

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.

Docket No. EL03-42-001

v.

PJM Interconnection, L.L.C.

ORDER ON REHEARING

(Issued September 15, 2003)

1. On June 5, 2003, the Commission issued an order in the captioned docket that, among other things, required PJM Interconnection, L.L.C. (PJM) (1) to permit wholesale customers such as Occidental Power Services, Inc. (OPSI) to schedule its purchases of wholesale power at the individual bus where OPSI receives its power, and (2) to provide wholesale power to OPSI at the locational marginal price at that bus.¹ The Commission deferred the effective date of the order for 120 days to permit interested parties to evaluate Delaware's open access retail program given the conclusion in the order. The PHI Operating Companies (PHI)² filed a request for rehearing of the Commission's determination of OPSI's rights at its individual meter. OPSI filed a request for rehearing of the 120 day deferral. The Delaware Public Service Commission (DE PSC) filed a motion for clarification and the Maryland Office of People's Counsel (MPC) filed a comment. The Commission denies the requests for rehearing and grants the motion for clarification.

¹Occidental Power Services, Inc. v. PJM Interconnection, L.L.C., 103 FERC & 61,285 (2003) (June 5 Order).

²Consisting of power delivery subsidiaries of Pepco Holdings, Inc., including Delmarva Power and Light Company (Delmarva) and Atlantic City Electric Company (collectively Convective Power Delivery), and Potomac Electric Power Company.

I. Background

2. On January 14, 2003, OPSI filed a complaint against PJM, alleging PJM had violated its tariff by refusing to accept as a basis for daily load forecasting the actual hourly volumes incurred at the OPSI meter. It asserted that the PJM tariff expressly gives OPSI, as a load serving entity (LSE)³, the right to provide PJM with node specific⁴ hourly load forecasts and that the OPSI's meter has the capability to support such forecasts and to report the related deliveries. Stating that it was a LSE under Delaware law, OPSI asserted that PJM's refusal to schedule OPSI's volumes at a specific meter capable of hourly interval metering resulted in a billing lag that injured its retail affiliate, Occidental Petroleum, Inc. OPSI alleged that its inability to schedule on a nodal basis at the individual meter also results in higher wholesale prices. Those higher prices stemmed from the practice of billing all Delaware LSE's a single state-wide average wholesale rate rather than on a nodal basis.

3. Delmarva asserted in reply that this single state-wide average wholesale rate was required under the Delaware retail open access program and that the PJM tariff was designed to accommodate that practice. It conceded that there are at least two sub-zones within the Delmarva Delaware service territory and that averaging the wholesale price of these two zones resulted in higher wholesale prices for OPSI. This would result because the northern zone in which OPSI is located typically has lower wholesale prices than the more frequently congested southern zone. Delmarva argued that requiring wholesale prices to be established at the nodal level would upset the uniform retail electric rate applicable to the entire state of Delaware and also would lead to scheduling and administrative complexities.

4. The Commission determined, as relevant here, (1) that PJM's tariff provides that scheduling will be at the individual bus if this is operationally feasible, and (2) that the

³Under the PJM tariff a LSE purchases power at wholesale and sells at retail pursuant to state authorization.

⁴Nodes are points for scheduling and pricing wholesale power in the PJM system that are less broad in scope, and more geographically refined, than the regional definitions that are used to determine the geographic basis for retail rates. In the instant case an individual node and the power bus, bar, or both, are the same. The bus is the actual physical point where the power is delivered to or received from the grid, and can serve as a point for the scheduling and pricing of wholesale power as well as the actual physical point where wholesale power is transferred.

PJM tariff expressly provides that wholesale prices shall 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 Commission concluded that scheduling at the individual wholesale node is feasible within the PJM service territory and there was no evidence that such scheduling was not feasible at the OPSI meter. However, the Commission deferred the effective date of this remedy for 120 days to provide the DE PSC an opportunity to respond to the Commission's determinations.

II. Requests for Rehearing and Clarification

5. PHI requests rehearing of OPSI's right to buy power at the wholesale nodal price and of OPSI's right to supply PJM with its own hourly load data. While PHI concedes that OPSI is an LSE and that it is feasible to price wholesale power at the OPSI hourly interval meter, it argues that the Commission did not adequately consider the overall policy consequences of its decision. PHI asserts that most state retail programs in the PJM operating territory are premised on a single wholesale price and the maintenance of a uniform retail rate. It further argues that, if all retail customers are entitled to schedule their own loads on an hourly basis, that scheduling will become much more complicated. This, in turn, will result in increased expense to implement retail access programs over the entire PJM region and could place the large investments that electric distribution companies (EDCs) now have in retail service at risk. PHI also argues that the Commission's order will result in cherry-picking of the desirable lower cost wholesale loads by specialized LSEs. It asserts that this will lead to more general providers such as Delmarva serving the higher cost loads, and a rise in the level of retail rates to these retail customers.

6. PHI further asserts that the risks of price complexity and volatility outweigh the benefits of nodal-based retail pricing. Given these complexities and the involvement of state concerns, it urges the Commission to move cautiously in modifying the existing framework involving state-sanctioned LSEs. For example, PHI states that the Commission and a state could jointly investigate a compromise where a threshold would limit the size and number of retail customers that would be served on nodal basis. If the size of the retail customer exceeded the threshold, the LSE would buy and price on a nodal basis; if below the threshold, the LSE would buy and price on a regional basis. PHI further argues that after state consultation, the PJM tariff would be amended to address these concerns. It therefore requests that the Commission stay its prior order and convene a technical conference.

7. Regarding OPSI's right to supply its own hourly load data to PJM, PHI asserts that the Commission's prior order misconstrued PJM's tariff. It argues that, while OPSI's meter provides for hourly interval metering, the responsibility for the accuracy of OPSI's

data for billing purposes and the proper allocation of system losses are Delmarva's responsibility as an EDC under the DE PSC's retail access program. Delmarva asserts that in this case the LSE happens to have a single retail customer and, as such, Delmarva and OPSI agree that it would be prudent to submit hourly interval data from the retail customer's interval meter with separate adjustments for losses by the EDC. It asserts that in other cases this may not be possible. Thus, the EDC, not the LSE or its retail customer, must decide to what extent to use the retail customer's meter.

8. PHI further claims that the responsibility for accurately reading customer meters rests exclusively with the EDC under the state retail program and that the States of Maryland, Virginia, and Delaware establish the EDC as the disinterested party. PJM states that PJM's tariff sheets require Delmarva to reconcile such items as 'day after' energy use, the difference between scheduled and final hourly load obligation, and the 'day after' estimated load obligation. It states that very few retail customers have interval metering and that most LSE metering is done at the retail level. PHI asserts that a consistent interpretation would vest in it the authority to schedule OPSI's loads. PHI requests that the Commission stay and reverse its prior determination.

9. In its request for rehearing OPSI asks the Commission to make its remedy regarding the hourly load data effective immediately, asserting that scheduling at the OPSI interval meter can begin without adversely impacting the reasons for the Commission's deferral of its remedy, *i.e.*, the interests of the DE PSC's retail program. OPSI states, however, to lower the business risk involved in any delay in reading its meter on a daily basis, it is willing to provide hourly load data on the same basis as Delmarva on a temporary basis, *i.e.*, at the DPL zone. It asserts that granting rehearing on this basis will not impede state review of the Commission's order, but will forestall further impediments to the relationship between OPSI and its retail customer.

10. OPSI also filed a motion for leave to answer PHI's request for rehearing and request for stay, together with an answer. The motion to file an answer to the request for rehearing is denied pursuant to the Commission's regulations.⁵ OPSI also filed a separate answer to PHI's request for a stay, which is accepted.⁶

11. The DE PSC did not address the merits of the Commission's prior order by requesting rehearing. Rather, it requests clarification that the Commission's ruling was based on an interpretation of the PJM tariff and was not intended as a broader policy

⁵18 C.F.R. ' 385.213(a)(2).

⁶18 C.F.R. ' 385.213(a)(3).

ruling on whether wholesale prices must be set at the nodal level. The DE PSC specifically requests clarification that its failure to file a rehearing request will not preclude it from filing a complaint under Section 206 of the Federal Power Act to modify the PJM tariff to provide for wholesale pricing on a regional level.

12. MPC filed a comment in support of PHI's position that it would be inequitable to permit LSEs of a certain size that purchase wholesale power to decide whether to purchase at a nodal or zonal price unless the amount of power to be purchased were in excess of a minimum threshold. Baltimore Gas and Electric Company filed an answer in support of MPC's comments.

III. Discussion

13. The Commission first holds that DE PSC is correct that the June 5 Order only interpreted PJM's tariff. The June 5 Order does not preclude the DE PSC, or any other entity having standing, from filing a complaint to modify the PJM tariff to permit wholesale prices to be determined on a broader basis than a specific node or bus. The June 5 order finds that, under PJM's tariff, a LSE may purchase wholesale power in the PJM energy market at a specific node or bus if technically feasible. OPSI's ability to purchase wholesale power at the bus where it receives its power is not in dispute.

14. Nothing in the Commission's prior order requires that individual retail customers that lack hourly interval metering be accorded a nodal price. In this regard, as discussed in the June 5 Order, Section 3.0 of Attachment F-1 to PJM's tariff, captioned "Form of Umbrella Agreement for Network Integrated Transmission Service Under State Required Access Retail Programs,"⁷ expressly provides that the Network Customer shall be responsible for the Transmission Provider [PJM] receiving information pertaining to network load and network resources described in this Section. Only if the capability to schedule at the individual bus is lacking does Section 3.1 of the PJM tariff authorize scheduling on the basis of regional averages.⁸ Thus, Section 3.1 specifically provide that wholesale loads will be scheduled on the basis of an individual bus bar unless this is not feasible.⁹

⁷PJM Interconnection, L.L.C. FERC Electric Tariff, Sixth Revised Volume No. 1, Original Sheet No. 290, Effective March 21, 2003.

⁸June 5 Order at P 25; See PJM's FERC Electric Tariff, Sixth Revised Volume No. 1, Original Sheet No. 292.

⁹Id.

15. The Commission denies PHI's request for rehearing and affirms its prior conclusions regarding the interpretation of the PJM tariff. The tariff provision cited by PHI, addresses Delmarva's responsibility to reconcile estimated and actual loads where it is the scheduler for retail customers.¹⁰ These retail provisions are not relevant in OPSI's case because, as was discussed in the June 5 Order, OPSI is not a retail customer, but is an LSE and wholesale customer that has its own responsibility for reconciling scheduled and actual loads.¹¹ The controlling provisions of the PJM tariff are those addressing the scheduling and reconciliation of wholesale loads. In fact, the accounting and reconciliation provisions for entities like OPSI are governed by Section 5.0 of Attachment F-1, which provides for the Transmission Provider to reconcile the Network Customer's hourly energy responsibilities with the Network Customer's hourly usage based on estimated or actual hourly meter readings, and to provide the corresponding charges and credits to that customer.¹²

16. As further discussed in paragraphs 25 and 26 of the June 5 Order, Section 3.3 of the PJM tariff¹³ places on the LSE the responsibility of informing PJM whether the LSE, the EDC, or both will provide the hourly information for the next day's forecast. This obligation would have no meaning if the LSE is not in a position to assert that it has the requisite metering and analytical capability required by the PJM tariff, and require PJM to accept the LSE's forecasts if the LSE is technically qualified to provide them.

17. Thus, it may be true that, if PHI's larger customers have the ability to schedule their own loads through a state-licensed LSE, there may be some cost shifts. While this could have an attendant impact on PHI's revenues and ability to recover expenses, this result follows from the structure of the PJM tariff and the structure of the current DE PSC open access state retail program. It is for these reasons, moreover, that the Commission deferred the effective date of its June 5 Order to afford the DE PSC a chance to evaluate these types of considerations.

¹⁰ See PJM's FERC Electric Tariff, Sixth Revised Volume No. 1, Original Sheets Nos. 495-99. The relevant sheets are titled: "Delmarva Power & Light Company: Procedures for Determination of Peak Load Contributions and Hourly Load Obligations of Retail Customers," making clear that these provisions apply to retail customers only.

¹¹ June 5 Order at P 20.

¹² See Original Sheet No. 294.

¹³ Id. Original Sheet No. 292.

18. Given its reliance on the tariff language, the Commission also rejects the other arguments advanced by PHI. As a practical matter, PHI's concerns regarding the immediate impact of the Commission's decision on state retail access programs appear overdrawn. The June 5 Order applies only to those LSEs that have hourly interval metering and therefore have the ability to schedule their own load forecasts based on hourly load information and reconciliations. As PHI itself states, only a few customers both have this capability in Delaware and would be interested in doing their own scheduling and receiving the lower nodal prices available in the Delmarva's northern zone. To the extent that customers like OPSI are located behind a single meter, the scheduling and operating problems raised by PHI should not occur.

19. The Commission will also deny OPSI's request for rehearing. It may be, as OPSI asserts, that the DE PSC's retail access program will not be impeded if OPSI begins to schedule its power on a nodal basis, but continues to pay on a regional basis as it does now. However, given the potential impact on the Delaware retail program, the Commission believes the DE PSC should have an opportunity to review in the first instance. For this reason the Commission will not modify its prior order to permit OPSI to utilize the scheduling opportunities that will be available after the 120 days period.

20. Finally, PHI has not met the factors the Commission considers in determining whether to grant a stay.¹⁴ Therefore its request for a stay is denied.

¹⁴These are: (1) the likelihood that the moving party will be irreparably harmed absent a stay; (2) the prospect that others will be harmed if the Commission grants the stay; and (3) the public interest in granting the stay. See Richard Blumenthal, Attorney General of the State of Connecticut v. NRG Power Marketing, Inc., 104 FERC & 61,046 (2003) at 7.

The Commission orders:

- (A) DE PSC's request for clarification is hereby granted.
- (B) PHI's and OPSI's requests for rehearing are hereby denied.
- (C) PHI's request for a stay is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.