responsibility to maximize the use of its transmission system.

6. In the March 31, 2011 Order, the Commission found that PJM did not violate its Tariff or act in an unjust, unreasonable, and unduly discriminatory manner by not including the Meadowbrook Outage in its simultaneous feasibility determination conducted for the 2010/2011 FTR Auction and ARR allocation. Accordingly, the Commission dismissed the Complaint.

7. The Commission concluded in the March 31, 2011 Order that the Tariff provided PJM discretion in conducting its simultaneous feasibility determinations. Specifically, the Commission found that, while the Tariff states that simultaneous feasibility determinations shall take outages into account, it does not specify how PJM should take them into account, and permits discretion by stating that simultaneous feasibility determinations "shall be based on reasonable assumptions about the configuration and availability of transmission capability."⁵ The Commission also found that Manual 6 did not impose an absolute obligation to model all transmission outages of two months or more. The Commission stated that its interpretation of the Tariff was supported by the purpose for which the simultaneous feasibility test is conducted, i.e., to determine the

⁵ March 31, 2011 Order, 134 FERC ¶ 61,263 at P 39, 41 (citing PJM Tariff, Attachment K-Appendix § 7.5(a)).

ARRs to be allocated for the entire yearly planning period, and the fact that imposing an absolute interpretation of the Manual would result in failure of the optimization program due to a power imbalance. Finally, the Commission concluded that PPL had not demonstrated that PJM acted in a discriminatory manner and rejected PPL's assertion that PJM violated its Tariff because PJM's actions resulted in revenue inadequacy.

8. PPL Parties filed a request for rehearing.⁶ PJM and the FirstEnergy Companies⁷ each filed an answer to the request.

II. Request for Rehearing

9. PPL Parties argue that the Commission erred by concluding that the Tariff does not specify how PJM should take extended outages into account and ignoring the Tariff's requirement to follow the Manual. PPL Parties also argue that the Commission erred by concluding that the Manual is not clear and by not articulating what is unclear about the Manual, failing to direct PJM to correct the lack of clarity, and failing to require a quarterly compliance filing to provide an update on the status of stakeholder discussions.

10. PPL Parties assert that the Commission erred in failing to read the Tariff in a manner that gives meaning to all its provisions.

11. PPL Parties contend that the Commission failed to articulate a reasonable basis for concluding that the optimization program will fail if the requested outages are modeled. PPL Parties reiterate that the program will fail if all the requested ARRAs are included and all the extended outages are modeled, and PJM could issue fewer annual ARRAs if it models additional outages and grant monthly rights instead of annual rights over lines that are not in service.

12. PPL Parties argue that the Commission failed to address the Tariff's requirement that all awarded FTRs and allocated ARRAs be simultaneously feasible. PPL Parties assert

⁶ Due to a power outage that resulted in the unexpected closure of the Commission, the Commission issued an order granting rehearing for purposes of further consideration on June 3, 2011 pursuant to the provisions of 18 C.F.R. § 385.2007(a)(2) (2011).

⁷ FirstEnergy Solutions Corp., Allegheny Energy Supply Company, LLC, Monongahela Power Company, The Potomac Edison Company, Pennsylvania Electric Company, Metropolitan Edison Company, Jersey Central Power & Light Company, and West Penn Power Company (FirstEnergy Companies).

that the Commission erred by finding PJM's exclusion of extended outages reasonable when the Tariff indicates that PJM's goal should be to pursue revenue adequacy and the exclusion resulted in revenue inadequacy. PPL Parties claim that the Commission should determine whether PJM was acting appropriately and pursuing the goal of revenue adequacy when it excluded the Meadowbrook Outage in the 2010/2011 simultaneous feasibility test and the Burches Hill spans (that is, specific line segments) in the 2011/2012 simultaneous feasibility test. PPL Parties reiterate that PJM's actions to exclude the Meadowbrook Outage were a cause of revenue inadequacy for 2010/2011. PPL Parties also argue that the Commission failed to adequately address its argument that modeling the Meadowbrook Outage would have led to zero revenue inadequacy and would have forgiven the effect of loop flow, forced outages, and other unknown conditions.

13. PPL Parties contend that the Commission did not provide a basis for its determination that PJM was not acting in an unduly discriminatory manner by creating winners and losers among its market participants. PPL Parties state that the Commission did not address with particularity whether it was unduly discriminatory for PJM to consider lines collectively out of service on extended outage as in service for 12 months.

14. PPL Parties assert that the Commission failed to rule on whether PJM's announced omission of the Burches Hill spans from its 2011/2012 FTR Auction was reasonable. PPL Parties claim that the Complaint requested the Commission to direct PJM to conduct the upcoming auction for the 2011/2012 planning period in accordance with the requirements of the Tariff, but that the March 31, 2011 Order only concerned itself substantively with the 2010/2011 auction. PPL Parties argue that, after articulating what obligations the Tariff imposes upon PJM, the Commission failed to assess whether PJM's action to exclude the Burches Hill spans was appropriate pursuant to the Commission's interpretation of the Tariff; specifically, whether the exclusion of the Burches Hill spans was consistent with the degree of judgment and discretion that it determined the Tariff provides to PJM and whether PJM's exclusion of these spans was based on reasonable assumptions about the configuration and availability of transmission capability during the period covered by the auction. PPL Parties further argue that the Commission failed to address whether it was reasonable for PJM to exclude both Burches Hill spans, which were out of service for 9 months of the 12 month planning period, and issue transmission rights as if they would be in service for the entire planning period.

15. Finally, PPL Parties argue that the Commission should have characterized its order as a denial of the Complaint instead of a dismissal of the Complaint because the March 31, 2011 Order considered the Complaint on its merits.

III. Discussion

A. Procedural Matters

16. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2011) prohibits an answer to a request for rehearing. Accordingly, PJM's and the FirstEnergy Companies' answers will be rejected.

B. Substantive Matters

17. We deny rehearing, affirming our finding that PJM did not violate its Tariff or act in an unjust, unreasonable, and unduly discriminatory manner by not including the Meadowbrook Outage in its simultaneous feasibility determination conducted for the 2010/2011 FTR Auction and ARR allocation.

18. In the Complaint, PPL claimed that PJM violated its Tariff and acted in an unjust, unreasonable, and unduly discriminatory manner when it failed to include the Meadowbrook Outage in the simultaneous feasibility test for the 2010/2011 Annual FTR Auction. PPL requested that the Commission direct PJM to model all outages of two months or more in its simultaneous feasibility test for the 2011/2012 planning period and make whole those parties harmed by PJM's failure to model the Meadowbrook Outage.

19. In order to receive refunds or other remedies with respect to the Meadowbrook Outage, PPL had to establish that PJM violated its Tariff in failing to model the Meadowbrook Outage. In the March 31, 2011 Order, the Commission found that the Tariff permits PJM to exercise discretion in its simultaneous feasibility determinations and therefore PJM did not violate its Tariff and did not act in an unjust, unreasonable, or unduly discriminatory manner by not modeling the Meadowbrook Outage.⁸ Accordingly, the Commission declined to direct PJM to model all outages of two months or more in its simultaneous feasibility determinations going forward and did not require that parties be made whole.

⁸ If the Commission had found that PJM had not violated its Tariff but had otherwise acted in an unjust and unreasonable or unduly discriminatory manner, PPL Parties would have been eligible for refunds only beginning the date the Complaint was filed.

1. **The Commission properly found that PJM did not violate its Tariff in not modeling the Meadowbrook Outage**

20. In the March 31, 2011 Order, the Commission concluded that PJM did not violate its Tariff by not including the Meadowbrook Outage in its simultaneous feasibility determination conducted for the 2010/2011 FTR Auction and ARR allocation. The Commission found that PJM's modeling of the Meadowbrook Outage did not conflict with its Tariff because the Tariff does not specify how PJM should take outages into account.⁹ The Commission explained that the Tariff permitted PJM to exercise discretion in its simultaneous feasibility determinations and concluded that the PJM Manuals do not impose an absolute obligation to model all transmission outages of two months or more.¹⁰

21. PPL Parties contend that the Commission erred by concluding that the Tariff does not specify how PJM should take extended outages into account and ignoring the Tariff's requirement that the ARR allocation process be performed in accordance with the PJM Manuals.¹¹ We reaffirm our finding that, while the Tariff states that simultaneous feasibility determinations shall take outages into account, it does not specify how simultaneous feasibility determinations shall take outages into account or specify any requirements as to which outages should be taken into account.¹² The Tariff merely states that simultaneous feasibility determinations "shall take into account outages of both individual generation units and transmission facilities" without further detail. The Tariff's statement that simultaneous feasibility determinations "shall be based on reasonable assumptions about the configuration and availability of transmission capability..." indicates that PJM may exercise its judgment and discretion in conducting simultaneous feasibility determinations.¹³

22. PPL Parties claim that the Tariff requires PJM to follow its manuals in determining simultaneous feasibility. However, section 7.5(a) of Attachment K-

⁹ March 31, 2011 Order, 134 FERC ¶ 61,263 at P 41.

¹⁰ *Id.* P 41-42.

¹¹ PJM Tariff, Attachment K-Appendix §§ 7.3.1, 7.4.2(a).

¹² March 31, 2011 Order, 134 FERC ¶ 61,263 at P 41.

¹³ PJM Tariff, Attachment K-Appendix § 7.5(a).

Appendix contains no reference to procedures in the Manual in determining simultaneous feasibility. The references to the Manual cited by PPL Parties (Attachment K-Appendix §§ 7.3.1, 7.4.2(a)) are to different sections of the Tariff dealing with the procedures by which FTR auctions and allocation of auction revenues are determined, not with the determination of simultaneous feasibility.¹⁴

23. In addition, as we found in the March 31, 2011 Order, the PJM Manual does not impose an obligation on PJM to model all outages of two months or more under any and all circumstances, without regard to the particular facts surrounding such an outage. Instead, the Manual only provides the inclusion of outages of two months or more as one of the factors to be considered in the simultaneous feasibility test.¹⁵ PJM's execution of the simultaneous feasibility test includes exercising its discretion to determine whether and the extent to which each of the referenced inputs should be included or excluded from the pre-auction phase of the determination and/or the computer optimization program that PJM uses to determine the proper allocation of ARR and auctioning of FTRs. In considering the specific facts of the outages raised in the Complaint, the Commission found that PJM had neither violated its Tariff nor engaged in unjust and unreasonable practices.

24. PPL Parties further assert that the Commission erred by concluding that the Manual is not clear, by not requiring the Manual to be corrected, and by not requiring PJM to submit a quarterly compliance filing to provide an update on the status of stakeholder discussions. In the March 31, 2011 Order, the Commission noted that the Manual "may not be as clearly worded as would be optimal," but found that a reasonable interpretation of the Tariff language, the Manual as informed by the Tariff, and the realities of the modeling process showed that PJM has discretion to determine which outages should be treated as applicable to the entire year for the purpose of the simultaneous feasibility test.¹⁶ As indicated above, moreover, the Manual is not part of

¹⁴ In any event, the Commission has not accepted or approved the Manuals and so any references in Manuals do not override Commission-accepted/approved Tariff provisions. *Cf. KeySpan-Ravenswood, LLC v. FERC*, 474 F.3d 804, 810-11 (D.C. Cir. 2007) (unelaborated reference to "ISO Procedures" cannot "be understood as 'clear[] and specific[]' notice that NYISO intended to follow the translation methodology in the yet-to-be-adopted [Installed Capacity] Manual"); *New York Independent System Operator, Inc. v. Astoria Energy LLC*, 118 FERC ¶ 61,216, at n.17 (2007) (finding no statutory obligation to enforce the Installed Capacity Manual's terms).

¹⁵ PJM Manual 6, section 9, p. 54.

¹⁶ March 31, 2011 Order, 134 FERC ¶ 61,263 at P 44.

PJM's filed rate and was not accepted or approved by the Commission. PJM, and its stakeholders, may decide to revise the Manual to be more clear as to the process PJM will follow, but we see no basis for the Commission to require that PJM engage in a Manual revision. The Commission also noted that concerns regarding the modeling of extended transmission outages are being vetted through the stakeholder process, however, in light of our dismissal of the Complaint we saw no reason to require a compliance filing. Additionally, we note that PJM's stakeholder deliberations are open and posted on PJM's website.

2. The Commission read the Tariff in a manner that gives meaning to all its provisions

25. PPL Parties argue that the Commission erred by interpreting the Tariff in a way that does not give meaning to all provisions in the Tariff, maintaining that PJM's reading of the Tariff does not give meaning to both the requirement to take into account extended outages and to make reasonable assumptions about transmission availability.¹⁷

26. The Commission did not ignore the requirement in the Tariff to "take into account outages of both individual generation units and transmission facilities."¹⁸ While PJM is required to consider these outages, the Tariff did not mandate that PJM model all outages of two months or more without any exercise of discretion. Rather, the Tariff permits PJM to base its allocations "on reasonable assumptions about the configuration and availability of transmission capability during the period covered by the auction."¹⁹ As the Commission found, "[w]hile the Tariff states that simultaneous feasibility determinations shall take outages into account, it does not specify how PJM should take them into account, or impose any requirements as to which outages should be taken into account."²⁰

¹⁷ Rehearing Request at 22 (citing PPL Answer to PJM Answer to Complaint at 8).

¹⁸ Attachment K, Appendix, 7.5, OATT 7.5 Simultaneous Feasibility, 0.0.0.

¹⁹ *Id.*

²⁰ March 31, 2011 Order, 134 FERC ¶ 61,263 at P 41. The Tariff does not, for example, state that PJM "shall take into account [all] outages."

3. **The Commission did not err notwithstanding its concluding that the optimization program will fail if all extended outages are modeled**

27. In the March 31, 2011 Order, the Commission interpreted the Tariff as allowing PJM to exercise discretion in its simultaneous feasibility determinations. The Commission stated its interpretation of the Tariff was supported by the fact that application of PPL's interpretation requiring modeling of all outages of two months or more would result in the failure of the optimization program due to a power imbalance.²¹

28. On rehearing, PPL Parties argue that the Commission failed to support its conclusion that modeling all outages of two months or longer, as PPL requested, would result in failure of the optimization program. PPL Parties argue that the program would only fail if all requested ARR's are included and all extended outages are modeled.²² PPL Parties reiterate that PJM could, for example, avoid failure of the optimization program by issuing fewer annual ARR's and granting monthly FTR's over lines that are not in service.

29. Initially, we note that our finding that PPL's interpretation would require modeling of all outages of two months or more would result in the failure of the optimization program was not crucial to the Tariff interpretation. Even if the optimization program did not fail, the Tariff provides PJM with discretion in determining how to model outages and does not require that PJM model every outage of two months or more in the simultaneous feasibility test. PJM persuasively explained in its answer to PPL's Complaint that, if multiple outages were modeled together for the entire year, the model would significantly understate the transmission system capability and the optimization program would likely be unable to produce a base model with which to begin the technical assessments necessary to evaluate transmission rights feasibility.²³ PJM uses the simultaneous feasibility test to ensure that the congestion payments due to awarded ARR's and FTR's can be funded from the congestion payments created in the energy market. PJM explained that it attempts to maximize the use of the transmission system by providing customers as much firm transmission as can reasonably be expected, allocating to firm customers a sufficient number of ARR's to hedge against their

²¹ *Id.* P 43.

²² Rehearing Request at 15-16. PPL Parties thus admit that the program could fail, we note.

²³ *Id.* at 13-14.

congestion charges.²⁴ The purpose of conducting the simultaneous feasibility determination is thus to allocate the maximum number of ARR that can be allocated while ensuring that FTRs are fully funded, not to ensure that FTRs can never be underfunded.²⁵ Finally, PPL may still explore its proposed modeling methods in PJM's stakeholder process if PPL believes these more accurately model the system.²⁶

4. The Commission did not err with respect to whether PJM's actions could be the cause of revenue inadequacy

30. In the March 31, 2011 Order, the Commission rejected PPL's assertion that PJM violated its Tariff because the Tariff requires PJM to pursue the goal of revenue adequacy and PJM took actions that caused revenue inadequacy.

31. On rehearing, PPL Parties argue that the Commission did not adequately respond to PPL's argument that PJM violated its Tariff because its exclusion of the Meadowbrook Outage was inconsistent with the goal of revenue adequacy specified in the Tariff and the Tariff's requirement that all awarded FTRs and allocated ARRs be simultaneously feasible. PPL Parties argue that the Commission should determine whether PJM was acting appropriately and pursuing the goal of revenue adequacy when it excluded the

²⁴ PJM Answer to Complaint at 22. *See Midwest Independent System Operator, Inc.*, 108 FERC ¶ 61,163, at P 156 (2004) (“[T]he Commission stated that the primary objective of the initial FTR allocation is ‘to hold existing transmission customers whole with respect to congestion related charges...to the extent possible given the objective of simultaneous feasibility’ (*Midwest Independent System Operator, Inc.*, 102 FERC ¶ 61,196, at P 64 (2003))...[W]e will augment the proposed FTR allocation methodology with additional measures to ensure that market participants receive sufficient FTRs....”).

²⁵ *Id.* at 26. PJM explains that if its mandate was to ensure that FTRs could never be underfunded, PJM would adopt such a conservative approach to granting firm transmission service that many customers would go without the level of firm service that they have historically relied upon in scheduling power from resources to load. *Id.* at 26, n.77.

²⁶ The PJM Market Implementation Committee approved the creation of the Financial Transmission Rights Task Force at its March 17, 2011 meeting to address the FTR revenue inadequacy that occurred during the 2010/2011 planning period. *See* PJM's Issue Tracking Webpage at: <http://www.pjm.com/committees-and-groups/issue-tracking/issue-tracking-details.aspx?Issue={759ECF2E-D3AE-4AC3-88FB-8D3E45CBA614}>.

Meadowbrook Outage from the 2010/2011 simultaneous feasibility test and the Burches Hill spans in the 2011/2012 simultaneous feasibility test.²⁷ PPL Parties reiterate that PJM admits that its actions contributed to revenue inadequacy.²⁸ PPL Parties further argue that the Commission should have reviewed PJM's admissions in juxtaposition with the Tariff requirement to pursue revenue adequacy.²⁹

32. In the March 31, 2011 Order, the Commission responded directly to PPL's arguments, stating that "[i]f PJM does not meet its goal of revenue adequacy in a particular instance, that does not mean that a Tariff violation has necessarily occurred."³⁰ The Tariff describes revenue adequacy as a "goal" of the simultaneous feasibility determination, not a requirement.³¹ As the Commission also pointed out, the Tariff contemplates the possibility of underfunding FTRs in a planning period.³² Furthermore, PPL Parties have not shown that PJM did not attempt to meet the goal of revenue adequacy or that PJM acted unreasonably based on the information available at the time. PJM stated that it performed its simultaneous feasibility analysis in a consistent manner since the ARR allocations and FTR Auctions were incorporated into PJM markets, with generally successful results.³³ Whether PJM's various modeling decisions ultimately achieved the goal of revenue adequacy or not in this particular case did not become clear until months after its decisions had been made. And even if PJM's exclusion of the Meadowbrook Outage contributed to revenue inadequacy in this case, we do not find that

²⁷ Rehearing Request at 19.

²⁸ *Id.* at 9, 20.

²⁹ *Id.* at 9.

³⁰ March 31, 2011 Order, 134 FERC ¶ 61,263 at P 46.

³¹ The Tariff states that "[t]he goal of the simultaneous feasibility determination shall be to ensure that there are sufficient revenues from Transmission Congestion Charges to satisfy all Financial Transmission Rights Obligations for the auction period under expected conditions and to ensure that there are sufficient revenues from the annual Financial Transmission Right auction to satisfy all Auction Revenue Rights Obligations." PJM Tariff, Attachment K-Appendix, §7.5(a).

³² March 31, 2011 Order, 134 FERC ¶ 61,263 at P 46 (citing PJM Tariff, Attachment K-Appendix § 5.2.5(c)).

³³ PJM Answer to Complaint at 27; PJM Answer to Complaint at Attachment A,

(continued...)

PJM violated its Tariff in doing so and therefore its actions would not justify the after-the-fact relief that PPL requested.

33. PPL Parties further argue that the Commission failed to adequately address its argument that modeling the Meadowbrook Outage would have led to zero revenue inadequacy and would have forgiven the effect of loop flow, forced outages, and other unknown conditions.³⁴ PPL Parties assert that a likely reason that the Tariff and Manual provide that extended outages should be included in the simultaneous feasibility test is to “forgive” for the effects of unpredictable conditions, such as loop flow.³⁵ However, PPL Parties’ claim that modeling this outage would have “forgiven” other unknown conditions and led to zero revenue inadequacy is immaterial because, as discussed above, even if PJM’s actions indeed did contribute to revenue inadequacy, PPL Parties have not shown that PJM did not attempt to meet the goal of revenue adequacy as the Tariff required or that PJM acted unreasonably based on the information available at the time. In any case, we are not persuaded by PPL Parties’ argument that inclusion of the Meadowbrook Outage in the simultaneous feasibility test would have led to zero revenue inadequacy. In the March 31, 2011 Order, the Commission recognized that the modeling of the Meadowbrook Outage was not the sole factor contributing to the FTR revenue inadequacy for the 2010/2011 planning period, as PJM stated that major construction outages only accounted for 17 percent of the FTR revenue inadequacy for the 2010/2011 planning period, with other contributing factors, such as other construction outages, external flowgates/constraints, and loop flow, accounting for the remaining 83 percent.³⁶ PJM explained that it determined that the revenue inadequacy probably still would have occurred even if no outage had been taken on the Meadowbrook Outage, albeit to a lesser extent.³⁷

Ott Affidavit at P 18.

³⁴ Rehearing Request at 21-22.

³⁵ *Id.*

³⁶ March 31, 2011 Order, 134 FERC ¶ 61,263 at P 45 (citing PJM’s March 16, 2011 Answer, Affidavit at PP 32-33).

³⁷ PJM Answer to Complaint at Attachment A, Ott Affidavit at P 33, and Appendix B.

5. The Commission did not err in its determination that PJM did not act in an unduly discriminatory manner

34. In the March 31, 2011 Order, the Commission found that PPL had not demonstrated that PJM acted in an unduly discriminatory manner by giving undue preference to certain market participants.

35. PPL Parties contend that the Commission erred by failing to provide a basis for its determination that PJM did not act in an unduly discriminatory manner in excluding the Meadowbrook Outage in its simultaneous feasibility tests. PPL Parties assert that the Commission did not address with particularity whether it was unduly discriminatory for PJM to assume lines collectively out of service on extended outage were in service for 12 months.

36. We reaffirm our finding in the March 31, 2011 Order that PPL has not demonstrated that PJM acted in an unduly discriminatory manner by giving undue preference to certain market participants. As PJM acknowledges, the simultaneous feasibility test model is not perfect, but the scale does not always tip in favor of underfunding of FTRs.³⁸ PJM states that, historically, it has generally fully funded its FTRs and allocated an appropriate amount of ARR, with only periodic underfunding.³⁹ The Commission noted in the March 31, 2011 Order that PJM's choice not to model the Meadowbrook Outage is consistent with its past decisions.⁴⁰ PPL Parties do not provide evidence that PJM acted in an unduly discriminatory manner in how it did or did not model the Meadowbrook Outage as compared with its modeling of other similar outages. Nor do we find that, as an independent system operator, PJM has an incentive to improperly model facilities and outages. Thus, even if PJM's decision not to model the Meadowbrook Outage could have led to underfunding of FTRs in this instance, there is no persuasive basis to find that PJM's actions amount to undue discrimination.

³⁸ PJM Answer to Complaint at 27.

³⁹ This statement is supported by PJM's Market Implementation Committee's Market Operations Report, February 8, 2011 at 6-10, included in the Complaint filing.

⁴⁰ March 31, 2011 Order, 134 FERC ¶ 61,263 at P 47.

6. **The Commission did not err with respect to whether PJM's omission of the Burches Hill spans from the 2011/2012 auction was reasonable**

37. PPL Parties assert that the Commission failed to rule on whether PJM's announced omission of the Burches Hill spans from PJM's 2011/2012 FTR Auction and subsequent issuance of transmission rights were reasonable. PPL Parties also assert that, having determined that the Tariff allows PJM to exercise discretion in conducting simultaneous feasibility determinations, the Commission failed to analyze whether excluding the Burches Hill spans was consistent with the degree of judgment and discretion the Tariff allows and whether PJM's exclusion of the lines was based on reasonable assumptions.

38. In the March 31, 2011 Order, the Commission found that the Tariff permitted PJM to exercise discretion in its simultaneous feasibility determinations and therefore PJM did not violate its Tariff or act in an unjust, unreasonable, or unduly discriminatory manner by not including the Meadowbrook Outage in its simultaneous feasibility determination for the 2010/2011 FTR Auction and ARR allocation. The Commission explained that, in order for PJM to provide an accurate model of the system for the year, PJM needs to determine whether a short-term outage of two months is sufficient to warrant the denial of ARRs for an entire year, and that determination requires the exercise of reasonable discretion as provided in the Tariff.⁴¹ The Commission accordingly declined to direct PJM to model all outages of two months or more in the simultaneous feasibility tests for the 2011/2012 planning period.

39. The Complaint focused on whether PJM violated its Tariff by not modeling the Meadowbrook Outage in the 2010/2011 planning period. The Complaint did not contain any substantive information concerning the Burches Hill spans. PPL briefly mentioned the Burches Hill spans, but only twice in the Complaint, and nowhere in the Complaint does PPL provide evidence going to the unreasonableness of PJM's exercise of discretion with respect to the Burches Hill spans.⁴² And PPL's answer to PJM's answer to the Complaint merely asserted that treating the Burches Hill spans as in service for the entire

⁴¹ *Id.* P 43.

⁴² Complaint at 14 (noting that "PJM plans to omit the Burches Hill – Chalk Point and Burches Hill – Possum Point 500 kV transmission line outages, expected to extend for 110 and 151 days, respectively, from its simultaneous feasibility determination") and 26 ("the Mt. Storm-Doubs outage as well as the Burches Hill – Chalk Point and Burches Hill – Possum Point outages must be modeled in the SFT for the annual ARR allocation and Annual FTR Auction for the 2011/2012 planning period").

planning period “does not constitute a reasonable representation of the transmission system.”⁴³ PPL Parties’ rehearing request merely refers back to these passing references. Mere brief assertions in pleadings and rehearing requests are not sufficient to raise cognizable issues.⁴⁴

40. In any event, PJM provided a reasonable response to PPL’s brief references to the Burches Hill spans. In its answer to the Complaint, PJM explained that the Burches Hill outages were excluded from the optimization program for the 2011/2012 Planning Period because it was not reasonable to include them in the network topology element of the DC power flow model when considering the other transmission outages that PJM included, in particular the Mt. Storm-Doubs 500 kV line outage.⁴⁵ PJM stated that modeling the Burches Hill outages together with the Mt. Storm-Doubs outage would result in extreme under-allocation of ARRs for expected conditions and would not be realistically representative of the physics of the grid.⁴⁶ Given the paucity of the Complaint and PPL’s pleadings on this matter, we find PJM’s answer reasonable and conclude that they have not demonstrated that PJM acted unreasonably in exercising its discretion with respect to the Burches Hill spans.

⁴³ PPL Answer to PJM Answer to Complaint at 12 (“while the Mt. Storm to Doubs transmission line and alternating sections of the Burches Hill transmission line will be out of service simultaneously for almost the entire planning period, PJM modeled only one of these 3 lines as out of service, treating the spans of the Burches Hill line from Chalk Point to Possum Point as if they will be in service for the entire planning period. This does not constitute a reasonable representation of the transmission system”).

⁴⁴ See *North Carolina v. FERC*, 112 F.3d 1175, 1192-93 (D.C. Cir. 1997) (“petitioners’ discussion of the issue in their request for rehearing was tucked away in a footnote in a paragraph primarily devoted to a discussion of ASR systems. Under these circumstances, the Commission “cannot be asked to make silk purse responses to sow’s ear arguments”); *Constellation Energy Commodities Group, Inc. v. FERC*, 457 F.3d 14, 22 (D.C. Cir. 2006) (“each quoted passage states a conclusion; neither makes an argument”); *Southeastern Mich. Gas Co. v. FERC*, 133 F.3d 34, 42 (D.C. Cir. 1998) (“a party does not preserve factual issues on appeal by raising them in the administrative proceeding and then referring to them without elaboration in a reply brief. Not only does the opposing party lose its opportunity to contest the merits of the factual challenge, but the court does not get the benefit of the adversarial process”).

⁴⁵ PJM Answer to Complaint at 15-16.

⁴⁶ *Id.* at 16.

7. **The Commission did not err by styling the March 31, 2011 Order as a dismissal of the Complaint instead of a denial of the Complaint**

41. PPL Parties also contend that the Commission erred in styling the March 31, 2011 Order as a dismissal of the Complaint, as opposed to a denial of the Complaint. The Commission's Rules of Practice and Procedure do not distinguish between a complaint that is "dismissed" and one that is "denied," and thus PPL Parties cannot argue that their due process rights, including their right to file for rehearing or to file a petition for review of the order in a Court of Appeals, were adversely impacted by the Commission's use of the term "dismissed." The March 31, 2011 Order is a merits order that reached the substance of the complaint and rehearing lies of that order; the precise term used in the order is irrelevant. We deny rehearing on this issue.

The Commission orders:

The request for rehearing filed by PPL Parties is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.