

128 FERC ¶ 61,258
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER09-497-001

ORDER DENYING REQUEST FOR REHEARING

(Issued September 17, 2009)

1. On April 3, 2009, the Commission approved amendments filed by PJM Interconnection, L.L.C. (PJM) to Schedule 12-Appendix of the PJM Open Access Transmission Tariff (Tariff) to reflect the assignments of cost responsibility for transmission upgrades included in the two most recent updates to the Regional Transmission Expansion Plan (RTEP).¹ Exelon Corporation (Exelon) has submitted a request for rehearing, and Baltimore Gas and Electric Company (BGE) have filed a motion for reconsideration. In this order, we deny Exelon's request for rehearing and BGE's motion for reconsideration.

I. Background

2. Pursuant to Schedule 12 of the Tariff, section 1.6 of Schedule 6 of the PJM Operating Agreement, and section 205 of the Federal Power Act (FPA),² PJM files cost responsibility assignments for transmission upgrades that have been approved by the PJM Board of Directors (PJM Board) as part of PJM's RTEP. The RTEP provides for the construction of expansions and upgrades to PJM's transmission system in order to comply with reliability criteria, and to maintain and enhance the economic and operational efficiency of PJM's wholesale electricity markets.

II. April 3, 2009 Order

3. On January 5, 2009, PJM submitted amendments to Schedule 12-Appendix to include the cost responsibility assignments for 251 baseline upgrades, including 232

¹ *PJM Interconnection, L.L.C.*, 127 FERC ¶ 61,016 (2009) (April 3, 2009 Order).

² 16 U.S.C. § 824d (2006).

lower voltage facilities (i.e., facilities that operate below 500 kV). PJM stated that all of the lower voltage transmission enhancements and expansions were approved by the PJM Board as reliability-based upgrades. Assignments of cost responsibility for below 500 kV facilities are determined pursuant to the DFAX methodology.³

4. Project b0834, included in the January 5, 2009 filing, provides for the conversion of two 138 kV transmission lines to one 230 kV transmission line as part of the Branchburg to Hudson 500 kV transmission project.⁴ As required by project b0834, project b0831 replaces the 138/13 kV transformers owned by Public Service Electric and Gas (PSEG) on the 138 kV transmission lines with 230/13 kV transformers, compatible with the 230 kV transmission line. PJM explained that the transformers that need to be upgraded are functionalized as distribution facilities, but PJM maintains the upgrading of these transformers would not be required except for the need to resolve contingency violations on the PJM transmission network, which are addressed by the Branchburg to Hudson 500 kV transmission project. PJM allocated the costs of project b0831 based on the DFAX methodology. The Commission found that the PJM Tariff supports inclusion of this project in Schedule 12-Appendix.

III. Request for Rehearing

5. On rehearing, Exelon contends that the Commission erred in holding that PJM properly allocated costs of the transformers included in project b0831. Exelon contends that the Commission's jurisdiction is limited to transmission facilities, and that PJM offered no evidence showing that the transformers included in project b0831 are used for interstate transmission rather than local distribution. Exelon states that these facilities are functionalized as distribution plant in PSEG's Form 1 report to the Commission. Exelon argues that absent a factual record that these transformers are operated to provide interstate transmission, the Commission should reject PJM's allocation of their costs.

³ The DFAX analysis establishes distribution factors to identify the power flows that cause the reliability violations that give rise to the need for transmission upgrades. In other words, for facilities that operate below 500 kV, PJM allocates the costs of necessary system improvements to the "cost causers" and "beneficiaries" of the needed upgrade based on the DFAX analysis. *See* Tariff, Schedule 12 § (b)(iii)(C).

⁴ The Branchburg to Hudson 500 kV project consists of several related projects (RTEP projects b0829 through b0836), including construction of a Branchburg to Roseland to Hudson 500 kV transmission line. In addition to conversion of the 138 kV transmission lines, the Branchburg to Hudson 500 kV project includes construction of a Roseland to Hudson 230 kV transmission line, Roseland and Hudson switching stations, and installation of a transformer at Hudson.

Further, Exelon maintains that the existing transformers have been functionalized as local distribution facilities under state regulation and the Commission should defer to the state's assertion of jurisdiction here. Exelon concludes that allowing PJM to allocate the costs of the transformers included in project b0831 in transmission rates without applying the seven-factor test to determine the function of the transformers will undermine jurisdictional precedent and confuse the proper cost allocation of numerous distribution facilities.⁵

6. BGE filed a motion for reconsideration on May 12, 2009, after the 30 day period for seeking rehearing expired. BGE submits that project b0831 includes distribution facilities and that the Commission is without authority to include the costs of these facilities in PJM's transmission rates regardless of the benefits to PJM's transmission system. BGE states that jurisdictional limitations set by statute cannot be overridden by RTO planning protocols, and that the Commission has violated this fundamental precept by exalting PJM's RTEP over the statutory limitations on its jurisdiction.⁶ BGE further maintains that the Commission is (1) inducing PJM transmission owners and others to initiate litigation over the classifications of low voltage facilities that have never been subjected to an on-the-record, transparent, and adjudicated seven-factor test analysis, and (2) effectively adding RTEP-inclusion as an eighth factor that can completely override the other seven factors of the seven-factor test.

⁵ *Citing Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002). Order No. 888 contained seven indicators, a combination of functional-technical tests, to assist companies and state commissions with separating local distribution facilities from transmission facilities on a case-by-case basis.

⁶ BGE motion for reconsideration at 5, citing *MidAmerican Energy Co.*, 90 FERC ¶ 61,105, 61,337, n.9 (2000) (*Mid American*) ("Which facilities will or will not be under an RTO's operational control also does not predetermine transmission pricing, cost allocation, or rate design determinations at either a state commission or at this Commission.").

IV. Commission Determination

7. We deny Exelon's request for rehearing. We find that PJM appropriately included the project b0831 transformer upgrade in its allocation of transmission costs, and consistent with Schedule 12 of its Tariff, allocated such costs using the DFAX methodology.

8. As noted above, the Branchburg to Hudson 500 kV transmission project addresses contingency violations on PJM's transmission system as identified in the PJM RTEP. Conversion of the 138 kV to 230 kV transmission line is part of the Branchburg to Hudson 500 kV transmission project. This conversion requires that the PSEG 138/13 kV transformers be upgraded to 230/13 kV transformers; a 138 kV transmission line cannot be upgraded to 230 kV without upgrading the high-side voltage of the transformers connected to the transmission line to match the higher operating voltage of the transmission line. Thus, this transformer upgrade became necessary only because PJM determined, through its RTEP process, the need to upgrade a transmission line to resolve one or more reliability violations. For this reason, we find PJM's proposal to recover the costs of this transformer upgrade through its transmission rates reasonable and appropriate.⁷

9. In making this finding, we are not changing the current functionalization of the transformers at issue here. Because the function of the transformers is not before us, the state's jurisdiction over local distribution facilities is not affected by our determination.

10. BGE raises a concern that, because the costs of new transmission facilities in PJM are no longer subject to license plate rates, it is important to develop mechanisms to avoid regulatory conflict and provide certainty as to which regulator has jurisdiction over which

⁷ This finding is consistent with court decisions that found the Commission, in evaluating the reasonableness of jurisdictional rates, could consider otherwise non-jurisdictional matters. *See Corning Glass Works v. FERC* 675, F.2d 392 (D.C. Cir. 1982) (affirming Commission determination that pipeline could recover, in systemwide wholesale gas rates, the costs of reimbursing certain local distribution companies for costs incurred in modifying equipment to safely accept higher-heating-value liquefied natural gas); *accord Federal Power Comm'n v. Conway Corp.*, 426 U.S. 271, 280 (1976) ("... in determining whether the proposed wholesale rates are just and reasonable, it would in any event be necessary to determine which of the Company's costs are allocable to its nonjurisdictional, retail sales and which to its jurisdictional, wholesale sales ...").

facilities.⁸ BGE, citing *MidAmerican*, maintains that jurisdictional limits set by statute cannot be overridden by RTO planning protocols. In response to BGE's concern, we reiterate that we are not changing the functionalization of these transformers as local distribution, nor are we exceeding limits on our jurisdiction. We are permitting recovery in PJM's transmission rates of the costs of an upgrade to these facilities that is necessary for an upgrade to PJM's transmission system.

The Commission orders:

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁸ Citing *PJM Interconnection, L.L.C.*, Opinion No. 494 (2007), 119 FERC ¶ 61,063, *order on reh'g*, Opinion No. 494-A, 122 FERC ¶ 61,082 (2008), *order on review, Illinois Commerce Commission v. FERC*, 2009 U.S. App. Lexis 18311, (7th Cir., 2009).