

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Old Dominion Electric Cooperative

Docket No. EL01-106-000

v.

PJM Interconnection, L.L.C.

ORDER DISMISSING COMPLAINT

(Issued July 22, 2005)

1. This order dismisses a complaint Old Dominion Electric Cooperative (ODEC) filed against PJM Interconnection, L.L.C. (PJM) on July 31, 2001. The result here benefits customers because the result is consistent with the efficiencies advanced through the policies adopted in Order No. 2003 and its progeny.¹

Background

2. On July 31, 2001 ODEC filed a complaint against PJM asserting that PJM's then existing interconnection procedures violated the Federal Power Act and the Commission's prohibition against "and pricing" for the improvements required to support and interconnect to the interstate transmission grid. The basis for the complaint is ODEC's ongoing plans to construct one or two new plants to supply additional energy supplies and capacity to its twelve distribution member cooperatives, three of which are located within the PJM control area. The new generating plants are to be located in Rock Springs, Maryland, and would interconnect with the system of PECO Energy Company (PECO), a PJM member. ODEC questions whether it should be required to pay for

¹ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (March 26, 2004), FERC Stats. & Regs., Regulations Preambles ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005) FERC Stats & Regs ¶ 31,171 (2005), Order No. 2003-C, 111 FERC ¶ 61,401 (2005); *see also* Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 (2004).

network upgrades in addition to paying transmission service charges for transmission service.

3. In its July 31, 2001 complaint, ODEC asserts that under PJM's "but for" pricing policy, the generator must pay for network upgrades that would not be required "but for" that interconnecting generator, but should be permitted to recoup those expenses later by receiving transmission service credits against the rates that it must pay for transmission service once the new generator goes into service. ODEC claims that requiring it to pay for both network upgrades and transmission charges would constitute prohibited "and" pricing, because ODEC would be both the owner of the project (*i.e.*, the generator) and the transmission customer. In its complaint, ODEC asks that the Commission (1) determine that ODEC is entitled to receive transmission service credits on its bill for network transmission charges paid to PJM to recoup the cost of network upgrades paid for by ODEC; (2) direct PJM to provide ODEC such credits; and (3) direct PJM to modify its open access transmission tariff (OATT), which does not provide such credits, to eliminate the "and" pricing by removing the "but for" provisions from its tariff.

4. Notice of ODEC's complaint was published in the *Federal Register*, 66 Fed. Reg. 41,582 (2001), with comments, protests and interventions due on or before August 20, 2001. On August 20, 2001, PJM filed an answer. A timely motion to intervene and comments in support of the complaint were filed by Delaware Municipal Electric Corporation, Inc. (DEMEC). Timely motions to intervene and protests were filed by Conectiv Energy, Inc. (Conectiv), PPL Electric Utilities Corporation (PPL), PECO, and GPU Energy (GPU). Conectiv also asks that if the Commission grants ODEC's complaint, that the Commission establish hearing procedures. On September 5, 2001, ODEC filed an answer to PJM's answer. On September 17, 2001, Conectiv filed a motion to reject ODEC's answer or, in the alternative, a motion to answer ODEC's answer. PECO filed a motion to reject ODEC's answer.

5. Timely motions to intervene were also filed by Orion Power New York GP, Inc. and Orion Power Midwest, L.P. (Orion); Reliant Energy Northeast Generation (Reliant); Mirant Americas Energy Marketing, LP, Mirant Chalk Point, Mirant Mid-Atlantic, LLC, Mirant Peaker, LLC, and Mirant Potomac River, LLC (Mirant); Potomac Electric Power Company; and Dynegy Power Marketing, Inc. (Dynegy). On August 21, 2001, NRG Power Marketing, Inc., Conemaugh Power LLC, Indian River Power LLC, Keystone Power LLC, and Vienna Power LLC (collectively, NRG) jointly filed a motion to intervene out of time raising no substantive issues. The Commission grants the untimely motions to intervene because they will not delay this proceeding or prejudice any party.

6. On May 17, 2002, the Commission deferred further action on this complaint by making it subject to the outcome of the Commission's final rule on interconnection policy in Docket No. RM02-1-000, the proceeding that resulted in Order Nos. 2003, 2003-A, 2003-B, and 2003-C. The May 17, 2002 order also accepted PJM's proposed

interconnection procedures that had been filed prior to the issue of Order No. 2003 and made those procedures subject to the outcome of Docket No. RM02-1-000.²

7. In Order Nos. 2003 and 2003-A, the Commission made an exception to its policy of prohibiting the direct assignment of Network Upgrade costs in cases where the Transmission Provider is independent of market participants. The Commission stated that it would continue to allow flexibility regarding the interconnection pricing policy for an independent Transmission Provider such as a Regional Transmission Organization (RTO) or an Independent System Operator (ISO), subject to Commission approval.³ Although the Commission adopted an approach for independent entities that differed from the crediting approach applied to non-independent entities, the Commission explained that it was not abandoning the goals that it had established for interconnection pricing, and that the policy applied to independent entities did not result in prohibited "and" pricing. Unlike a non-independent Transmission Provider, an independent Transmission Provider has no incentive to use the cost determination and allocation process to unfairly advantage its own generation. Under the right circumstances, a well-designed and independently administered participant funding policy for Network Upgrades offers the potential to provide more efficient price signals and a more equitable allocation of costs than the crediting approach. Further, under the transmission pricing policies that the Commission has permitted an RTO or ISO with locational pricing, in which the Interconnection Customer bears the cost of all facilities and upgrades, which would not be needed "but for" the interconnection of the new Generating Facility, the Interconnection Customer receives transmission and congestion rights in return, as well as access to the network.⁴ Finally, when the Interconnection Customer bears the cost of all facilities and upgrades, which would not be needed "but for" the interconnection of the new Generating Facility, these are acceptable forms of participant funding and are not "and" pricing.⁵ Even if the Interconnection Customer or its power sales customer subsequently is required to pay an embedded, cost-based transmission charge, this is not "and" pricing because the customer is not paying twice for the same service. Rather, as Order No. 2003 explained, the Interconnection Customer pays separate charges for

² *Old Dominion Electric Cooperative v. PJM Interconnection, L.L.C. and PJM Interconnection, L.L.C.*, 99 FERC ¶ 61, 189 (2002) at 61,774 (May 2002 Order).

³ Order No. 2003 at P 698-703.

⁴ See *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 at 62,259-60 (1997), *order on reh'g and clarification*, 92 FERC ¶ 61,282 at 61,955-56 (2000), remanded on other grounds sub nom. *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002).

⁵ Order No. 2003 at P 700; *see also* Order No. 2003-A at P 587; *supra* note 4.

separate services; it pays an access charge for transmission, which may involve an obligation to pay congestion charges, and in exchange for its "but for" payments, it receives capacity rights associated with the upgrades that provide some protection from having to pay the congestion charges.⁶

8. Therefore, the Commission has directly addressed the concerns raised by the complaint in Order No. 2003, *et al.*, and the relief requested here is inconsistent with Order No. 2003, *et al.*, for the reasons stated therein. While parties made extensive filings in these proceedings, with one exception, these raise arguments that were addressed in the Order No. 2003 proceedings or by the Commission's orders addressing PJM's compliance filings to Order No. 2003.⁷ The sole argument that was not directly addressed in Order No. 2003 is ODEC's argument that it should receive credits from PJM because it is both a transmission customer of the PJM system and an interconnection customer that is developing a new generating source. However, the fact that ODEC has multiple roles as a member of PJM does not obliterate the distinction between system improvements by PJM, in its role as an RTO, the incremental investments that must be made by an interconnection customer, or the related underlying concerns about efficiency in the location of additional generating capacity addressed by Order No. 2003. As pointed out by Conectiv and PJM, adopting ODEC's position would shift the cost of connecting its proposed generating capacity to the system as a whole. This provides a competitive cost advantage if the newer facility should decide to sell power into the PJM energy market.

9. Therefore, the Commission denies ODEC's request that it is entitled to receive transmission service credits in order to recoup the cost of network upgrades paid for by ODEC, even though ODEC states that it may function as both an interconnection customer and a transmission customer. ODEC's request would give it an undue competitive advantage and result in a less equitable allocation of costs in PJM. As with its previous arguments, ODEC's request is inconsistent with the Commission's discussion in Order No. 2003 on the allocation of costs and Network Upgrades. Since the Commission made the complaint subject to the outcome of the Commission's final rule on interconnection policy in Docket No. RM02-1-000,⁸ the complaint is dismissed.

⁶ Order No. 2003 at P 700; *see also* Order No. 2003-A at P 692.

⁷ *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025 at P 18 (2004), *order on reh'g*. 110 FERC ¶ 61,099 (2005).

⁸ 99 FERC ¶ 61,189 at 61,770 (2002).

The Commission orders:

ODEC's complaint against PJM in the instant docket is dismissed.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.