

139 FERC ¶ 61,184  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER11-4073-001

ORDER DENYING REHEARING

(Issued June 7, 2012)

1. On September 16, 2011, the Commission issued an order (September 2011 Order)<sup>1</sup> that accepted a proposed, unexecuted interconnection service agreement (ISA) and interconnection construction service agreement entered into among PJM, West Deptford Energy, LLC (West Deptford), and Atlantic City Electric Company pursuant to section 205 of the Federal Power Act (FPA) and Part VI of the PJM Open Access Transmission Tariff (PJM Tariff). West Deptford declined to execute the proposed agreements primarily because they would assign West Deptford certain network upgrade costs for its interconnection project. West Deptford now requests rehearing, arguing that the September 2011 Order erred in its interpretation of the PJM Tariff, including the question of which version of the PJM Tariff controlled. The request for rehearing is denied for the reasons set forth below.

**I. Background**

**A. West Deptford Project**

2. Under section 219 of its OATT, PJM assigned to West Deptford \$10,761,078 for a previously constructed transmission upgrade, Network Upgrade 28, a second 230 kV circuit onto the Mickleton-Monroe transmission line near Philadelphia. Network Upgrade 28 had been constructed by Liberty Electric and Marcus Hook when they were interconnecting with PJM.

---

<sup>1</sup> *PJM Interconnection, L.L.C.*, 136 FERC ¶ 61,195 (2011) (September 2011 Order).

3. The Mickleton-Monroe transmission line contained double towers capable of holding two transmission lines, but initially only one transmission line was constructed. The first time PJM considered the interconnection requests related to the Mickleton-Monroe transmission line, three projects were in the interconnection queue in the following order: the Mantua Creek Project; the Liberty Electric Project; and the Marcus Hook project. The Mantua Creek Project required no upgrade to the Mickleton-Monroe line. But the Liberty Electric and Marcus Hook projects resulted in overloads to the existing single Mickleton-Monroe line and were assigned responsibility for the upgrade to construct a second line (90 percent of the upgrade was assigned to Marcus Hook and 10 percent to Liberty Electric). However, after the project was substantially constructed, Mantua Creek terminated its project. PJM determined that the Liberty Electric and Marcus Hook upgrade to the Mickleton-Monroe line would not have been necessary had it known that the Mantua Creek project would be terminated.<sup>2</sup> But by the time PJM learned of the termination of the Mantua Creek project, it was too late to do anything about the costs already incurred by Liberty Electric and Marcus Hook, and these costs remained allocated to Liberty Electric and Marcus Hook.<sup>3</sup>

4. West Deptford entered PJM's interconnection queue on July 31, 2006. As described below, under the PJM Tariff, an interconnection project may, under certain circumstances, be liable for all or a portion of the network upgrades that were built prior to the time a new generation project enters the interconnection queue when it too is using those facilities.

5. When the West Deptford project entered the queue, PJM determined that this project also would use the Mickleton-Monroe line. Since the West Deptford project would have overloaded the single Mickleton-Monroe line, PJM determined that West Deptford would be responsible for all of the costs of constructing the second Mickleton-

---

<sup>2</sup> In other words, had the Mantua project dropped out earlier, the second Mickleton-Monroe line would not have been needed and neither the Liberty nor Marcus Hook projects would have been assigned costs for such construction.

<sup>3</sup> Marcus Hook challenged the allocation. In a series of orders, the Commission affirmed the allocation of costs of the project to Liberty Electric and Marcus Hook since the costs had been expended and they had assumed the risk of constructing the project. *See FPL Energy Marcus Hook, L.P. v. PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,069 (2004) (*Marcus Hook I*), *order 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), *order on remand*, 114 FERC ¶ 61,296 (2006) (establishing briefing procedures), *order on remand*, 118 FERC ¶ 61,169 (2007) (*Marcus Hook III*), *order denying reh'g*, 123 FERC ¶ 61,289 (2008) (*Marcus Hook IV*).

Monroe line.<sup>4</sup> PJM made this cost responsibility clear starting with its Feasibility Study report, which it delivered in November 2006, less than four months after receiving West Deptford's queue application. PJM included these costs not only in this Feasibility Study, but also in the System Impact Study in September 2010 and the Facility Study in April 2011. At each stage, West Deptford executed an agreement to continue the study process based on the studies done to date.

6. On July 18, 2011, PJM filed an unexecuted ISA and interconnection construction service agreement to be entered into among PJM, West Deptford, and Atlantic City Electric Company. The West Deptford ISA contains Schedule F, holding West Deptford financially responsible for the costs of Network Upgrade 28. The ISA proposes an attachments facilities charge of \$4,364,319 and a network upgrade charge of \$10,761,078.

**B. PJM Tariff Provisions Relating to Responsibility for Prior Network Upgrades**

7. West Deptford contends that it should not be responsible for the costs of the network upgrade because of a change PJM made to its interconnection tariff that occurred after it entered the queue but before it signed its interconnection service agreement. The PJM Tariff assigns cost responsibility using a version of the "but for" test.<sup>5</sup> Generally, under the "but for" test, new generation projects are assigned cost responsibility for any transmission upgrades needed to accommodate the generation project as long as PJM has not previously identified the upgrades as necessary. The reasoning behind the "but for" test is that it creates incentives for companies to locate generation efficiently so as to minimize the upgrades needed to integrate with the transmission network.

8. The PJM Tariff has throughout provided that an interconnection customer may be responsible for the costs of prior upgrades if their project contributes to the need for the prior upgrade. Section 37.7 (now section 219) of the tariff, which was applicable at the time West Deptford entered the queue, stated:

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

---

<sup>4</sup> All of the costs were allocated to West Deptford because as noted above, the Liberty Energy and Marcus Hook projects did not overload the single line. Because the West Deptford project was the first project to overload the existing single line, it became responsible for 100% of the costs of the upgrade.

<sup>5</sup> *E.g.*, September 2011 Order, 136 FERC ¶ 61,195 at P 42.

Upgrade or Network Upgrade that was previously determined to be necessary to accommodate, and that was constructed in connection with, 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.

9. Section 37.7 also provided that the new interconnection project would be responsible for the costs of an earlier completed project if the “New Service Customer’s New Services Queue Closing Date” was within the prescribed number of years of the in-service date of the earlier project.<sup>6</sup> Of relevance to this case, section 37.7 provided that the new customer would be responsible for a portion of the cost of a completed upgrade of \$10 million or more if that upgrade went into service no more than five years prior to the queue closing date for the new customer. All sides agree that West Deptford’s queue closing date was within five years of the June 2003 in-service date for the second 230 kV circuit onto the Mickleton-Monroe transmission line near Philadelphia.

10. On May 30, 2008, PJM filed a revision to section 37.7 so that instead of applying from the in-service date of the earlier transmission project, the provision applied from the date of the Interconnection Service Agreement for the earlier generation project. The revised section 219 provided that cost responsibility could be assigned to a new interconnection project for a period of five years “from the execution date of the

---

<sup>6</sup> A new generation project would be responsible for the costs of an earlier transmission project under the following conditions:

- 1) the completed cost of [the first project] was less than \$1,000,000, provided that the facility or upgrade was placed in service no more than one year prior to the affected New Service Customer’s New Services Queue Closing Date, or
- 2) the completed cost of [the first project] was \$1,000,000 or more, but less than \$10,000,000, provided that the facility or upgrade was placed in service no more than three years prior to the affected New Service Customer’s New Services Queue Closing Date, or
- 3) the completed cost of [the first project] 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 New Service Customer’s New Services Queue Closing Date.

Interconnection Service Agreement for the project that initially necessitated the requirement for the Local Upgrade or Network Upgrade.”<sup>7</sup> Liberty Electric signed an ISA on May 14, 2001, and Marcus Hook signed its ISA on January 22, 2002. West Deptford entered the queue on July 31, 2006, five years and two months beyond the Liberty Electric Interconnection Service Agreement date and four years and six months beyond the Marcus Hook ISA date.

11. PJM proposed this change to its tariff as part of the settlement of a complaint filed by Dominion Resources Services, Inc. (Dominion) in January 2008 in Docket No. EL08-36-000. Dominion alleged that the delays in PJM’s interconnection process violated the PJM Tariff and caused Dominion to miss potential revenue. Pursuant to the settlement, PJM engaged in a stakeholder process to revise its interconnection procedures, and on May 30, 2008, PJM filed several proposed tariff changes, including the significantly revised section 37.7 discussed above. In this filing, PJM described the revisions as part of a larger effort at queue reform. PJM stated that it considered the May 30, 2008 revisions to be “a compliance filing,” to the settlement order, and that “[b]ecause the next interconnection queue will begin on August 1, 2008, PJM requests an August 1, 2008 effective date for these Tariff revisions.”<sup>8</sup>

12. One of the parties to the proceeding, American Municipal Power – Ohio, Inc., filed to request that PJM clarify the above statement about the effective date, asking whether the proposed changes would “apply only to projects that enter the interconnection queue on or after the proposed effective date of August 1, 2008 or whether they will apply also to projects that have entered the queue before that date.”<sup>9</sup> Regarding the changes to cost allocation and section 37.7, PJM clarified that these tariff changes would not apply to projects in the earlier queue, like West Deptford, but only to projects entering the queue starting on July 31, 2008. PJM stated, “[t]his modification will become effective on August 1, 2008, and will be initially applied to the U2-Queue

---

<sup>7</sup> The revised provision provides that cost responsibility may be assigned with respect to any facility or upgrade “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.” PJM OATT 219 Inter-queue Allocation of Costs of Transmission Upg, 0.0.0 (<http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=1731&sid=66969>).

<sup>8</sup> PJM, Transmittal Letter, Docket No. EL08-36-001, at 17 (filed May 30, 2008).

<sup>9</sup> American Municipal Power – Ohio, Inc., Request for Clarification, Docket No. EL08-36-001, at 1 (filed June 20, 2008).

(this queue will close on July 31, 2008).”<sup>10</sup> West Deptford’s project was in the “Q Queue,” established two years prior to July 31, 2008.

## **II. September 2011 Order**

13. In the September 2011 Order, the Commission ruled in PJM’s favor regarding both the cost allocation and the Maximum Facility Output (MFO). The Commission found that the 2006 version of the PJM 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. The Commission noted that this interpretation followed the precedent established in *Marcus Hook III*.<sup>11</sup> Relying on the 2006 version of the PJM Tariff, the Commission interpreted that language to find that PJM had followed its tariff properly in allocating the Network Upgrade 28 costs to West Deptford. In particular, the order found that PJM did a complete review and was not obligated to conduct a restudy, and that West Deptford’s claim to be due Auction Revenue Rights (ARRs) was not yet ripe, but could be raised again after it executes an ISA.<sup>12</sup> On the MFO issue, the Commission found PJM’s actions in conducting only the 650 MW study and not the 800 MW MFO study to be reasonable.<sup>13</sup>

## **III. Discussion**

14. On rehearing, West Deptford primarily disputes the September 2011 Order’s ruling that PJM could draft the service agreements for the project based on the PJM Tariff language in effect on July 31, 2006, when West Deptford submitted its interconnection request to the PJM queue, rather than the language in effect on July 18, 2011, the date that the agreement was filed unexecuted with the Commission, as is the practice of the Midwest Independent System Operator, Inc. (MISO). West Deptford presents several arguments, detailed below, for why the Commission’s ruling on the effective tariff version contradicts the FPA and Commission precedent.

---

<sup>10</sup> PJM, Answer, Docket No. EL08-36-000, at 4 (filed July 7, 2008). The Commission accepted PJM’s Filing by delegated letter order *PJM Interconnection, L.L.C.*, Docket No. EL08-36-001 (August 19, 2008) (delegated letter order).

<sup>11</sup> September 2011 Order, 136 FERC ¶ 61,195 at P 36 (citing *Marcus Hook III*, 118 FERC ¶ 61,169 at P 11 n.9 & P 17, *reh’g denied*, 123 FERC ¶ 61,289 at PP 77-79, and *Neptune Regional Transmission System*, 110 FERC ¶ 61,098, at P 23 (2005)).

<sup>12</sup> *Id.* P 43.

<sup>13</sup> *Id.* P 44.

15. In the event that the Commission continues to find against West Deptford with regard to which version of section 219 to apply, West Deptford also disputes the September 2011 Order's findings that PJM has correctly applied the PJM Tariff. In particular, West Deptford argues that Liberty Electric and Marcus Hook must first hand over ARRs that PJM provided to the two generators for originally paying for Network Upgrade 28. West Deptford also argues that its project may provide the sort of net system benefits that, under the PJM Tariff, should reduce or cancel its upgrade charges under the unexecuted agreements.

16. Separately from the above issues, West Deptford also raises on rehearing the issue of the correct MFO for its project. The September 2011 Order declined to overturn PJM's decision to specify in the interconnection agreements that the West Deptford facility may only have a MFO of 650 MW, instead of 800 MW as West Deptford argues it requested.

**A. Responsibility for Network 28 Upgrades**

**1. Request for Rehearing**

17. West Deptford argues that the Commission erred in the September 2011 Order by finding that PJM could base its proposed service agreements for the project on the PJM Tariff language in effect on July 31, 2006, when West Deptford submitted its interconnection request to the PJM queue, and not on the language in effect on July 18, 2011, the date that the agreement was filed unexecuted with the Commission. West Deptford raises four main legal arguments in support of this proposition:

- 1) allowing PJM to enforce a superseded tariff provision violates the filed rate doctrine, and the "on notice" exception to the filed rate doctrine does not apply in this case;
- 2) the September 2011 Order misinterprets previous cases involving PJM;
- 3) the September 2011 Order is an unexplained departure from Commission precedent established in MISO; and
- 4) the Commission's decision was based on erroneous factual determinations.

18. In its first argument, West Deptford argues that allowing PJM to enforce a superseded tariff provision violates the filed rate doctrine and the related corollary prohibiting retroactive ratemaking. According to West Deptford, these related policies forbid a regulated entity from charging a rate other than the rate on file and prevent the Commission from retroactively altering a filed rate to compensate for prior over- or under-recovery. West Deptford argues that the "rate on file" here "is the currently effective version of Section 219 ... accepted by the Commission effective August 1,

2008,”<sup>14</sup> rather than the version that was on file when West Deptford first contracted with PJM to enter the interconnection queue.

19. West Deptford argues that the “on notice” exception to the filed rate doctrine does not apply in this case. West Deptford claims that the “entire weight of the Commission’s conclusion ... rests on its contention that, under *Natural Gas Clearinghouse*, the filed rate doctrine ‘does not apply when parties are on notice of the rate to be charged.’”<sup>15</sup> West Deptford argues that this mischaracterizes *Natural Gas Clearinghouse*, which, in its view, only authorizes exceptions from the filed rate doctrine to correct a legal error that had been reversed by a court on appeal, and only then when the tariff itself explicitly stated the rates were subject to the outcome of the pending rate case. It would not apply here, West Deptford argues, where PJM “unilaterally and informally” stated in an answer that the revised provision would not apply to existing queues, and where “no party sought rehearing of the August 2008 Letter Order accepting the revised Section 219.”<sup>16</sup> West Deptford also argues that the September 2011 Order failed to explain what constituted the “notice” that the Commission found PJM to have provided.<sup>17</sup>

20. In its second argument, West Deptford argues that the September 2011 Order misreads case law on the PJM Tariff. West Deptford argues that while the September 2011 Order cited *Dominion* in finding the 2006 version of the PJM Tariff to apply, *Dominion* actually proves the opposite. West Deptford claims that in the *Dominion* proceeding (outlined above), PJM originally argued that submitting an interconnection request does not “lock down all then-effective tariff provisions associated with the processing of the request,”<sup>18</sup> and that the Commission agreed, finding that “the system impact study agreement does not set a rate ... [so] there is no rate on file for the Commission to change.”<sup>19</sup> West Deptford acknowledges that PJM later stated in the same *Dominion* proceeding that the new section 219 would only apply to new queues, but argues that “an answer filed in an unrelated case (i.e., the Dominion Complaint proceeding) cannot change” how the Commission applies the PJM Tariff to West

---

<sup>14</sup> West Deptford Request for Rehearing at 21.

<sup>15</sup> *Id.* at 27 (citing *Natural Gas Clearinghouse v. FERC*, 965 F.2d 1066, 1075 (D.C. Cir. 1992) (*Natural Gas Clearinghouse*)).

<sup>16</sup> *Id.* at 27-28.

<sup>17</sup> *Id.* at 29 n.105.

<sup>18</sup> PJM, Reply Comments, Docket No. EL08-36-000, at 6 (filed March 24, 2008).

<sup>19</sup> *Dominion Resources Services, Inc. v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,025, at P 52 (2008) (order approving contested settlement) (*Dominion*).

Deptford.<sup>20</sup> West Deptford notes that the Commission could have required PJM to make a clarification in *Dominion*, but it did not.<sup>21</sup>

21. West Deptford also claims that the “plain meaning of the filed Tariff language is that all reimbursement claims, without exception, made on and after the effective date are subject to the currently effective rule.”<sup>22</sup> West Deptford points to a 2004 order in which, it claims, the Commission told PJM that its *pro forma* ISA must apply the tariff in effect on the date of execution.<sup>23</sup> Since then, West Deptford argues, the Commission cannot “cite to any ... precedent that supports its holding that PJM may ignore the Tariff on file.”<sup>24</sup>

22. West Deptford argues that the Commission “require[s] transmission providers to distinguish between earlier- and later-stage requests when they revise their interconnection procedures,” and that the “Commission has not cited any instance in which it accepted a transmission provider’s proposal to make all pending Interconnection Requests subject to new rules – or, conversely, to grandfather them all under the old rules.”<sup>25</sup> West Deptford claims its project was an early-stage request when PJM revised its tariff, and therefore the new PJM Tariff rules should apply.

23. In addition, West Deptford argues that the September 2011 Order misreads *Marcus Hook*, which it claims has “significant factual differences” with the instant proceeding.<sup>26</sup> West Deptford acknowledges that the Commission in *Marcus Hook* sought to avoid the “potential for never-ending reallocations of costs,”<sup>27</sup> but argues that the Commission only took this position because Marcus Hook had already signed its ISA.

---

<sup>20</sup> West Deptford Request for Rehearing at 30.

<sup>21</sup> *Id.* at 31.

<sup>22</sup> *Id.* at 30.

<sup>23</sup> *Id.* at 22 (citing *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025, at P 21 (2004)).

<sup>24</sup> *Id.* at 23.

<sup>25</sup> *Id.* at 32 (citing *Interconnection Queuing Practices*, 122 FERC ¶ 61,252, at P 19 (2008)).

<sup>26</sup> *Id.* at 44.

<sup>27</sup> *Marcus Hook III*, 118 FERC ¶ 61,169 at P 22.

West Deptford has not signed its ISA, and argues that it therefore has not forfeited its right to challenge it. West Deptford argues that it is the September 2011 Order, and not West Deptford's position, that would upset parties' settled expectations, because the September 2011 Order would require money to change hands yet again regarding Network Upgrade 28.<sup>28</sup> West Deptford also argues that the Commission in *Marcus Hook IV* ended up applying the 2001 version of the PJM Tariff, even though Marcus Hook entered the queue in 1998.<sup>29</sup>

24. In its third argument, West Deptford argues that the September 2011 Order is an unexplained departure from Commission precedent established in MISO that should control PJM. West Deptford argues that in MISO, the Commission established that an ISA should apply the tariff that is effective and on file on the date that the interconnection agreement is executed or filed as unexecuted. According to West Deptford, the Commission specifically rejected claims by MISO queue participants that they could rely on the reimbursement rules that were in effect when they entered the queue.<sup>30</sup>

25. In its fourth argument, West Deptford argues that the Commission relied on erroneous factual determinations in ruling that the PJM Tariff language in effect on July 31, 2006 should apply. West Deptford claims that there is no evidence that requiring PJM to apply the 2010 version would upset the expectations of other queued generators. In particular, West Deptford points to paragraph 35 of the September 2011 Order, in which the Commission states, "as of the date West Deptford entered the PJM interconnection queue, ... all parties in the queue were under the expectation that the costs of the network upgrade would be allocated" according to the 2006 version of section 219. West Deptford argues that no third party in the queue had any financial reason to rely on the costs of Network Upgrade 28 being allocated to West Deptford.

## 2. Commission Determination

26. We deny the request for rehearing. PJM made its tariff filing to revise its tariff to become effective August 1, 2008. PJM stated in its Answer that the proposed effective date would not apply to parties that had already entered into contractual arrangements with PJM for studies, but would only apply prospectively from the effective date of the filing.

---

<sup>28</sup> West Deptford Request for Rehearing at 46.

<sup>29</sup> *Id.* at 37.

<sup>30</sup> *Id.* at 35 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106 at P 70 & 115 (2006)).

27. West Deptford maintains that applying the PJM Tariff prospectively would both violate the filed rate doctrine and the prohibition against retroactive ratemaking, because PJM would not be applying the tariff in effect at the time that West Deptford might sign its interconnection agreement. We disagree. Neither of these related doctrines is violated where a utility proposed a tariff change to be effective prospectively for those customers that seek service after that date.<sup>31</sup> The essence of the filed rate doctrine is that customers be on notice of the rates that will apply to their transaction.<sup>32</sup> In *Associated Gas Distribs. v. FERC*, the court stated that under the filed rate doctrine, “the appropriate inquiry seeks to identify the purchase decisions to which the costs are attached.”<sup>33</sup>

28. Not only did PJM put all parties on notice by its proposed effective date and its statements in its answer in the *Dominion* proceeding, PJM also included the costs calculated under the previous version of its tariff in every study it conducted for West Deptford during the process of the interconnection. This included the West Deptford Feasibility study in November 2006, prior to the filing of the revised tariff, as well as in the System Impact Study in September 2010, and the Facility Study in April 2011. In the Feasibility Study in November 2006, PJM specifically noted that West Deptford could be liable for a contribution to the costs of the previously constructed Mickleton-Monroe upgrade under then section 37.7 of the tariff (now section 219).<sup>34</sup> In the System Impact Study in 2010, PJM again cited to the previous version of the tariff and made clear to West Deptford it would be responsible for these upgrades.<sup>35</sup> West Deptford argues that PJM is attempting to “ignore the Tariff on file.”<sup>36</sup> However, PJM is not ignoring its tariff; PJM is applying it to West Deptford in a manner consistent with Commission precedent and which PJM indicated it would be using when it made its filing and throughout the study process.

---

<sup>31</sup> See *Consolidated Edison Co. of New York v. FERC*, 347 F.3d 964, 969 (D.C. Cir. 2003) (filed rate doctrine authorizes only prospective rate changes).

<sup>32</sup> *Id.*

<sup>33</sup> 893 F.2d 349, 355 (D.C. Cir. 1989).

<sup>34</sup> PJM Answer, Appendix C at page 7.

<sup>35</sup> PJM Answer, Appendix D at page 5 (“Since Queue Q90’s Queue closing date was August 31, 2006, which is less than 5 years after Network Upgrade n0028 was put into service, and since it has been determined that accommodating Q90’s Interconnection Request would require Network Upgrade n0028, Q90 will be responsible for 100% of the \$10,500,461 cost to construct Network Upgrade n0028”).

<sup>36</sup> West Deptford Request for Rehearing at 23.

29. West Deptford appears to assert that only the date of the final interconnection agreement can be used to determine cost responsibility under the tariff. But its position would ignore the contractual arrangements and studies that precede the final interconnection agreement. Its position, if accepted, also would lead to the situation where all prior contractual commitments and studies would be effectively discarded whenever a utility changes its interconnection process. Indeed, as PJM points out, under West Deptford's scenario, it would have to redetermine cost allocations for dozens of queued projects,<sup>37</sup> many of which relied on the allocations in PJM's studies. As indicated above, we find that the filed rate doctrine does not prevent a utility from proposing a prospective change in its tariff that will not apply to those parties that have already entered into contractual arrangements with the utility.

30. Moreover, the date of the West Deptford interconnection agreement is not relevant under either tariff provision under consideration. Under both provisions, the relevant date for determining cost responsibility is when the new interconnection project enters the queue, not when it signs its final interconnection agreement. Under both tariff provisions, reliance on the date when the new project enters the queue ensures that the customer knows its potential cost responsibility for prior approved projects. Accepting West Deptford's position that the tariff in existence at the date of the final interconnection agreement should apply would, in fact, provide little or no notice to the queued interconnection customer of its potential cost allocation.<sup>38</sup>

31. West Deptford claims that PJM's Answer in *Dominion* was vague, but in fact PJM detailed how each aspect of the proposed revisions would come into effect, with some revisions taking effect for all projects on August 1, 2008. PJM also explained that revised section 219(a) would "be initially applied to the U2-Queue,"<sup>39</sup> which closed on July 31, 2008. West Deptford was part of the "Q Queue", and therefore was on notice that the revision would not apply to it.

---

<sup>37</sup> PJM Answer at 7.

<sup>38</sup> While in this case, the cost allocation would be lower, application of West Deptford's approach could lead in some cases to a higher allocation of costs than the customer expected.

<sup>39</sup> PJM, Answer, Docket No. EL08-36-001, at 4 (filed July 7, 2008).

32. The September 2011 Order cited to *Natural Gas Clearinghouse*<sup>40</sup> for the proposition that it would not violate the filed rate doctrine to make West Deptford responsible for those interconnection costs for which it was on notice when it joined the queue. West Deptford argues *Natural Gas Clearinghouse* is inapposite because it applies to situations in which the Commission is correcting legal error, which is not the case here. But *Natural Gas Clearinghouse* is not limited situations where the Commission corrects legal error. Rather, *Natural Gas Clearinghouse* stands for the general proposition that “[t]he filed rate doctrine simply does not extend to cases in which buyers are on adequate notice.”<sup>41</sup>

33. More specifically, in *Natural Gas Clearinghouse*, the court found that the filed rate doctrine did not prevent the Commission from imposing a 16.88-cent rate, rather than a 4.02 cent rate, where Tarpon Transmission Company had, in its filings, expressly reserved the right to charge the 16.88-cent rate in the event that the lower rate were overturned. The court found that the express reservation was sufficient to put the shippers on notice of the possibility of being charged the higher rate for filed rate doctrine purposes.

34. Similarly, in this case, West Deptford was on notice from the existing tariff when it entered the queue that it could be expected to pay for upgrades from prior transmission expansions that had gone into service within the preceding five years. West Deptford triggered its obligation to follow the terms and conditions of the PJM Tariff when it entered the queue. The courts have consistently held that “providing the necessary predictability is the whole purpose of the well established ‘filed rate doctrine.’”<sup>42</sup> Here, that predictability is maintained since PJM is charging West Deptford what it expected to be charged based on its queue position.

35. West Deptford argues that the September 2011 Order misreads *Marcus Hook*, which it claims has “significant factual differences” with the instant proceeding. While

---

<sup>40</sup> In *Natural Gas Clearinghouse*, the Commission initially rejected a pipeline’s proposed 16.88 cent rate and approved the much lower 4.02 rate, but on remand reversed its decision. The Commission then allowed the pipeline to impose a surcharge in the amount of the difference between the two rates to make up for the revenues that it initially had not collected. *Natural Gas Clearinghouse*, 965 F.2d at 1073.

<sup>41</sup> *Id.* at 1075.

<sup>42</sup> *Electrical Dist. No. 1 v. FERC*, 249 U.S. App. D.C. 190, 774 F.2d 490, 493 (D.C. Cir. 1985), *quoted in, e.g., Columbia Gas Transmission Corp. v. FERC*, 265 U.S. App. D.C. 376, 831 F.2d 1135, 1141 (D.C. Cir. 1987), *modified on reh’g*, 269 U.S. App. D.C. 261, 844 F.2d 879 (D.C. Cir. 1988).

West Deptford acknowledges that the Commission in *Marcus Hook* sought to avoid the “potential for never-ending reallocations of costs,”<sup>43</sup> it argues that the premise of this position is that Marcus Hook had already signed its ISA. Because West Deptford has not signed its ISA, it argues that it therefore has not forfeited its right to challenge it. West Deptford argues that it is the September 2011 Order, and not West Deptford’s position, that would upset parties’ settled expectations, because the September 2011 Order would require money to change hands yet again regarding Network Upgrade 28. West Deptford also argues that the Commission in *Marcus Hook IV* ended up applying the 2001 version of the PJM Tariff (the time when the ISA was signed), even though Marcus Hook entered the queue in 1998.

36. We disagree with West Deptford’s reading of *Marcus Hook*. In *Marcus Hook*, the Commission confronted the question of which of two tariffs to apply, the 2001 tariff which existed at the time the ISA was signed and the tariff in effect at the time the Commission considered the complaint. No party argued that an earlier tariff was relevant to the proceeding, or that such a tariff contained different terms than the 2001 tariff. In fact, the Commission’s reasoning in *Marcus Hook* was that the proper tariff to apply is the one in effect and on file when the interconnection was being considered:

The language of section 37.2 [now section 219] that the Commission analyzed in its initial set of orders was the PJM tariff language in effect at the time the Commission considered the complaint (2006). Based on the briefs of the parties after the remand, however, it appears that this tariff language differed from the tariff language in effect in 2001, the time the FPL Energy project was being constructed and the ISA was signed. Neither party addressed this issue on rehearing of the original Commission order. The proper tariff language to be applied to the facts of this case should be that which applied when the interconnection was being considered, and therefore this order will rely upon the tariff provision (reproduced in the text) as it existed at the time of the interconnection. (emphasis added).<sup>44</sup>

Similarly, the tariff we apply here is the one on file when West Deptford’s interconnection request was being considered.

---

<sup>43</sup> *Marcus Hook III*, 118 FERC ¶ 61,169 at P 22.

<sup>44</sup> *Marcus Hook III*, 118 FERC ¶ 61,169 at n.9.

37. Moreover, the fact that Marcus Hook had already signed an ISA, while West Deptford has not, does not change our determination. West Deptford knew throughout the interconnection process that it could be assigned these upgrade costs and, if it does not want to pay these costs, it can terminate its project and reapply for interconnection with PJM. But it cannot both keep its queue position and avoid payment of the upgrades that are required under the tariff in effect at the time it established its position in the queue.

38. West Deptford argues that the Commission's determination here is inconsistent with determinations in earlier cases involving MISO,<sup>45</sup> and contends that the Commission has adopted a hard and fast rule that the tariff as it exists at the date the interconnection agreement is signed is the applicable tariff to apply in every situation. To the contrary, we do not find that the MISO cases establish a single policy to address all of the myriad issues that may arise from a change to cost allocation in the interconnection process. In each case, the Commission must evaluate the filing made by the utility, including the utility's proposal as to applicability to existing queue participants to determine whether that proposal is just and reasonable.

39. For example, the Commission addressed a similar argument in *Critical Path Transmission LLC v. California Independent System Operator Corp.*<sup>46</sup> In that case, a complainant challenged CAISO's proposal to apply new transmission planning provisions of its tariff to existing projects in part on the basis that the Commission had previously accepted a proposal by MISO to exempt existing projects from revised tariff provisions concerning transmission planning and cost allocation. The Commission rejected this argument. The Commission noted that there was "not only one just and reasonable rate, term, or condition, which the Commission must accept" and, as a result, CAISO was free to propose a method of handling the pending projects that was tailored to the design of [CAISO's planning process], and the Commission was not required to impose on CAISO the exact same treatment of pending projects used by MISO...."<sup>47</sup>

40. Likewise, the fact that the Commission has previously determined that it was just and reasonable to apply the cost allocation policy on file when a generator executed its interconnection agreement or when its agreement was filed unexecuted in MISO did not bar PJM from applying the tariff in effect at the time of the interconnection request as it did in this proceeding. In the *MISO* case, the MISO proposed in its FPA section 205

---

<sup>45</sup> See *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,060, at P 62 (2009).

<sup>46</sup> 135 FERC ¶ 61,031 (2011).

<sup>47</sup> *Id.* P 44.

filing that these revisions be applied to pending projects in order to more fully and quickly rectify the unanticipated consequences from its former tariff.<sup>48</sup> However, even within MISO, the Commission has permitted other solutions. In another *MISO* order, the Commission accepted MISO's proposal to apply an existing tariff provision to projects that had started a Facilities Study rather than the revised interconnection procedures.<sup>49</sup> In this proceeding, PJM proposed that the revisions to its cost allocation rules not apply to pending projects because that would be disruptive to PJM's planning and study process.

41. West Deptford cites to no precedent that would prevent a public utility from seeking in a section 205 filing to continue to apply its existing tariff to those customers that have sought service pursuant to that tariff. As discussed above, this is not a retroactive ratemaking, because the public utility is applying the tariff in effect at the time the customer initiates the interconnection process. The execution date of an ISA does not by itself establish which tariff provision will apply to a process that from initiation to completion may take place for many years (over five years in this case). West Deptford was on notice throughout this process that its cost allocation would be determined under the tariff that existed when it initiated its interconnection request.

42. Indeed, in Order No. 2003,<sup>50</sup> while the Commission generally standardized interconnection agreements, we nonetheless allowed an RTO or ISO to seek "independent entity variations," in order to fit their needs, and accorded them "greater flexibility" than the "consistent with or superior to" standard that applies to non-independent transmission providers.<sup>51</sup> Similarly, in the *Interconnection Queuing Practices* order, the Commission found that ISOs and RTOs had the option whether to apply queue reforms to early-stage or later-stage queue requests and could propose their

---

<sup>48</sup> Under section 205 of the Federal Power Act, a utility can propose any just and reasonable terms and conditions, regardless of whether other terms and conditions may be just and reasonable as well.

<sup>49</sup> *Midwest Indep. Transmission Sys. Operator, Inc.* 124 FERC ¶ 61,183, at P 90 (2008), *order on reh'g*, 127 FERC ¶ 61,294 (2009).

<sup>50</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

<sup>51</sup> Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at PP 822-827.

own variations to accommodate their particular needs.<sup>52</sup> While the Commission recognized that reforms could be applied to all participants in a queue, including those in the latter stages of processing, if those provisions are necessary in order to resolve current backlogs, the Commission found that changes to later stage projects require greater justification than revisions applicable to future and early-stage existing requests.<sup>53</sup> Here, PJM proposed to apply the tariff change at issue only to future queue participants, so that it did not change the expectations of any participants in the queue. Therefore, we do not find that applying the tariff in existence at the time West Deptford entered the queue to be inconsistent with Commission policy, as alleged by West Deptford.

43. West Deptford contends the Commission's determination also is inconsistent with a 2004 PJM order in which the Commission did not object to PJM attaching to an ISA the applicable terms of the tariff "as long as all of the standard terms and conditions that are part of the tariff at the time the agreement is executed are included."<sup>54</sup> We do not read this order as setting a specific and inflexible rule that only the tariff as it stands on the date of the interconnection service agreement will apply to an interconnection.

44. In the 2004 proceeding, PJM stated in its transmittal letter that it intended to include as an attachment to the Interconnection Service Agreement the standard terms and conditions of Subpart E of the tariff in effect on the date of execution of the agreement. PJM stated that "the purpose of the attachment is to assure that PJM does not unilaterally change the terms of the agreement after it is executed through a tariff filing."<sup>55</sup>

45. In the present West Deptford case, in which PJM proposed that its 2008 tariff changes would not apply to existing interconnection requests, PJM specifically included in all of the West Deptford documents, including the Interconnection Service Agreement, the pre-2008 tariff provisions. Thus, as in the 2004 PJM Order, the relevant documents in this case made clear from the very beginning of the interconnection process that West Deptford would be responsible for the upgrades associated with the Mickleton-Monroe transmission line based on the tariff provisions in effect at the time of its interconnection request.

---

<sup>52</sup> *Interconnection Queuing Practices*, 122 FERC ¶ 61,252, at PP 11-13 (2008).

<sup>53</sup> *Id.* P 19.

<sup>54</sup> *PJM Interconnection, LLC*, 108 FERC ¶ 61,025, at P 21 (2004).

<sup>55</sup> *Id.*

46. Finally, West Deptford claims the Commission erroneously determined that a decision in West Deptford's favor would upset other parties' expectations. The Commission's statement simply reflected the general observation that PJM and the parties in every PJM interconnection queue, expected that PJM would honor its commitment in *Dominion* to apply the revised section 219 to new queue participants only.

### **B. Net System Benefits**

47. West Deptford argues that, assuming *arguendo* that the 2006 version of section 219 applies, the Commission erred in applying it to require West Deptford to pay for the costs of the Mickleton-Monroe transmission line. First, West Deptford argues that PJM can allocate costs of an earlier project only if the Local Upgrade or Network Upgrade that "was previously determined to be necessary to accommodate," earlier-queued customers is, indeed, necessary. West Deptford maintains that "although PJM initially determined that Network Upgrade 28 was necessary to accommodate the interconnection requests of Liberty Electric and Marcus Hook, it subsequently determined that it was not necessary."<sup>56</sup> West Deptford argues that, under section 219, PJM failed to meet the prerequisites of the tariff because Network Upgrade 28 ultimately was not necessary.

48. We disagree with West Deptford's reading of the tariff provision in light of the context of the provision. PJM designed the tariff provision so that later-queued projects would pay for the costs of prior upgrades from which they benefit.<sup>57</sup> Thus, the point of section 219/37.7 is to reallocate the cost of a project previously determined to be necessary when that project is "constructed." The fact that the project actually was not needed when constructed reinforces this point. Had Liberty and Marcus Hook not constructed the second conductor on the Mickleton-Monroe transmission line, West Deptford would have had to construct this line to accommodate its project. Thus, the allocation of costs to West Deptford is line with the intent of the "but for" test to allocate costs to the interconnection projects that make the construction necessary.

49. West Deptford also maintains that the tariff requires a proportional allocation of costs rather than the 100 percent allocation PJM ultimately assigned to West Deptford. First, the tariff provision recognizes that the new service request may "require, in whole or in part," the use of a previously constructed upgrade. Second, the use of the term

---

<sup>56</sup> West Deptford Request for Rehearing at 47.

<sup>57</sup> See *FPL Energy Marcus Hook, L.P. v. PJM Interconnection, LLC*, 107 FERC ¶ 61,069, at P 20 (2004) (finding that this provision of section 37.7 and 219 provides for reimbursement to early queue participants to the extent that their investment benefits a later entrant into the queue).

“proportional share” does not necessarily preclude the allocation of 100 percent of the costs of an upgrade if, in fact, that is the correct proportion attributable to the new upgrade.

50. Second, West Deptford claims PJM erred in assigning the entirety of Network Upgrade 28’s costs to West Deptford without proper factual demonstrations. West Deptford argues that PJM failed to show that West Deptford’s request actually contributed to the need for the second conductor on the Mickleton-Monroe transmission line.

51. In the Feasibility study in November 2006, System Impact Study in September 2010, and the Facility Study in April 2011, PJM identified the original Mickleton-Monroe transmission line (prior to the addition of the second line) as one impacted by the West Deptford project. As PJM stated, “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 an overload on the Mickleton-Monroe 230 KV line which is Network Upgrade 28.”<sup>58</sup> For example, the Generator Facilities Impact Report found that the West Deptford project contributed to the flow on the original Mickleton-Monroe transmission line and therefore the upgrade would have been necessary as a result of the West Deptford project:

Q90 contributes approximately 177.4 MW to the flow on the Mickleton - Monroe 230 kV circuit (original line #1 before line #2 was constructed as previously identified Network Upgrade n0028) for the contingency loss of the Eagle Point - Gloucester 230kV line.<sup>59</sup>

Network Upgrade n0028 was completed in June 2003 at an actual cost was \$10,500,461 and was previously paid for by queue projects A19 and A21. It was later determined that the upgrade was not necessary for queue projects A19 and A21 Since Queue Q90’s Queue closing date was August 31, 2006, which is less than 5 years after Network Upgrade n0028 was put into service, and since it has been determined that accommodating Q90's Interconnection Request would require Network Upgrade n0028, Q90 will be responsible for 100%

---

<sup>58</sup> PJM Answer at 9.

<sup>59</sup> PJM Answer, Appendix D at page 4.

of the \$10,500,461 cost to construct Network Upgrade n0028. (emphasis added).<sup>60</sup>

52. West Deptford revisits its arguments that it should not be responsible for the costs of the second Mickleton-Monroe transmission line because PJM failed to show that this line would not have been constructed for some other reason during the period between the in-service date of the line and West Deptford's interconnection request. West Deptford argues that PJM should have studied "whether, if Network Upgrade 28 had not been built in 2003, it would have been included in a subsequent RTEP or identified by a PJM transmission owner as being needed for reliability purposes."<sup>61</sup>

53. As noted above, PJM did conduct a complete analysis of the project and found that no other subsequent project would have caused an overload on the original Mickleton-Monroe transmission line. The tariff provision in question (§37.7) does not require that once the first project is constructed, PJM is required to conduct a "what if" analysis to determine whether had the project not been constructed, PJM would have required the construction of the project for some other reason during the time between initial construction and the second interconnection request. Rather, the tariff only requires PJM to determine whether the second interconnection request "would require, in whole or in part, any Local Upgrade or Network Upgrade that was previously determined to be necessary to accommodate, and that was constructed in connection with, a New Service Request that was part of a previous New Services Queue." In effect, under this tariff provision, the West Deptford interconnection request is treated as part of the cluster of the projects that gave rise to the need for the Mickleton-Monroe transmission line upgrade, and costs are assigned based on the studies done at the time the Mickleton-Monroe transmission line upgrade was planned.

54. West Deptford cites to no tariff provision in support of its argument that PJM is required to consider whether a previously approved project would have been included in a subsequent RTEP or identified by a PJM transmission owner as subsequently being needed for reliability purposes. However, in the *Marcus Hook* cases to which West Deptford refers, the parties argued over the extent to which section 37.2 of the PJM tariff required PJM to conduct a net benefits test. Section 37.2 provides that the "but for" costs allocated to an interconnection customer should be reduced if the project in question accelerates, defers, or eliminates the need for other planned upgrades.<sup>62</sup> This net benefits

---

<sup>60</sup> *Id.* PJM has adjusted this \$10,500,461 figure to \$10,761,078 as more updated cost records became available. See PJM Answer, Appendix F; *Marcus Hook* August 18, 2011 Answer, Docket No. ER11-4073-000, at 14.

<sup>61</sup> West Deptford Request for Rehearing at 50 n.183.

<sup>62</sup> *Marcus Hook III*, 118 FERC ¶ 61,169 at P 11. The full text of Section 37.2

(continued...)

test, however, was applied when the Mickleton-Monroe transmission line was planned, in this case, in 2002-2003. At that time, there were no reliability or other upgrades in the PJM queue that this transmission line would accelerate, defer, or eliminate. West Deptford cites to no provision of either section 37.2 or 37.7 that requires PJM to continue to study, over the succeeding five year period, whether a reliability problem would have occurred that might have required the construction of the project in question.

55. The Commission responded to a similar argument in the *Marcus Hook* case, explaining that:

PJM can analyze only the projects anticipated at the time of the interconnection, not projects that materialize afterwards. As PJM points out, “[e]very addition to the system could be characterized as providing some possible intangible system benefit by adding transmission capacity redundancy, or might later be deemed to have accelerated some unspecified, future upgrade.”<sup>63</sup>

---

reads:

A Generation Interconnection Customer shall be obligated to pay for 100 percent of the costs of the minimum amount of Local Upgrades and Network Upgrades necessary to accommodate its Generation Interconnection Request and that would not have been incurred under the Regional Transmission Expansion Plan but for such Generation Interconnection Request, net of benefits resulting from the construction of the upgrades, such costs not to be less than zero. Such costs and benefits shall include costs and benefits such as those associated with accelerating, deferring, or eliminating the construction of planned Local Upgrades and Network Upgrades, the construction of Local Upgrades and Network Upgrades resulting from the modifications to the Regional Transmission Expansion Plan to accommodate the Generation Interconnection Request, or the construction of other Local Upgrades and Network Upgrades that are not and do not formally become part of the Regional Transmission Expansion Plan. (emphasis added)

<sup>63</sup> *Marcus Hook IV*, 123 FERC ¶ 61,289 at P 60 (citing *Old Dominion Elec. Coop., Inc. v. FERC*, 518 F.3d 43, 51 (D.C. Cir. 2008)).

As the Commission pointed out, in the *CED Rock Springs* case, the court affirmed the Commission's finding that PJM does not have to consider the potential construction of future facilities in applying the "but for" test:

The same reasoning applies to explain why the future cost of a \$200,000 wave trap replacement and other unquantified costs associated with complying . . . are not evidence that the facilities would have been built but for their interconnection request. FERC adequately responded to this argument, asserting that "these costs resulted from [Petitioners'] choice to build and own these facilities[,] not from any demonstrated need by the system."<sup>64</sup>

By limiting an interconnection customer's responsibility for prior upgrades to five years, the PJM tariff provides a balance between fairly allocating the costs of upgrades to future customers who use those upgrades and mitigating the possibility that intervening events would so change the configuration of the PJM system such that an allocation of past construction projects would not be warranted.

56. Moreover, West Deptford merely speculates that had the second Mickleton-Monroe transmission line not been built, PJM might have needed to construct a second line transmission line within the three year period between projects. But West Deptford offers no support for this position, nor any evidence that the Mickleton-Monroe transmission line would have solved a potential reliability problem during the three year period, despite having access to the PJM RTEP Filings. West Deptford makes the same argument that the second Mickleton-Monroe transmission line might have provided system benefits that the Commission rejected in the *Marcus Hook* case:

FPL Energy has alleged only that the existence of double towers shows that the line it constructed might someday be of benefit to the system. It has not proffered evidence to show that these towers would have accelerated, deferred or eliminated any specific project, as required by section 37.2 of PJM's tariff.... Indeed, as PJM points out, these towers have been in place since 1965 and a second line has never been needed in those 40 years.<sup>65</sup>

---

<sup>64</sup> *Old Dominion Elec. Coop., Inc. v. FERC*, 518 F.3d 43, 51 (D.C. Cir. 2008).

<sup>65</sup> *Marcus Hook III*, 118 FERC ¶ 61,169 at P 38.

### C. Incremental ARRs

57. In the original proceeding, West Deptford argued that, if West Deptford must pay for the costs of Network Upgrade 28, then it should receive the Incremental ARRs that were awarded to Marcus Hook and Liberty Electric when they first paid for Network Upgrade 28. In its request for rehearing, West Deptford notes that “[t]he Commission has not ruled on the merits of this argument,”<sup>66</sup> because it was not ripe, yet West Deptford re-raises the argument on rehearing.

58. West Deptford notes that permitting Marcus Hook and Liberty Electric to double-recover the costs of Network Upgrade 28 would contradict the PJM Tariff, *Marcus Hook III*, and other precedent. In particular, West Deptford argues that not awarding Incremental ARRs in the event that West Deptford pays for Network Upgrade 28 would violate the Commission’s prohibition on “and” pricing. West Deptford explains that the prohibition on “and” pricing protects a customer from paying for the same service twice, such as being charged both for the cost of installing a network upgrade and for the use of the same upgrade. Thus, West Deptford argues, the September 2011 Order is an unexplained reversal of long-standing policy.<sup>67</sup>

59. While we did not rule on the merits of this argument, we did not, as West Deptford alleges, authorize Marcus Hook and Liberty Electric to double-recover, nor did we overturn the prohibition on “and” pricing. We did not rule on the argument because it was premature. The assignment of ARRs applies only after West Deptford signs the Interconnection Service Agreement. As we explained in the September 2011 Order, “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.’”<sup>68</sup> In the event that West Deptford does execute an ISA, its claim to receive Incremental ARRs will be perfected and PJM will be required to assign those ARRs as provided in its tariff.

### D. Maximum Facility Output

60. In the September 2011 Order, the Commission affirmed PJM’s decision to treat the West Deptford project as having a 650 MW MFO, rather than the 800 MW that West Deptford states it sought. West Deptford claims that all three of its interconnection study

---

<sup>66</sup> West Deptford Request for Rehearing at 24.

<sup>67</sup> *Id.* at 39.

<sup>68</sup> September 2011 Order, 136 FERC ¶ 61,195 at P 43.

agreements indicate an 800 MW MFO.<sup>69</sup> West Deptford states that the confusion arose when West Deptford agreed to lower its Capacity Interconnection Rights from 800 MW to 650 MW. West Deptford states that it never agreed to reduce its MFO, and “clearly indicated in all of its study agreements that it intended to maintain the full MFO of 800 MW that it initially requested.”<sup>70</sup> West Deptford argues that the Commission “relies on PJM’s claim that, in 2007, West Deptford provided PJM data indicating that the facility would have a maximum winter output of 690 MW,” but that the Commission ignored West Deptford’s claim that in May 2008 “West Deptford provided updated machine data demonstrating a maximum winter output of 800 MW,” “over two years before PJM issued its [system impact study] report.”

61. We reject this ground for rehearing. West Deptford merely restates evidence that was already in the record, evidence that the Commission had already considered and weighed in the September 2011 Order. While “a party may propound novel arguments based upon evidence already in the record as late as that party’s petition for rehearing,”<sup>71</sup> West Deptford presents no arguments that it did not present in the original proceeding.

62. We do not need to find specific intent on West Deptford’s part to reduce its MFO from 800 MW to 650 MW. Rather, we find that PJM in good faith understood West Deptford’s words and actions, detailed below, as proposing such a reduction. Further, West Deptford has presented no evidence in the record suggesting that PJM’s belief that West Deptford sought a 650 MW MFO was due to negligence or malfeasance.

63. In July 2006, the West Deptford project entered the PJM queue and signed a Feasibility Study Agreement with PJM that, at Article 3.c, clearly provided for an 800 MW MFO. Accordingly, in November 2006, PJM presented West Deptford with a “PJM Generator Interconnection Q90 Mickleton 800 MW Feasibility Study,” which showed in its Network Impacts section that at 800 MW, the West Deptford project would have the potential to cause overloads on eight lines.<sup>72</sup> Except for the overload on the Mickleton-Monroe line (the line associated with Network Upgrade 28), all of the projected overloads were less than 150 MW.

---

<sup>69</sup> West Deptford Request for Rehearing at 51.

<sup>70</sup> *Id.*

<sup>71</sup> *Villages of Chatham v. FERC*, 662 F.2d 23, 30 (D.C. Cir. 1981).

<sup>72</sup> PJM, Answer, Docket No. ER11-4073-000, at Attachment C (filed August 23, 2011).

64. In the early stage of the queue, before the System Impact Study Agreement is executed, section 36.2A.1 of the PJM tariff<sup>73</sup> allows the interconnection customer to reduce the electrical output of its proposed project by up to 60 percent. PJM states that it received such a request from West Deptford on November 8, 2006, reducing its MFO from 800 MW to 650 MW.<sup>74</sup> West Deptford states that PJM misunderstood this filing, and that West Deptford agreed to lower its Capacity Interconnection Rights. However, on December 11, 2006, West Deptford and PJM reached a System Impact Study Agreement and included in that agreement the statement that West Deptford elected to “reduce the Q90 project size to a *net capacity resource* of 650 MW,” without further explanation regarding any intention to maintain its initial request for a Maximum Facility Output of 800 MW. PJM further points out that data provided by West Deptford to PJM in 2007 showed the project having an output of 650 MW in summer and 690 MW in winter,<sup>75</sup> and that the 2008 Feasibility Study Agreement at Article 4 referred to the West Deptford project as a 650 MW project. Thus, in contrast to West Deptford’s claim that it “clearly indicated in all of its study agreements that it intended to maintain the full MFO of 800 MW that it initially requested,”<sup>76</sup> these documents show that West Deptford did not make its intentions clear and that it did sign documents that reflected a lower project rating. West Deptford relies on its 2008 updated machine data as evidence that these statements were in error. If these statements were indeed in error, however, then West Deptford missed multiple opportunities to correct these errors and subscribed to documents containing the error. It therefore cannot expect to correct them at this late stage without losing its queue position and having the project restudied.

65. Facing the same evidence and the same arguments as in the September 2011 Order, we reach the same conclusion, 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

---

<sup>73</sup> The 2006 version of section 36.2A.1 is substantially identical to the current version.

<sup>74</sup> PJM, Answer, Docket No. ER11-4073-000, at 11 (filed August 23, 2011).

<sup>75</sup> *Id.* at 12.

<sup>76</sup> West Deptford Request for Rehearing at 51.

we therefore find that PJM's interpretation of that request was reasonable in conducting only the 650 MW study."<sup>77</sup>

The Commission orders:

The request for rehearing is denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

---

<sup>77</sup> September 2011 Order, 136 FERC ¶ 61,195 at P 44.