

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Borough of Chambersburg, PA and
Town of Front Royal, VA

v.

Docket No. EL06-94-001

PJM Interconnection, L.L.C.

ORDER DENYING REHEARING

(Issued May 18, 2007)

1. On November 22, 2006, the Commission issued an order on a complaint filed by the Borough of Chambersburg, Pennsylvania and the Town of Front Royal, Virginia (collectively, Municipals) against PJM Interconnection, LLC (PJM).¹ In that order, the Commission denied a complaint by the Municipals regarding the method used by PJM to allocate Auction Revenue Rights (ARRs) for the period from June 1, 2006 through May 31, 2007. ARRs are used by the Municipals and others to hedge against transmission costs. In this order, the Commission denies the requests for rehearing filed by the Municipals and the American Public Power Association (APPA).

I. Background

A. The Municipals' Complaint

2. On August 1, 2006, the Municipals filed a complaint against PJM, arguing that PJM has mis-applied its Open Access Transmission Tariff (OATT or Tariff) to under-allocate ARRs to the Municipals for the 2006/2007 planning period, thus depriving them of valuable revenue rights and exposing them to millions of dollars per year in unhedged congestion costs. The Municipals argued that PJM's application of its Tariff contravenes principles of cost causation and produces a result that is unjust, unreasonable and unduly

¹ *Borough of Chambersburg, PA v. PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,219 (2006) (Complaint Order).

discriminatory. As such, the Municipals requested that the Commission order PJM to reallocate the ARR for 2006/2007 and to refund to the Municipals the amounts that they overpaid in congestion costs. Additionally, the Municipals stated that, while their complaint addressed only the ARR allocation for 2006/2007, they were protesting the PJM long-term transmission rights (LTTR) filing in Docket No. ER06-1218 to prevent a recurrence of this harm prospectively.

B. The Complaint Order

3. The Commission found that PJM had appropriately applied its Tariff and rejected the Complainant's claims that PJM violated the filed rate doctrine with respect to the ARR allocation for the 2006/2007 planning year. The Commission explained that under the Tariff, in the first stage of PJM's annual ARR allocation process, ARRs are allocated to network and long-term firm transmission customers based on historical usage for a base reference year. For the Municipals, the base year is 2002, the year they were integrated into PJM. In the second stage of the allocation process, ARRs associated with the remaining system capacity are allocated to network and long-term transmission customers serving non-historic loads.²

4. The Commission further explained that PJM uses a simultaneous feasibility test to ensure that the congestion credits due to FTR holders could be funded from the congestion charges collected in the energy market. This methodology effectively amounts to awarding ARRs up to the physical capacity of the system. When system conditions reflect that ARRs are not simultaneously feasible (*i.e.*, not revenue sufficient), PJM must employ the pro-rationing methodology in order to ensure payment of congestion credits. Should PJM determine that ARRs are not simultaneously feasible, regardless of cause, PJM is required by the Tariff (and its Operating Agreement) to pro-rate.³

5. For the 2006/2007 planning year, conditions on the PJM system required PJM pursuant to its Tariff (and Operating Agreement) to pro-rate ARRs, which it did, by considering the impact each ARR request would have on relieving the constraint that is limiting ARR allocations. PJM employs a methodology that results in reducing ARR allocations in proportion to the megawatts nominated and also in inverse proportion to the effect of the nominations on a constraint. According to PJM's existing market rules, the pro-rationing of requested ARRs is accomplished in inverse proportion to the power distribution factor effect on the binding constraint as determined in the feasibility analysis. In this regard, in response to a request by the Commission, PJM had submitted a compliance filing in Docket No. ER03-406-002 on April 11, 2003 that contained an

² *Id.* at P 59.

³ *Id.* at P 60.

illustrative example of the ARR pro-rationing calculation and how the inverse proportion language of its Tariff would be applied. No parties protested the illustrative example of the ARR pro-rationing calculation in that filing and the Commission accepted the compliance filing.⁴ The Commission found PJM's allocation of ARR's in the instant case was consistent with the example accepted by the Commission and with the language of the Tariff. The Commission found, therefore, that PJM had not violated its Tariff (or its Operating Agreement) in its 2006/2007 ARR annual allocation process.⁵

6. The Commission also found that the Municipals failed to demonstrate that PJM implemented its Tariff in a discriminatory manner. The Municipals complained that the method used by PJM to pro-rate ARRs is producing a discriminatory result because it pro-rates in inverse proportion to the power distribution effect that each entity has on the congested facility. For 2006/2007, all stage 1 ARR nominations on the Bedington-Black Oak line, including the Municipals', were pro-rated, because there were more ARRs nominated than were simultaneously feasible due to transmission constraints on the Bedington-Black Oak line. Chambersburg nominated 54.1 MW of ARRs and was awarded only 28.8 MW, or approximately 53 percent of its nomination level. Front Royal requested 36.6 MW in the first stage and was awarded only 19.9 MW, or approximately 54 percent of its nomination level. The Commission explained that the pro-rationing of the ARRs nominated by the Municipals in the 2006/2007 annual allocation process reflects non-discriminatory implementation of PJM's existing market rules.⁶ We also found that the appropriate forum to investigate the justness and reasonableness of PJM's tariff on a prospective basis was in Docket No. ER06-1218-000,⁷ where we directed PJM to re-evaluate its ARR allocation process to ensure that it will result in meeting the reasonable needs of all load serving entities (LSEs).

C. Requests for Rehearing

7. The Municipals and APPA argue that the Commission failed to address whether PJM has properly applied its Tariff and whether the Tariff is unjust, unreasonable or unduly discriminatory. They contend that the Commission cannot avoid its statutory

⁴ See *PJM Interconnection, L.L.C.*, 106 FERC ¶ 61,049, at P 39 (2004) (January 28 Order). The illustration is also provided in PJM Manual 06, *Financial Transmission Rights*, pages 25-26, available at www.pjm.com/contributions/pjm-manuals/manuals.html.

⁵ Complaint Order, 117 FERC ¶ 61,219, at P 61-62.

⁶ *Id.* at P 63.

⁷ See *PJM Interconnection, LLC*, 117 FERC ¶ 61,220 (2006) (PJM LTTR Order).

obligation under the Federal Power Act (FPA)⁸ to ensure just and reasonable rates in the 2006/2007 planning year by saying the problem will be fixed in the future. The Municipals note that the Commission states that it intends to address PJM's ARR allocation procedures in another docket, but argues that the Commission should act in this docket and for this planning year.⁹ The Municipals argue that the Commission fails in the Complaint Order to address the disproportionate burdens that the Municipals demonstrated in this proceeding, and that it is not reasonable to conclude that Docket No. ER06-1218-000, which concerns a methodology to allocate ARRs on a prospective basis and does not address the 2006/2007 planning year ARR allocation, is the appropriate forum for addressing a complaint directed at the 2006/2007 planning year ARR allocation.

8. The Municipals and APPA argue that the Commission failed to address that the results produced by the PJM Tariff contravene fundamental principles of cost causation. They contend that the Complaint Order sanctions a tariff provision that not only allows, but requires, PJM to impose on the Municipals and similarly-situated LSEs costs and constraints on the Bedington-Black Oak line that are caused by other users. The Municipals argue that the Tariff, as interpreted by PJM, results in a disproportionate pro-rationing for LSEs that are located adjacent to a heavily constrained regional transmission facility that those LSEs have relied upon for delivery of resources to their native loads because of PJM region-wide problems that those LSEs have not caused.¹⁰

9. The Municipals contend that PJM's stated reasons for significant pro-rationing in the 2006/2007 planning year were regional problems, and not something over which the Municipals have any control or are able to affect. For example, the Municipals argue that congestion on the Bedington-Black Oak Line is a regional problem, which had the effect of increasing prices in all but five of the 17 PJM zones. The Municipals note that another reason cited by PJM was increased load growth. However, the Municipals contend that neither Chambersburg's loads nor Front Royal's loads have grown significantly in the last several years, and the costs associated with PJM load growth cannot reasonably be attributed to Chambersburg and Front Royal. They add that they neither caused the addition of 6,000 MW of ARR nominations on the Bedington-Black Oak line, nor the additional 2,000 MW in loop flow on the PJM system.

10. The Municipals argue that the Commission failed to address their argument that the result of the application of PJM's Tariff is discriminatory, in that LSEs located closest to the Bedington-Black Oak line have their ARRs prorated more significantly. The

⁸ 16 U.S.C. § 824d(a) (2000).

⁹ Municipals Request for Rehearing at 9.

¹⁰ *Id.* at 12.

Municipals argue that because those entities located closest to a binding constraint will inevitably have a higher “effect per MW” on that constraint, those entities will always be prorated the most.

11. The Municipals also argue that the Commission erred in finding that PJM did not violate its Tariff. They contend that the Commission erred in finding that PJM’s Tariff provides for the pro-rationing of ARR in inverse proportion to the power distribution factor effect on the binding constraint as determined in the feasibility analysis. They contend that PJM’s use of the distribution factor does not measure what the Municipals state must be measured under the Tariff, the effect on the binding constraint. Instead, the Municipals argue that the distribution factor effect measures the percentage of the power flowing between an LSE’s nominated source/sink pairs over the constrained facility. They contend that the Commission, like PJM, reads into the Tariff words “effect on binding constraint” the term “power distribution factor impact.” The Municipals argue that PJM’s Tariff does not state that an entity’s ARR allocation will be pro-rated based on the flow-based effect per megawatt on the constraint, or that an entity’s ARR allocation will be pro-rated based on the power distribution factor that each of their megawatts of ARR nominations had on the binding constraint. They argue that the term “power distribution factor impact” is not found in the relevant portions of the Tariff, and that the Commission has approved a PJM gloss on the Tariff language that materially alters the actual language of the Tariff.

12. The Municipals further argue that the illustrative example provided by PJM in its April 11, 2003 compliance filing does not demonstrate that PJM’s application of its Tariff is consistent with the language of the Tariff. They note that the illustrative example focuses on “effect per MW” on the constrained line, while the Tariff requires pro-rationing based on the “effect on binding constraints.” The Municipals add that the Commission failed to address their alternate example, which they claim demonstrates that PJM’s “effect per MW” formula does not measure the effect on the binding constraint.

13. The Municipals state that the fact that they did not protest the illustrative example contained in PJM’s April 11, 2003 compliance filing has no bearing on whether the Tariff has been applied in a discriminatory fashion and does not constitute a waiver of their rights to file a complaint under section 206. They argue that it is well established that a customer may challenge the application of an approved tariff.¹¹ The Municipals further contend that even if PJM’s filed example were consistent with the Tariff, it would not be a bar to a subsequent finding that the Tariff itself is unreasonable.

14. The Municipals argue that the Commission’s apparent desire not to upset customer expectations is irrelevant to whether PJM has applied a pro-rationing methodology

¹¹ *Id.* at 24.

consistent with its Tariff and whether the Tariff is just and reasonable. They also argue that the Commission did not explain why it would be inappropriate to rerun the ARR allocation after parties have made commitments based on that allocation. The Municipals contend that other customers' expectations cannot legally excuse a violation of the filed rate or an unjust and unreasonable result.¹² They add that the filing of their complaint, which was noticed by the Commission in the Federal Register, provided other customers in PJM notice that their expectations might be upset. The Municipals further add that, if the Commission were to rely on customers' expectations, then the Municipals' ARRs would not have been pro-rated because they had no reasonable basis for expecting this dramatic reduction in their ARR entitlement. They further argue that reliance on customer expectations would allow the Commission to only rarely implement a remedy of a violation of an RTO tariff because such refunds would almost always be funded by other customers of the RTO.

15. The Municipals also argue that the Commission failed to address their second request for relief, namely, that the Commission provide some other mechanism by which the Municipals would be returned to the position that they would have occupied if their ARRs had not been improperly pro-rated. The Municipals cite to numerous cases for the proposition that the Commission has broad discretion in fashioning a remedy.¹³ The Municipals further cite *PJM Interconnection, LLC*, 108 FERC ¶ 61,246, at P 31 (2004) (*PJM Interconnection*), which required payments to LSEs via uplift charges spread across all load in PJM when insufficient FTRs existed to provide a hedge to holders of long-term firm point-to-point transmission contracts as well as to network service customers.

16. The Municipals additionally argue that the Commission erred in finding that PJM's ARR allocation process is transparent. They contend that PJM does not post all of the data, assumptions or methodologies it employs in determining simultaneous feasibility. They further contend that PJM does not post information on how many simultaneous feasibility models it has created and for what conditions, or information on the pro-rationing algorithm. The Municipals argue that, in its earlier answer and supporting affidavit, PJM did not provide sufficient information to understand fully the reasons for the reduction in ARR pro-rations, and provided no information regarding the increase in load growth. The Municipals add that, even if the process were transparent, that fact would be irrelevant to whether PJM applied its tariff correctly.

17. PJM filed an answer addressing the arguments raised by the Municipals and APPA.

¹² *Id.* at 26 (citing *New York Independent System Operator, Inc.*, 113 FERC ¶ 61,340, at P 18 (2005) (NYISO)).

¹³ Municipals Request for Rehearing at 28.

II. Discussion

A. Procedural Matters

18. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2006) prohibits an answer to a request for rehearing. Accordingly, we will reject PJM's answer.

B. Commission Determination

19. We deny the Municipals' and APPA's requests for rehearing. In the Complaint Order, the Commission found that PJM properly implemented its Tariff. Because PJM followed the terms of its Tariff, and also did not discriminate in the method of its application, we determined that there was no basis for upsetting customer expectations with respect to the ARR allocation for the 2006/2007 year. We also found that the appropriate forum to investigate the justness and reasonableness of PJM's Tariff on a prospective basis was in Docket No. ER06-1218-000.¹⁴

1. Application of PJM's Tariff

20. The Municipals claim that PJM did not properly apply the pro-ration provisions contained in PJM's tariff. We disagree.

21. Section 7.4.2(f) of the PJM Tariff at the time of the complaint stated:

All Auction Revenue Rights must be simultaneously feasible. If all Auction Revenue Right requests made during the annual allocation process are not feasible then Auction Revenue Rights are prorated and allocated in proportion to the MW level requested and in inverse proportion to the effect on the binding constraints.

22. PJM's Tariff requires that, if legitimate requests for auction revenue rights cannot be honored, PJM will allocate the lesser amount of simultaneously feasible ARRs in proportion to the effect of each customer's request on the constrained line. The DFAX, or power distribution factor, is the method used by PJM to determine how much of an entity's power flows over a particular transmission path and thus the effect that that entity's power flows would have on that path. The Municipals contend that the term "effect on the binding constraints" must be interpreted as requiring a proportional reduction in the ARRs requested. However, they fail to explain how that interpretation of the tariff complies with the "inverse proportion" requirement of the tariff. In contrast,

¹⁴ Complaint Order, 117 FERC ¶ 61,219, at P 2, 65.

PJM's application of section 7.4.2(f) employs (as the example in the Complaint Order shows), the language of the tariff.¹⁵

23. Further, the contemporaneous filings made by PJM show that PJM's application of the Tariff corresponds with what the Commission accepted. When PJM adopted this provision of its Tariff, it provided, at the request of the Commission, a specific numerical example of how the provision would operate—which included the use of the DFAX methodology to determine the effect on the binding constraint. No party protested that filing and the Commission accepted it.¹⁶ The explanatory example provided by PJM and accepted by the Commission (and included in PJM's Manual) illustrates the contemporaneous understanding of how that Tariff provision will be implemented. In this case, PJM applied its pro-rationing methodology in accordance with its Tariff and the example (and the manual), and on rehearing the Complainants have provided no additional information that would indicate that PJM failed to apply that mechanism properly. And the DFAX model, to which the Municipals object, was referenced in the example (and the manual) as the method of measuring the effect on the binding constraint. We, therefore, reaffirm the determination made in the Complaint Order that PJM implemented the provisions of its Tariff how they were intended to be implemented and how the Commission and participants were put on notice as to how they would be implemented.

24. The Municipals maintain that their failure to protest the illustrative examples contained in the 2003 compliance filing does not waive their right to bring a complaint under section 206 at a later date. PJM's tariff, as accepted, establishes the filed rate, and as discussed above, the Municipals have not shown that PJM failed to follow its tariff. While the Municipals have every right to file a section 206 complaint against PJM, in doing so, they have the burden to show that the Tariff is unjust and unreasonable. As we show below, the Municipals have not met that burden.

2. Justness and Reasonableness of PJM's Tariff Provision

25. The Commission rejected the Municipals' arguments that the PJM Tariff is unjust and unreasonable for the 2006/2007 planning year ARR allocation. However, the Commission also determined that the justness and reasonableness of the ARR allocation

¹⁵ Based on the example used in the Complaint Order, PJM would take the total capacity of a line (e.g., 50 MW) multiply it by the customer's percentage of the total requests (e.g., 200/400 MW) and multiply that result by *the inverse* of that customer's DFAX (1/.50) or (1/.25) to arrive at the total ARRs to be allocated to the customer.

¹⁶ *PJM Interconnection, LLC*, 106 FERC ¶ 61049, at P39 (2004).

on a prospective basis would be reexamined in the LTTR proceeding, Docket No. ER06-1218-000.

26. While the Municipals state that we should have acted in the instant docket, they cite to no precedent requiring us to do so. The Commission has the authority to determine where issues can best be resolved,¹⁷ and in this case, we examined the Municipals' contentions in light of the Tariff as it then existed and found no violations of the Tariff; but nevertheless, decided that it would re-examine the ARR allocation going forward in Docket No. ER06-1218-000. And, in fact, contemporaneously with this order, we are accepting a settlement in Docket No. ER06-1218-000 (to which the Municipals are a party) that resolves these issues and maintains PJM's existing pro-rationing methodology.¹⁸

27. Although this settlement in Docket No. ER06-1218-000 preserves the existing pro-rationing methodology on a prospective basis, the Settlement did not resolve the Municipals' claim that the methodology should be found unjust and unreasonable with respect to the 2006/2007 allocation year. As explained below, we find that the Municipals have not shown that the Tariff is unjust and unreasonable with respect to the 2006/2007 allocation year.¹⁹

28. Under PJM's Tariff, parties are allowed to nominate ARRs based on their historical use of the transmission system. The ARRs are nominated from source to sink. Nominations may have different sources and sinks, but may still use a proportion of the same line. If all of the ARR requests cannot be honored due to constraints on a particular line, PJM must pro-rate the requested ARRs to ensure that it awards only the quantity of ARRs that are simultaneously feasible.

¹⁷ See, e.g., *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 143 (1940) (agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties); *Nader v. FCC*, 520 F.2d 182, 197 (D.C. Cir. 1975) (within agency discretion to consider issue in a second proceeding); *Stowers Oil and Gas Company*, 27 FERC ¶ 61,001, at 61,001 & n.3 (1984) (Commission is "master of its own calendar and procedures").

¹⁸ Pursuant to Order No. 681, the settlement provides that during Stage 1-A, an LSE's FTR requests will not be subject to pro-ration, except in cases of *force majeure*, to ensure it receives FTRs equal to its zonal base load. See *PJM Interconnection, LLC*, 119 FERC ¶ 61,144 at P 17 (2007). The pro-rationing methodology is maintained for all other stages of the FTR allocation process.

¹⁹ E.g., *Colorado Interstate Gas Co. v. FPC*, 324 U.S. 581, 589 (1945) (allocation of costs is "not a matter for the slide rule" and "has no claim to an exact science.")

29. In allocating those rights, PJM takes into account how much of the constraint was due to the megawatt level requested by each company. As the example in the Complaint Order showed, a line may have a capacity of 50 MW, with two companies each requesting 200 MW of ARR from different sources and sinks. The ARRs requested are from a specific generation source to the respective loads of each entity. The requested ARRs both use the constrained line, but, because the system is a network, also will use unconstrained portions of the rest of the PJM system.

30. In the example, entity A has a DFAX (line usage) of 50 percent. That means that due to the properties of the network, 50 percent (*i.e.*, 100 MW) of its request would flow on the constrained line. Entity B, with a DFAX of 25 percent, would use 50 MW of that constrained line. The result would be a total of 150 MW requested on a 50 MW line. In this case, entity A's requested ARRs contribute more to the constraint than that of entity B because entity A uses more of that line to serve its load from its designated sources.

31. PJM would then allocate the ARRs in proportion to the requests (each 200), and then in inverse proportion to the effect each request has on the line in question. In other words, because both parties have historic resources that permit each to request 200 MW over their respective paths, PJM proportionally allocates 50 percent of the constrained line to each company. As a result, both entity A and entity B would be allocated 25 MW on the constrained line.

32. Entity A would receive 50 MW of ARRs, because 50 percent of its nomination flows over unconstrained lines.²⁰ Entity B would receive ARRs of 100 MW, because only 25 percent of its request flows over the constrained line and 75 percent flows over unconstrained lines.²¹ Thus, PJM allocates constrained lines in proportion to the legitimate ARR requests made that utilize those lines in some respect. We cannot find that a proportionate allocation of a constrained line is unjust and unreasonable.

33. We also find the Municipals and APPA's arguments regarding cost causation to be unpersuasive. They contend that the Complaint Order sanctions a Tariff that requires PJM to impose on the Municipals costs and constraints on the Bedington-Black Oak line that are, in part, caused by other users. The Municipals contend the pro-rationing formula is unjust and unreasonable because at least, in part, the constraints are due to loop flow, increased ARR requests on the Bedington-Black Oak transmission line, and load growth.

²⁰ Because entity A is allocated 25 MW of the constrained line, it can receive a total of 50 MW, because only 50 percent of its request flows over the constrained line.

²¹ Because entity B is allocated 25 MW of the constrained line, it can receive a total of 100 MW, because only 25 percent of its nomination flows over the constrained line.

34. As we stated in the Complaint Order, and reaffirm here, PJM has correctly applied its ARR allocation methodology.²² Loop flow, by definition, comes from outside the PJM system, and cannot be attributed to specific parties. We therefore, cannot find it unreasonable for PJM's ARR allocation method for the 2006/2007 year to take into account the realities it faces, (*i.e.*, the reduction in total line capacity due to loop flow) and to allocate ARRs based on the total amount of simultaneously feasible ARRs available on that line, rather than to ignore the effect of loop flow.

35. With respect to increased requests on the Beddington-Black Oak line and load growth, PJM's current Tariff allows parties to request ARRs based on their use of historical resources. This is, we note, the same predicate on which the Municipals rely in arguing that they are entitled to ARRs covering their historical resources. The PJM Tariff also places limits on the amount of ARRs that can be requested from a historical resource. For example, an LSE's request is limited to the "number of megawatts equal to or less than the amount of the resource that has been assigned to the Network Service User."²³ We cannot find that permitting LSEs to make use of their historical resources is unjust and unreasonable, even if those LSEs experience varying amounts of load growth.

36. Moreover, regardless of the reasons for the lack of transmission capacity available over the constrained facility in question, pro-rationing is required when transmission capacity is unable to accommodate the quantity of ARRs requested in each stage, *i.e.*, the line is oversubscribed. The Municipals are among the users of this line and, therefore, their use is among those that cause the need to pro-rate. In this regard, the ARR allocation method used by PJM is based on cost causation principles because it reflects, proportionally, the amount of the constrained facility that is used by each entity to serve its load. The requested ARRs are pro-rated based on the use of the constrained facility resulting from each entity's request because it is the entity's requested use of the facility that is contributing to the constraint.

²² Complaint Order, 117 FERC ¶ 61,219, at P 60.

²³ PJM Tariff, section 7.4.2(b). In determining this amount, the Office of the Interconnection determines a set of eligible sources based on the historical reference year and assigns a pro rata amount of megawatt capability from each resource to each Network Service User in the Zone based on its proportion of peak load in the Zone.

37. The Municipals also suggest that PJM does not take into account a situation in which two customers submit different ARR requests.²⁴ The Municipals contend that, because they are smaller customers, they have less of an effect on the constrained line.

38. The Municipals provide an example in which there are two customers nominating FTRs: Customer A nominates 50 MW and Customer B nominates 350 MW. The line over which these nominations flow has a capacity of only 50 MW. Fifty percent of Customer A's nomination flows over the line, while 25 percent of Customer B's nomination flows over that line (*i.e.*, DFAXs of .50 and .25 respectively). The Municipals maintain that PJM's allocation method would unfairly allocate Customer A 12.5 MW of FTRs, while Customer B would receive 175 MW of FTRs.

39. Whether or not Customer A is smaller than Customer B, we cannot find that PJM's allocation of the line is unjust and unreasonable. Under PJM's allocation each customer gets allocated the proportion of the line represented by its historic entitlement to resources using that line: Customer A is allocated 12.5 percent (50/400) of the 50 MW line or 6.25 MW, while Customer B is allocated 87.5 percent (350/400) or 43.75 MW. PJM then determines the FTR allocation based on the megawatts that each customer can move on the proportion of the line it is allocated. Customer A receives 12.5 MW because 50 percent of the power it purchases from its historic resource moves over that line and Customer B would receive 175 MW.²⁵ This allocation treats small and large customers identically based on their proportionate share of the congested line. For example, if the nomination from the smaller Customer A used only 25 percent of the line, and the nomination from the larger Customer B used 50 percent of the line, Customer A would then receive 25 MW (50 percent of its initial request) and Customer B would receive only 87.5 MW (25 percent of its initial request).

40. The Municipals also contend that their alternate pro-rationing approach is superior. While there may be a number of just and reasonable methods for pro-rating ARRs over a constrained facility, we cannot say that the method used by PJM is unjust and unreasonable. It allocates, via pro-rationing, ARRs based on an entity's use of the constrained facilities. Also, it has the advantage of increasing the total number of ARRs distributed system-wide as compared to the method suggested by the Municipals. For example, suppose PJM used a simple proportional allocation, as Municipals suggest, and applied it in the example used in the Complaint Order. In that case, Company A and B

²⁴ Request for Rehearing at 22.

²⁵ Since it is allocated 12.5 percent of the line, and 50 percent of its power flows on the line, the 12.5 MW of FTRs will completely fill its allocated portion.

would each be allocated 66.66 MW, for a total of 133 MW of ARR, ²⁶ compared with PJM's total allocation of 150 MW. ²⁷ The PJM approach results in more total system ARR than the approach proposed by the Municipals. Moreover, the method used by PJM is the result of PJM's stakeholder process and it has a sound economic basis as outlined above. We cannot, as the Municipals contend, find it unjust and unreasonable for the 2006/2007 allocation year.

41. The Municipals cite to the fact that the Commission stated in the Complaint Order that it was sympathetic with the concerns raised by the Municipals. But this statement should not be misconstrued to imply that PJM has violated its Tariff or to conclude that the Tariff is unjust and unreasonable or unduly discriminatory for the 2006/2007 year. The Commission has found that the Complainants did not demonstrate that PJM had violated its tariff in pro-rationing ARR for the 2006/2007 year.

42. APPA contends that the Commission, by requiring PJM to adapt its current market rules to comply with Order No. 681 in the PJM LTTR Order, supports APPA's contention that the current market rules are unjust and unreasonable and implemented in a discriminatory manner. However, the Commission did not find in the LTTR Order that the pro-rationing methodology was unjust and unreasonable. The Commission found, among other things, that PJM's proposed allocation of long-term ARR, including the use of pro-rationing, did not meet the Commission's reasonable needs standard as required by Order No. 681 in stage 1A of the PJM process. Stage 1A did not exist in the existing Tariff and was only mandated by Order No. 681. Any findings in the LTTR order were based on the priorities established in Order No. 681, as required by EAct 2005, and cannot be abstracted and applied to the tariff governing the 2006/2007 allocation, where these requirements did not exist.

²⁶ Since both parties have the same requested level of ARR, the Municipals would allocate the same level of ARR to each shipper. Under the example, the capacity of the constrained line is 50 MW, and the total use of the line from the two requests is 150 MW (100 MW from the customer with the DFAX of .50 and 50 MW from the customer with the DFAX of .25). Since the line's capacity of 50 MW is 1/3 of the total requested ARR, the Municipals would allocate to each requester 1/3 of its requested amount of 200 MW, or 66.67 MW. In this example, the customer with the DFAX of .5 would be allocated 66 percent of the constrained line ($200 * .5/50$) while the customer with the DFAX of .25 would be allocated 33 percent of the constrained line ($200 * .25/50$).

²⁷ As explained above in paragraphs 32, PJM would allocate 50 MW to the customer with the DFAX of .50 and 100 MW to the customer with the DFAX of .25.

43. We also disagree with the Municipals' contention that PJM's ARR allocation process is not transparent. The Municipals argue that PJM does not post all of the data, assumptions or methodologies it employs in determining simultaneous feasibility. However, we find that PJM's process, which includes posting ARR and FTR information for current and past allocations for customers to evaluate, is sufficiently transparent.²⁸ Posting of all information is not possible because some information, such as a list of all LSEs that requested ARRs and the associated percentages granted to such entities, would reflect individual market participants' market positions and, therefore, would be confidential pursuant to PJM's market rules.²⁹ Accordingly, we find that PJM's ARR allocation process is sufficiently transparent given the need to protect the confidential information of PJM's members.

3. A Remedy for the 2006/2007 Allocation is Not Appropriate

44. The Municipals also maintain that the Commission should act in this docket in order to apply a remedy for the 2006/2007 planning year. The Municipals maintain that the ARR allocations should be re-run for the 2006/2007 planning year, because notice of the Municipals' complaint in the Federal Register is sufficient notice to PJM's customers that their expectations may be upset.

45. Because as discussed above, we have found that PJM's existing tariff is not unjust and unreasonable as applied to the 2006/2007 year, no refunds are necessary.³⁰ However, we reaffirm our determination that providing refunds for this year would be inappropriate in any event.

46. As we found in the Complaint Order, we see no basis for upsetting customer expectations with respect to the ARR allocation for the 2006/2007 year.³¹ This case involves an auction of ARRs that occurred in June of 2006 on which all participants in the process have relied in making FTR determinations as well as energy commitments based on those allocations. As a result, it would not be practical to re-run the auction for

²⁸ See PJM website at www.pjm.com/markets/ptr/auction-user.html.

²⁹ See Complaint Order, 117 FERC ¶ 61,219, at P 66.

³⁰ In *Louisiana Public Service Commission v. FERC*, No. 05-1161, 2007 U.S. App. LEXIS 7596 (D.C. Cir. Apr. 3, 2007), the court remand the Commission's decision not to require refunds of costs that the Commission had found unjust and unreasonable. In the instant case, however, we do not find that PJM's 2006/2007 allocation methodology unjust and unreasonable.

³¹ 117 FERC ¶ 61,219, at P 65.

the 2006/2007 year to implement a change in the allocations for all of the participants in the ARR process, not just the Municipals.

47. The Municipals cite *NYISO* for the proposition that the filed rate doctrine does not apply where customers are on notice that resolution of some specific issue may cause a later adjustment to the rate being collected at the time of service.³² However, in this case, the parties were not on notice in June 2006 when the auction was final that there was a potential for changing the ARR allocations. The Municipals also failed to recognize that *NYISO* also states that:

the Commission has generally disfavored re-determining market outcomes after the fact, holding that “retroactivity is not authorized when a new rule is substituted for an old rule that was reasonably clear so that the settled expectations of those who had relied on the old rule are protected.”³³

This is the situation in the instant case, where PJM’s ARR allocations were determined by pre-existing rules of which all participants were aware.

48. Similarly, in *Bangor Hydro-Electric Company v. ISO New England Inc.*,³⁴ the Commission determined not to retroactively recalculate energy prices when the ISO had complied with the filed rate, even though (unlike this case), the ISO had committed an implementation error. As the Commission stated:

to go back at this point and change those prices, when no notice was given by ISO-NE that such a disruption might occur, would do far more harm to wholesale electricity markets than is justifiable or appropriate in light of the circumstances raised by Bangor Hydro and would be fundamentally unfair to market participants³⁵

49. The Municipals maintain that the Commission nevertheless should fashion a special remedy for them short of requiring a re-running of the ARR allocation, by reducing their congestion costs and imposing a system-wide uplift charge to fund this

³² Municipals Request for Rehearing at 26 (*citing NYISO*, 113 FERC ¶ 61,340, at P 18).

³³ *NYISO*, 113 FERC ¶ 61,340, at P 17 (*citing Wisvest-Connecticut, LLC v. ISO New England, Inc.*, 104 FERC 61,262, at 61,849 (2003)).

³⁴ 97 FERC ¶ 61,339 (2001), *reh’g denied*, 98 FERC ¶ 61,298 (2002).

³⁵ *Id.* at 62,590.

reduction. However, we see no reason to provide an alternate remedy since PJM did not violate its Tariff, and the 2006/2007 allocation methodology was not unreasonable.

50. The Municipals cite *PJM Interconnection* as an example of a case where we required payments to customers via uplift charges spread across all load in PJM when insufficient FTRs existed to provide a hedge to holders of long-term firm point-to-point transmission contracts as well as to network service customers.³⁶ In that case, the Commission made clear that it would not revise allocations because parties had relied on those allocations.³⁷ On the facts of the case, however, the Commission did permit mitigation limited to certain holders of firm point to point contracts. The Commission permitted such mitigation where PJM had conceded that under its Tariff it provided preference to network customers over firm point to point customers in the award of ARR. But the facts surrounding the grant of mitigation are different than those at issue here. That case dealt with the initial allocation of FTRs when AEP integrated into PJM, and issues arose as to the allocation of FTRs to point to point customers that had not previously been faced. In contrast, PJM's allocation here is based on a Tariff mechanism, and we have found that PJM's existing Tariff does not provide any undue preference to one set of firm customers as compared with another. In addition, in that case, the Commission acted on September 17, 2004, prior to the October 1, 2004 effective date of the allocation, as opposed to the Municipals' complaint which was filed after the effective date of the allocation. Further, the uplift payments in that case were limited to point-to-point transmission customers who failed to receive any FTRs. In contrast, the Municipals' complaint would involve re-determining the allocation of ARRs for all customers on the PJM system with uplift payments potentially to all those entities whose ARR allocation would decrease.

51. The Commission has discretion to determine whether to order refunds.³⁸ Here, PJM allocated ARRs based on its Tariff and Commission acceptance of that methodology, parties had every reason to rely upon that allocation in making contractual commitments, and so we conclude that providing refund relief for the 2006/2007 planning year would cause more harm than good.

³⁶ Municipals Request for Rehearing at 28 (*citing* PJM Interconnection, 108 FERC ¶ 61,246, at P 31 (2004)).

³⁷ *PJM Interconnection*, 108 FERC ¶ 61,246, at P 1 (2004); *accord*, *PJM Interconnection, LLC*, 107 FERC ¶ 61223, at P 51 (2004) (too disruptive to the market to change ARR allocations).

³⁸ *Connecticut Valley Electric Co. v. FERC*, 208 F.3d 1037, 1043 (D.C. Cir. 2000) (*citing* *Niagara Mohawk Serv. Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967), and *Louisiana Public Service Commission v. FERC*, 174 F.3d 218, 225 (D.C. Cir. 1999)).

The Commission orders:

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.