

109 FERC ¶ 61,236  
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, L.L.C.

Docket No. ER03-194-003,  
ER03-194-004,  
and ER03-194-005

Allegheny Power

Docket No. ER03-309-003  
and ER03-309-007

ORDER DENYING REHEARING

(Issued November 26, 2004)

1. On August 12, 2003, Allegheny Power (Allegheny) filed a request for clarification, or in the alternative, rehearing of the Commission's order issued on July 29, 2003.<sup>1</sup> As discussed below, we deny Allegheny's request.

**A. Background**

2. On February 7, 2003, the Commission accepted an executed interconnection service agreement between PJM Interconnection, L.L.C. (PJM) and Duke Energy Fayette, LLC (Duke) filed in Docket No. ER03-194-000.<sup>2</sup> The parties entered into this agreement to accommodate Duke's request for the interconnection of a 620 MW generating facility to the PJM's transmission system. Duke was granted 620 MW of Capacity Interconnection Rights located at the Ronco Substation. The project included the construction of a 500 kV interconnection switching station, a 500 kV looping of a portion of Allegheny's 500 kV transmission line between the Fort Martin and Hatfield's

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<sup>1</sup> *PJM Interconnection, L.L.C., et al.*, 104 FERC ¶ 61,154 (2003) (*July 29 Order*).

<sup>2</sup> *PJM Interconnection, L.L.C., et al.*, 102 FERC ¶ 61,161 (2003) (*February 7 Order*).

Ferry switching stations and protective relaying (Ronco Substation Project Facilities). The Commission determined that the Ronco Substation Project Facilities were integrated with Allegheny's transmission system and fit PJM Tariff's definition of Network Upgrades.<sup>3</sup>

3. Additionally, the *February 7 Order* accepted an unexecuted Interconnection and Operating Agreement between Allegheny and Duke under the PJM's Open Access Transmission Tariff (Tariff), filed in Docket No. ER03-309-000. However, Allegheny was directed to amend its charges under this agreement to reflect the Commission's determination that the Ronco Substation Project Facilities were Network Upgrades, and that Duke was not required to pay the operation and maintenance costs (O&M costs) for these facilities.

4. On July 29, 2003, the Commission denied Allegheny's rehearing request of the February 7 Order. The Commission affirmed the finding in its *February 7 Order* that the facilities at issue were Network Upgrades under the PJM Tariff.<sup>4</sup> Thus, the Commission found that the only outstanding issue was whether the O&M costs associated with the Ronco Substation Project Facilities should be directly assigned to Duke under the PJM Tariff.<sup>5</sup> The *July 29 Order* concluded that because the PJM Tariff provided only for the direct assignment of O&M costs associated with Attachment Facilities,<sup>6</sup> the O&M costs of the facilities required to interconnect Duke to Allegheny should not be directly assigned to Duke.<sup>7</sup> Finally, the *July 29 Order* noted Allegheny's concern that in Docket No. ER03-405-000 the Commission had permitted the assignment of O&M costs associated with merchant upgrades to be assigned to merchant transmission projects. The Commission, however, stated that the "treatment of O&M costs for merchant upgrades is most appropriately, and will be, considered in [the Docket No. ER03-405-000 proceeding]."<sup>8</sup>

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<sup>3</sup> *February 7 Order* at P 16-17.

<sup>4</sup> *July 29 Order* at P 18-19.

<sup>5</sup> *Id.* at P 17.

<sup>6</sup> Attachment Facilities are defined as "[t]he facilities necessary to physically connect a Customer Facility to the Transmission System or interconnected distribution facilities." PJM OATT, FERC Electric Tariff, Sixth Revised Volume No. 1 (PJM Tariff), section 1.3A.

<sup>7</sup> *See July 29 Order* at P 17-19 citing to PJM Tariff section 60.1(d).

<sup>8</sup> *July 29 Order* at P 21 (*footnote omitted*).

5. On August 12, 2003, Allegheny filed a request for rehearing, or in the alternative, clarification of the *July 29 Order*. On August 27, 2003, Duke filed an answer.

6. On May 20, 2004, Commission staff requested further information from PJM in order to address Allegheny's argument that the PJM Tariff may be treating O&M costs associated with generator interconnections differently than the O&M costs associated with the interconnection of merchant transmission facilities.<sup>9</sup> PJM filed a response with the Commission on June 21, 2004 explaining that its tariff did not treat O&M costs associated with generator interconnects differently than those associated with merchant transmission facilities (*PJM Response*).

### **B. Allegheny's Arguments on Rehearing**

7. Allegheny reasserts its previous arguments that the O&M costs should be directly assigned to Duke under the PJM Tariff, Commission's precedent<sup>10</sup> and policy.<sup>11</sup> Allegheny's argument is that the PJM Tariff does not allow the assignment of O&M costs associated with Merchant Network Upgrades to transmission owners,<sup>12</sup> but allows the assignment of O&M costs associated with Network Upgrades to transmission owners.<sup>13</sup> Allegheny reiterates that the Commission's action in this proceeding is therefore inconsistent with its recent decision in Docket No. ER03-405-000. Allegheny believes that it is entitled to full recovery, including retroactive recovery to the date of interconnection, of all of the O&M expenses associated with the Ronco Substation Project Facilities.

8. In the alternative, Allegheny seeks rehearing of the *July 29 Order*. It argues that while the *July 29 Order* acknowledged that the PJM Tariff may be treating generator interconnections differently than interconnections of merchant transmission projects, the Commission failed to explain how it planned to resolve such differences. Furthermore,

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<sup>9</sup> See Letter to PJM Interconnection, L.L.C., dated May 20, 2004.

<sup>10</sup> See *PJM Interconnection L.L.C.*, 87 FERC ¶ 61,299 at 62,202-04, *reh'g denied*, 89 FERC ¶ 61,186 (1999).

<sup>11</sup> See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,846 (August 19, 2003), FERC Stats. & Regs. ¶ 31,146 at P 695 (2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220 (March 5, 2004), *reh'g pending*.

<sup>12</sup> Citing to sections 54.2 and 55.2 of the PJM Tariff.

<sup>13</sup> Citing to section 60.1(d) of the PJM Tariff.

Allegheny contends that the Commission failed to explain how the resolution of this issue in a separate proceeding will apply to Allegheny. It is also concerned that the inconsistency will not be addressed in Docket No. ER03-405, because apparently no party has raised the O&M cost recovery issue on rehearing.

### C. Duke's Answer

9. On August 27, 2003 Duke sought to file an answer to Allegheny's request for clarification, or in the alternative, request for rehearing.

10. Duke urges the Commission to reject Allegheny's rehearing request as untimely. According to Duke, Allegheny argued for the first time that the proceeding in Docket No. ER03-405-000 was relevant to the current proceeding in a supplemental pleading (answer to an answer to the April 7, 2003 rehearing request), rather than raising the argument in its timely rehearing request. Thus, Duke believes that this is Allegheny's second attempt to place this new rehearing argument before the Commission on an untimely basis.

11. Moreover, Duke contends that, contrary to Allegheny's assertions, the PJM Tariff provisions accepted by the Commission in Docket No. ER03-405-000<sup>14</sup> do not allow transmission owners to recover O&M costs related to Network Upgrades required to accommodate the interconnection of new generation capacity or merchant transmission facilities. Duke explains that a merchant developer (who built the merchant facility and interconnected it with the transmission system) is responsible for the O&M costs for Merchant Network Upgrades under PJM Tariff sections 54.2 and 55.2; however, Merchant Network Upgrades do not include Network Upgrades that are built to accommodate the interconnection of generation or merchant transmission facilities. Duke notes that under the PJM Tariff, Merchant Network Upgrades are a subset of Merchant Transmission Facilities.<sup>15</sup> Duke notes that the Commission has previously

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<sup>14</sup> *PJM Interconnection, L.L.C.*, 102 FERC ¶ 61,277 (2003).

<sup>15</sup> PJM Tariff section 1.18E defines Merchant Transmission Facilities as:

A.C. or D.C. transmission facilities that are interconnected with or added to the Transmission System pursuant to Subpart B of Part IV of the Tariff [Transmission Interconnection Procedures] and that are so identified on Attachment T to the Tariff provided, however, that Merchant Transmission Facilities shall not include (i) any Customer Interconnection Facilities (as defined in section 50.15A), (ii) any physical facilities of the Transmission System that are in existence on the date this provision is filed with the Commission; (iii) any expansions or enhancements of the Transmission System that are not identified as Merchant Transmission Facilities in the

(continued...)

determined that the Ronco Project Substation Facilities are Network Upgrades associated with a generation facility interconnection. Furthermore, Duke notes that PJM's revisions to its tariff do not expand the O&M Facilities Charge provision at section 60.1(d) to include facilities other than Attachment Facilities. Therefore, Duke asserts that it is not responsible for the O&M costs associated with the Ronco Project Substation Facilities.

12. Duke goes on to explain that because all Merchant Transmission Facilities are analogous to interconnecting generation projects, none of the new definitions in the PJM Tariff (Merchant A.C. Transmission Facilities, Merchant D.C. Transmission Facilities, and Merchant Network Upgrades) encompass Network Upgrades built to accommodate generation or transmission interconnection. Duke argues that instead the facilities built to accommodate generation and transmission upgrades continue to be encompassed under the PJM Tariff definitions for Network Upgrades, Local Upgrades and Attachment Facilities.

13. Lastly, Duke contends that the Commission does not need to revisit the PJM Tariff provisions in Docket No. ER03-405-000 for two reasons. First, PJM did not revise section 60.1(d) of its tariff, which is the provision that assigns the O&M costs related to Network Upgrades required for the interconnection of generating facilities to transmission providers. Second, even if the Commission revisits the application of O&M costs for merchant upgrades, as it stated it would in the *July 29 Order*, the Commission's determination would not apply to Duke's facility, which is a generating facility and not a Merchant Transmission Facility. Duke does not believe that there is any basis to grant Allegheny retroactive relief for future potential changes that PJM might make to its tariff.

#### **D. PJM's Response to the Data Request**

14. In its response to the data request, PJM explained that generators and merchant developers were treated the same with regard to O&M costs associated with Network Upgrades under PJM Tariff. PJM asserts that section 60.1(d) is part of the tariff that applies to interconnections of both generation and merchant transmission facilities.<sup>16</sup> Thus, it notes that under section 60.1(d), the O&M costs associated with Network Upgrades are the responsibility of the transmission owner of the Network Upgrade facilities. However, it acknowledges that O&M costs associated with Merchant Network

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Regional Transmission Expansion Plan and Attachment T to the Tariff, or (iv) any transmission facilities that are included in the rate base of a public utility and on which a regulated return is earned.

<sup>16</sup> See PJM Tariff, Subpart E, Preamble, and section 1.7A (defining Customer Facility to include both interconnecting generation and merchant transmission facilities).

Upgrades are the responsibility of the merchant developer who built the merchant facility and interconnected it with the transmission system,<sup>17</sup> rather than the transmission owner.

15. PJM distinguishes Network Upgrades from Merchant Network Upgrades. It defines Network Upgrades as “upgrades or additions to the PJM Transmission System that are required to accommodate the interconnection of new generation capacity or merchant transmission facilities.”<sup>18</sup> Merchant Network Upgrades are defined by PJM as “a type of Merchant A.C. Transmission Facilities, *i.e.*, merchant transmission facilities that are expansions or upgrades to the transmission system built by a merchant developer to create additional transmission rights that the developer may market to users of the transmission system.”<sup>19</sup> Additionally, it declares that Merchant Transmission Facilities “shall not include . . . any network upgrades built to accommodate generation or transmission interconnection.”<sup>20</sup> Thus, it concludes that Merchant Network Upgrades do not include Network Upgrades related to generator interconnects or interconnection of merchant transmission facilities.

16. Finally, PJM asserts that all costs of merchant transmission facilities are properly allocated to the merchant developer because merchant transmission facilities, including Merchant Network Upgrades, are market-based investments that should not be subsidized by load or other market participants.

#### **E. Discussion**

17. We find good cause to accept Duke’s answer notwithstanding the general prohibition on the filing of answers to requests for rehearing, *see* 18 C.F.R. § 385.213(a)(2) (2004), in light of various representations by Duke that assist in our understanding and resolution of the issues raised.

18. Allegheny first reiterates its position that under the PJM Tariff, as well as Commission precedent and policy, Duke should be responsible for the O&M costs associated with the Network Upgrades for the interconnection of its generating facility. The Commission fully addressed this contention in the previous orders and will not repeat the discussion here. In brief, as explained in the *July 29 Order* at P 17-19, section

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<sup>17</sup> *PJM Response* at 3 *citing to* PJM Tariff sections 54.2 and 55.2.

<sup>18</sup> *PJM Response* at 2 *citing to* PJM Tariff sections 1.26 and 37.2.

<sup>19</sup> *Citing to* PJM Tariff sections 1.18B and 1.18D.

<sup>20</sup> PJM’s January 10, 2003 Transmittal Letter, Docket No. ER03-405-000, at 8.

60.1(d) of the PJM Tariff<sup>21</sup> provides that transmission owners may recover O&M costs from generators only when those O&M costs relate to Attachment Facilities. Because the facilities at issue here are Network Upgrades, Allegheny is responsible, under the tariff, for the O&M costs related to those upgrades.

19. Allegheny's principal argument in this rehearing is that the Commission erred in not addressing its contention that that PJM's approach to O&M costs for the interconnection of generator facilities (generator projects) is inconsistent with its approach for the interconnection of merchant transmission facilities (merchant transmission projects) and that the Commission erred in deferring this issue for resolution in Docket No. ER03-405. It contends that the PJM Tariff does not allow the assignment of O&M costs associated with Merchant Network Upgrades to transmission owners under sections 54.2 and 55.2, but allows the assignment of O&M costs associated with Network Upgrades to transmission owners.

20. We agree that this issue does not need to be deferred to Docket No. ER03-405 and should be resolved in this proceeding. However, based on the record developed in this proceeding, we find no inconsistency in the treatment of O&M costs for the interconnection of generator projects and merchant transmission projects.

21. Allegheny's arguments fail to appreciate the difference between Network Upgrades and Merchant Network Upgrades. Merchant Network Upgrades are "Merchant A.C. Transmission Facilities that are additions to, modifications or replacements of, physical facilities of the Interconnected Transmission Owner... that... are part of the Transmission System or are included in the Regional Transmission Expansion Plan."<sup>22</sup> A Merchant Network Upgrade, therefore, is "the project" undertaken by a merchant developer to create additional transmission rights that the developer may market to users of the transmission system,<sup>23</sup> and is the equivalent of the generation project being constructed by a generator like Duke. In both cases, under PJM's tariff, the project

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<sup>21</sup> Section 60.1 of the PJM Tariff states that:

Any [O&M] charge may recover only the Interconnected Transmission Owner's costs and expenses associated with operation, maintenance, inspection, testing, modifications, taxes and carrying or capital replacement charges for Attachment Facilities related to the Interconnection Customer's Interconnection Service and that are owned by the Interconnected Transmission Owner . . . .

<sup>22</sup> PJM Tariff section 1.18D.

<sup>23</sup> See PJM Tariff sections 1.18B and 1.18D.

developer (merchant developer or generator) is responsible for the O&M costs associated with the project itself.<sup>24</sup> Thus, in the case of both generator and Merchant Network Upgrade interconnections, it is appropriate to allocate the O&M costs to the project developer because such facilities are market-based investments that should not be subsidized by load or other market participants.<sup>25</sup>

22. On the other hand, Network Upgrades are “[m]odifications or additions to transmission-related facilities that are integrated with and support the Transmission Provider’s overall Transmission System for the general benefit of all users of such Transmission System.”<sup>26</sup> These facilities are not a part of the generator or merchant transmission project, but are additional upgrades to the network that are necessary to accommodate such facilities. Under section 60.1(d) of the PJM Tariff, O&M costs associated with such Network Upgrades for the interconnection of a generator project are treated the same as O&M costs associated with Network Upgrades for the interconnection of a merchant transmission project. In both cases, the transmission owner that owns the Network Upgrades is responsible for those O&M costs.

23. PJM provides the following example that shows the similar treatment of generation and merchant transmission projects.<sup>27</sup> An interconnection customer proposes to reconductor an existing transmission line between two substations to create additional transmission capability to reduce congestion in that portion of the system. Subsequently, PJM’s interconnection studies reveal that a circuit breaker needs to be replaced at an

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<sup>24</sup> Sections 54.2 and 55.2 of the PJM Tariff provide that the O&M costs associated with the merchant transmission project (*i.e.*, the Merchant Network Upgrade) are the responsibility of the project developer. Sections 54.2 and 55.2 state with respect to operations (54.2) and maintenance (55.2) the following::

Unless otherwise provided in the Interconnection Service Agreement, the Interconnected Transmission Owner that owns Transmission System facilities to which any Merchant Network Upgrades are connected shall [*operate* in 54.2 and *maintain* in 55.2] such Merchant Network Upgrades (a) on behalf of and at the expense of the Interconnection Customer that constructed or caused construction of the pertinent Merchant Network Upgrades . . . .

<sup>25</sup> *PJM Response* at 3; *see also PJM Interconnection, L.L.C.*, 102 FERC ¶ 61,277 (2003) at P 6.

<sup>26</sup> Section 1.26 of the PJM Tariff.

<sup>27</sup> *PJM Response* at 3.

affected substation to accommodate the reconducted transmission line. The reconducted line would be a Merchant Network Upgrade, *i.e.*, an upgrade built by the interconnection customer to create marketable transmission rights. In this case, the interconnection customer would be responsible for the O&M costs associated with the reconducted line. Similarly, a generator would be responsible for O&M costs related to its generating plant. However, the new circuit breaker would be a Network Upgrade, which is an upgrade required to accommodate interconnection of the customer's proposed facility, *i.e.*, the reconducted line. In this instance, the interconnection customer would not be responsible for the O&M costs related to the Network Upgrade. Likewise, a generator would not be responsible for the O&M costs related to the Network Upgrade, *i.e.*, a new circuit breaker required to interconnect its generating plant to the system. Therefore, we find that the PJM Tariff does not treat O&M costs related to Network Upgrades to interconnect a generator project, such as the Ronco Substation Project Facilities, differently from O&M costs related to Network Upgrades to interconnect a merchant transmission project.

The Commission orders:

Allegheny's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.