

124 FERC ¶ 61,059
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. EL08-55-000

ORDER GRANTING DECLARATORY ORDER

(Issued July 18, 2008)

1. On April 15, 2008, PJM Interconnection, LLC (PJM) filed a Petition for Declaratory Order (petition) regarding its management of its interconnection queue. In the petition, PJM requests that the Commission confirm that PJM may, consistent with its Open Access Transmission Tariff (tariff), the Commission's decision in *Neptune Regional Transmission System, LLC*,¹ and Commission policy, treat generator retirement announcements that precede an interconnection customer's queue date as higher-queued projects and treat the reversal of these retirements after the customer's queue date as higher-queued projects withdrawing from the queue. Under this interpretation of PJM's tariff, PJM could consider such retirements when first conducting interconnection studies for the customer's project and conduct re-studies of the customer's project based on the retirement reversals. For the reasons discussed below, we grant PJM's petition.

I. Background

2. PJM's interconnection process begins when a customer submits an interconnection request and receives a queue position. PJM then conducts a Feasibility Study, a System Impact Study, and a Facility Study to identify the facilities required to accommodate the customer's project, estimate and refine the customer's system upgrade costs, and provide the customer with the opportunity to evaluate its business risks.² Following these studies, PJM and the customer execute an interconnection agreement. The interconnection

¹*Neptune Regional Transmission System, LLC*, 110 FERC ¶ 61,098 (Neptune Order), *reh'g denied*, 111 FERC ¶ 61,455 (Neptune Rehearing Order) (2005), *aff'd sub nom. Pub. Serv. Elec. and Gas Co. v. FERC*, 485 F.3d 1164 (D.C. Cir. 2007) (collectively, *Neptune* proceeding).

² These studies are progressively more expensive and are paid for by the customer.

agreement “locks-in” the customer’s costs; once it is executed, the customer cannot be assigned construction of new facilities or allocated new costs.³ However, if certain system conditions change before the interconnection agreement is executed, PJM may seek to re-study the customer’s project. This re-study may result in PJM requiring the customer to construct new or different facilities, which may result in the customer having to pay increased or decreased system upgrade costs.

3. The Commission addressed the limits of PJM’s authority to re-study a project in the *Neptune* proceeding, where it held that generator retirement announcements that follow a project’s queue date do not provide a basis for re-studies. After examining Order No. 2003,⁴ PJM’s tariff, and the fundamental principles of the queue process, the Commission interpreted PJM’s tariff to permit re-studies only in response to events that were reasonably foreseeable and calculable at the time the project entered the queue, such as a higher-queued project withdrawing from the queue.⁵ The Commission explained that queue position forms an important baseline in the PJM cost allocation process because it provides customers with a reasonable degree of certainty in assessing their costs, and that holding customers responsible for costs that arise after their queue dates would create uncertainty and unreasonable delay in their ability to assess their business risks and finalize their interconnection agreements.⁶

³ The customer’s estimated costs, however, may be “trued up” to reflect actual costs.

⁴ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh’g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh’g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh’g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff’d sub nom. Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007). Order No. 2003 permits re-studies only if: (1) a higher-queued project withdraws from the queue, (2) a higher-queued project requires a modification, or (3) the project’s point of interconnection is re-designated. Order No. 2003, *pro forma* Large Generator Interconnection Procedures §§ 6.4, 7.6, 8.5.

⁵ *Neptune Rehearing Order*, 111 FERC ¶ 61,455 at P 19-20.

⁶ *Id.* P 19, 22, 23 (“Project sponsors are entitled to a timely upfront determination of costs, based on reasonably foreseeable events. For example, the interconnection customer will know the costs associated with any higher queued project and can therefore factor into its analysis the possibility that it may have to pay some of those costs in the event the higher queued project drops out.”).

II. Petition for Declaratory Order

4. In its petition, PJM requests that the Commission resolve two issues left unaddressed in the *Neptune* proceeding;⁷ specifically, PJM seeks guidance on how it should handle generator retirement announcements that *precede* a customer's queue date, and how it should handle reversals of these retirements *after* the customer's queue date. PJM states that its approach is to treat retirement announcements that precede a customer's queue date as higher-queued projects, and thus to consider them when studying the customer's project. PJM further states that it treats reversals of these retirements after the customer's queue date as higher-queued projects withdrawing from the queue, and thus as triggers to re-study the customer's project. PJM requests a declaratory order confirming that its approach to these issues is consistent with its tariff and the *Neptune* proceeding.

5. PJM argues that its petition is consistent with its tariff and the *Neptune* proceeding because it abides by the principle that a customer's costs must be based on circumstances existing as of its queue date and the principle that re-studies are permitted only in response to events that were reasonably foreseeable and calculable at the time the customer entered the queue. PJM states that before submitting an interconnection request, customers may assess their business risks by viewing PJM's website and ascertaining which generators have submitted formal retirement announcements, just as they may view the website and obtain a list of higher-queued projects. Similarly, PJM argues that just as it is foreseeable on the customer's queue date that a higher-queued project will leave the queue, it is foreseeable that a retiring generator will reverse its decision.⁸ Thus, PJM contends that the possibility of a generator reversing its retirement decision, like the possibility of higher-queued projects withdrawing from the queue, should be part of the customer's business risk assessment.

III. Notice of Filing and Responsive Pleadings

6. Notice of PJM's filing was published in the *Federal Register*,⁹ with comments and interventions due on or before May 15, 2008. American Municipal Power-Ohio, Inc.

⁷ In a footnote in that proceeding, the Commission explained that its decision was limited to the issue presented by the complaint in that proceeding. *See Neptune Order*, 110 FERC ¶ 61,098 at n.11.

⁸ PJM states that since 2004 fourteen deactivation notices have been withdrawn, four have been deferred, and three units have deactivated and subsequently reactivated. PJM Petition for Declaratory Order at 10 (PJM Petition).

⁹ 73 Fed. Reg. 23,455 (2008).

(AMP-Ohio),¹⁰ Duke Energy Corporation (Duke),¹¹ Old Dominion Electric Cooperative, Public Service Electric and Gas Company, and Pepco Holdings, Inc. (PHI)¹² filed timely motions to intervene. Hess Corporation, American Electric Power Service Corporation, and CPV Power Development, Inc. filed motions to intervene out-of-time. Hudson Transmission Partners, LLC (HTP), New York Power Authority (NYPA), Exelon Corporation (Exelon), and FirstEnergy Service Company (FirstEnergy) filed timely motions to intervene and comments. The New Jersey Board of Public Utilities (NJBPU) filed a notice of intervention and protest. The Public Service Commission of Maryland (Maryland Commission) filed a notice to intervene out-of-time and comments. PJM and HTP filed answers.

7. HTP and NYPA support PJM's petition. HTP argues that interconnection customers may be charged for upgrades that are no longer necessary if PJM cannot conduct a re-study following reversal of a retirement decision, and that this would violate cost causation principles in PJM's tariff and Commission policy.

8. Exelon is concerned about an apparent inconsistency between how PJM manages its interconnection process and how it manages its Regional Transmission Enhancement Planning (RTEP) process following reversal of a retirement decision. Exelon explains that whereas PJM is proposing to account for reversals in the interconnection process by conducting re-studies, PJM Manual 14B specifies that PJM will not consider reversals of retirement decisions when conducting its RTEP process and will therefore conduct the process as if the reversal never occurred. Exelon argues that the Manual 14B process could result in load financing upgrades that otherwise would be allocated to generators. Consequently, Exelon requests that the Commission require PJM to explain how it will conduct the RTEP process following reversal of a retirement decision, how it will reconcile inconsistent planning criteria, and how it will avoid unfairly allocating system upgrade costs to load.

9. FirstEnergy supports PJM's modified queue process, but contends that the petition is too narrow in scope.¹³ FirstEnergy requests that the Commission require a compliance

¹⁰ AMP-Ohio's motion is on behalf of itself and its members.

¹¹ Duke's motion is filed on behalf of its franchised utility affiliates: Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., Duke Energy Kentucky, Inc. and Duke Energy Carolinas, LLC, as well as Duke Energy Shared Service.

¹² PHI includes: Pepco Delmarva Power & Light Company, Atlantic City Electric Company, Conectiv Energy Supply, Inc., and Pepco Energy Services, Inc.

¹³ FirstEnergy Comments at 3.

filing by PJM to address certain issues related to generator retirements and RTEP cost allocations. In the alternative, FirstEnergy asks the Commission to set this matter for hearing and settlement judge procedures.

10. FirstEnergy argues that PJM must institute rules that are consistent and that do not result in unreasonable cost increases for PJM transmission customers. FirstEnergy claims that as a result of the *Neptune* proceeding, merchant transmission developers are not assigned any additional costs for required network upgrades due to the retirement or re-retirement of a generating plant. FirstEnergy contends that this results in these costs being shifted to other PJM transmission customers. FirstEnergy argues that PJM's petition, which it characterizes as allowing re-studies of merchant projects in the event a generator decides to reactivate, will also result in costs shifting to other PJM transmission customers—likely in the form of baseline RTEP project costs. FirstEnergy asserts that these cost re-allocations present it with difficulties in budgeting and timing its expenses. FirstEnergy contends that if merchant transmission projects benefit by cost decreases when generators reverse their retirement decisions, then they should bear the costs that result when generators retire.

11. FirstEnergy also argues that PJM should develop more precise and comprehensive rules with respect to generator retirements and retirement reversals. FirstEnergy claims that there is currently no financial responsibility placed on generators for the operational or financial impacts associated with their retiring or reactivating decisions, and contends that PJM must develop rules providing that, if a generator returns to service after retiring, it will be responsible for the upgrade costs associated with its reactivation and reconnection to the transmission system. FirstEnergy argues that the generator's reactivation should be treated and studied as an interconnection queue project, and that the reactivating generator should be allocated "but for" interconnection costs.¹⁴ FirstEnergy further contends that the generator should be required to remain in service and available to the PJM market for a specified period of time after reconnecting in order to allow PJM market participants to recoup the costs incurred in connection with the generator's reactivation.

12. Finally, FirstEnergy claims that when a generator retires, the PJM system is planned on the assumption that it will not reactivate; network transmission facilities are planned and become part of the RTEP, and the costs for these facilities are allocated based on this assumption. Consequently, FirstEnergy argues that, as part of the stakeholder process, PJM must develop rules that will permit and specify the methods for cost recovery for investments that become unnecessary or obsolete as a result of a generator's decision to reactivate.

¹⁴ FirstEnergy Comments at 6.

13. NJBPU supports PJM's petition insofar as it permits PJM to re-study a project following reversal of a retirement decision.¹⁵ However, NJBPU argues that the interconnection customer should remain obligated to pay the costs it was allocated in the initial set of studies because, even if certain upgrades are no longer necessary, the customer has already assessed its business risks and costs based on the earlier studies. NJBPU proposes that PJM collect any extra funds and use them to offset future upgrades identified in the RTEP process that have moved forward in time because of the customer's interconnection or that are caused by the rescinding generator reversing its retirement. NJBPU argues that this would remedy what it characterizes as an inequitable consequence of the *Neptune* proceeding and PJM's petition—the prospect that interconnection customers would not be responsible for increases in interconnection costs for announced generation deactivations that occur after the interconnection customer is already in the queue, but would have their interconnection costs decreased for withdrawals of such deactivations that occur after the interconnection customer is already in the queue.¹⁶ In the alternative, NJBPU requests that the Commission revisit the *Neptune* proceeding and direct PJM to amend its tariff to clearly state that each interconnection customer will bear its appropriate risk of cost increases and decreases and pay the “but for” costs associated with its interconnection.

14. NJBPU also argues that the current 90-day retirement notice required of generators in PJM is insufficient to allow PJM to deal with the reliability issues that result from a generator deactivation. Consequently, NJBPU requests that the Commission direct PJM to develop a new mechanism to handle retirements and provide the predictability necessary to properly plan and install the transmission lines needed to address reliability issues.

15. In its answer, HTP argues that FirstEnergy's comments are collateral attacks on the *Neptune* proceeding. HTP also argues that FirstEnergy's and NJBPU's comments raise issues that are outside the scope of this proceeding, and that their affirmative proposals violate the “but-for” cost allocation method that is the bedrock of PJM's tariff. Finally, HTP argues that Exelon's concern is moot because PJM already considers reversals of retirement announcements for system planning purposes.

16. In its answer, PJM clarifies its RTEP planning policy. PJM states that in order to ensure reliability, in the RTEP process it continues to treat a generator that has reversed its retirement decision as if it is retiring unless the generator presents “compelling

¹⁵ NJBPU Protest at 3.

¹⁶ The Maryland Commission makes a similar argument.

evidence” that it will remain in-service. PJM explains that examples of compelling evidence include the generator bidding into and clearing the Reliability Pricing Model auction or making new investments or building new upgrades prior to its reversal notice.¹⁷ PJM further clarifies that in the interconnection process it will consider reversal of a retirement notice as a trigger for a re-study only if it is accompanied by compelling evidence that the generator would remain in service.

17. PJM also contends that FirstEnergy’s description of its rules regarding generator retirements and retirement reversals is inaccurate. PJM states that it has rules in place that provide flexibility to generators and protect customers from bearing the costs of reconnecting generators that have been out of service for a considerable period of time. Finally, PJM argues that FirstEnergy and NJBPU raise issues that are outside the scope of this proceeding. PJM states that it submitted a petition for declaratory order on a very narrow issue, and contends that it is inappropriate to use this proceeding to revisit the *Neptune* proceeding, or to propose amendments to PJM’s tariff. PJM states that it has not requested clarification on many of the issues on which FirstEnergy and NJBPU have submitted proposals, and that the proper forum for these issues is the PJM stakeholder process or a separate proceeding pursuant to section 206 of the Federal Power Act.¹⁸

IV. Commission Determination

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,¹⁹ the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure,²⁰ the Commission will grant the motions to intervene out-of-time given the interests of the entities that filed them in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

¹⁷ PJM acknowledges that Manual 14B creates confusion. PJM states that while its description of its RTEP planning policy has been in place for some time, Manual 14B has not been updated to reflect this policy. PJM states that at the conclusion of this proceeding, depending on its outcome, it will update its manuals accordingly. PJM Answer at n.4.

¹⁸ 16 U.S.C. § 824e (2000 & Supp. V 2005)

¹⁹ 18 C.F.R. § 385.214 (2008).

²⁰ *Id.* § 385.214(d).

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,²¹ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept HTP's and PJM's answers because they have provided us information that assisted us in our decision-making process.

B. Substantive Matters

20. We agree with PJM that its petition is consistent with its tariff and the *Neptune* proceeding. Accordingly, we grant the petition.

21. In the *Neptune* proceeding, the Commission interpreted PJM's tariff to permit re-studies of a customer's project only in response to conditions that existed or events that were reasonably foreseeable at the time the project entered the queue, such as a higher-queued project withdrawing from the queue.²² The Commission emphasized that interconnection customers are entitled to a reasonable degree of certainty regarding their business risks, and held that retirement announcements that follow a customer's queue date do not provide a basis to re-study the customer's project.

22. In the instant petition, PJM seeks confirmation that it may treat generator retirement announcements that *precede* a customer's queue date as higher-queued projects and that it may treat the reversal of these retirements *after* a customer's queue date as higher-queued projects withdrawing from the queue. We agree with PJM that this approach is consistent with the principle that a customer's costs must be based on circumstances existing as of its queue date and with the principle that re-studies are permitted only in response to events that were reasonably foreseeable at the time the customer entered the queue. By treating and studying a retirement announcement that precedes a customer's queue date as a higher-queued project, PJM's approach clarifies that because such retirements are "known" at the time the customer enters the queue they must be factored into the interconnection study process and may form the basis for assigning the customer new facilities to build or for allocating to the customer specific costs. Similarly, just as it is foreseeable that a higher-queued project will withdraw from the queue, potentially changing the facilities and associated costs that are necessary to complete a customer's interconnection, it is foreseeable that a retiring generator will reverse its retirement, potentially changing the facilities and associated costs that are necessary to complete a customer's interconnection. By treating such a reversal as a higher-queued project withdrawing from the queue, and thus as a trigger for a re-study,

²¹ *Id.* § 385.213(a)(2).

²² Neptune Rehearing Order, 111 FERC ¶ 61,455 at P 19-20.

PJM ensures that the proper facilities are constructed to complete the customer's interconnection, the construction of superfluous facilities is eliminated, and the customer's financial responsibilities are appropriately adjusted.

23. We note that no party has argued that PJM's petition is inconsistent with its tariff or with the *Neptune* proceeding, and that both FirstEnergy and NJBPU support the approach in PJM's petition.²³ Rather than assail PJM's petition, FirstEnergy and NJBPU object to what they perceive to be systemic flaws in PJM's post-*Neptune* cost allocation process that would be highlighted by granting the petition. Specifically, FirstEnergy and NJBPU argue that interconnection costs will be shifted to the RTEP process, and that developers will be able to escape responsibility for costs due to generator retirements that are announced after their queue dates (*Neptune*) but will reap the benefits of potential cost decreases resulting from retirement reversals that occur after their queue dates (instant petition).

24. We find that FirstEnergy's and NJBPU's arguments are collateral attacks on the *Neptune* proceeding and thus we reject them. In essence, FirstEnergy and NJBPU recognize the logic of PJM's petition in light of the *Neptune* proceeding and as it relates to managing the interconnection process, but seek to separate PJM's proposed interpretation of its tariff from its potential cost allocation consequences. In doing so, FirstEnergy and NJBPU do not offer arguments against the petition, but against the *Neptune* proceeding and its resolution of these issues.²⁴ Thus, NJBPU's assertion that

²³ FirstEnergy Comments at 3 ("FirstEnergy supports PJM's modified queue process as it relates to generator retirements and reactivations. It is appropriate that generator retirements and reactivations are treated as queued projects, which more efficiently addresses cost allocation relative to timing issues rather than the current allocation method."); NJBPU Protest at 3 ("The Commission's [d]eclaratory [o]rder should confirm that, in studies to determine a customer's interconnection costs, PJM properly takes into account all deactivations for which it has received notice prior to an interconnection customer's queue date. The Commission's [d]eclaratory [o]rder should rule that PJM should be permitted to restudy the interconnection projects after a generator rescinds its notice of retirement.").

²⁴ In objecting to the principle that developers may be allocated costs only based on conditions that existed or events that were reasonably foreseeable as of their queue dates, FirstEnergy and NJBPU are objecting to a principle established in the *Neptune* proceeding. Similarly, in objecting to the notion that a developer may have its costs cut because a generator that announced its retirement before the developer's queue date reverses its decision after the developer's queue date, FirstEnergy and NJBPU are objecting to the application of the principle established in the *Neptune* proceeding only when it benefits a developer.

interconnection customers should remain obligated to pay the costs they were initially allocated, even if re-studies determine that certain upgrades are no longer necessary, is actually an attack on the principle that a customer's costs may be adjusted in response to events that were reasonably foreseeable at the time the customer entered the queue, and thus on the *Neptune* proceeding.²⁵

25. We also agree with PJM and HTP that FirstEnergy's and NJBPU's other arguments are outside the scope of this proceeding, which PJM initiated in order to receive a Commission ruling on a very narrow issue of queue management.²⁶ FirstEnergy's proposal for a compliance filing addressing *Neptune*-related cost allocation issues, generator retirement rules, and stranded costs does not speak to whether PJM's petition is consistent with its tariff and the *Neptune* proceeding. Similarly, NJBPU's proposals that PJM revamp its retirement notice rules and amend its tariff do not address the issues presented by the petition.

26. We also note that FirstEnergy's and NJBPU's characterization of the interconnection cost allocation process in light of this petition and the *Neptune* proceeding, in addition to being a collateral attack on *Neptune*, is incomplete and misses the mark. FirstEnergy and NJBPU claim that developers currently escape responsibility for costs due to generator retirements announced after their queue dates, and now, because of PJM's petition, will reap the benefits when generators reverse their retirement decisions. However, FirstEnergy and NJBPU ignore the key fact that PJM's petition applies only to reversals of retirement announcements that *precede* a customer's queue date, and not to reversals of retirement announcements that *follow* a customer's queue date.²⁷ This distinction is important because it highlights the relationship between a customer's queue date, its right to a baseline against which to gauge its costs with a reasonable degree of certainty, and the potential that re-studies will result in different cost estimates. In ignoring this distinction, FirstEnergy and NJBPU ignore the fundamental equity embedded in the principle that a customer's costs must be based on circumstances that existed or that were reasonably foreseeable as of its queue date. This principle puts customers on notice that their costs may change in response to reasonably foreseeable events; thus, while a customer may benefit by its costs decreasing as a consequence of a

²⁵ This argument may also be construed as a proposal to amend PJM's cost allocation procedures, and thus may be rejected as outside the scope of this proceeding.

²⁶ In fact, in describing PJM's petition as too narrow, FirstEnergy indirectly acknowledged that its proposals were outside the scope of this proceeding. See FirstEnergy Comments at 3.

²⁷ See PJM Petition at n.27.

foreseeable reversal of a retirement decision, it may see its costs increase as a result of a different foreseeable event, such as a developer's higher-queued project withdrawing from the queue.

27. Finally, we are satisfied that PJM has sufficiently addressed Exelon's concern by clarifying its RTEP planning policy and indicating its intention to revise Manual 14B.

The Commission orders:

PJM's Petition for Declaratory Order is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.