

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Occidental Power Services, Inc.
Complainant,

Docket No. EL03-42-000

v.

PJM Interconnection, L.L.C.
Respondent

ORDER GRANTING COMPLAINT BUT
DEFERRING REMEDY FOR 120 DAYS
TO ACCOMMODATE STATE RETAIL CONCERNS

(Issued June 5, 2003)

1. On January 14, 2003, Occidental Power Services Inc. (OPSI) filed a complaint against PJM Interconnection, L.L.C. (PJM) alleging that PJM had violated its tariff by not accepting the actual hourly volumes incurred at OPSI's meter for wholesale scheduling and billing purposes. The Commission concludes that under PJM's tariff, it must schedule wholesale loads for LSE network customers such as OPSI at the OPSI meter. However, due to the impact that a change in PJM's practices may have on the retail access program administered by the Delaware Public Service Commission (DE PSC), the Commission will defer its decision for 120 days to allow the DE PSC and the parties to review the implications for the retail access program. This result serves the customers by assuring that wholesale prices for both the seller and the buyer will be determined at the bus or nodal level as is contemplated by the PJM tariff, but will provide interested parties with sufficient time to adjust to the required changes in the administration of PJM's tariff.

I. Background and Findings

2. Occidental Petroleum Company (Occidental) is a major oil and chemical company with substantial facilities in northern Delaware. Occidental was also Delmarva Power and Light's (Delmarva) second largest industrial retail customer. On August 31, 1999, the DE PSC approved a settlement between Delmarva and its retail customers laying out a program

for electric retail choice in Delmarva's Delaware electric service territory. That settlement provided for the phasing in of retail choice in Delaware and also required a state wide uniform retail rate at the outset of the program. Occidental is a member of an industrial customer's group that endorsed the settlement. It appears that when the settlement was implemented Occidental lost a favorable interruptible rate and its retail rate costs increased.¹ OPSI is an affiliate of Occidental that was formed to buy wholesale power and resell it to Occidental after the state retail plan became effective.

3. Occidental is OPSI's only retail customer although OPSI asserts it intends to pursue others. While it may only have one customer served at only one bus (node), OPSI is a qualified network load serving entity (LSE) under the terms of PJM's tariff.² At present OPSI is charged a single wholesale price by PJM based on the average wholesale price for Delmarva's entire Delaware service territory. The uncontested facts are that Delmarva's Delaware service territory includes two subregions or nodes consisting of a northern zone that normally has lower congestion costs than the second, the southern zone. The latter suffers from insufficient transmission capacity and more varied seasonal demand due to the resort areas on the Delaware seacoast.³ Moreover, OPSI has hourly interval metering capacity at the one meter that serves its affiliated retail customer and no credible evidence here suggests that this meter does not meet the standards PJM requires for an entity to be accepted as an LSE under the PJM tariff.

4. OPSI asserts that if it were to schedule wholesale power purchases at the wholesale price for the northern zone, or the congestion price at the bus of its individual meter, the wholesale cost of power to OPSI would be lower than is currently the case. In addition, OPSI maintains billing true-ups would occur more rapidly than is now the case, and Occidental would gain present value of the interest on any initial overcharges that are reduced through the true-up process. However, Delmarva maintains that if the complaint is granted, Delmarva would likely be faced with higher costs for its remaining retail

¹See Occidental Chemical Corporation v. PJM Interconnection, L.L.C. and Delmarva Power & Light Company, 102 FERC ¶ 61,275 (2003).

²This fact is uncontested in the answers. However, OPSI is not listed as a party to PJM's Reliability Assurance Agreement as based on the March 30, 2003 version of that Agreement. In light of PJM's silence on the point it appears that this fact does not affect OPSI's LSE status for purposes of the complaint at issue here.

³The Commission has instituted a fact finding proceeding of congestion issues in the southern portion of Delmarva's Delaware service territory. See Transmission Congestion in the Delmarva Peninsula, Docket No. PA03-12-000, 103 FERC ¶ 61,163 (2003).

customers that it might not be able to recover under its current retail rate structure. Delmarva claims this result might require an upward adjustment of all retail rates in the state if the DE PSC desires to retain a single state-wide retail rate.

II. The Complaint

5. In its complaint OPSI asserts that it is a duly authorized load serving entity (LSE) under PJM's tariff and that as a network customer, it is permitted under the PJM tariff to receive wholesale power from its Electric Distribution Company (EDC)(in this case Delmarva) at a specific bus or node at that LMP. OPSI further asserts that it is an Electric Supplier authorized to provide electricity to retail customers under the state's retail access program. OPSI states that effective November 1, 2002, it purchases electricity in the PJM Interchange Energy Market and takes PJM Network Integration Transmission Service for transmission of market energy to Occidental's industrial plant in Delaware. It states that the Occidental plant is interval metered, meaning actual hourly energy usage data is available from meter readings.⁴

6. OPSI states that it desires to receive wholesale power priced at the specific bus where Occidental now receives its retail power, or alternatively, priced at the broader node in the northern portion of Delmarva's Delaware service territory known as DP&L North. OPSI's complaint alleges that PJM will not permit it to receive the LMP at its specific bus because Delmarva will only provide PJM with average daily flows derived based on the weather-adjusted forecasts for its entire Delaware service territory. OPSI further argues that PJM is discriminating by allowing Delmarva, which is also an LSE and therefore a competitor, to control OPSI's pricing and competitive position. OPSI further argues that Delmarva uses average loads to schedule hourly flows at all buses in its Delaware service area, and that this practice blocks competition at the wholesale level. OPSI claims the PJM tariff permits the LSE, the EDC, or both to provide PJM (the Transmission Provider) with an estimate of the next day's load based on the previous day's hourly load. OPSI concludes that PJM is violating its tariff by not permitting OPSI to schedule its own hourly loads.

7. OPSI claims that this result is inconsistent with the Commission's orders accepting PJM tariff. OPSI asserts that those orders provide that wholesale pricing is to be determined at the bus or nodal level. OPSI asserts that the effect of PJM's position is to require OPSI to accept a higher wholesale price from Delmarva than would otherwise be the case because OPSI must accept the state-wide wholesale price rather than one based on the congestion determined price at its specific bus.

⁴See OPSI complaint at 7.

8. Additionally OPSI argues that PJM will not permit OPSI to provide energy data based on power delivered to OPSI's specific bus directly with PJM and instead defers this determination to its EDC, resulting in an increased true-up billing amounts for settlement at OPSI's expense. OPSI further claims that since the point at which it receives its power has hourly interval metering, there is no technical barrier to OPSI providing PJM with actual hourly historical data to prepare the next day's schedules and that PJM concedes that it is technically feasible for PJM to accept the hourly load data at any level. It therefore requests the Commission direct PJM to enforce its tariff by accepting day ahead hour by hour load data provided by OPSI based on its hourly interval metering capacity.

III. Notices and Interventions

9. Notice of the complaint was published on January 15, 2003, with answers due on February 3, 2003. Timely motions were made by the following parties with additional pleadings as noted. Delmarva and PJM filed answers in opposition to the complaint. PECO Energy and several of its affiliates filed in support of Delmarva's position. The PJM Industrial Customer Coalition (PJMICC), the Electricity Consumers Resource Council (ELCON), and the PJM Industrial Customer Group support OPSI's arguments. Parties intervening without comment include the Maryland Office of People's Counsel, the Mirant Parties, PPL Energyplus, and the PPL Electric Utilities Corporation. Baltimore Gas and Electric stated that the complaint is not related to its own circumstances.

10. On February 3, 2003, the DE PSC filed a motion to intervene and a request for a 27 day extension to file its comments, which was granted. The DE PSC filed its comments on February 24, 2003. On February 19, 2003, OPSI filed a motion to answer and answer to the parties responding to its complaint. OPSI also filed a motion to answer and answer to the DE PSC on March 4, 2003. Delmarva filed in opposition to OPSI's answer to the responses to its complaint. Delmarva filed in opposition to OPSI's February 19 motion. The Commission will accept OPSI's two answers because of the clarification they provide to the issues in this proceeding.

IV. Answers and Comments

Delmarva's Answer

11. Delmarva asserts that granting OPSI's complaint would be inconsistent with, and would disrupt, implementation of the DE PSC's retail choice program. It asserts that

granting the complaint would have a direct impact on many other retail customers in Delaware and that other large retail customers have approached it requesting the same type of treatment as OPSI. Delmarva asserts that the retail choice program designed by the DE PSC requires Delmarva to use a single wholesale price in its Delaware service territory in order to maintain a uniform retail rate throughout the state. Thus, the wholesale price within its Delaware service territory must be the same at all buses or nodes. Moreover, Delmarva asserts that if the State of Delaware wants retail competition to take place on a playing field on which the [wholesale] market price available to every competitor is the same, then FERC should and must defer to that judgement. Delmarva states that the State of Delaware can and does regulate the terms on which LSE's compete with one another.⁵ It also states that it is prepared to adjust Occidental's billing on a daily basis to reflect the hourly interval capability of the meter serving the Occidental plant, thus reducing the opportunity cost involved in the monthly true-up process it now uses.

PJM's Answer

12. PJM states in its answer that its tariff must provide the necessary flexibility to accommodate retail access programs regardless of the potentially different details that might be employed in such programs. It asserts its interpretation of its tariff supports this accommodation by requiring parties interacting at the state level to agree on which party will submit the next day hourly load data. PJM asserts that the LSE (OPSI) and the transmission owner (Delmarva) must agree on who will provide the load data to PJM. PJM concedes that it can schedule loads on zonal, nodal, or bus basis.

13. PJM asserts that a critical element in its daily operations is the procedure for submitting to PJM the aggregate peak and hourly load and bus distributions regarding deliveries to end users under an EDC's state retail access program. It asserts that because the information is not available directly to PJM, PJM states that according to its tariff "the Network Customer shall arrange for each electric distribution company delivery to the Network Customer load to provide directly to the Transmission Provider, on a daily basis, Network Customer's peak load, by bus, coincident with the annual peak load of the Zone, as determined under Section 34.1 of the Tariff."⁶ PJM also states that under Section 3.1 unless more specific bus distribution is available, the EDC [here Delmarva] may provide a bus distribution for the Network Customer's peak load proportional to the bus distribution for all of the load in the Zone.

⁵See Delmarva Answer in Opposition to Complaint at 16, 19.

⁶See Section 3.1 of the Specifications to Attachment F-1 to the PJM Operating Agreement, FERC Electric Tariff, Fifth Revised Volume No. 1, First Original Sheet No. 168.

14. PJM concludes that these provisions provide flexibility for the EDC and the retail access customer to provide the information required for accurate forecasting and scheduling of hourly loads in a manner that is reliable and consistent with state retail access programs. PJM states that therefore the EDC, not the retail access transmission customer, must provide the bus information to PJM. It further notes that under Section 3.1, "unless a more specific bus distribution is available, the EDC may provide a bus distribution for the Network Customer's peak load proportional to the bus distribution for all the load in the Zone."⁷ PJM concludes that if Occidental believes a more specific bus distribution should be provided for its load under Delmarva's state retail access program, it needs to resolve this issue with Delmarva, not PJM, or in another appropriate forum. PJM asserts that it is not in violation of its tariff because the Commission has previously permitted a transmission provider's open access tariff to accommodate state retail plans.⁸

Comments of the Delaware Public Service Commission

15. The DE PSC requests that any action here be deferred until the DE PSC could determine whether to review OPSI's allegations that the structure of the DE PSC settlement is what drives the relationship between the use of LMP and zonal pricing in the State of Delaware. The DE PSC asserts that if OPSI wishes to address how OPSI is priced for supply to its retail customer, the first place for this to be addressed is in a state forum. The DE PSC also asserts that if changes in the wholesale market since 1999 and resulting issues of retail access require the DE PSC to take a new look at zonal/nodal LMP pricing, then this should be done at the state level. The DE PSC does not speak to OPSI's interpretation of the PJM tariff, but instead argues that given the conflict between federal and state regulation, it should be provided an opportunity to review its retail program to address any possible conflicts between the state and federal programs.

Comments of other Parties

16. Other parties filing comments include two that support OPSI's complaint and one that opposes it. ELCON asserts that permitting Delmarva to dictate the bill to OPSI at zonal LMP and to report next day's load to PJM undermines the goals of Standard Market Design, violate's Order No. 2000's independence criteria, and results in discrimination against price-sensitive load. ELCON argues that PJM's failure to use a standardized interpretation of its tariff undercuts the goal of regional uniformity at the ISO level. It therefore urges the Commission to prevent what it sees as a practice of inserting incumbent utilities or EDCs between the RTO and its wholesale customers. It further asserts that

⁷PJM answer at 4.

⁸Citing Midwest Independent Transmission System Operator, Inc., 99 FERC ¶ 61,112 (2002); Entergy Servs., Inc., 91 FERC ¶ 61,155 (2000).

permitting Delmarva to aggregate and price on a regional basis undercuts competitive opportunities despite the fact that there are at least four nodes in Delaware that could be used as basis for more refined pricing in the Delaware state retail market. Finally, it asserts that Delmarva is masking prices at the regional level, which works to an incumbent LSE's advantage, but discriminates against industrial firms that can respond to price sensitive load on a more refined basis and who could otherwise obtain retail prices based on bus-specific LMPs.

17. PJMICC moved to file supplemental comments to augment the record based on the experience of one of its members, BOC Gases, and BOC Gases's affiliate, BOC Energy Services Inc (collectively BOC). PJMICC states that BOC sought the same relief from Delmarva as OPSI. BOC claims it was rebuffed by Delmarva even though it was advised by PJM that PJM was supportive of nodal pricing at BOC's Claymont plant and that it was technically feasible to do so because that plant has an hourly interval meter. It also notes that Delmarva has agreed to use actual daily load data for billing purposes, so that such a practice is practical. BOC notes that the theory of LMP suggests that pinpoint pricing provides the economic incentives for transmission and generation investment by sending pricing signals on a more particularized basis. In light of these benefits, PJMICC suggests the phasing-in of more refined nodal priced options, beginning with large interval-metered customers. It asserts that since the number of such customers who initially might be interested in and able to use such an option is small, the pricing ramifications of the option would be small.

18. In contrast, Public Service Electric and Gas Company (PSE&G) and its affiliated company PECO support Delmarva and PJM. They assert that PJM treats all its LSEs on the same basis and that it is not discriminating its scheduling practices. They assert that it is the state public utility commission, in coordination with local RTO practice, that regulates business rules governing energy reconciliation transactions between the EDC and LSE operating within the EDC's territory. Consequently, as a result of the DE PSC restructuring orders, Delmarva may not move away from utilizing the D&PL aggregate zonal LMP without the consent of the DE PSC and the agreement of Delmarva. Rather, as part of Delaware's restructuring settlement package, the only locational marginal price available to Delmarva, and consequently, to OPSI, is the Aggregate Zonal Price, not DP&L North or South or specific bus pricing.

19. PSE&G further asserts that under the PJM tariff, the Supplier Agreement entered into between Delmarva and OPSI, and the Connective Operating Manual, the EDC controls the right to submit data to PJM. In particular it notes that the issues here are controlled by Schedule F-1 and Attachment N of the PJM Operating Agreement, not Attachment K, as OPSI claims. PSE&G argues that Schedule F-1 and Attachment N of the Operating Agreement favor PJM's interpretation. PSE&G therefore urges that Commission to fully

consider the arguments raised here and recommends that the Commission direct Delmarva and OPSI to resolve this issue before the DE PSC. Alternatively, it requests that the Commission take into account state level mitigation and compromises already in place when considering the relief sought by OPSI. It argues that in order to bill retail customers at LMP by bus load, the EDC must map each retail customer to its individual load at a specific point in time and that such mapping is very difficult to accomplish because of the dynamic nature of the grid. It further argues that for some retail customers the assignment of load is based on engineering judgement, which is open to dispute.

V. Discussion

20. The Commission concludes that the complaint should be granted but will defer the remedy for a period of 120 days to permit state review of the impact of our conclusions in this order on the state's open access retail program. The Commission first finds that OPSI is a legitimate LSE having been accepted as such by PJM and listed as an active PJM member in PJM's tariff.⁹ While PJM and Delmarva refer to OPSI as Occidental in their pleadings, thereby emphasizing the latter's retail character, they do not deny that OPSI has LSE status, or that having obtained that status, that OPSI is a network customer under the PJM tariff. Nor has there been any challenge to OPSI's assertions that it is qualified to provide retail services under Delaware state law and that it has been purchasing power in the PJM wholesale market since November 1, 2002. The Commission further concludes given the absence of credible evidence to the contrary that OPSI possesses the hourly interval metering capability that PJM requires to schedule the power to be delivered at an individual wholesale bus or node.¹⁰ Thus, while Occidental may be taking retail load at the very same bus, an hourly interval meter, this does not change the fact that OPSI is wholesale customer under its membership classification with PJM and its wholesale power purchases are governed by the scheduling and billing provisions of the PJM tariff.

⁹See Section 1.26 of First Revised Rate Schedule FERC No. 27 (Second Revised Sheet No. 10) which provides the definition of an LSE. See also Second Revised Rate Schedule FERC No. 24, Original Sheet No. 176D.

¹⁰While PJM states that it has no way of determining whether OPSI's hourly interval meter can be used for forecasting hourly loads, under the PJM tariff any entity desiring LSE status must establish that it can communicate effectively with PJM for scheduling and operating purposes. If OPSI's meter and communications methods cannot provide the relevant information, PJM would not have been granted OPSI LSE status. See PJM Interconnection, L.L.C., First Revised Rate Schedule FERC No 27, Original Sheet No. 31-35 governing the operation qualifications and procedures for becoming an LSE.

21. Thus there are two remaining questions. The first is whether the PJM tariff provides that both wholesale loads and generation will be priced at the individual bus at a price that reflects the congestion determined value of power delivered at that bus. The second is which of the parties involved here has the right or obligation to provide the hourly forecasts for the loads to be served at a particular bus under the PJM tariff.

22. As to the first issue, the PJM tariff explicitly provides that the wholesale price to a LSE shall be the price determined at the individual node. Section 2 of the PJM tariff addresses many aspects of PJM's calculation of locational marginal prices.¹¹ The first subsection, Section 2.1, provides:

The Office of Interconnection shall calculate the price of energy at the load busses and generation busses in the PJM Control Area and the PJM West Region ... on the basis of Locational Marginal Prices. Location Marginal Prices determined in accordance with this Section shall be calculated on a day-ahead basis for each hour of the Day-ahead Energy Market, and every five minutes during the Operating Day for the Real-time Energy Market.

23. It is clear from this language that the calculation of wholesale prices is to be determined at the load and generation buses on a locational marginal price basis for all entities purchasing power in the PJM wholesale market. The PJM tariff reflects that the Commission accepted a proposal for calculating wholesale prices on a locational marginal price basis for both the seller and the buyer.¹² Moreover, in approving the PJM tariff, the Commission explicitly rejected the complexity argument that Delmarva advances here for the scheduling of loads to wholesale customers,¹³ and a related concern that there would be price uncertainty in the real time hourly market.¹⁴ The Commission's review of the PJM tariff did not disclose any tariff provision providing for the calculation of LMP on other than an individual bus basis, nor did PJM cite to any pricing provision in this regard.

¹¹See generally PJM Interconnection, L.L.C. FERC Electric Tariff, Fifth Revised Volume No. 1, Original Sheets No. 237-240.

¹²See 81 FERC at 62,253 n.12 (the location [for determining the price] will be the bus where the generator is located). Thus, unlike certain other ISO tariffs, the PJM tariff does not provide that different pricing methods are to be used to determine the wholesale price paid to the generator at the point of sale and the cost of wholesale power to the purchaser for calculating the wholesale cost component of the state regulated retail rate.

¹³See 81 FERC at 62,255-56.

¹⁴See 81 FERC at 62,256-57.

PJM's only citation is to the use of a regional average for scheduling loads when individual bus information is not available.

24. The second issue is whether PJM's tariff allows OPSI to provide the hourly forecasts for the loads to be served at a particular bus under the PJM tariff. In the instant case the parties have framed this issue in the narrow context of the relationship between PJM and the scheduling of wholesale load related to a required state retail access program. Under the terms of the PJM tariff this issue appears to be governed by Attachment F-1 to PJM's FERC Electric Tariff, Fifth Revised Volume No. 1 and in the related provisions found at First Revised Sheet Nos. 166 through 171. These provisions are contained in a portion of Attachment F-1 of the general PJM Operating Agreement captioned "Specifications for Network Integration Transmission Service Pursuant to State Required Retail Access Programs."¹⁵

25. To summarize, Section 3.0 of Attachment F-1 provides that the Network Customer shall be responsible for PJM receiving the information pertaining to Network Load and Network Resources described in this section [3]. Section 3.1 of Attachment F-1 further provides that the Network Customer shall arrange for each EDC delivering to the Network Customer's load to provide to PJM, on a daily basis, the Network Customer's peak load, by bus, coincident with the annual peak load of the zone.¹⁶ That section further provides that [U]nless a more specific bus distribution is available, the EDC may provide a bus distribution for the Network Customer's peak load proportional to all the load in the Zone. This information [the peak load] must be provided by the EDC unless PJM approves in advance another arrangement. Section 3.3 provides that Network Customer and/or the EDC's delivering to the Network Customer's load shall provide to the Transmission Provider, on a daily basis, hourly loads and an associated bus distribution for the Network Load, and states:

The Network Customer and/or the EDCs delivering to the Network Customer's load shall provide to the Transmission provider, on a daily basis, hourly loads and an associated bus distribution for the Network Load.... The Network Customer shall notify the Transmission Provider whether the Network Customer or the EDC or both will submit the hourly loads.

26. Under this tariff language, it is clear that information is to be provided to PJM by bus, unless a specific bus distribution is not available. OPSI, as the network customer, is also ultimately responsible for seeing that the appropriate information is delivered to PJM.

¹⁵First Revised Sheet Nos. 168 - 171.

¹⁶Underlining added for emphasis.

Moreover, unless PJM otherwise approves, the peak load information related to the customer's individual bus is to be provided by the EDC. Finally, Section 3.3 of Attachment F-1 makes clear that the network customer, OPSI, has the choice of whether to provide specific bus information to PJM or to allow Delmarva to submit the information. It states the Network Customer and/or the EDC can provide hourly load data. Thus, contrary to PJM's arguments here, the tariff permits OPSI to provide network load data without Delmarva's agreement.

27. The Commission also finds that under the PJM tariff all scheduling forecasts are be provided at the most specific bus available. This is reflected in the provision in the previously cited Section 3.1 of Attachment F-1 that use of proportional peak loads in the EDC peak forecast is permitted unless a more specific bus distribution is available. Thus, under the PJM tariff all scheduling of retail oriented wholesale loads is to be on the basis of the most specific bus. Since OPSI has only one bus location on the Delmarva transmission system and is served by an hourly interval meter, the Commission concludes that such a more specific bus distribution is available. There have been no credible arguments provided here that the hourly interval meter at OPSI's plant cannot provide the necessary information for that function. Further, the Commission has found nothing in the PJM tariff to support the conclusion that the wholesale price for power delivered at the individual bus is to be anything other than the locational marginal price for that bus.

28. The Commission therefore concludes that under its tariff (1) PJM must permit OPSI to provide its own hourly forecast, (2) PJM may permit OPSI to provide the relevant peak load information, and (3) the scheduling of power for delivery to OPSI must be on the basis of demand at the OPSI bus and the related wholesale price and billings must be determined on the basis on the congestion determined locational marginal price at that individual bus.

29. PJM has cited to cases approving tariff provisions permitting the determination of prices on a broader regional level. These cases are inapposite because PJM's tariff as described above specifically provides for pricing at the individual bus. However, the Commission emphasizes that this decision affects only wholesale pricing under PJM's tariff, and does not affect the authority of the State of Delaware to determine whether OPSI can operate as a retail provider nor does it affect the authority of the DE PSC to regulate the retail price that OPSI charges its affiliate. The Commission also recognizes, as Delmarva and the DE PSC have asserted, that this change in PJM's practice is likely to have a direct impact on economic considerations underlying the DE PSC's retail access program. This includes changes to the relationship between wholesale rates in the northern and southern portion of the state that may affect Delmarva's ability to recover the costs of providing a state-wide uniform retail rate.

30. Due to possible impacts on the state retail program, the DE PSC requested that it be permitted an opportunity to review its retail program so that it can address any conflicts between state and federal requirements. OPSI argues in reply that the interpretation of the PJM tariff and its relationship to the pricing of the wholesale power it purchases in under the PJM tariff is strictly a federal matter, and that therefore the Commission should not defer to the DE PSC on this matter.

31. The Commission agrees with OPSI that the interpretation of PJM's tariff relating to wholesale pricing is a federal matter, and that the tariff permits OPSI to schedule power and to take delivery at wholesale prices at the individual bus. However, the Commission also recognizes that OPSI's status as an LSE and its ability to purchase power at wholesale results from the State of Delaware's retail access program. Because the Commission's findings here will result in a change in PJM's operating practices that may affect the operation of the state's retail access program, the Commission will accept DE PSC's suggestion and defer the remedy for 120 days to provide the DE PSC with additional time to consider our rulings in this order.

32. Under the Federal Power Act, the Commission must balance the conflicting interests relevant to the public's energy needs. While the benefits to OPSI (and Occidental) seek here may be delayed by such a deferral, the DE PSC's filing makes clear that the interests of many other Delaware customers are also likely to be affected. For this reason, the Commission finds that deferral of the effective date of this order will best balance the interests of all parties to the proceeding by providing the DE PSC and other parties an opportunity to determine what interim or long term steps, consistent with this order, are required to meet its retail goals. PJM should cooperate fully in that effort and the parties should advise the Commission 30 days before the end of the six month period of any changes or actions that have been taken.

The Commission orders:

(A) PJM is directed to administer its tariff in a manner consistent with the text of this order by permitting OPSI to schedule its purchases of wholesale electric power at the individual bus where OPSI receives its power from Delmarva and to provide that OPSI receives the congested determine location marginal price for wholesale power delivered to that bus.

(B) The remedy stated in paragraph (A) is deferred for a period of 120 days from the date of this order to permit interested parties to evaluate Delaware's open access retail program given the conclusions of this order.

By the Commission.

Docket No. EL03-42-000

- 13 -

(S E A L)

Magalie R. Salas,
Secretary.