

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Occidental Chemical Corporation

v.

Docket No. EL02-121-005

PJM Interconnection, L.L.C. and
Delmarva Power & Light Company

ORDER ON REHEARING

(Issued December 23, 2003)

1. Baltimore Gas and Electric Company (BGE) seeks rehearing of our July 28, 2003 Order in which we accepted a compliance filing made by PJM Interconnection, L.L.C. (PJM).¹ In its compliance filing, PJM (as we directed) removed curtailed load from its network access charge allocation factor.² For the reasons discussed below, we will deny BGE's request for rehearing.

Background

2. In an order issued October 10, 2002, we required PJM to explain further, or modify, its network access charge in response to a complaint filed in this proceeding by

¹ See Occidental Chemical Corporation v. PJM Interconnection, L.L.C., et al., 104 FERC ¶ 61,142 (2003) (July 28 Order).

² See PJM open access transmission tariff (OATT) at Section 34.1(a). The Section 34.1 access charge is designed to recover the embedded costs of PJM's transmission facilities and the associated revenue requirements of PJM's transmission owners.

Occidental Chemical Corporation.³ We noted that while part of the formula for allocating PJM's network access charge costs, *i.e.*, the component which is based on a customer's actual load (both firm and non-firm) coincident with the annual peak of the zone, was reasonable, PJM's practice of adding back curtailed load to its calculation appeared inconsistent with the underlying rationale of reducing a customer's costs when it reduces load during system peaks. We further noted that relying on curtailed loads to allocate PJM's access charge costs may create a disincentive for load serving entities (LSEs) to implement load response programs on their own systems, since LSEs would be charged for system costs regardless of whether they curtail load during system peaks. Based on these findings, we required PJM to revise Section 34.1 of its OATT by removing "curtailed load" as an allocation factor, or in the alternative provide an explanation of why such an allocation factor is warranted.⁴

3. In its compliance filing made in response to the October 10 Order, PJM defended its use of curtailed load as an allocation factor under Section 34.1 of its OATT. In our order on this compliance filing, issued March 12, 2003, we rejected PJM's arguments, noting, among other things, that access charges for the use of PJM's transmission system should be allocated to network customers based on a network customer's actual use of PJM's system, consistent with the principle of cost causation.⁵ Accordingly, we required PJM to remove its curtailed load add-back provision from its network access charge allocation factor and to make any conforming changes, as may be necessary.

4. In its second compliance filing, PJM complied with our directive. It removed curtailed load from its network access charge allocation. Specifically, PJM revised Subsection (a) of Section 34.1 of its OATT to remove the language providing that curtailed load would be included in the determination of the monthly demand charge. PJM did so by striking out the reference to curtailed load in the definition of "DCPZ," *i.e.*, the term used by PJM to refer to the daily load of a network located within a zone coincident with the annual peak of the zone. PJM also struck the reference to curtailed load in the paragraph identifying the elements included in network load.

5. In the July 28 Order, we accepted PJM's second compliance filing and denied a protest to that filing made by BGE. We found that PJM's second compliance filing satisfied the requirements of the March 12 Order regarding the removal of curtailed load as an allocation factor in Section 34.1 of PJM's OATT. We also found that BGE's

³ See *Occidental Chemical Corporation v. PJM Interconnection, L.L.C., et al.*, 101 FERC ¶ 61,005 (2002) (October 10 Order).

⁴ October 10 Order, 102 FERC ¶ 61,275 at P 15.

⁵ See *Occidental Chemical Corporation v. PJM Interconnection, L.L.C., et al.*, 104 FERC ¶ 61,275 (2003) (March 12 Order).

protest, in which BGE challenged the merits of our findings in the March 12 Order, constituted a collateral attack of that earlier order and was thus beyond the scope of PJM's later-filed compliance proceeding.

BGE's Request for Rehearing

6. On rehearing, BGE concedes that its protest filed in response to PJM's second compliance filing (the compliance filing we accepted in the July 28 Order) challenged the underlying merits of our earlier order, *i.e.*, our ruling in the March 12 Order in which we directed PJM to remove from Section 34.1 of its OATT its use of curtailed load as an allocation factor. However, BGE claims that its protest also included a challenge regarding the completeness of PJM's compliance filing. Specifically, BGE asserts that PJM, in addition to modifying its allocation factor under Section 34.1 of its OATT was also required by the March 12 Order to: (i) make "significant changes" to its Active Load Management (ALM) and emergency load response (E-LRP) programs to allow curtailments for transmission emergencies; (ii) remove ALM and E-LRP load from its planning studies; and (iii) provide for the curtailment of ALM and E-LRP load in order to relieve congestion on the transmission system. BGE concludes that the Commission erred in the July 28 Order in not addressing these three issues on the merits and holding, as BGE claims, that PJM failed to comply with the directives of the March 12 Order.

Discussion

7. We will deny BGE's request for rehearing on two grounds. First, in the March 12 Order, we considered the merits of PJM's initial compliance filing in this proceeding, in which PJM addressed each of the issues BGE now raises on rehearing.⁶ Specifically, we considered PJM's load reduction policies relating to its ALM and E-LRP programs and PJM's use of this load data in its planning studies.⁷ In considering these issues, we did not require PJM to make the revisions BGE now requests. Rather, our ordering paragraph directed PJM "to make a compliance filing, removing from Section 34.1 of PJM's OATT, its use of curtailed load as an allocation factor." PJM did so in a compliance filing, which we accepted in the August 28 Order, and did not challenge our findings on rehearing.

8. Second, while BGE asserts that "significant changes" are required in PJM's ALM and E-LRP programs in order to make these programs consistent with the changes we required in the March 12 Order, PJM itself did not find such changes essential in its compliance filing, and BGE has failed to support its contention that such changes are

⁶ BGE, in fact, both cites to and quotes from PJM's compliance filing in support of its rehearing request.

⁷ See March 12 Order, 102 FERC ¶ 61,275 at PP 13-16.

necessary. In its protest and in its rehearing request, BGE does not specify what its changes would entail, nor does it demonstrate any necessary nexus between these requested changes and PJM's network access charge.

The Commission orders:

BGE's request for rehearing is hereby denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.