108 FERC ¶ 61,307
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, LLC Docket No. ER04-653-002

ORDER ON CLARIFICATION AND REHEARING

(Issued September 22, 2004)

1. On April 29, 2004, the Commission issued an order conditionally accepting the allocation of Financial Transmission Rights (FTRs) for the month of May, 2004 in the new Commonwealth Edison zone (ComEd zone) in the PJM Interconnection.[1] The Commission required that PJM pay mitigation to certain long-term firm customers to reimburse them for having to pay additional congestion costs that resulted from their not receiving FTRs commensurate with their long-term firm transmission contracts. Exelon Corporation (Exelon) has requested rehearing and clarification on behalf of its subsidiary Commonwealth Edison Company (ComEd). The Commission grants the requests that mitigated customers pay the uplift charge that funds their mitigation and the request that mitigation payments should not be made if customers do not incur congestion costs. The Commission denies the request that mitigation payments be made only to members of MISO.

Background

2. The Commission approved the integration of ComEd into PJM effective May 1, 2004.[2] As required,[3] on March 15, 2004 PJM submitted the allocation of FTRs and

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[1] *Order Conditionally Accepting the Initial Allocation of Financial Transmission Rights for the Commonwealth Edison Zone*, 107 FERC ¶ 61,090 (2004).

[2] *PJM Interconnection, L.L.C.*, 106 FERC ¶ 61,253 (2004) (ComEd Integration Order); *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,087 (2004).

Auction Revenue Rights (ARRs) for the ComEd zone for the period May 1, 2004, through May 31, 2004 under section 205 of the FPA. The allocation was for the period from the integration of ComEd until the end of the then current PJM annual planning period.

3. In the May 2004 allocation, PJM allocated FTRs under interim procedures in Section 9.4 of Schedule 1 of its Operating Agreement (OA).[4] It allocated the May FTRs in two stages, first to all service for which the source was a capacity resource or that had identified a specified source in its original transmission service request. In the second stage, PJM allocated FTRs to network service paths for which there was no specifically designated source. Several long-term firm point-to-point customers located in the MISO region did not receive all of the FTRs they requested, but a prorated amount, and protested the filing.

4. The Commission conditionally accepted the May 2004 allocation, subject to PJM's adopting an additional mitigation measure to ensure that customers are not harmed from an allocation of FTRs that is lower than their prior firm transmission service. The Commission cited its concerns in the ComEd Integration Order that customers holding firm reservations should receive FTRs for a comparable level and term in the PJM FTR allocation process. The Commission found that certain customers within MISO holding long-term firm point-to-point contracts did not receive nominated FTRs up to their contract levels and that mitigation in addition to redirecting their FTR requests to other resources or terminating existing transactions was necessary.[5]

5. The Commission required PJM to pay long-term firm point-to-point customers in MISO congestion revenues associated with FTRs they had nominated up to their contract levels that they did not receive. This mitigation measure was to apply to those MISO customers that filed protests in this proceeding. The Commission stated: "This way these customers will be protected from having to pay the congestion costs for which they were unable to receive FTRs."[6] The payments were to be recovered through an uplift charge assessed to all customers within the ComEd zone.

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[3] See the Commission's January 28, 2004 order in Docket No. ER03-406-000, *PJM Interconnection, L.L.C.*, 106 FERC ¶ 61,049 at P 23 (2003).

[4] Original Sheet Nos. 141B and 141C, Third Revised Rate Schedule FERC No. 24.

[5] 107 FERC ¶ 61,090 at P 7, 27, and 28.

[6] 107 FERC ¶ 61,090 at P 29.

6. PJM subsequently made its initial annual allocation of FTRs and Auction Revenue Rights (ARRs) for the ComEd zone for the period June 1, 2004 through May 31, 2005. The allocation was made under sections 5.2.2(a) and (e) and 7.4.2 of Schedule 1 of the PJM OA.[7] In the first stage of the allocation process, only network customers could request FTRs. In the second stage, both network customers and long-term firm point-to-point customers could request FTRs. In this allocation, PJM again prorated the nominated FTRs of some long-term firm point-to-point customers in MISO. PJM submitted the allocation for Commission review in a section 205 filing in Docket No. ER04-742-000.

7. In an order issued May 28, 2004, the Commission conditionally accepted PJM's annual allocation of FTRs and ARRs for the ComEd zone, subject to additional mitigation, and instituted a public hearing under section 206 of the FPA concerning PJM's allocation procedures.[8] In the May 28 Order, the Commission found that the allocation process provides preference to network service customers and appears to be unjust and unreasonable. It required PJM to file a response to these concerns. The Commission also required PJM to adopt an additional mitigation measure for the one-year period. The Commission required that congestion revenues associated with the FTRs/ARRs that were requested but not received be paid to the protesting parties that did not receive nominated FTRs/ARRs up to their firm long-term point-to-point contract levels and that such payments be recovered through an uplift payment assessed to all customers within the ComEd zone.[9] The Commission emphasized that this mitigation approach is only a short-term solution and that the proceeding it had instituted is intended to result in a long-term non-discriminatory solution that does not require mitigation.

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[7] First Revised Sheet Nos. 126 and 136, Third Revised Rate Schedule FERC No. 24.

[8] *Order Conditionally Accepting June Annual Allocation for Commonwealth Edison Zone*, 107 FERC ¶ 61,223 (2004).

[9] Citing *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,090 at P28 and *PJM Interconnection, L.L.C.*, 106 FERC ¶ 61,253 at P 41.

8. On June 1, 2004, Exelon requested rehearing and clarification of the April 29 Order. On June 16, 2004, MidAmerican filed a motion for leave to answer and an answer.[10] Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2003), prohibits an answer to a request for rehearing. MidAmerican's motion is denied.

9. On July 22, 2004 the Commission Staff sent PJM a data request concerning the FTRs allocated to MidAmerican. PJM filed responses to the data request on August 6 and August 23, 2004. Both responses were noticed with comments due on August 27 and September 3, 2004, respectively. MidAmerican filed a comment on August 27, 2004.

Assessment of Uplift Charges

10. First, Exelon asks the Commission to clarify or to grant rehearing that all customers in the ComEd zone will be assessed uplift charges, including the customers who are receiving the additional congestion revenue payments for FTRs nominated but not received. Exelon asserts that the long-term firm customers located in the MISO region who are receiving the congestion revenue payments should share in the socialized cost of the mitigation by being assessed the uplift charge. Exelon asserts the other customers should not subsidize the customers located in MISO and therefore should not be the only ones to bear the burden of the uplift charges.

11. The Commission grants this request as follows. The mitigation payments are intended to compensate firm long-term transmission customers for not receiving FTRs commensurate with their contracts. Since customers who were assigned FTRs are responsible for paying their share of uplift costs, so should be those customers receiving mitigation. The mitigation is being paid in lieu of the receipt of FTRs. Thus, those receiving mitigation should be treated the same as those customers who did receive FTRs. The Commission also clarifies that the customers who must pay the uplift charges are those customers who accepted FTRs or mitigation or both. However, the Commission has determined that this mitigation measure shall only be in effect for the short term. The Commission expects that new allocation procedures will be adopted in the section 206 proceeding in Docket No. EL04-105-000. The Commission anticipates that once new allocation procedures are in effect, it will not be necessary to require mitigation for prorated FTRs of long-term firm customers. In addition, so that this

[10] MidAmerican's answer was not filed as a separate document, but as a portion of its Motion for Leave to Answer.

mechanism is reflected in PJM's tariff, PJM is required, within seven days of the date of this order, to file tariff provisions that provide the methodology for determining and allocating the uplift charge paid by all customers in the ComEd zone.

Crediting of Congestion Revenues

12. Exelon asserts that an FTR holder need not schedule its transactions, so that the MISO customers could receive congestion revenues in excess of congestion payments. Exelon asserts the MISO customers should not be allowed to retain profits from FTRs over and above the additional congestion payments they face. Exelon asks the Commission to clarify or grant rehearing that any excess revenues the MISO customers receive from FTRs should be credited to reduce uplift charges.

13. The mitigation requirement was designed to ensure that customers paying for long-term firm transportation service reasonably receive the service for which they contracted, without incurring added transmission costs. It was not designed to provide added compensation to such customers. Accordingly, a customer should receive mitigation payments only when necessary to offset congestion costs they have incurred. Therefore, we grant the rehearing request of Exelon regarding this matter.

MidAmerican Energy Company

14. Exelon asks the Commission to clarify that the mitigation measure is limited to customers located in MISO who are members of MISO. Exelon asserts MidAmerican is not now a member of MISO and will not be joining MISO.[11] Exelon also asserts MidAmerican owns facilities known as Quad West flowgate that can create congestion on transactions sourcing or sinking in the ComEd zone. Exelon asserts that since MidAmerican owns and controls facilities that may result in congestion in an RTO but is not a member of an RTO, it should not receive additional congestion payments. If the Commission does not provide the clarification that Exelon seeks, it asks the Commission to grant rehearing and allow it to present evidence regarding how MidAmerican's non-membership in an RTO can result in additional congestion impacting PJM customers in the ComEd zone.

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[11] Exelon cites the minutes of the May 19, 2004 MISO Advisory Committee Meeting at 1.

15. The Commission denies this request. In the April 29, 2004 Order, the Commission stated, "the FTR allocations proposed by PJM are accepted, but such acceptance is subject to PJM's adoption of a mitigation measure to ensure that customers are not harmed from the allocation of FTRs that is lower than their prior firm transmission service."[12] The Commission went on to state: "This mitigation measure will apply to long-term firm point-to-point customers that did not receive nominated FTRs up to their contract levels, i.e., those MISO customers that filed protests in this proceeding."[13] While the Commission referred to MISO customers as the principal beneficiaries, the mitigation would apply to all customers of ComEd with long-term firm transmission contracts.

16. This conclusion also follows from the purpose of the mitigation requirement: to compensate holders of long-term firm transmission contracts for their failure to obtain FTRs commensurate with those contracts. Since customers that are not members of MISO could and did obtain FTRs, those customers that did not obtain reasonably commensurate FTRs are entitled to mitigation for their failure to receive such FTRs.

17. It appears, however, that PJM made most of the mitigation payment to MidAmerican for May, 2004 by mistake.[14] PJM states it erroneously assumed that MidAmerican's short-term firm contract for that month was part of a series of monthly contracts for a multi-year period and treated the May contract as a long-term firm

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[12] 107 FERC ¶ 61,090, at P 28.

[13] 107 FERC ¶ 61,090, at P 29.

[14] In its data responses PJM states that in the May 2004 allocation, MidAmerican had a monthly contract that was prorated from 50 FTR MW to 28.2 FTR MW and a yearly contract that was prorated from 3 FTR MW to 1.8 FTR MW. (Response of August 6, 2004 at 2, PJM Interconnection, L.L.C., Docket No. ER04-653-002.) PJM states it should not have provided MidAmerican with mitigation for the prorated monthly contract since that contract was not part of a series of monthly contracts covering at least one year and should not have been treated as the equivalent of long-term firm service. (Response of August 23, 2004 at 1-2, PJM Interconnection, L.L.C., Docket No. ER04-653-002.) Short-term firm service is not entitled to mitigation in the form of congestion revenue payments for nominated FTRs requested but not received. 107 FERC ¶ 61,223 at P 49 (2004) (option to cancel the contract is sufficient for short-term firm transactions if the customer is dissatisfied with its FTR allocation). Thus, MidAmerican was not entitled to mitigation in the form of congestion revenue payments for most of its prorated FTRs.

contract eligible for mitigation. PJM and MidAmerican agree that MidAmerican received only about $40 in mitigation payments.[15] PJM states it does not propose to recalculate the mitigation for May 2004 given the small amount involved.[16] MidAmerican states it is willing to render this issue moot by refunding its mitigation payment, although without agreeing that it should be denied mitigation payments.[17] The Commission agrees with PJM that the amount of mitigation involved is de minimis and will not require a refund by MidAmerican or a recalculation of the uplift payments for May, 2004.

18. Exelon's concern regarding the potential of MidAmerican to influence the amount of congestion in the ComEd zone is beyond the scope of this proceeding. The Commission encourages the parties to discuss congestion problems they may be experiencing at the Quad Cities West flowgate.

<u>The Commission orders</u>:

(A) The requests for clarification and rehearing are denied in part and granted in part.

(B) PJM is required to file, within seven days of the date of this order, a tariff provision reflecting the mitigation mechanism as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

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[15] Response of August 6, 2004 at 2, PJM Interconnection, L.L.C., Docket No. ER04-653-002; Comment of MidAmerican Energy Company at 2, Docket No. ER04-653-002 (August 27, 2004).

[16] Response of August 23, 2004 at 2, PJM Interconnection, L.L.C., Docket No. ER04-653-002.

[17] Comment of MidAmerican Energy Company at 2, Docket No. ER04-653-002 (August 27, 2004).