

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER04-608-001

ORDER DENYING REHEARING

(Issued September 22, 2004)

1. In this order, the Commission denies rehearing of the May 6, 2004 Order which accepted a proposal by PJM Interconnection, L.L.C. (PJM) to implement certain market rules subject to condition.¹ This order addresses the requests for rehearing of the Borough of Chambersburg, Pennsylvania (Chambersburg) and American Municipal Power-Ohio, Inc. (AMP-Ohio). Our decision benefits customers because it allows PJM to better allocate the costs of its transmission system, while also permitting PJM to ensure reliability and act prudently in the expansion of its behind-the-meter netting program.

Background

2. On March 1, 2004, PJM filed proposed revisions to its Open Access Transmission Tariff (PJM Tariff) and related agreements to implement market rules for behind-the-meter generation. Under PJM's pre-existing market rules, market participants were charged for network service, energy, capacity, ancillary services, and PJM administrative fees based on their total load or scheduled load, as applicable. In order to encourage demand response and the use of behind-the-meter generation in times of scarcity, and reduce the cost to market participants that rely to a lesser degree on the PJM integrated transmission system to serve load, PJM stakeholders developed a "total netting" proposal, which was approved by the PJM Members Committee. The idea behind this proposal was to reduce certain costs to market participants that rely to a lesser degree on the PJM integrated transmission system to serve load.

¹ PJM Interconnection, L.L.C., 107 FERC ¶ 61,113 (2004) (May 6 Order).

3. Pursuant to the new market rules, the term “behind-the-meter generation” refers to generating units that are located with load at a single electrical location such that no transmission or distribution facilities owned by any transmission owner or distributor are used to deliver energy from the generating units to the load. The “total netting” approach allows such qualifying market participants to net operating behind-the-meter generation (or behind-the-meter generation expected to be operating in the case of day-ahead markets) against load at the same electrical location for purpose of calculating charges for energy, capacity, transmission service, ancillary service, and PJM administrative fees.
4. Many intervening parties supported PJM’s proposal to net behind-the-meter generation for qualifying market participants. Several municipal systems, however, protested PJM’s proposed behind-the-meter generation market rules and argued that the total netting approach should be expanded to include municipally-owned distribution systems.
5. In response to the arguments raised by the municipal parties, PJM explained in its answer that the proposed market rules were limited to entities that generate and serve load at a single electrical location because a broader application of the behind-the-meter netting program poses additional complexities. PJM stated that municipal systems are often located at multiple locations, or are connected to the transmission system at multiple points, requiring behind-the-meter generation to use the PJM transmission system to serve load. Additionally, PJM pointed out that the character of municipal loads raises additional reliability concerns. Specifically, PJM noted that municipal generation is often extensive, and that making such a large exemption in the application of behind-the-meter netting generation rules would result in far more generation facilities designated as “behind-the-meter generation” than was ever anticipated. As such, PJM explained that it is concerned that classifying such high volumes of generation would significantly reduce the level of reserves of the PJM system.
6. In its filing, PJM noted that it expects that its stakeholders will consider whether it is appropriate to expand the netting program to permit netting of generation against load in other circumstances, such as radially served municipal and cooperative system loads. Additionally, PJM reiterated in its answer that its stakeholders recognize that including some generation associated with distribution systems, such as municipal generation, within the scope of behind-the-meter generation rules should be further considered and evaluated.
7. The May 6 Order found that PJM’s proposed market rules were consistent with our policy of encouraging demand response and with the decision in *Occidental Chemical Corp. v. PJM Interconnection, L.L.C.*² Specifically, the Commission found PJM’s “total netting” approach was just and reasonable as it would encourage qualifying entities with behind-the-

² 102 FERC ¶ 61,275 (2003).

meter generation to reduce their use of the PJM transmission system (since qualifying behind-the-meter generation that contributes to network load reductions will be allocated a fairer share of the transmission system and other operating costs.)

8. Notwithstanding, the Commission was mindful that some parties, particularly, municipal generators, believed that PJM's proposal was too restrictive in limiting the field of market participants that may net behind-the-meter generation.³ Since PJM explained that its stakeholders are actively considering whether the netting program could be expanded to include some additional generation associated with municipal distribution systems, the Commission conditionally accepted PJM's proposed market rules. The sole condition was that PJM must file a status report with the Commission by January 1, 2005, informing us of the results of its stakeholder process and whether the netting program could be expanded.

Requests for Rehearing

9. In its request for rehearing Chambersburg contends that the Commission failed to articulate a rational basis for denying a municipal generator (that is not located at a single electrical location) the ability to net its operating behind-the-meter generation against its load for purposes of calculating various charges solely because distribution facilities owned or operated by an electric distributor are used to deliver energy from the generation to load. Specifically, Chambersburg contends that there is no rational basis for distinguishing between what has been described as behind-the-meter generation serving directly connected load and Chambersburg, which has generation embedded within its distribution system. Additionally, Chambersburg argues that PJM's exclusion of generation facilities that utilize distribution facilities to deliver generation output to load violates section 205(b) of the Federal Power Act (FPA).

10. Secondly, Chambersburg argues that the Commission erred in concluding that Chambersburg did not show that "protestors have not provided sufficient evidence to show that municipal generation is similarly-situated with that of directly connected load." Chambersburg reiterated that it has demonstrated that it is similarly situated as an end use generator. Chambersburg notes that it demonstrated that the output of its behind-the-meter generation would be consumed on its distribution system and therefore it would not utilize any PJM transmission facilities.

³ May 6 Order at P 29-31.

11. Additionally, AMP-Ohio filed a request for rehearing arguing that by accepting PJM's tariff modifications, the Commission violated sections 205(a) and (b) of the FPA. AMP-Ohio contends that limiting the benefits to industrial facilities would create unreasonable discrimination and PJM's behind-the-meter netting program should be extended to municipal utilities with relevant electrical configurations identical to those of the industrial facilities that are the intended beneficiaries of the tariff. Additionally, AMP-Ohio contends that the Commission erred by shifting the burden of proof to AMP-Ohio to show that their generation does not make use of the PJM transmission system and by imposing a requirement for the production of evidence. AMP-Ohio asks that the Commission direct PJM to extend to municipals the same beneficial treatment afforded in its filing to industrials when there is no relevant electrical distinction between them.

Discussion

12. The Commission finds that PJM's behind-the-meter tariff provision, which allows for the netting of generation at a single electrical location, is consistent with our policy of encouraging demand response programs. Moreover, contrary to the assertions made by Chambersburg and AMP-Ohio, the Commission finds that PJM's behind-the-meter tariff provision, pending the results of PJM's required status report, is just and reasonable and not unduly discriminatory. Accordingly, as discussed below, the requests for rehearing are denied.

13. PJM proposed in this proceeding to apply its netting approach only to generators at a single electrical location, because such a provision ensures that only generation that does not use the transmission system is included in the netting program. Unlike generators that consume the energy at a single location, municipal generators are often located at multiple locations or are connected to the transmission systems at multiple points, requiring such generation to make use of the transmission system to serve its load.⁴ In its answer, filed on April 6, 2004, PJM stated that even if the subject generation is located on a municipal's distribution system that is in the same geographic area, given the general operation of the electric transmission grid, the municipal's generation could flow onto the integrated transmission system at one location and re-enter the distribution system at another location to serve load. Moreover, according to PJM, inclusion of municipal generators in the currently proposed program could jeopardize system reliability, because classifying such high volumes of generation as behind-the-meter generation would significantly reduce the level of reserves on the PJM system, and because PJM does not have the right to call upon behind-the-meter

⁴ However, if the municipal generator qualifies for the behind-the-meter generation program under the terms of PJM's Tariff, then that generator may participate in this program.

generation in an emergency or capacity shortage.⁵ Thus, municipal generators that serve load outside of a single electrical location are not necessarily similarly situated as generators at a single location and their exclusion from the tariff, pending the results of PJM's required status report, is not unduly discriminatory.

14. Chambersburg and AMP-Ohio argue that they only seek to receive the same treatment afforded to qualifying "single electrical location" generators when they can establish that their generation does not factually make use PJM's of integrated transmission system. They contend that they should not be required to make such a factual determination in a protest to the compliance filing, and that the Commission erred in shifting the burden of proof to them to show that their generation does not make use of the integrated transmission system.

15. While the party filing under § 205 of the Federal Power Act, bears the burden of showing that its tariff proposal is just and reasonable, the burden falls on a protester or the Commission if the Commission seeks to amend or change that proposal.⁶ Here, PJM has established that its proposal is just and reasonable and that it is not unduly discriminatory on its face.⁷ In addition, protesters must do more than set forth allegations; they must put forward evidence to support their positions.⁸ Here, Chambersburg and AMP-Ohio merely assert that some municipal systems are similar to generators at a single electrical location, but they do not put forward evidence to support the claim,⁹ nor do they put forward criteria or other procedures

⁵ Since behind-the-meter generation is not controlled by PJM, PJM states that such generation cannot be called upon for reliability purposes. *See* PJM's Answer at 5.

⁶ *Western Resources, Inc. v. FERC*, 9 F.3d 1568 (D.C. Cir. 1993) (applying such a standard under §§ 4 & 5 of the Natural Gas Act, which are comparable to §§ 205 & 206 of the Federal Power Act).

⁷ Chambersburg and AMP-Ohio do not contest that the proposal made by PJM is not just and reasonable or contend that it should be rejected.

⁸ *See Illinois Municipal Elec. Agency v. Central Illinois Public Serv. Co.*, 76 FERC ¶ 61,084 at p. 61,482-83 and n.6 (1996). *See also Woolen Mills Assoc. v. FERC*, 917 F.2d 589, 592 (D.C. Cir. 1990).

⁹ Indeed, AMP-Ohio concedes that not all municipal generators may qualify for the program, stating that it "has not sought, and does not seek, equivalent BMG [behind the meter generation] treatment in those instances where the generation does use the transmission system, only where it does not." Request for Rehearing, at 4.

for assessing when municipal generators should be considered to be in a similar position. Thus, there is no basis at this point for the Commission to grant rehearing and require PJM to include municipal generators in its netting program.

16. Nonetheless, PJM has recognized that there may be situations in which municipal generation does not make significant enough use of the integrated transmission system and that such generation should be permitted to qualify for the “total netting” treatment. Moreover, PJM has committed to consider this issue through its stakeholder process. Indeed, in the May 6 Order, the Commission required PJM to file a status report with the Commission by January 1, 2005, on the results of its stakeholder process.¹⁰

17. The Commission also clarifies that in this status report, PJM must justify any continued exclusion of municipal generation from the “total netting” treatment, especially if the generators can demonstrate that some of their generation does not use PJM’s integrated transmission system. Once PJM files its report with the Commission, the parties will then have the opportunity to file comments or protests in response to PJM’s findings. This Commission finds that this process is the best procedural vehicle to achieve faster and comprehensive resolution of this issue. When PJM files the results of the stakeholder process, we will determine whether a further proceeding is necessary to review behind the meter generation program issues.

The Commission orders:

The requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

¹⁰ May 6 Order at P 31.