

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

PJM Interconnection, LLC

Docket Nos. ER03-404-001
ER03-404-002
ER03-404-003

ORDER ON COMPLIANCE FILING AND REHEARING

(Issued March 30, 2004)

1. In this order, the Commission accepts in part and rejects in part a compliance filing and accepts in part and rejects in part requests for rehearing and/or clarification with regard to the operation of Independent Transmission Companies (ITCs) within PJM Interconnection, LLC (PJM). This order will benefit customers by ensuring the appropriate balance of responsibilities between PJM and its ITCs.

BACKGROUND

2. On March 14, 2003, the Commission issued an order¹ accepting amendments to PJM's Open Access Transmission Tariff (OATT) providing standard terms and conditions under which ITCs will operate within PJM.² PJM filed two attachments to its tariff: Attachment U, which contains those standard terms and conditions, and the standard division of rights, responsibilities and functions between PJM and the ITC, and Attachment V, the pro forma agreement to be executed by each ITC which incorporates the terms and conditions of Attachment U.

¹ PJM Interconnection, LLC, 102 FERC ¶ 61,296 (2003) (March 14 Order).

² In an order issued on July 31, 2002 (Alliance Companies, 100 FERC ¶ 61,137 (2002)), the Commission noted that several former members of the Alliance Companies intended to join PJM within an ITC, which would be managed by National Grid USA (National Grid). See March 14 Order at P 2.

3. The Commission accepted the filing, but required PJM to make a compliance filing within 30 days, which PJM did on April 14, 2003. The compliance filing was noticed in the Federal Register,³ with comments, protests, and motions to intervene due on or before May 5, 2003. On August 18, 2003, the Commission requested that, to clarify its compliance filing, PJM provide responses to additional data requests. PJM provided those responses on October 3, 2003.

4. National Grid and the Coalition of Municipal and Cooperative Users (Muni-Coop Coalition) sought clarification and rehearing of the March 14 Order. National Grid also protested PJM's April 14 compliance filing, and also filed comments on PJM's responses to the Commission's data requests. PJM filed an answer to National Grid's protest.

DISCUSSION

Procedural issue

5. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 213(a)(2) (2003) prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PJM's answer to National Grid's protest of its compliance filing because it has provided information that has assisted us in our decision-making process.

Requests for Rehearing and Clarification

A. Criteria for disapproving transmission outages

6. In the March 14 Order, the Commission provided that an ITC within PJM would develop its own maintenance and outage schedule for ITC transmission facilities, but that PJM had the authority to disapprove transmission maintenance outages on ITC facilities.

7. National Grid states that the Commission has mis-stated the bases on which PJM would be authorized to disapprove an outage proposed by an ITC. According to National Grid, PJM proposed that it have the authority to disapprove an ITC's proposed transmission outage if the ITC failed to comply with certain notice requirements, or if "PJM determines that such outages would create a violation of system reliability criteria." In the March 14 Order, however, the Commission stated that PJM's proposal, which the Commission approved, "also grants to PJM the authority to disapprove transmission maintenance outages on ITC facilities if PJM determines that such outages would have the potential to cause transmission system congestion or significantly affect the efficient

³ 68 Fed. Reg. 19803 (2003).

and reliable operation of PJM."⁴ National Grid states that this language grants an additional ground to disapprove transmission outages that PJM did not seek and that National Grid opposes. National Grid asks the Commission to clarify that it did not intend to expand the grounds on which PJM may disapprove an outage beyond those stated in PJM's proposal.

8. **Commission response.** We grant the clarification requested by National Grid. Section 9.2 of Attachment U as currently filed does not contain the language that National Grid complains of, since it provides solely that PJM may disapprove an outage proposed by an ITC if the ITC fails to comply with the applicable notice requirements, or if PJM determines that such outages would create a violation of system reliability criteria.

B. Exemption from PJM's one-month notice requirement for outages

9. In the March 14 Order, the Commission provided that PJM and an ITC must coordinate their outage schedules, and further stated that PJM could reject a request by an ITC to schedule an outage, if that outage would take place after PJM held its auction for Financial Transmission Rights (FTRs) for the month of the proposed outage. The Commission stated:

We are concerned that allowing an ITC to change its planned maintenance outage schedule after the FTR auctions have taken place could adversely affect the ability of others to hedge congestion. Market participants cannot be expected to make decisions on FTR transactions if the maintenance outage schedule is incomplete and there is the possibility of increased congestion following a monthly auction. Insofar as FTR auctions allow participants to protect against uncertain future congestion costs . . . purchasers of FTRs require knowledge of all planned outages prior to purchases. . . . PJM should be free to reject an outage proposal if presented after FTR purchases have been made.⁵

10. According to National Grid, the Commission originally imposed PJM's minimum notice requirement for proposing transmission outages to eliminate the possibility that a transmission owner could use its ability to schedule transmission outages in such a way

⁴ March 14 Order at P 30, emphasis added.

⁵ March 14 Order at P 36.

as to favor its affiliates that deal in FTRs,⁶ but that in the March 14 Order, the Commission is now articulating a further rationale for the one-month rule, namely, the need for FTRs to serve as a hedge against congestion. National Grid argues that application of this rule even to an ITC that commits that neither it nor any of its affiliates will trade in FTRs within the ITC's footprint will prevent the ITC from achieving savings and efficiencies for its members through being able to schedule outages on a more flexible basis. National Grid asserts that such flexibility will permit ITCs to achieve lower congestion costs by adopting operational practices that "recognize real-time conditions,"⁷ and thus, although withholding such flexibility might make the value of specific FTRs more certain, the transmission infrastructure would be operated less efficiently overall. National Grid asks the Commission to reserve for future determination, in the context of a specific ITC proposal, the question of whether that ITC should be permitted to demonstrate that it will create greater efficiencies for its members through short-term outage management (*i.e.*, without being restrained by the one-month minimum notice rule), provided that that ITC and its affiliates do not trade in FTRs within the ITC's footprint.

11. **Commission response.** As National Grid points out in its rehearing request, the Commission based its initial ruling in part on concerns that affiliated companies could use outage scheduling to manipulate the value of FTRs, and in part on concerns that "allowing an ITC to change its planned maintenance outage schedule after the FTR auctions have taken place could adversely affect the ability of others to hedge congestion," and noting that, "if the maintenance outage schedule is incomplete and there is the possibility of increased congestion following a monthly auction," market participants would be unable to make decisions as to their FTR purchases.⁸ If an ITC and its affiliates commit not to trade in FTRs within the ITC footprint, that largely addresses the Commission's concern with regard to the possibility of two affiliated entities using outage scheduling to manipulate the value of FTRs.

⁶ See PJM Interconnection, LLC, 97 FERC ¶ 61,319 at 62,462 (2001), order on compliance filing, 99 FERC ¶ 61,170 (2002), cited by National Grid's request for rehearing at 4 n. 4. The Commission was concerned that a transmission owner could schedule outages and then provide notice of those scheduled outages to an affiliate that traded in FTRs in advance of providing notice to the rest of the market. In that circumstance, that trading affiliate would have greater knowledge as to which paths were likely to experience congestion, and thus have a significant advantage in its decision-making as to which FTRs to purchase.

⁷National Grid request for rehearing at 5.

⁸ March 14 Order at P 36.

12. However, the Commission continues to be concerned about the effect of short-term outage scheduling on market participants and their ability to hedge congestion. Under National Grid's proposal, as market participants plan their purchasing strategy for monthly FTRs, the utility of FTRs on paths within an ITC would be less certain, because parties would know that outages interrupting those paths may be scheduled on short notice. The proposed limitation offered by National Grid does not directly address this concern. Hence, there is no basis for a generic exemption to the PJM one-month notice rule, and the Commission thereby rejects National Grid's rehearing request. However, when ITC agreements are filed with the Commission, we will consider specific exemptions if the ITC agreement directly addresses both concerns.

C. Consistency with PJM Criteria

13. In the March 14 Order, the Commission approved an ITC's right to establish ratings, transfer limits and ratings procedures for its transmission facilities.⁹ The Commission also provided that, in the event of a dispute between PJM and the ITC, the parties would engage in dispute resolution, and that pending resolution of the dispute, the ITC's position would prevail.¹⁰

14. The Muni-Coop Coalition asserts that, as to calculation of Available Transmission Capacity (ATC), it is necessary for the Commission to clarify that:

[T]he ITC's establishment of ratings, transfer limits and ratings procedures for ITC facilities in PJM shall be either (i) in conformity with criteria and procedures adopted by PJM for the entire PJM area (including within the ITC footprint) to govern the calculation of ratings and transfer limits, or (ii) consistent with the procedures and criteria applied by PJM for establishing ratings, transfer limits and ratings procedures in portions of PJM outside the ITC footprint.¹¹

15. The Muni-Coop Coalition asserts that, absent this clarification, an ITC might establish ratings, transfer limits and ratings procedures for ITC facilities that are inconsistent with equivalent determinations for other portions of PJM, thus potentially creating a seam within PJM that could hamper PJM-wide transactions.

⁹ March 14 Order at P 28.

¹⁰ March 14 Order at P 28-29; see also section 9.1 of Attachment U.

¹¹ Muni-Coop Coalition request for rehearing at 3.

16. **Commission response.** We will deny the requested clarification. First, the provision as currently approved does not grant absolute primacy to the ITC – rather, it simply selects a default party whose position will prevail pending dispute resolution. Presumably, if PJM sees the possibility of the inconsistencies or kinds of harms that the Muni-Coop Coalition fears, it will raise those difficulties and the parties can address them during the process of dispute resolution. Second, as noted in the March 14 Order, the Commission’s ruling here is consistent with prior Commission orders regarding ITCs in the Midwest Independent Transmission System Operator (MISO),¹² and the Muni-Coop Coalition has provided no specific evidence or allegations, other than speculation as to possible future problems, to persuade the Commission to deviate from its prior policy. And third, it is our view that the Muni-Coop Coalition's clarification is not needed because it has failed to show that an ITC, following good utility practice, would in any event deviate from the requirements proposed by the Muni-Coop Coalition.

D. Modification of ITC actions having material effects outside the ITC footprint

17. In the March 14 Order, the Commission approved a provision of Attachment U providing that an ITC may take operating actions to enhance transmission performance (including targeted transmission investment, outage management, transmission device settings, contractual arrangements with generators and Load Serving Entities (LSEs), and changes in technology), so long as those enhancement activities "can be accommodated within the framework of the approved congestion pricing methodology" for the PJM region,¹³ i.e., currently Locational Marginal Pricing (LMP).¹⁴ The Commission also ruled that, while PJM may not approve or disapprove such actions, the ITC must consult with PJM to develop procedures to include those actions within PJM’s Operating Manuals. The Commission rejected requests to grant PJM the authority to reject or modify the ITC’s actions within its footprint, on the basis that "[t]he Commission’s policy has been to encourage innovative actions and investments by ITCs," and that giving PJM authority to reject or modify ITC actions would "stymie and hamper ITC innovation and impede ITC independence."¹⁵

18. The Muni-Coop Coalition asserts that denying such authority to PJM in the area of ITC operating actions is inconsistent with the Commission’s grant of PJM oversight over

¹² March 14 Order at P 28-29.

¹³ Attachment U, section 6.1

¹⁴ March 14 Order at P 42.

¹⁵ March 14 Order at P 38, 44.

an ITC's scheduling of maintenance and outages on critical facilities. It further asserts that, although section 6.1 of Attachment U provides for consultation and cooperation between PJM and the ITC as the ITC implements transmission enhancement measures, Attachment U is silent as to which party's views would prevail in the event of irresolvable differences, and fears that this silence could result in the ITC implementing transmission enhancement measures even absent PJM approval. To preclude that result, the Muni-Coop Coalition asks the Commission to clarify that the ITC's autonomy must be limited to actions that (i) are within the framework of PJM's approved congestion pricing methodology (which, as the Muni-Coop Coalition notes, is already the case in the filing), and (ii) have no material impact on the operation of facilities located outside the ITC's footprint. In the absence of that clarification, it seeks rehearing.

19. **Commission response.** We will deny the requested clarification and request for rehearing.

20. The Muni-Coop Coalition asks us to grant PJM veto power over ITC operating activities that might have any material impact on the operation of facilities outside the ITC's footprints. As the Commission stated in the March 14 Order, such a ruling would be inconsistent with the Commission's goal of maintaining the ability of ITCs to take innovative actions to maximize the value of their transmission owners' facilities. We found in the March 14 Order that "the latitude provided to ITCs . . . to conduct operating actions affecting ITC transmission facilities is . . . not overly broad," since it was limited to activities that could be accommodated within the PJM congestion pricing methodology,¹⁶ and we reaffirm this position now.

21. Contrary to the Muni-Coop Coalition's assertion, such a grant of broad authority to an ITC over operating activities is not inconsistent with our earlier rulings. PJM, as the RTO, is the party most responsible for the reliability of the system as a whole, and therefore must have oversight over activities which have been shown to have the potential to affect reliability. Both of the rulings to which the Muni-Coop Coalition points are in this category. In our March 14 Order, we found that PJM must "retain oversight over an ITC's scheduling of transmission outages," and we thus approved section 9.2 of Attachment U, which provides that PJM has the authority to disapprove any ITC-scheduled outages if PJM determines that such outage would cause a violation of system reliability criteria.¹⁷ Similarly, we ruled that PJM must pre-approve an ITC's transmission planning and expansion activities to prevent any material adverse effect on facilities outside the ITC's footprint that could lead to reliability violations (as discussed

¹⁶ March 14 Order at P 42.

¹⁷ See March 14 Order at PP 35-36.

below). However, the Muni-Coop Coalition has not demonstrated that any of the other transmission enhancement activities that an ITC might conduct, such as targeted transmission investment, transmission device settings, contractual arrangements with generators and Load Serving Entities (LSEs), and changes in technology, would have that potential for damaging reliability. Absent such a showing, we will not grant PJM veto power over those activities.¹⁸

Compliance Filing

22. The Commission accepts PJM's compliance filing, with one exception, as follows. In our initial order, we found that an RTO, rather than ITCs within it, must have ultimate authority on transmission planning and expansion issues inside the ITC's footprint on issues that materially affect facilities located outside of the ITC's footprint. Our order also made clear that we envisioned situations in which an ITC's transmission expansion and planning within its footprint would not materially affect facilities located outside the footprint and, thus, would not require PJM approval. In PJM's initial filing, section 10.1 of Attachment U provided that "[e]ach component of a timely plan proposed by the ITC shall be incorporated without PJM approval in the Regional Transmission Expansion Plan if PJM determines that such component does not materially adversely affect the Transmission System other than the ITC Transmission Facilities" (emphasis added). We required PJM to include a definition and criteria for what would "materially adversely affect" the transmission system outside of the ITC's footprint.¹⁹

23. In its compliance filing, PJM proposed a new section 10.4 to Attachment U that contained a four-part test. Under PJM's proposal, a "material adverse effect" on PJM's transmission system would occur if any one of the following conditions were met:²⁰

¹⁸ We further note that section 6.1 also provides that, before it implements any transmission enhancement activities, the ITC must consult with PJM, and during that consultation, PJM will consider whether "the type of action can be accommodated within the framework of the approved congestion methodology and whether the type of action would result in violations of regional reliability criteria applied in the PJM region" and that PJM and the ITC must cooperate with one another in solving "operational issues . . . inside the ITC region that affect facilities outside such region" (Attachment U, section 6.1), thus providing greater assurance that PJM and the ITC together will address any ITC actions that might cause operational problems for other PJM members.

¹⁹ March 14 Order at P 65.

²⁰ The language proposed by PJM is stated in the negative: that is, it states that there will be no material adverse effect only if all four of the reverse of the conditions as
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The Power Transfer Distribution Factor associated with the proposed facility or requested service would be 3 percent or greater on any non-ITC facility or facilities in the PJM region;

The proposed facility or requested service would result in any non-ITC facility or facilities in the PJM region exceeding thermal, voltage, or stability limits, consistent with all applicable reliability criteria;

The proposed facility or requested service would result in a one percent or greater reduction in Total Transfer Capability on any voltage or stability limited flowgate, or in the transient instability of any existing generator connected to the non-ITC facilities in the PJM region; and

The proposed facility or requested service would result in any circuit breaker on non-ITC facilities in the PJM region exceeding its interrupting capability.

24. PJM's transmittal letter states that these criteria are "based on the similar definition and criteria that the Midwest Independent System Operator, Inc. [MISO] recently filed in Docket No. ER03-216."²¹ The MISO filing was a joint filing of the MISO and the TRANSLink Development Company, LLC in response to direction from the Commission "to determine a consistent definition and criteria for what constitutes a 'material effect.'"²² The Commission has not yet approved the proposed MISO-TRANSLink criteria.

25. National Grid protested PJM's proposed criteria. According to National Grid, for the TRANSLink ITC, MISO has two separate tests for allocating responsibility for intra-ITC planning based on the identity of the facility's proponent. If the facilities are proposed by the ITC, a two-part definition of material effect is applied. If the facilities are proposed by a third party that requests transmission or interconnection service

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repeated by the Commission are present. We interpret this to mean that if any one of the conditions, as we have stated them above, is present, that will constitute a "material adverse effect."

²¹ Transmittal letter to compliance filing at 5.

²² TRANSLink Development Company, LLC, 102 FERC ¶ 61,033 (2003) (TRANSLink).

involving the ITC, MISO applies the four-part definition that PJM cites here.²³ National Grid asserts that PJM has not complied with the directive in an earlier Commission order that PJM's ITC policies must be similar to MISO's policies.²⁴

26. PJM responded to National Grid in a May 30, 2003 answer. According to PJM, it used a single definition of "materially adversely affect" to trigger PJM's involvement, both in the review of ITC-proposed facilities, and in studies of generator interconnection requests on the ITC, based on the more conservative of the two definitions proposed by the Midwest ISO for the TRANSLink ITC. In its answer, PJM stated that there is no reason to differentiate between PJM's participation in these two types of reviews, so it is reasonable to use the same definition. PJM further asserts that the MISO standard falls short of what is required within the PJM planning process, and that PJM's responsibility to produce a comprehensive regional plan requires PJM to participate in the review of both categories of ITC facilities if they have a material adverse effect on the rest of the PJM system, so that those effects can be considered in connection with the effects of proposals elsewhere on the system.

27. In PJM's responses to staff's data requests, it reiterates the appropriateness of the four-part screen. In particular, PJM argues that the proposed criteria looks at a much broader universe of changes that can affect the state of the system that could lead to a potential violation of reliability criteria. In support of this proposal, PJM compares its four-pronged test with the two-criteria screen. For example, PJM states that the proposed four-criteria test, which evaluates the impact on all facilities, will identify all system problems whether a particular facility was previously identified as a flowgate or not. PJM states that to the extent that expansion plans typically result in a redistribution of

²³ According to National Grid, the first set of criteria was to be used to define the "material effect" standard for purposes of determining when an ITC would have authority to plan for the expansion of its facilities without oversight and approval by MISO, and that MISO proposed that the "material effect" standard would be met whenever it determined that the ITC planning proposal would either 1) create negative Available Transmission Capacity (ATC) on any flowgate, or 2) render existing Financial Transmission Rights (FTRs) simultaneously infeasible." National Grid asserts that MISO also proposed a second set of criteria for purposes of determining when MISO and the ITC would coordinate planning studies necessary to accommodate requests by third parties for transmission service or transmission rights, which is equivalent to the four-part test that PJM proposes to use.

²⁴ Alliance Companies, 100 FERC ¶ 61,137 at P 43 (2002) ("in order for us to accept the Alliance Companies' choices, PJM must revise its tariff to permit ITCs to operate under PJM as Midwest ISO does").

flows on the system which may invalidate previous flowgate constraints and result in new previously unidentified reliability problems not associated with any existing defined flowgates, the two-criteria test would not identify such constraints. PJM states that it would need to revise its procedures and the timeframe of its analyses to accommodate the two-part approach, and that use of the two-part approach (which focuses on measurement of a negative available flowgate capacity impact on pre-identified, specific flowgates) may miss impacts elsewhere within the system. PJM states that the four-part test, by evaluating the impact on all facilities, will identify all system problems whether a particular facility was previously identified as a potentially congested flowgate or not. In addition, PJM asserts that the proposed Joint Operating Agreement between MISO and PJM will resolve any seams issues or potential inconsistencies between planning in the two RTOs.

28. National Grid, in its comments on PJM's responses, reiterates its opposition to PJM's proposed criteria and argues that PJM's proposal is designed to remove any role for ITCs within the PJM region. National Grid further states that the proposal is not in compliance with Commission direction that an ITC should be primarily responsible for planning expansion to its facilities. National Grid argues that PJM misapplies the MISO four-part screen to ITC-proposed facilities, asserting that the four-part test was designed only for the evaluation of external, third-party requests. National Grid also states that MISO's less stringent, two-part test was designed as a broad means of determining planning oversight, not a full-blown transmission planning study, and that while PJM's proposal will provide a better understanding of impact, National Grid considers application of PJM's approach to be excessive as a planning oversight screen.

29. **Commission response.** The Commission rejects PJM's proposed section 10.4 for failing to fully comply with the requirements of our March 14 Order.²⁵ That order directed PJM to file a definition and criteria for what would "materially adversely affect" the transmission system outside the ITC's footprint, consistent with the requirements we have imposed in past orders. We explained that we have previously drawn a clear distinction between ITC transmission expansion and planning that occurs within the ITC footprint and does not materially adversely affect facilities located outside the footprint, and ITC expansion and planning that does materially adversely affect outside facilities.²⁶ By focusing on "material" adverse effects, we have sought to strike a balance between providing ITCs with flexibility in planning and expanding their transmission systems and preserving an RTO's responsibility for the reliability of the transmission system within its overall region.

²⁵ March 14 Order at P 65.

²⁶ TRANSLink at P 87.

30. PJM's proposed definition of "materially adversely affect" appears to be so broad as to essentially eliminate the "materiality" component from the term, and PJM has not explained why the failure of any aspect of this test is material. The proposed four-part test appears to measure virtually all adverse impacts from an ITC's transmission planning and expansion, as opposed to only "material" adverse impacts. It would seem that such a test would leave little, if any, ITC transmission expansion and planning that would not be subject to PJM approval, and PJM has not explained how this test would permit reasonable ITC planning activities within the ITC footprint. As a result, we conclude that PJM has failed to show that its proposed definition strikes a reasonable balance between providing ITCs with the flexibility to plan and expand their transmission systems and enabling PJM to maintain system reliability, as required by our March 14 Order.

31. We direct PJM to submit revisions to its tariff that limit its definition of those ITC planning activities that must be approved by PJM before incorporation into PJM's Regional Transmission Expansion Plan to those activities that "materially adversely affect" the remainder of the PJM system, within 30 days of the date of this order.

The Commission orders:

(A) National Grid's request for clarification with regard to the grounds for PJM's authority to disapprove transmission outages is granted, as discussed above.

(B) All other requests for clarification or rehearing are denied, as discussed above.

(C) PJM's compliance filing is accepted, except for PJM's proposed section 10.4, which is rejected, as discussed above.

(D) Within 30 days of the date of this order, PJM is required to refile its definition of when ITC expansion planning "materially adversely affects" transmission facilities outside the ITC's footprint, as discussed in the body of the order.

By the Commission.

(S E A L)

Magalie R. Salas
Secretary.