

121 FERC ¶ 61,073  
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.

PJM Interconnection, LLC

Docket No. ER06-1218-005

ORDER ON CLARIFICATION AND DENYING REHEARING

(Issued October 22, 2007)

1. Order No. 681 required public utilities with organized electricity markets to make available long-term firm transmission rights (LTTRs).<sup>1</sup> On November 22, 2006, the Commission accepted PJM Interconnection, LLC's (PJM) LTTR proposal subject to modifications and a settlement procedure.<sup>2</sup> On May 17, 2007, the Commission issued an order on rehearing of the November 22 Order and on compliance filings and a settlement arising from the November 22 Order.<sup>3</sup> H-P Energy Resources LLC (H-P Energy) and PJM request clarification of the May 17 Order. The PSEG Companies (PSEG)<sup>4</sup> ask for rehearing. The Commission clarifies one conclusion in the May 17 Order as discussed below, directs further compliance, and denies rehearing.

**Rehearing and Clarification Requests**

2. PSEG requested rehearing of the May 17 Order on June 18, 2007. H-P Energy requested clarification on June 12, 2007 and PJM requested clarification on June 19, 2007. PJM filed an Answer to H-P Energy's request for clarification on June 26, 2007.

---

<sup>1</sup> *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, 71 Fed. Reg. 43,564 (August 1, 2006), FERC Stats. & Regs. ¶ 31,226 (2006), *order on reh'g*, Order No. 681-A, 117 FERC ¶ 61,201 (2006).

<sup>2</sup> 117 FERC ¶ 61,220 (2006) (November 22 Order).

<sup>3</sup> 119 FERC ¶ 61,144 (2007) (May 17 Order).

<sup>4</sup> The PSEG Companies consist of Public Service Electric and Gas Company (PSE&G), PSEG Power LLC (PSEG Power), and PSEG Energy Resources & Trade LLC (PSEG ER&T).

3. On June 20, 2007, the New York Independent System Operator, Inc. (NYISO) filed a motion for leave to intervene out of time. NYISO states that its interest in this proceeding is limited to the loop flow management issues raised by certain of the FirstEnergy companies<sup>5</sup> in comments filed on May 1, 2007 in response to PJM's April 2, 2007 informational filing concerning loop flows. NYISO states that FirstEnergy asked that a congestion management protocol between PJM and the Midwest Independent Transmission System Operator, Inc. be expanded to include NYISO. NYISO states that the FirstEnergy filing implicated NYISO's interests for the first time in this proceeding and that NYISO now has a substantial interest in this proceeding. NYISO states that it accepts the record as it currently stands.

### **Discussion**

#### **A. Procedural Matters**

4. The Commission will grant NYISO's late-filed motion to intervene with respect to the issues of loop flow management given the party's interest and the absence of undue prejudice or delay.

#### **B. Guideline (2)—Uplift Allocation Method**

5. PSEG asks for rehearing with respect to guideline (2)<sup>6</sup> which requires, among other things, that LTTRs be fully funded. PSEG asserts that the uplift mechanism PJM proposed to achieve full funding is not consistent with Order No. 681 because it does not

---

<sup>5</sup> FirstEnergy Service Company filed a motion to intervene and comments on behalf of American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Ohio Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and The Toledo Edison Company.

<sup>6</sup> Guideline (2) provides:

The long-term firm transmission right must provide a hedge against locational marginal pricing congestion charges or other direct assignment of congestion costs for the period covered and quantity specified. Once allocated, the financial coverage provided by a financial long-term transmission right should not be modified during its term (the "full funding"

(continued...)

spread uplift costs over a broad enough group. The Commission denies rehearing and affirms its holding in the May 17 Order that PJM's proposed uplift mechanism is consistent with Order No. 681.

### 1. Background

6. In the November 22 Order, the Commission found that PJM's LTTR proposal met the requirement of guideline (2) with respect to the stability of the quantity of rights awarded because the feasibility of the LTTRs was linked to PJM's transmission planning and expansion process. The Commission found, however, PJM's LTTR proposal did not comply with guideline (2) with respect to the full funding requirement. PJM proposed to continue its existing market rule, which prorates congestion payments to the LTTR holders of FTRs in the event of a shortfall of congestion revenues. The Commission stated guideline (2) "contemplates that the transmission organization will implement an uplift charge to make up for any shortfall in congestion revenues that would otherwise prevent full funding of the FTRs of LTTR holders."<sup>7</sup> The Commission noted there are important benefits to achieving full funding by means of an uplift mechanism, in particular, enhancing the tradability of the LTTRs. Therefore, the Commission required PJM to modify its LTTR proposal to include an uplift payment or similar mechanism to provide PJM with a source of revenue to make up for any shortfalls in congestion revenues that would otherwise prevent the full funding of FTRs held by the recipients of LTTRs.<sup>8</sup>

7. On January 22, 2007, PJM made a compliance filing containing an uplift mechanism in Docket No. ER06-1218-003. PJM proposed, first, to fully fund all FTRs and Auction Revenue Rights (ARRs),<sup>9</sup> both short-term and long-term, not just the FTRs

---

requirement) except in the case of extraordinary circumstances or through voluntary agreement of both the holder of the right and the transmission organization.

18 C.F.R. § 42.1(d)(2) (2007).

<sup>7</sup> November 22 Order at P 38 *citing* Order No. 681 at P 175.

<sup>8</sup> *Id.*

<sup>9</sup> PJM allocates ARR, both short-term and long-term, to LSEs that are historical customers and that have transmission service agreements. The ARR are rights to the

(continued...)

obtained by LTTR holders, in order to prevent the creation of effectively different FTR products. PJM also proposed a full funding cost allocation mechanism that allocates costs to all FTR holders on a pro-rata basis according to the total target allocations for all FTRs held at any time during the relevant planning period.<sup>10</sup> The Commission accepted PJM's uplift proposal in the May 17 Order.<sup>11</sup>

## 2. Rehearing Request

8. PSEG asks for rehearing of PJM's uplift allocation method primarily on the ground that allocating uplift based on FTR target allocations is inconsistent with the cost spreading principles of Order No. 681<sup>12</sup> and with the full funding requirement imposed by the Energy Policy Act of 2005. PSEG asserts that the May 17 Order approved PJM's uplift allocation method because it found the group of entities to which uplift would be allocated could reasonably be expected to be a group much larger than the under-funded FTR holders.<sup>13</sup> But, PSEG asserts, PJM's allocation of uplift charges based on FTR target allocations falls mainly on a relatively small set of market participants because thirteen percent of the FTRs issued by PJM constitute ninety-three percent of the total FTR target allocations of all FTRs.<sup>14</sup> PSEG states the Commission must assess the actual impact of PJM's uplift allocation method before accepting it regardless of

---

revenues from the FTR auctions. The LSEs can either collect the revenues to which their ARRs entitle them or convert their ARRs to FTRs. Section 7.4.2, PJM Open Access Transmission Tariff.

<sup>10</sup> May 17 Order at P 54. The FTR target allocation is equal to the product of the FTR MW and the price differences between sink and source that occur in the Day-Ahead energy market. *Id.* at n.47 citing *PJM 2006 State of the Market Report*, Volume II, at p. 308.

<sup>11</sup> May 17 Order at P 68-70.

<sup>12</sup> Citing Order No. 681 at P 177.

<sup>13</sup> May 17 Order at P 69.

<sup>14</sup> PSEG cites PJM's *2006 State of the Market Report* at p. 316 (included in PSGE Request for Rehearing as Appendix A).

language in the preamble to Order No. 681<sup>15</sup> stating it would be potentially reasonable to distribute uplift charges over holders of both short- and long-term rights. PSEG indicates that this statement in Order No. 681 conflicts with guideline (2).<sup>16</sup>

9. PSEG asserts that on rehearing, the Commission should adopt a load ratio share method for allocating uplift charges. PSEG asserts that the load ratio share method would satisfy guideline (2) because, in its view, underfunded FTR amounts would be fully paid out and, in addition, would not be charged back in a way that targets the FTR holders most likely to experience significant deficiencies. PSEG states the load ratio share method is the same method used to pay out overcollections for marginal losses. It states the basic rationale for paying out overcollections for marginal losses according to load ratio share is that “it is fair to distribute surpluses back to load customers since they pay for the fixed costs of the grid.”<sup>17</sup> PSEG states that the same rationale is equally valid here. Here, PSEG states, the source of FTRs and FTR funding is also the grid.

### **3. Commission Conclusion**

10. The Commission denies PSEG’s rehearing request. In Order No. 681, the Commission stated that it was concerned that allocating uplift charges solely to holders of rights that had been made infeasible (i.e., holders of under-funded FTRs in need of uplift payments) would be unreasonable because it would undercut the relative congestion price certainty provided by full funding.<sup>18</sup> The Commission also stated that a potentially reasonable approach would be to distribute uplift charges over all holders of both short- and long-term financial transmission rights.<sup>19</sup> Contrary to PSEG’s assertions, these statements in the preamble of Order No. 681 do not conflict with guideline (2).

---

<sup>15</sup> Order No. 681 at P 177.

<sup>16</sup> PSEG cites *Entergy Servs., Inc. v. FERC*, 375 F.3d 1204, 1209 (D.C. Cir. 2004) (*Entergy*) (quoting *Wyo. Outdoor Council v. U.S. Forest Serv.*, 165 F.3d 43, 53 (D.C. Cir. 1999) (*Wyoming*)). The cited portion of *Entergy* states that if language in a preamble to a regulation is inconsistent with the regulation, the language of the regulation controls. The cited portion of *Wyoming* states that courts give substantial deference to an agency’s interpretation of an ambiguous regulation.

<sup>17</sup> Citing *Atlantic City Electric Company v. PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,169, at P 28 (2006).

<sup>18</sup> Order No. 681 at P 176-177.

<sup>19</sup> *Id.* at P 177.

Guideline (2) requires full funding. The discussion in the preamble of Order No. 681 indicates one example of how the full funding requirement may reasonably be achieved, but it was not meant to suggest that it was the exclusive means of meeting the requirement.

11. In its proposal, PJM adopted full funding for all FTRs, both short- and long-term. It also allocated uplift charges to all holders of FTRs, both short- and long-term. The Commission found in the May 17 Order<sup>20</sup> and affirms here that the measures adopted by PJM for allocating uplift charges are consistent with Order No. 681. In particular, in adopting the allocation measures suggested in Order No. 681, PJM's proposal achieved the objective in Order No. 681 of spreading uplift charges over a group larger than the holders of under-funded FTRs.<sup>21</sup>

12. PSEG prefers the load ratio share method as an allocation method for uplift charges, which, it asserts, would spread uplift charges over an even larger group. In the May 17 Order, the Commission noted that some market participants prefer this method and that PJM is conducting a stakeholder process to consider this method.<sup>22</sup> The May 17 Order requires PJM to file an informational report by November 30, 2007 describing the alternatives evaluated and the results of the stakeholder process.<sup>23</sup>

13. As the Commission noted in the May 17 Order, however, while a load ratio share method may also have merit, PJM's current proposal is just and reasonable and consistent

---

<sup>20</sup> May 17 Order at P 69.

<sup>21</sup> To the extent that the guideline (2) requirement of full funding is ambiguous, the case of *Wyoming* cited by PSEG supports giving substantial deference to the Commission's interpretation of guideline (2) as set forth in the preamble of Order No. 681, the May 17 Order, and this order.

<sup>22</sup> May 17 Order at P 70 and 74.

<sup>23</sup> *Id.* at P 74.

with Order No. 681.<sup>24</sup> A utility must establish that its proposed rate is reasonable, but it is not required to show that its proposal is superior to other proposals.<sup>25</sup> As long as the utility's proposal is just and reasonable, it is acceptable. That is the case here.

### **C. Guideline (2)--Treatment of Negative FTRs**

14. In the May 17 Order, the Commission also considered how negative FTRs should be treated in the uplift allocation.<sup>26</sup> In its protest of PJM's compliance filing, Old Dominion requested that the Commission direct PJM to modify the uplift allocation for each month to include only positive value FTRs and that such FTRs must not be reduced by negative value or counter-flow FTRs in that month. Old Dominion stated that such negative or counter-flow FTRs are fully funded in and of themselves; and therefore, neither contribute to nor require an uplift mechanism in order to achieve full funding. The Commission agreed. The Commission stated that negative FTRs function to ensure that positive FTRs (target allocations) are fully funded. The Commission determined, therefore, that reducing positive FTRs by negative value or counter-flow FTRs in the uplift allocation process would result in their holders paying twice (once through the negative FTR and again through uplift). Accordingly, the Commission directed PJM to revise its tariff as necessary to require that the monthly uplift allocation include only positive FTRs, with no reduction by negative or counter-flow FTRs.

#### **1. Request for Clarification**

15. In requesting clarification, PJM indicates that currently it calculates the uplift charge using both positive and negative FTRs, so that a party's share of an LTTR uplift charge is equal to its total net FTR target allocation position, including both positive and negative FTR target allocations, divided by the total net sum of all FTR target allocation positions, including both positive and negative FTR target allocations.<sup>27</sup> PJM asks the

---

<sup>24</sup> *Id.* at P 70.

<sup>25</sup> *OXY USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995); *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984); *California Independent System Operator Corp.*, 120 FERC ¶ 61,023 at P 45 (2007).

<sup>26</sup> *Id.* at P 71.

<sup>27</sup> PJM cites section 5.2.5(c)(2) and (3) of Schedule 1 of the PJM Operating Agreement. See Filing of January 22, 2007, PJM Operating Agreements (Redline Version), First Revised Second Revised Sheet No. 128; First Revised Sheet No. 128A (Docket No. ER06-1218-003).

Commission to clarify its directive with respect to the uplift allocation calculation. Specifically, PJM requests the Commission to clarify that PJM should include only positive FTR target allocations in calculating both the individual participant's target allocations and also in calculating the sum of all FTR target allocations (i.e., the denominator of the fraction). PJM provides an example which demonstrates that the Commission's method would result in a greater allocation of uplift charges to an entity with negative FTRs than would PJM's existing method.<sup>28</sup> PJM states this result appears to be contrary to the Commission's rationale for excluding negative FTRs from the uplift calculation, which was that entities with negative FTRs are already funding positive FTRs and should not have to pay twice, once through the negative FTR and again through the uplift charge.<sup>29</sup>

## 2. Commission Conclusion

16. We will clarify the May 17 Order. After reviewing the examples provided by PJM, the Commission now realizes that it did not state clearly its intent regarding the allocation of uplift payments. The Commission's intent in ruling as it did in the May 17 Order was to ensure that the share of any revenue shortfall allocated to an FTR holder through uplift reflects only its net positive target allocation; that is, the positive target allocation that may remain after subtracting the FTR holder's negative target allocation, if any. PJM's examples and explanation demonstrate that the mechanism PJM proposed in its compliance filing generally achieves this objective.

17. However, PJM's examples, as well as the relevant language of its tariff and Operating Agreement,<sup>30</sup> do not explain how an FTR holder with a net negative target allocation would be treated in the calculation of uplift charges. The Commission finds

---

<sup>28</sup> In PJM's example, party A has \$100,000 of positive FTRs and party B has \$100,000 of positive FTRs and \$50,000 of negative FTRs. If both negative and positive FTRs are included in the individual participant's target allocations, the numerator of the uplift calculation, and in the sum of all FTR target allocations, the denominator of the uplift calculation, as in PJM's current method, party B is allocated 33 percent of the uplift charge ( $\$50,000/\$150,000=1/3$ ). PJM demonstrates that if negative FTRs are excluded from both the numerator and the denominator of the uplift calculation per the Commission's May 17 directive, party B is allocated 50 percent of the uplift charge ( $\$100,000/\$200,000=1/2$ ). PJM Motion for Clarification at 3-4 (unnumbered).

<sup>29</sup> May 17 Order at P 71.

<sup>30</sup> See, e.g., section 5.2.5(c) of Schedule 1 of the PJM Operating Agreement.

that no uplift should be assigned to such FTR holders and, therefore, the negative target allocations of all such FTR holders should be excluded from the calculation formula. We direct PJM to revise its Open Access Transmission Tariff (OATT) and Operating Agreement accordingly.

18. Finally, the Commission notes, however, that its acceptance of the general methodology of PJM's uplift proposal does not preclude the future consideration of other approaches to designing an uplift mechanism that may be developed through PJM's stakeholder process. We expect that PJM will describe any such proposals that emerge from the current stakeholder process when it submits its informational report in November.<sup>31</sup>

**D. Guideline (3)—Incremental ARR from Expansions**

19. In the November 22 Order, the Commission found that PJM's LTTR proposal complied with guideline (3)<sup>32</sup> which provides that LTTRs that are made feasible by transmission upgrades or expansions must be available to a party that pays for the upgrades or expansions,<sup>33</sup> but required PJM to file a standardized process to support the granting of Incremental ARRs in section 7.8 of its Tariff.<sup>34</sup> In the May 17 Order, the Commission confirmed that it had accepted such procedures, which included the timing and calculation of Incremental ARRs, in prior dockets.<sup>35</sup>

---

<sup>31</sup> See May 17 Order at P 74.

<sup>32</sup> Guideline (3) provides:

Long-term transmission rights made feasible by transmission upgrades or expansions must be available upon request to any party that pays for such upgrades or expansions in accordance with the transmission organization's prevailing cost allocation methods for upgrades or expansions.

18 C.F.R. § 42.1(d)(3) (2007).

<sup>33</sup> November 22 Order at 46.

<sup>34</sup> *Id.* at P 47 and Ordering Paragraph (C).

<sup>35</sup> May 17 Order at P 97. The procedures were accepted in Docket Nos. ER07-344-000 and EL06-67-001 by an unpublished Letter Order on February 8, 2007 (February 8 Letter Order).

## 1. Request for Clarification and Answer

20. H-P Energy asks the Commission to clarify that the current PJM rules do not ensure that entities that fund transmission upgrades will receive the rights that were requested and that, consequently, they do not comply with guideline (3). H-P Energy asserts that under the current PJM procedures the funding entity has no certainty of any Incremental ARR because the version of the Simultaneous Feasibility Test that PJM employs at the time an upgrade is studied and paid for may produce a different result from the version and vintage of the Simultaneous Feasibility Test that PJM employs when the upgrade goes into service.<sup>36</sup> H-P Energy asserts the binding determination of Incremental ARRs should be moved forward in time to the System Impact Study stage or, in any event, no later than the time of execution of the Upgrade Construction Service Agreement when the financial commitment is made. It states this proposal is pending in the PJM stakeholder process.<sup>37</sup>

21. PJM responds in its Answer that H-P Energy's motion is beyond the scope of this proceeding because the feasibility requirement is implemented in a part of PJM's Tariff that the Commission accepted in another proceeding.<sup>38</sup> Also, PJM states that its LTTR rules are consistent with guideline (3) because that guideline imposes a feasibility requirement<sup>39</sup> so that the amount of Incremental ARRs requested may differ from the rights actually allocated based on feasibility at the time the upgrades are placed in service. Finally, PJM states that H-P Energy should pursue this issue through the PJM stakeholder process.

## 2. Commission Conclusion

22. The Commission denies H-P Energy's request to clarify that the PJM LTTR rules do not comply with guideline (3). Guideline (3) does not guarantee that an entity will

---

<sup>36</sup> Citing section 231.2 of the PJM Open Access Transmission Tariff (PJM OATT).

<sup>37</sup> Citing <http://www.pjm.com/committees/mic/downloads/20070523-item-18-iarr-finality.pdf>. H-P Energy states it has also proposed this reform for merchant transmission projects.

<sup>38</sup> PJM refers to Part VI of its Tariff which was accepted in the February 8 Letter Order.

<sup>39</sup> Citing November 22 Order at P 46 and May 17 Order at P 19-20.

receive the amount of Incremental ARR that it requests when it is funding a network upgrade. Rather, guideline (3) requires that the funding entity receive capacity rights made possible by its transmission upgrade that are simultaneously feasible.<sup>40</sup> Consistent with guideline (3), under section 7.8 of PJM's Operating Agreement and Tariff, any party that funds upgrades is eligible to obtain Incremental ARRs.<sup>41</sup> As the Commission stated in the May 17 Order, the purpose of guideline (3) is to ensure that entities that fund transmission upgrades that "expand transmission capacity" receive Incremental ARRs "commensurate with this expanded capacity."<sup>42</sup> As the Commission explained previously in the November 22 and May 17 Orders, the funding party may not receive Incremental ARRs for transmission rights that are not simultaneously feasible because "if requests were granted that cannot be supported by the capacity of the system, the market would be undermined since they could not be financially supported by congestion costs and inequities would occur among market participants."<sup>43</sup>

23. H-P Energy states it believes that PJM's procedures for identifying the Incremental ARRs to be awarded should be reformed so that there can be some certainty associated with investment in upgrades. It also states that a reform proposal to change the time at which Incremental ARRs are determined is pending in the PJM stakeholder process.<sup>44</sup> The proposal was listed for consideration at the June 27 and July 25, 2007

---

<sup>40</sup> May 17 Order at P 20.

<sup>41</sup> We note that section 7.8(b) of the existing Operating Agreement and Tariff provisions provide that PJM will assess the simultaneous feasibility of a party's requested Incremental ARRs and offer a preliminary estimate of the upgrades that will be required to support such a request, which includes the future years of the 10-year term of the stage 1A ARRs. We further note that, pursuant to section 7.8(c) of its Operating Agreement, no later than forty-five days prior to the in-service date of the upgrades or expansion PJM will notify the party of the actual amount of Incremental ARRs that will be awarded based on the outcome of a simultaneous feasibility test performed at that time. PJM Interconnection, L.L.C., Third Revised Rate Schedule FERC No. 24 (Operating Agreement), Schedule 1, First Revised Sheet No. 138C. In addition, the scope of the PJM Regional Transmission Expansion Planning studies includes evaluation and analysis of upgrades to support elective upgrade ARRs.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* referring to November 22 Order at P 46.

<sup>44</sup> It appears that H-P Energy has principally proposed to modify procedures for assigning the final determination of IARRs and replacing "the (45) days prior to the in-  
(continued...)

meetings of the PJM Market Implementation Committee. The Commission agrees with PJM that this issue should be considered in the stakeholder process. If PJM submits revisions to its procedures for determining Incremental ARR's the Commission will consider this matter further. Accordingly, we conclude as before that PJM's rules comply with guideline (3).

The Commission orders:

(A) PSEG's request for rehearing is denied.

(B) H-P Energy's request for clarification is denied.

(C) PJM is required to make a compliance filing within 30 days of the date of this order to revise its OATT and Operating Agreement to make clear that net negative FTR target allocations are not included in the uplift calculation formula and FTR holders with net negative FTR target allocations are not assigned uplift, as discussed above.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

---

service date" language with "(45) days prior to the required execution date of the interconnection service agreement or upgrade construction agreement" through the PJM stakeholder process. See document labeled Item 10-IARR Finality dated August 22, 2007 located at: [www.pjm.com/committees/mic/mic.html](http://www.pjm.com/committees/mic/mic.html).