

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission
System Operator, Inc.,

Docket No. EL04-135-002

PJM Interconnection, L.L.C.,

and

All Transmission Owners Providing
Access to Their Transmission Facilities under Midwest
Independent Transmission System Operator, Inc.
or PJM Interconnection, L.L.C. Tariffs and All
Other Public Utility Transmission Owners in
These Regions

ORDER ON REHEARING

(Issued April 18, 2005)

1. On September 27, 2004, the Commission issued an order instituting a section 206 proceeding to implement a new long-term transmission pricing structure intended to eliminate seams in the PJM Interconnection, L.L.C. (PJM) and Midwest Independent Transmission System Operator, Inc. (Midwest ISO) regions.¹ On October 21, 2004, Virginia Electric and Power Company (Dominion) filed a request for rehearing disputing its inclusion in this proceeding. In this order, the Commission denies rehearing.

¹ *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,313 (2004) (September 27 Order).

I. Background

2. In earlier orders the Commission ordered the elimination of regional through and out rates between the PJM and Midwest ISO regions effective April 1, 2004,² and also found unjust and unreasonable the through and out rates of individual public utilities that had not yet become members of PJM or Midwest ISO effective April 1, 2004. In place of the through and out rates the Commission adopted a replacement rate design consisting of license plate rates with a transitional lost revenue recovery mechanism.³ On December 17, 2003, the Commission clarified that the through and out rates were eliminated for reservations pursuant to requests made on or after November 17, 2003, for service commencing on or after April 1, 2004.⁴ Subsequently, by notice issued January 23, 2004, the Commission provided time for the parties to participate in a stakeholder process to develop these transitional lost revenue recovery mechanisms.

3. On February 6, 2004, the Commission accepted an agreement among the parties extending the date for elimination of the through and out rates from April 1, 2004 to May 1, 2004 (but with the transition period continuing to run from April 1, 2004, *i.e.*, effectively shortening the transition period).⁵ At the same time, the Commission established settlement judge procedures to further aid the parties in developing the transitional lost revenue recovery mechanism.⁶

4. On March 5, 2004, following further negotiations among the parties, the Chief Judge filed a report and an agreement which established going-forward principles and procedures that would shorten the period for lost revenue recovery by seventeen months. On March 19, 2004, the Commission accepted this agreement, which retained the through and out rates until December 1, 2004, at which time they would be eliminated entirely.⁷

² *Midwest Independent Transmission System Operator, Inc.*, 104 FERC ¶ 61,105, *order on reh'g*, 105 FERC ¶ 61,212 (2003).

³ *Ameren Services Company*, 105 FERC ¶ 61,216 (2003).

⁴ *Midwest Independent Transmission System Operator, Inc.*, 105 FERC ¶ 61,288 (2003).

⁵ *Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,106 (2004).

⁶ *Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,105 (2004).

⁷ *Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,262 (2004) (March 19 Order).

The agreement also provided for negotiations to continue to develop a long-term transmission pricing structure that eliminates seams in the PJM and Midwest ISO regions. The agreement provided that either one proposal or, if the parties were unable to agree to a single proposal, multiple proposals would be filed with the Commission on or before October 1, 2004, with a December 1, 2004 effective date. Furthermore, the Commission stated that “in no event will through and out rates remain in place beyond December 1, 2004 irrespective of whether there is an agreed-upon long-term transmission pricing structure.”⁸ In addition, the Commission “obligate[d] itself to choose a replacement and to put that replacement in place on December 1, 2004 (subject to refund, if appropriate).”⁹

5. In September 2004 the Chief Judge issued two reports indicating that after numerous meetings and conferences the parties had successfully narrowed the range of long-term transmission pricing proposals to two and stated that the two competing proposals would be filed with the Commission on October 1, 2004.¹⁰ However, the Commission, recognizing that it would be receiving two competing proposals, anticipated that ultimately it would adopt a single long-term transmission pricing structure across the entire PJM and Midwest ISO regions.

6. Consequently, in order to ensure that the Commission had adequate authority to implement a single long-term transmission pricing structure for all parties across the PJM and Midwest ISO regions effective December 1, 2004, the Commission instituted this section 206 proceeding. In the September 27 Order the Commission established this docket to provide a mechanism for the Commission to implement a just and reasonable long-term transmission pricing structure to replace existing through and out rates in the PJM and Midwest ISO regions. Subsequently, on November 18, 2004, effective December 1, 2004, the Commission eliminated rate pancaking for transmission service under PJM’s and Midwest ISO’s open access transmission tariffs (OATTs) and adopted a transition methodology.¹¹

⁸ March 19 Order at P19.

⁹ The Commission also stated that it was “not obligated to adopt any particular long-term transmission pricing structure over another.” *Id.* n.19; *accord id.* at n.17.

¹⁰ *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 63,034 (2004); *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 63,039 (2004).

¹¹ *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,168 (2004) (November 18 Order), *reh’g pending*.

II. Rehearing Request

7. Dominion asserts that the Commission erred in including it within the section 206 proceeding instituted by the Commission in the September 27 Order. Dominion contends that it is not currently a member of either PJM or Midwest ISO, and that while it abuts PJM's territory, it is not located along a seam between Midwest ISO and PJM. Dominion argues that, unlike the other individual public utility transmission owners that had not yet joined an RTO, in earlier proceedings the Commission did not find it to be within the combined regions.

8. Dominion argues that its participation in these proceedings is not required and asserts that it has not been involved as a transmission-owning participant in the preceding dockets and proceedings discussed above. Furthermore, Dominion contends that it was not a signatory to the going forward principles and procedures settlement, never agreeing to be bound by its terms. Dominion also argues that the Commission and parties were aware that it did not consider itself a part of this region.

9. Dominion states that, in the September 27 Order, the Commission does not provide any reason for including Dominion and asserts that there is no legitimate reason for the Commission to require Dominion to participate, especially at such a late date, in the proceeding. Dominion argues that eliminating the seams between PJM and Midwest ISO does not require Dominion's participation and therefore, the Commission erred in including it in the section 206 proceedings.

10. Dominion acknowledges that it has applied and the Commission has conditionally accepted its application to join PJM. However, Dominion asserts that this is not sufficient reason to require Dominion to participate in the section 206 proceeding. Dominion adds that a similar transmission owner, Duquesne, was not included by the Commission in the section 206 proceeding, although like Dominion, it bordered PJM and had announced its intention to join PJM but had not yet done so at the time of the September 27 Order.

III. Discussion

11. We will deny Dominion's request for rehearing of the September 27 Order. To support its claim that it should not be subject to the newly initiated rate structure, Dominion relies principally on the argument that it had not been a party to the prior proceeding investigating the through and out rates in the region. We are not persuaded that Dominion should be excluded from the section 206 proceeding and the new rate design under the PJM and Midwest ISO OATTs merely because it was not a party to predecessor proceedings.

12. An earlier proceeding specifically targeted the Midwest ISO and PJM through and out rates. It later became evident, however, that due to delays in RTO expansion certain transmission owners at the seam were not yet in an RTO. Therefore the Commission initiated a second, section 206 investigation to include the through and out rates of the individual transmission owners at the seam that had yet to join an RTO. At this stage, Dominion was excluded because it did not sit at the seam and the Commission was primarily focused on the through and out rates of individual transmission owners that were perpetuating rate pancaking between Midwest ISO and PJM. However, as the parties began developing permanent pricing proposals to replace the through and out rates Dominion filed its application to join PJM, but included a request that it not be subject to the rate structure being developed to replace the through and out rates.¹² It would have been inappropriate to exempt Dominion, a new PJM member, from the rates that would apply to any other PJM member. Accordingly, in the Commission's order on Dominion's PJM application, the Commission rejected Dominion's request to "opt out" of the new rate structure and stated that Dominion's integration into PJM must be subject to the outcome of the through and out rate proceedings.¹³ It would also be inappropriate here to grant Dominion an opt-out from the new rate structure by removing it from the section 206 proceeding initiated in the September 27 Order; the section 206 proceeding was established to allow for the implementation of a single long-term transmission pricing structure for all parties across the PJM and Midwest ISO regions, and Dominion is one such party.

13. Dominion's concern that it will be inappropriately subject to the replacement rate structure and corresponding December 1, 2004 refund effective date is misplaced. Indeed, while Dominion is correct that it does not sit on the seam between the two RTOs,¹⁴ it has filed to join PJM and should be treated no differently than any other PJM member once it is integrated.

14. While it is true that the Commission did not name Duquesne in the September 27 Order, Duquesne did not then have a formal application pending to join PJM, nor had it

¹² See Dominion proposal to join PJM filed on May 1, 2004, amended July 16, 2004 in Docket Nos. ER04-829-000 and ER04-829-001.

¹³ *PJM Interconnection LLC., and Virginia Electric and Power Company*, 109 FERC ¶ 61,012 at P 42 *reh'g denied in pertinent part* 110 FERC ¶ 61,234 at PP 24-27 (2004).

¹⁴ Moreover, since the new rate structure only applies to the PJM and Midwest ISO OATTs, Dominion will not be subject to the new rate structure until it is integrated with PJM.

indicated any reservation in accepting PJM's rates.¹⁵ Dominion, however, in its application to join PJM, specifically requested that it not be subject to PJM's rates or the new rate structure. Regardless of whether Duquesne is subjected to the section 206 proceeding, both parties, like all other transmission owners in the region, will be subjected equally to PJM's new rate structure.

The Commission orders:

Dominion's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

¹⁵ We further note that according to Duquesne's PJM integration filing made on October 28, 2004, in Docket No. ER05-85-000, Duquesne did not "[propose] to change any of the methodologies or rate designs currently used under the PJM tariff." Nor did Duquesne ask to be exempt from any new rate design under the PJM OATT resulting from these ongoing proceedings. Therefore, even after Duquesne officially made its integration filing it was not necessary for the Commission to add Duquesne to the section 206 proceeding initiated in the September 27 Order.