

136 FERC ¶ 61,195  
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.

PJM Interconnection, L.L.C.

Docket No. ER11-4073-000

ORDER ACCEPTING INTERCONNECTION SERVICE AGREEMENTS

(Issued September 16, 2011)

1. On July 18, 2011, PJM Interconnection, L.L.C. (PJM) filed an unexecuted interconnection service agreement and interconnection construction service agreement entered into among PJM, West Deptford Energy, LLC (West Deptford), and Atlantic City Electric Company (West Deptford ISA and West Deptford ICSA) pursuant to section 205 of the Federal Power Act and Part VI of the PJM Open Access Transmission Tariff (Tariff). As discussed below, the Commission accepts the proposed agreements, effective June 17, 2011, as requested.

**I. Background**

**A. Filing and Request for Waiver**

2. PJM states that it is submitting the agreements because West Deptford has requested that PJM file them unexecuted pursuant to section 212.4 and 212.6 of the PJM Tariff. The West Deptford ISA, designated Original Service Agreement No. 2962, and the West Deptford ICSA, designated Original Service Agreement No. 2963, facilitate the interconnection to the PJM transmission system of the West Deptford Energy Station, a natural gas-fueled combined cycle generating facility consisting of two combustion turbines and one steam turbine, in West Deptford Township, Gloucester County, NJ.

3. The West Deptford ISA contains a disputed, non-standard Schedule F. PJM states that Schedule F addresses cost allocation of the Customer Facility and reimbursement of a prior-queued interconnection project for the costs of the network upgrade identified as Network Upgrade n0028 (Network Upgrade 28). The attachments facilities charge associated with the West Deptford ISA is \$4,364,319; the network upgrade charge associated with the West Deptford ISA is \$10,761,078.

4. PJM explains that it is PJM's understanding that West Deptford did not execute the agreements and requested that they be filed unexecuted because (1) West Deptford challenges the cost allocation in Specifications section 4.2 and Schedule F and (2) West Deptford challenges the maximum facility output (MFO) of 650 MW in Specifications section 1.0(c) of the West Deptford ISA. PJM further explains that it is its understanding that West Deptford claims that the currently effective PJM Tariff provision concerning cost allocation would not support the proposed cost allocation and that the appropriate MFO is 800 MW. PJM counters that the PJM Tariff section that was in effect does support the proposed cost allocation, and that the 650 MW MFO assessment was the result of West Deptford's own request to reduce the output of its facility to 650MW.

5. PJM requests a waiver of the Commission's 60-day prior notice requirement in order to allow an effective date of June 17, 2011. PJM argues that the Commission should grant waiver because PJM is filing the unexecuted agreements within 30 days of the date when West Deptford asked PJM to file the agreements as unexecuted.<sup>1</sup>

## **II. Notice and Responsive Pleadings**

6. Public notice of the filing was issued on July 19, 2011. Interventions and protests were due August 8, 2011, as provided in section 154.210 of the Commission's regulations.<sup>2</sup> Pursuant to Rule 214,<sup>3</sup> all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. West Deptford filed a timely protest, which is discussed below.

7. On August 18, 2011, FPL Energy Marcus Hook, L.P. (Marcus Hook) filed an answer to West Deptford's protest. On August 23, 2011, PJM filed an answer to West Deptford's protest. On August 31, 2011, West Deptford filed an answer to Marcus Hook's and PJM's answers. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest or to an answer unless otherwise ordered by

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<sup>1</sup> PJM filing at 4 (citing *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,983-84 (1993)).

<sup>2</sup> 18 C.F.R. § 154.210 (2011).

<sup>3</sup> 18 C.F.R. § 385.214 (2011).

the decisional authority.<sup>4</sup> We will accept all three answers because they have aided us in our decision-making.

### III. Protest

#### A. Section 219 and Cost Allocation

8. West Deptford protests PJM's proposed allocation of costs. In particular, West Deptford states that PJM is charging it roughly \$10.76 million for a network upgrade that was already constructed before the West Deptford project existed. West Deptford explains that construction on Network Upgrade 28 was completed in June 2003,<sup>5</sup> and that two other projects, Liberty Electric and Marcus Hook, signed interconnection service agreements agreeing to pay for Network Upgrade 28, with Liberty Electric going into service in 2002 and Marcus Hook going into service in 2004. West Deptford states that it did not submit its interconnection request until July 31, 2006.

9. West Deptford raises four arguments as to why it should not have to pay for Network Upgrade 28. First, West Deptford argues, PJM's claim is time-barred under the currently effective Section 219 of the PJM tariff, and PJM has been attempting to avoid this bar by applying an outdated version of the PJM tariff. Both versions of Section 219 establish certain situations in which a new interconnection service customer might be responsible for the cost of an already-built upgrade. The most significant difference is that the current Section 219 allows this retroactive payment "for a period of time not to exceed five years *from the execution date of the Interconnection Service Agreement*," while the old Section 219 allowed retroactive payment "provided that the facility or upgrade was placed in service no more than 5 years *prior to the affected Interconnection Customer's Interconnection Queue closing date*." Thus, by starting the clock from the date that the ISA is executed, instead of the earlier date when the project enters the PJM queue, West Deptford would be free from obligation to pay for Network Upgrade 28, which was placed into service over 8 years ago.

10. Second, West Deptford argues the filed rate doctrine and Commission precedent require PJM to apply the currently effective cost allocation provisions in Section 219 of the PJM Tariff. West Deptford notes that when PJM submitted the relevant reforms in a May 2008 compliance filing in Docket No. EL08-36-001, PJM did not include a grandfathering provision. By Commission precedent, West Deptford argues, the current version of Section 219 must apply. West Deptford states that in *Marcus Hook III* and

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<sup>4</sup> 18 C.F.R. § 385.213(a)(2) (2011).

<sup>5</sup> West Deptford Protest at 7.

*Marcus Hook IV*,<sup>6</sup> PJM argued that “the tariff in effect at the time of signing an ISA [] governs the terms and conditions of a specific interconnection,”<sup>7</sup> and the Commission agreed and found that the tariff in effect at the time of the ISA’s execution properly governs the relationship between the parties.<sup>8</sup> West Deptford argues that the Commission has consistently, on both the PJM and MISO systems, held that “the cost allocation rules that apply to a given customer are those in the tariff “that is effective and on file on the date that the interconnection agreement is executed or filed unexecuted.”<sup>9</sup>

11. Third, assuming *arguendo* that PJM is legally permitted to allocate Network Upgrade 28 costs to West Deptford, West Deptford argues that it still should not have to bear all the costs. West Deptford argues that the old version of Section 219 only triggered if the Upgrade in question “*was previously determined to be necessary to accommodate, and that was constructed in connection with, an Interconnection Request that was part of a previous Interconnection Queue.*” West Deptford claims, however, that while PJM initially evaluated Network Upgrade 28 as being necessary for both the Marcus Hook and Liberty Electric facilities, PJM ultimately acknowledged that the upgrade was not necessary for either one.<sup>10</sup> Accordingly, West Deptford argues Network Upgrade 28 would not trigger even the old version of Section 219.

12. Further, West Deptford argues that under the old version of Section 219, PJM still has failed to demonstrate factually that its interconnection request contributed to the need

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<sup>6</sup> See generally *FPL Energy Marcus Hook, L.P. v. PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,069 (*Marcus Hook I*), *on reh’g*, 108 FERC ¶ 61,171 (2004) (*Marcus Hook II*), *vacated and remanded*, *FPL Energy Marcus Hook, L.P. v. FERC*, 430 F.3d 441 (D.C. Cir. 2005), *on remand*, 118 FERC ¶ 61,169 (2007) (*Marcus Hook III*), *reh’g denied*, 123 FERC ¶ 61,289 (2008) (*Marcus Hook IV*).

<sup>7</sup> West Deptford Protest at 16 n.46 (citing Docket No. EL04-57-002, Answer of PJM filed April 16, 2007).

<sup>8</sup> See *Marcus Hook IV*, 123 FERC ¶ 61,289 at P 80.

<sup>9</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,060, at P 62 (2009). See also West Deptford Protest at 16-17 (citing *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025 at P 21 (2008); *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,098, at P 11, 15 (2005); *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106, at P 70, 115 (2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,128, at P 25 (2006)).

<sup>10</sup> West Deptford Protest at 23.

for Network Upgrade 28. Since PJM constructed Network Upgrade 28 irrespective of new generation, West Deptford argues, it could have been included in the PJM Regional Transmission Expansion Plan, instead of erroneously billed to Marcus Hook and Liberty Electric. If this had occurred, West Deptford argues, it would also mean that Network Upgrade 28 would not trigger the old version of Section 219. Finally, West Deptford states that PJM has failed to demonstrate factually, or even analyze, whether Network Upgrade 28 provides net system benefits, or whether Network Upgrade 28 is more expensive than what would have been necessary to connect the West Deptford project.

13. Fourth, West Deptford claims that Marcus Hook or Liberty Electric have received Incremental Auction Revenue Rights (Incremental ARRs) for Network Upgrade 28, and argues that those ARRs must be surrendered before the entities can be reimbursed. West Deptford states that PJM previously stated that Marcus Hook received Incremental ARRs, and that Liberty Electric by the same logic would have been entitled to Incremental ARRs. West Deptford argues that under PJM Tariff Section 231, West Deptford would only be liable for reimbursement if “the Preceding Customer [relinquished] the Incremental Auction Revenue Rights that it elects to exchange in writing.”<sup>11</sup> Even if these Preceding Customers were to relinquish their rights now, West Deptford notes that they have received substantial compensation for their ARRs in the intervening years, and argues that they would be partly double-recovering if West Deptford were to now reimburse them for Network Upgrade 28.

#### **B. Maximum Facility Output**

14. West Deptford protests PJM’s decision to specify in the interconnection agreements that its interconnecting facility may only have a maximum facility output (MFO) of 650 MW, instead of 800 MW. West Deptford claims that in December 2006 it conceded to reducing its Capacity Interconnection Rights to 650 MW, but that it never conceded to reducing its MFO.<sup>12</sup> West Deptford argues that “[i]t was not until the draft ISA was tendered to West Deptford in April 2011, that PJM provided the first information suggesting that the MFO or full energy output related to the West Deptford Facility would be anything other than 800 MW.”<sup>13</sup> West Deptford notes that in some instances, PJM referred to the project as a 650 MW project, but argues that it is PJM’s practice to refer to project sizes by their Capacity Interconnection Rights, and so PJM never placed West Deptford on notice. West Deptford further claims that it consistently

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<sup>11</sup> West Deptford Protest at 25 n.72 (citing PJM Tariff §231.4(3)(a)).

<sup>12</sup> West Deptford Protest at 27.

<sup>13</sup> West Deptford Protest at 28.

provided PJM with project information indicating that it expected an 800 MW MFO. West Deptford requests that the Commission direct PJM to provide a study assessing the West Deptford project at an 800 MW MFO, revise the ISA to allow for an 800 MW MFO, and allow West Deptford to keep its existing queue priority.

**C. Answers**

15. Marcus Hook answers West Deptford's protest of PJM's proposed cost allocations. Marcus Hook states that it paid 90 percent of the costs of Network Upgrade 28 and will accordingly receive 90 percent of West Deptford's reimbursement of such costs.

16. Marcus Hook presents eight arguments in its answer. First, Marcus Hook asserts based on the general "but for" cost allocation principle, the project that necessitates Network Upgrade 28 should pay for that upgrade. Marcus Hook explains that since Network Upgrade 28 was not necessary to interconnect the Marcus Hook facility, but is necessary to connect the West Deptford facility, that it is manifestly just and reasonable – between Marcus Hook and West Deptford – that West Deptford pay for the upgrade if it decides to execute the tendered ISA.

17. Second, Marcus Hook argues the Commission and PJM have specifically affirmed Marcus Hook's right to reimbursement under the subject tariff provision. Marcus Hook asserts in the 2004 proceeding involving Network Upgrade 28, both PJM and the Commission specifically noted Marcus Hook's right to reimbursement under the precise circumstances of this case.

18. Third, even if prior Commission orders were not dispositive, the earlier tariff provision would still govern the West Deptford interconnection. Marcus Hook argues that PJM already clarified that the August 1, 2008 Tariff revisions that West Deptford seeks to use apply starting with the U2 Queue, rather than the Q Queue position that West Deptford holds.<sup>14</sup>

19. Fourth, acceptance of the West Deptford position could wreak havoc on existing and future ISAs. Marcus Hook argues that if West Deptford prevails, numerous other studies and ISAs for projects before the U2 queue over the last three years would have to be deemed completed using the wrong cost allocation. Marcus Hook asserts confusion,

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<sup>14</sup> "Answer of PJM Interconnection, L.L.C. to Request for Clarification of American Municipal Power-Ohio, Inc.," *Dominion Resources Services, Inc. v. PJM Interconnection, L.L.C.*, Docket No. EL08-36-000, filed July 7, 2007, page 3 (provided as attachment C).

delay and litigation would follow, and that at least 22 already executed ISAs could be affected.<sup>15</sup>

20. Fifth, Marcus Hook argues West Deptford's proportionate share is 100 percent because Network Upgrade 28 was not necessary to interconnect the Marcus Hook or Liberty Electric facilities and is necessary to interconnect the West Deptford facility.

21. Sixth, West Deptford's speculations about possible benefits were rejected by the Commission in the prior proceeding. Marcus Hook argues that West Deptford's speculations that Network Upgrade 28 might have been needed for reliability purposes, might have system benefits, and might not be cost effective are rehashes of arguments that the Commission denied in the prior proceeding involving Marcus Hook. In particular, the Commission held in those orders that a specific benefit must be shown.<sup>16</sup>

22. Seventh, Marcus Hook argues that West Deptford wants the benefits of its earlier queue position without any cost. West Deptford could have chosen to submit another interconnection request outside the 5 year window to which the reimbursement obligation applies. Marcus Hook asserts that presumably, West Deptford did not do so because a later request would have incurred greater interconnection costs and delays. Marcus Hook states that under its Q90 position, the only network upgrade West Deptford has to pay for is Network Upgrade 28 at a cost of \$10,761,078. Later projects, such as West Deptford's request in the S queue, are subject to much greater upgrade costs (e.g., the system impact study<sup>17</sup> for West Deptford's S107 request indicates network upgrade costs of approximately \$140,000,000). However, West Deptford should not be able to avoid both the cost and delays of a later queue position, and the relatively small cost of the earlier queue position it has knowingly and willingly elected to retain.

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<sup>15</sup> Review of queues O to T for posted ISAs shows 22 projects with one or more network upgrades costing less than \$5 million under ISAs executed after August 1, 2008 (Projects O22, O51, O52, O56, P10, P28, P36, P46, P47, P59, P60, Q43, Q57, Q65, R19, R32, R81, S100, S102, T126, T157, and T167).

<sup>16</sup> *E.g.*, *Marcus Hook IV*, 123 FERC ¶ 61,289 at P 60 (“Without any showing of some system benefit – namely, the acceleration, deferral, or elimination of some other upgrade – FPL has failed to meet the ‘system benefit’ test of section 37.2 of the PJM tariff.”).

<sup>17</sup> Available at [http://www.pjm.com/pub/planning/project-queues/impact\\_studies/s107\\_imp.pdf](http://www.pjm.com/pub/planning/project-queues/impact_studies/s107_imp.pdf).

23. Eighth, Marcus Hook argues West Deptford's argument regarding relinquishment of Incremental ARR is patently incorrect. Marcus Hook argues that in arguing that West Deptford is not obligated to reimburse Marcus Hook for its cost of Network Upgrade 28 because Marcus Hook has not relinquished the ARRs it received for paying 90 percent of Network Upgrade 28 costs, West Deptford ignores the fact that the Incremental ARR relinquishment provision is not triggered until an ISA is signed.

24. PJM answers both West Deptford's protest of PJM's cost allocation and West Deptford's protest of PJM's specification of a MFO of 650 MW in the ISA. PJM presents two arguments regarding cost allocation and one argument regarding the MFO. First, regarding cost allocation, PJM argues that it correctly applied the cost allocation provision that was in effect when West Deptford entered the queue. PJM states that in its protest, West Deptford claims that PJM should apply the inter-queue cost allocation provisions that are in effect at the time it signs the ISA rather than those in effect at the time it entered the queue. PJM explains the relevant difference between the two provisions is the length of time over which an upgrade installed by one customer can be allocated to a later-queued customer that has a need for such network upgrade. PJM asserts that the appropriate section to apply – Tariff section 37.7 that was in effect at the time the West Deptford project entered the queue (Q-90) – provides, in part:

Cost responsibility under this Section 37.7 may be assigned with respect to any facility or upgrade :... (c) the completed cost of which was \$10,000,000 or more, provided that the facility or upgrade was placed in service no more than five years prior to the affected Interconnection Customer's Interconnection Queue Closing Date.

25. Network Upgrade 28 was placed into service in June 2003. West Deptford submitted its interconnection request on July 31, 2006, just 3 years after Network Upgrade went into service, well within the 5-year cost allocation time frame. As such, PJM asserts, West Deptford is responsible for its share (100 percent) of Network Upgrade 28 costs.

26. PJM further argues that the cases West Deptford cites in its support are inapposite as applied to the tariff section at issue for one simple reason: the current Section 219 applies to the U2 queue and forward as PJM requested when it proposed revisions to Section 219, and as accepted by FERC.<sup>18</sup> Specifically, when PJM filed revisions to Section 219, in an answer to an intervenor in that proceeding, PJM stated:

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<sup>18</sup> PJM states that West Deptford's application is in the "Q" queue, which closed two years prior to application of the revised Section 219.

Finally, PJM proposes a modification to the PJM Tariff section 219(a) which sets forth the procedure for the allocation on costs across queues, in the May 30 filing. These modifications are intended to be effective as of August 1, 2008, and will be initially applied to the U2-Queue.<sup>19</sup>

Critically, it explains, PJM has consistently processed its inter-queue cost allocations for the last 3 years in reliance on that FERC Order. PJM states that if the Commission were to accept West Deptford's position, PJM would have to re-determine cost allocation determinations for potentially dozens of projects. In fact PJM explains, the stakeholder group that developed the revisions to Section 219 specifically determined that it should apply starting prospectively, with the U2 queue.

27. PJM asserts that the allocation method applicable to West Deptford's project should come as no surprise to West Deptford. For instance, starting with the Feasibility Study report, PJM made clear that West Deptford may have responsibility for all or a portion of Network Upgrade costs by clearly incorporating the specific tariff language in Section 37.7(c) that would apply to the project. PJM states that this was carried through to the System Impact Study and Facilities Study reports.<sup>20</sup> Also, LS Power Associates, L.P. (LS Power), West Deptford's parent company, was party to the proceeding in which PJM revised Section 219. Yet, LS Power did not challenge PJM's proposal to apply the new provision only prospectively from the U2 queue and forward.

28. Second, PJM argues that West Deptford is responsible for 100 percent of the cost of Network Upgrade 28 based on both prior case law and PJM's analysis of the West Deptford project. PJM states that as the Commission acknowledged in the Marcus Hook case, once the prior queue project A13 dropped out, the Marcus Hook and Liberty project did not need Network Upgrade 28. However, the Commission found that since costs had already been incurred and the upgrade was already completed, Marcus Hook and Liberty remained responsible for those costs. PJM states that the Commission relied on (1) the fact that no other interconnection customers in the queue at the time needed Network Upgrade 28, and (2) its interpretation of the PJM Tariff that if another generator attaches to the system in a manner that would need Network Upgrade 28, Marcus Hook and

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<sup>19</sup> *Answer of PJM Interconnection, L.L.C. to Request for Clarification of American Municipal Power-Ohio, Inc.* at 4, Docket No. EL08-36-000 (filed July 7, 2008). See also *PJM Interconnection, L.L.C. Transmittal Letter* at 2, Docket No. EL08-36-001 (filed May 30, 2008).

<sup>20</sup> See Feasibility Study Report at 3-4.

Liberty would receive reimbursement.<sup>21</sup> West Deptford's project requires Network Upgrade 28, and thus it must reimburse Marcus Hook and Liberty as contemplated in the Marcus Hook orders.

29. PJM also asserts that the West Deptford project is the first project to need Network Upgrade 28. PJM explains that since Marcus Hook and Liberty no longer had need for Network Upgrade 28, as a matter of course PJM analyzed later queued projects to determine what if any contribution such project had on Network Upgrade 28. West Deptford's project is the first project to cause overload on the Mickleton-Monroe 230 KV line which is Network Upgrade 28. This fact was noted in the Feasibility Study report, which indicated that the West Deptford project contributes 218 MW to the overload.<sup>22</sup> Further, PJM's System Impact Study included in its findings that West Deptford would be responsible for 100 percent of the upgrade costs.<sup>23</sup> This conclusion was also carried through to the Facilities Study report.<sup>24</sup> Regarding West Deptford's argument that the upgrade would have been needed in the intervening years since its need was first identified, PJM argues that the system benefits argument had already been denied in the Marcus Hook cases. There, the Commission found that without proven system benefits such as acceleration, deferral, or elimination of the need for another upgrade, such benefits could not be inferred.<sup>25</sup> PJM pleads that West Deptford should not be permitted to ask the Commission to infer benefits now.

30. Regarding PJM's specification of a MFO of 650 MW in the ISA, PJM argues that it acted in accordance with West Deptford's December 2006 request to reduce its unit capability from 800 MW to 650 MW and proceeded to study the project accordingly. PJM states that it acted in accordance with Section 36.2A.1 of the PJM Tariff<sup>26</sup> that provides in part:

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<sup>21</sup> *Marcus Hook I*, 107 FERC ¶ 61,069 at P 14.

<sup>22</sup> *FPL Marcus Hook, LP v. PJM Interconnection, L.L.C.*, Production of Information Required of PJM Interconnection, L.L.C. at 2, Docket EL04-57-000 (May 19, 2004).

<sup>23</sup> See Attachment D, System Impact Study Report at 5.

<sup>24</sup> See Attachment E, Facilities Study Report at 4.

<sup>25</sup> *Marcus Hook IV*, 123 FERC ¶ 61,289 at P 64-65.

<sup>26</sup> Section 36.2A.1 is in all relevant respects the same today as it was in 2006.

Prior to return of the executed System Impact Study Agreement to the Transmission Provider, a Generation Interconnection Customer may modify its project to reduce by up to 60 percent the electrical output (MW) of the proposed project.

Acting on West Deptford's request, PJM proceeded to study the project at 650 MW in all respects except, as West Deptford notes,<sup>27</sup> that it was studied at 800 MW for stability. Unfortunately, PJM adds, the information regarding the reduction of the project to 650 MW was not timely conveyed to analysts who conducted the stability study on West Deptford's project until after the fact. However, since even at 800 MW there was no stability impact, there was no reason to re-run the stability analysis at a lower value. No other needed studies, such as multiple contingency analyses or short circuit studies, were ever conducted on this facility as an 800 MW facility. In fact, PJM states, machine data provided by West Deptford to PJM in the 2007 timeframe shows this facility as having an electrical output of 690 MW (i.e., shows a maximum winter rating of 690 MW and a maximum summer net of 650 MW). PJM states it would not permit a facility to have such a great difference between MFO and CIR, as West Deptford suggests, without having performed the required studies as such an interconnection could have a severe impact on the reliability of the transmission system.

#### **IV. Commission Determination**

##### **A. Section 219**

31. Section 219 of PJM's tariff establishes certain situations in which a new interconnection service customer might be responsible for the cost of an already-built upgrade. One of the main issues in dispute in this proceeding is which version of Section 219 of PJM's tariff to use: the version that is currently effective, or the version that was effective at the time that West Deptford's request entered the queue, on July 31, 2006. For the reasons detailed below, and relying on previous orders on the same issue, we find that the 2006 version applies to this dispute.<sup>28</sup>

32. The currently effective version, which took effect on September 17, 2010, states as follows:

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<sup>27</sup> Protest at 28.

<sup>28</sup> At the time West Deptford entered the queue, section 219 was numbered Section 37.7. PJM renumbered much of its tariff in a 2006 filing that took effect on March 1, 2007. For simplicity, we use the current enumeration except where noted.

In the event that Transmission Provider determines that accommodating a New Service Customer's New Service Request would require, in whole or in part, any Local Upgrade or Network Upgrade that was previously determined to be necessary to accommodate, a New Service Request that was part of a previous New Services Queue, such New Service Customer may be responsible, subject to the terms of Sections 231.4, 233.5, and 234.5 below and in accordance with criteria prescribed by Transmission Provider in the PJM Manuals, for additional costs up to an amount equal to a proportional share of the costs of such previously-constructed facility or upgrade.

Cost responsibility under this Section 219 may be assigned with respect to any facility or upgrade:

(a) the completed cost of which was \$5,000,000 or more, for a period of time not to exceed five years from the execution date of the Interconnection Service Agreement for the project that initially necessitated the requirement for the Local Upgrade or Network Upgrade.

For purposes of applying this section, Transmission Provider may aggregate the costs of related facilities or upgrades, e.g., multiple replacements of or new circuit breakers at a single substation, that are, or are anticipated to be, constructed contemporaneously. In each Interconnection Service Agreement and Upgrade Construction Service Agreement executed after the date on which this Section 219 first becomes effective, Transmission Provider shall identify any of the facilities or upgrades included in the Specifications to such Interconnection Service Agreement or Upgrade Construction Service Agreement the costs of which Transmission Provider will aggregate for purposes of application of this section.

33. Schedule F of the unexecuted West Deptford ISA provides a Schedule Of Non-Standard Terms & Conditions, which states:

Note: At the time of Q90 entering the PJM queue, the Tariff stated the following relative to cost allocation:

*"In the event that Transmission Provider determines that accommodating an Interconnection Customer's*

*Interconnection Request would require, in whole or part, any Local Upgrade or Network Upgrade that was previously determined to be necessary to accommodate, and that was constructed in connection with, an Interconnection Request that was part of a previous Interconnection Queue, such Interconnection Customer may be responsible, subject to terms of Sections 46.4 and 48.5 below and in accordance with criteria prescribed by Transmission Provider in the PJM Manuals, for an additional costs up to an amount equal to a proportional share of the costs of such previously constructed facility or upgrade. Cost responsibility under this Section 37.7 may be assigned with respect to any facility or upgrade*

*a. ....*

*b. ....*

*c. the completed cost of which was \$10,000,000 or more, provided that the facility or upgrade was placed in service no more than 5 years prior to the affected Interconnection Customer's Interconnection Queue closing date.”*

34. The parties generally agree that under the currently effective 2010 version of section 219, West Deptford would be exempt from paying for Network Upgrade 28, since more than five years have passed from the execution date of Marcus Hook's Interconnection Service Agreement for Network Upgrade 28. Under the superseded 2006 version of section 219 (which is quoted in the West Deptford ISA), however, PJM argues that West Deptford would be responsible, because its Interconnection Queue closing date was less than five years after Network Upgrade 28 was placed in service.

35. We find under the circumstances here that the 2006 version of the tariff should apply to the West Deptford interconnection since, at the time when West Deptford entered the PJM interconnection queue, that provision was the one that established its financial responsibility. Thus, as of the date West Deptford entered the PJM interconnection queue, it was on notice that it would bear its proportionate share of Network Upgrade 28 and all parties in the queue were under the expectation that the costs of the network upgrade would be allocated in that manner.

36. This interpretation of the tariff is in accord with the Commission's prior interpretation of PJM's tariff. In order for the interconnection queue to operate, all parties need to know what cost responsibility rules will control, so they can plan accordingly. As the Commission found in *Marcus Hook III*:

The interconnection process cannot work efficiently if the determinations made in these studies were under continual review with the potential for never-ending reallocations of costs related to numerous other projects. ... “By looking to the date of each customer’s position in the queue, the interconnection provider may determine which interconnection costs should be allocated to an interconnection customer, and which costs belong to the system itself. In turn, the interconnection customer is able to use the queue system to assess its business risks. Each customer knows that subsequent cost allocations will be determined by circumstances that are known as of the time its System Impact Study is conducted. Projects may drop out of the queue and customers may move up the queue, but the cost allocation system insulates an interconnection customer from costs arising from events occurring after its System Impact Study is completed, other than costs arising from changes from higher-queued generators.”<sup>29</sup>

37. Furthermore, PJM confirmed that the tariff change it made in 2008 would operate prospectively when it filed to implement the change to its tariff in 2008. In its transmittal letter in Docket No. EL08-36-000, PJM noted that the requested effective date for the changed provision (August 1, 2008) was to coincide with the start date of the next interconnection queue. PJM explained that these tariff changes would apply only to the queue starting with the “U2-Queue.” The West Deptford project was in an earlier queue (the “Q Queue”) to which the proposed changes would not be applied.

38. We disagree with West Deptford that relying on a superseded version of a tariff violates the filed rate doctrine. We are applying the tariff that was in effect on the date on which West Deptford entered the queue, so West Deptford was on notice of the costs to which it potentially would be liable.<sup>30</sup>

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<sup>29</sup> *Marcus Hook III*, 118 FERC ¶ 61,169 at P 17 (quoting *Neptune Regional Transmission System*, 110 FERC ¶ 61,098, at P 23 (2005)). In *Marcus Hook III*, the Commission similarly found that the appropriate tariff for judging the parties’ obligations was the tariff on file “when the interconnection was being considered.” *Marcus Hook III*, 118 FERC ¶ 61,169 at P 11 n.9, *reh’g denied*, 123 FERC ¶ 61,289 at P 77-79.

<sup>30</sup> *Natural Gas Clearinghouse v. FERC*, 965 F.2d 1066, 1075 (D.C. Cir. 1992) (filed rate doctrine does not apply when parties are on notice of the rate to be charged).

## B. Cost Allocation

39. Given our above finding that the 2006 version of Section 219 applies, we find that PJM has properly followed its tariff in allocating the Network Upgrade 28 costs to West Deptford. West Deptford argues that it still should not have to bear all the costs of Network Upgrade 28 costs. West Deptford argues that the 2006 version of Section 219 only triggered if the Upgrade in question “*was previously determined to be necessary to accommodate, and that was constructed in connection with, an Interconnection Request that was part of a previous Interconnection Queue.*” West Deptford claims that while PJM initially evaluated Network Upgrade 28 as being necessary for both the Marcus Hook and Liberty Electric facilities, PJM ultimately acknowledged that the upgrade was not necessary for either one.<sup>31</sup> Accordingly, West Deptford argues Network Upgrade 28 would not trigger even the old version of Section 219.

40. We find that West Deptford misreads Section 219. West Deptford attempts to ascribe significance to the fact that PJM ultimately acknowledged that Network Upgrade 28 was not necessary for Marcus Hook and Liberty Electric because a higher-queued project dropped out, thus reducing predicted congestion, but this is irrelevant for West Deptford’s purposes under Section 219. Rather, Section 219 triggers if the upgrade “*was previously determined to be necessary.*” West Deptford concedes that PJM did, at one point, make this determination. This is consistent with the holding that the Commission made in the *Marcus Hook* cases in which it found that FPL was responsible for network upgrades included in its interconnection study even though the upgrade would not have been needed if the parties had known that the higher queued project would have dropped out.

41. Further, West Deptford argues that under the old version of Section 219, PJM still has failed to demonstrate factually that its interconnection request contributed to the need for Network Upgrade 28. West Deptford argues that once the earlier queued project dropped out of the queue, PJM should have restudied the project to determine whether Network Upgrade 28 would have been necessary as part of the PJM Regional Transmission Expansion Plan. If this had occurred, West Deptford argues, it would also mean that Network Upgrade 28 would not trigger the old version of Section 219. Finally, West Deptford states that PJM has failed to demonstrate factually, or even analyze, whether Network Upgrade 28 provides net system benefits, or whether Network Upgrade 28 is more expensive than what would have been necessary to connect the West Deptford project.

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<sup>31</sup> West Deptford Protest at 23.

42. As we found in the *Marcus Hook* cases, under PJM's tariff, the test for cost allocation is whether the project would have been required "but for" the new interconnection request. The fact that the facilities might provide other incidental benefits does not change the cost allocation.<sup>32</sup> PJM did a complete review of these projects and determined that the project would not have been necessary "but for" the construction of the West Deptford project. West Deptford does not provide sufficient evidence to find that PJM, as an impartial grid operator, incorrectly or inappropriately conducted these studies. The record here and in the *Marcus Hook* cases shows that it was the expected congestion caused by multiple queued generation projects in the same geographic area that caused Network Upgrade 28 to be built, and that one of those higher-queued projects then withdrew. As a result, under the tariff the costs of that upgrade were allocated to those parties next in the queue, including West Deptford. As a general rule, on the PJM system, "an interconnecting generator bears all the risks associated with its project,"<sup>33</sup> and West Deptford, like Marcus Hook before it, bears the risk that higher-queued projects might not come into operation as predicted.

43. Finally, West Deptford claims that Marcus Hook or Liberty Electric have received Incremental Auction Revenue Rights (ARRs) for Network Upgrade 28, and argues that those ARRs must be surrendered before the entities can be reimbursed. We find that PJM tariff section 231.4(1), which concerns the surrendering of Incremental ARRs, only applies after the "New Service Customer ... executes ... an Interconnection Service Agreement." West Deptford has not yet executed its ISA, so its argument is not yet ripe. We dismiss it without prejudice to West Deptford raising the issue again after it executes an ISA.<sup>34</sup>

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<sup>32</sup> See *Old Dominion Elec. Coop., Inc. v. FERC*, 518 F.3d 43, 51 (D.C. Cir. 2008) ("On appeal, Petitioners make several allusions to services their transmission facilities now provide to the grid, but they still point to no evidence in the record that the PJM Transmission System would have built facilities to provide these services in the absence of Petitioners' need to connect to the grid. While Petitioners contend that FERC refused 'to acknowledge the benefits of increased reliability and flexibility' to the grid their facilities provide, [citation omitted], the presence or absence of these purported benefits is not controlling. The allocation of costs under Section 37.2 depends on the grid's demonstrated need for interconnection facilities, not the incidental services or benefits any given interconnection facility may provide once it is built.").

<sup>33</sup> *Marcus Hook I*, 107 FERC ¶ 61,069 at P 15.

<sup>34</sup> We grant PJM's request for waiver of the Commission's 60-day prior notice requirement in order to allow an effective date of June 17, 2011 for the unexecuted ISA.

**C. Maximum Facility Output**

44. In its December 11, 2006 letter, West Deptford provided to PJM a System Impact Study Agreement and included in that agreement the statement that, pursuant to section 36.2A.1 of the tariff it elects to “reduce the Q90 project size to a *net capacity resource* of 650 MW ... Also attached is updated generator data,” without further explanation regarding any intention to maintain its initial request for a Maximum Facility Output of 800 MW. Section 36.2A.1 states in pertinent part: “Prior to return of the executed System Impact Study Agreement to the Transmission Provider, an Interconnection Customer may modify its project to reduce by up to 60 percent the electrical output (MW) (in the case of a Generation Interconnection Request) ... of the proposed project.”<sup>35</sup> PJM interpreted this request under the cited tariff provision as requesting a reduction in the size of the “electrical output” to 650 MW. PJM further points out that data provided by West Deptford to PJM in 2007 showed the facility in question having an output of only 690 MW (690 MW in winter and 650 MW in summer). When PJM provided study documents to West Deptford, those documents reduced the scope of the project to 650 MW to which West Deptford did not object until this filing. We find that West Deptford’s original request to PJM for a system impact study was ambiguous as to the intended scope of the requested study and we therefore find that that PJM’s interpretation of that request was reasonable in conducting only the 650 MW study.

**The Commission orders:**

The Commission accepts the proposed agreements, to be effective on June 17, 2011.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>35</sup> OATT 36.2A Modification of Interconnection Request:, 0.0.0, §36.2A.1.