

128 FERC ¶ 61,262
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Black Oak Energy, L.L.C.
EPIC Merchant Energy, L.P. and
SESCO Enterprises, L.L.C.

Docket No. EL08-14-002

v.

PJM Interconnection, L.L.C.

ORDER ACCEPTING COMPLIANCE FILING

(Issued September 17, 2009)

1. This order addresses a compliance filing submitted on March 26, 2009, by PJM Interconnection, L.L.C. (PJM) with proposed revisions to its open access transmission tariff (OATT or tariff) and its amended and restated operating agreement (operating agreement) to comply with the Commission's October 16, 2008 order,¹ as clarified on February 24, 2009.² These orders found that PJM had not adequately justified its current method of distributing collected marginal line losses and provided that PJM needed to propose a method that distributes such losses equitably among all parties that support the fixed costs of the transmission system, without regard to whether such parties serve load, or to show cause why its existing tariff provision is just and reasonable.³ As discussed below, the Commission will accept PJM's filed tariff sheets to become effective June 1, 2009, subject to conditions, and will direct PJM to pay refunds pursuant to section 206(b) of the Federal Power Act (FPA).

¹ *Black Oak Energy, L.L.C. v. PJM Interconnection, L.L.C.*, 125 FERC ¶ 61,042 (2008) (Rehearing Order).

² *Black Oak Energy, L.L.C. v. PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,164 (2009) (Clarification Order).

³ Rehearing Order, 125 FERC ¶ 61,042 at P 49.

I. Background

2. On December 3, 2007, Black Oak Energy, L.L.C. (Black Oak), EPIC Merchant Energy, L.P. (EPIC), and SESCO Enterprises, L.L.C. (SESCO) (collectively, Complainants) filed a complaint challenging the marginal line loss method and the related allocation methodology in PJM's tariff. Specifically, Complainants argued that arbitrageurs' financial transactions do not create the flow of physical energy and concomitant transmission line losses and, therefore, they should not be assigned marginal line losses. Alternatively, Complainants argued that if their financial transactions are assigned marginal line losses they should receive a share of the surplus over-collected amount. In its order denying the complaint, the Commission *inter alia* concluded that no party is entitled to receive any particular amounts through disbursement of the surplus that inevitably results from using the marginal line loss methodology, since the price each party is paying is the correct marginal cost for the energy that each party is purchasing.⁴

3. Complainants subsequently filed a request for rehearing of the Complaint Order, arguing, among other things, that they, and others similarly situated, are entitled to receive a share of the marginal line loss surplus because they contribute to the fixed costs of the transmission system.⁵ In addressing Complainants' arguments, the Commission addressed whether arbitrageurs in the PJM market should be required to pay marginal line losses and, if so, whether they should be entitled to a share of the over-collected amounts (or "surplus") on an equal basis with other similarly situated customers.⁶ The Commission denied rehearing on the first issue and granted rehearing on the issue of the allocation of the over-collected amounts. The Commission directed PJM either to revise its tariff to include a credit to others who pay for the fixed costs of the transmission system in proportion to the load represented by their transmission usage or to show cause why its existing tariff provision is just and reasonable.

4. PJM subsequently requested that the Commission clarify its directive in paragraph 49 of the Rehearing Order that PJM make a tariff revision to include a credit to those who pay the fixed costs of the transmission system "in proportion to load represented by their transmission usage" and whether this use of the term "load" evidences an intent by the Commission to exclude those market participants that engage in virtual transactions, i.e., those who do not serve "load."⁷

⁴ *Black Oak Energy, L.L.C., et al. v. PJM Interconnection, L.L.C.* 122 FERC ¶ 61,208, at P 46 (2008) (Complaint Order).

⁵ Request for Rehearing at 21-24.

⁶ Rehearing Order, 125 FERC ¶ 61,042 at P 24.

⁷ Clarification Order, 126 FERC ¶ 61,164 at P 10 & 13.

5. In its Clarification Order, the Commission affirmed that it did not intend to exclude virtual traders from eligibility for the credit related to the surplus to the extent that those traders make transmission payments that contribute to the fixed costs of the transmission grid, without regard to whether such parties serve load.⁸

II. Compliance Filing

6. PJM submitted revisions to section 5.5 of the appendix to Attachment K of the tariff and to the corresponding section of Schedule 1 of the Operating Agreement.⁹ PJM states that section 5.5 has been revised to allocate the total transmission loss charges accumulated by PJM to each Network Service User and Transmission Customer in proportion to its ratio share of the total megawatt-hours (MWh) of energy delivered to load in the PJM Region.¹⁰ PJM further states that revised section 5.5 “allocates total transmission loss charges to the total exports of MWh of energy from the PJM Region, or the total MWh of cleared Up-To Congestion transactions (that paid for transmission service during such hour).”¹¹

7. PJM states that it believes its proposed revisions satisfy the Commission’s concern that collected marginal line losses be distributed equitably among all parties that support the fixed costs of the transmission system, without regard to whether such parties serve load.¹² PJM states that Network Service Users will still receive an allocation of surplus marginal line loss collections in proportion to their ratio shares of the total MWhs of energy delivered to load in the PJM Region, but that allocation now will also include “Transmission Customers,” which includes load serving customers such as those taking point-to-point transmission service under Part II of the tariff.¹³ PJM explains that the allocation methodology for these customers is still based upon the Commission’s accepted principle that allocation of marginal line losses to these customers is fair because it distributes the surplus back to load customers who pay for the fixed costs of the transmission system.¹⁴ PJM states that it further modified section 5.5 to capture

⁸ Clarification Order, 126 FERC ¶ 61,164 at P 14-15.

⁹ Compliance Filing at 3.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 4-5.

¹⁴ *Id.* at 4.

allocation of surplus marginal line losses to those customers engaging in Up-To Congestion transactions in proportion to the total MWh of those cleared transactions (that paid for transmission services during such hour).¹⁵ PJM avers that each customer identified in revised section 5.5 contributes, through transmission charges, to the overall costs of the transmission grid; therefore, through the proposed revisions, each will receive a distribution of the surplus over-collected marginal line loss charges.¹⁶

8. PJM requests an effective date of June 1, 2009, for its tariff and operating agreement compliance revisions and states that application of a prospective effective date for the compliance filing is appropriate because the existing rules, regulations, and filed rates were deemed to be just and reasonable at the time they were filed and during the pendency of this complaint proceeding.¹⁷

III. Notice and Responsive Pleadings

9. Notice of PJM's compliance filing was published in the *Federal Register*, 74 FR 16204 (2009), with interventions and protests due on or before April 16, 2009. PEPCO Holdings, Inc. filed a timely motion to intervene. On April 16, 2009, Black Oak, EPIC, SESCO, Energy Endeavors LP, and Solios Power, LLC (collectively, Financial Marketers), both jointly and severally, filed a timely protest and, under the same caption, Energy Endeavors LP and Solios Power, LLC filed a motion to intervene.

10. On April 17, 2009, the NRG Companies¹⁸ filed a motion to intervene out-of-time. On the same date, Twin Cities Power, LLC (Twin Cities) filed a motion to intervene out-of-time and comments.

11. On May 1, 2009, PJM filed an answer to Financial Marketers' protest and to Twin Cities' comments. On May 18, 2009, Financial Marketers, both jointly and severally, filed an answer to PJM's answer.

12. In their protest, Financial Marketers maintain that PJM has failed to comply with the Commission's directive to credit the surplus over-collections on an equitable basis to

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 4 & n.17.

¹⁸ In this filing the NRG Companies are: NRG Power Marketing, LLC; Conemaugh Power, L.L.C.; Indian River Power, L.L.C.; Keystone Power, L.L.C.; NRG Energy Center Dover, L.L.C.; NRG Energy Center Paxton, L.L.C.; NRG Rockford, L.L.C.; NRG Rockford II, L.L.C.; and Vienna Power, L.L.C.

all transactions that contribute to the fixed costs of the transmission system. They identify certain language as broad and impermissibly vague, namely, where PJM proposes to include in the allocation “the total MWh of cleared Up-To Congestion transactions (that paid for transmission service during such hour).”¹⁹ They contend that the parenthetical language would introduce an impermissible and subjective element of discretion in the process of determining which transactions receive a share of the transmission line loss surplus. Financial Marketers state that it is unclear what the parenthetical language “paid for transmission service” is intended to mean. Financial Marketers conclude that the parenthetical language could be used to improperly exclude more than 70 percent of cleared Up-To Congestion transactions from receiving any distribution of transmission line loss surplus.²⁰ They aver that all cleared Up-To Congestion transactions support the fixed costs of the transmission system.²¹

13. Financial Marketers maintain that PJM’s proposed exclusion of “pure virtual transactions” (i.e., those not involving an Up-To Congestion component) violates section 205 of the FPA.²² They state that “virtual transactions pay not only for 40 percent of transmission line losses, but also 40 percent of the surplus.”²³ Therefore, Financial Marketers state that there is no just and reasonable basis to exclude pure virtual transactions by limiting the allocation of the transmission line loss surplus to those market participants who contribute to the fixed costs of the transmission system. They reiterate what Complainants advanced previously, namely, that the most equitable way to allow such virtual transactions to share in the surplus is an allocation based on the virtual transactions’ proportional share by volume of all day-ahead transactions (both virtual and physical).²⁴ Financial Marketers state that such transactions could be allocated a fixed 40 percent share of the surplus or, alternatively, a variable percentage adjusted periodically. By not crediting them their share of the surplus (and thereby effectively increasing their locational market price), Financial Marketers contend that PJM’s proposed tariff revisions cannot be reconciled with the Commission’s holding that all transactions—both “virtual” and physical—must pay the same locational market prices.²⁵ As a result, they

¹⁹ Protest at 8 (quoting Compliance Filing at 3).

²⁰ *Id.* at 10.

²¹ Twin Cities comments’ agree with Financial Marketers. *See* Twin Cities Comments at 5.

²² Protest at 2, 12; *see also* Twin Cities Comments at 5-6.

²³ *Id.* at 12.

²⁴ *Id.* at 14.

²⁵ *Id.* at 15; *see also id.* at 13.

explain that virtual transactions would be required to bear substantially more than their fair share of transmission line loss costs, while other market participants would receive distributions of the surplus in excess of that to which they are entitled.²⁶

14. Lastly, Financial Marketers state that PJM has provided no basis for departing from the general policy of awarding refunds back to the date of the complaint, which is December 3, 2007.

15. In its answer to Financial Marketers' protest, PJM maintains that the Commission's prior determinations and the closed deadline for submitting a request for rehearing have administratively foreclosed Financial Marketers from raising their questions with respect to whether they should pay marginal line loss charges and, if they do pay such charges, whether the surplus of those payments should be allocated to those who pay any form of PJM transmission costs.²⁷ PJM recognizes that arbitrageurs or "virtual traders" pay transmission charges related to Up-To Congestion transactions and, through these payments, contribute to the fixed costs of the transmission system. PJM explains that the fixed or embedded costs of the transmission system are represented by transmission access charges. Thus, PJM further explains that the only way to equitably apportion the allocation of the marginal line loss surplus to virtual traders engaging in Up-To Congestion transactions, based upon their contribution to the fixed costs of the transmission system, is by qualifying that allocation to those Up-To Congestion transactions that paid for transmission service during such hour.²⁸

16. Assuming, *arguendo*, that Financial Marketers could now raise their issues, PJM maintains that Financial Marketers' position nonetheless should be rejected as an attempt to expand the allocation of the surplus to those customers who do not pay for the fixed or embedded costs of the transmission system.²⁹ PJM states that Financial Marketers' position is premised on the conclusion that all cleared Up-To Congestion transactions contribute to the fixed or embedded costs of the transmission system, because these transactions pay charges to cover the electric grid's black start and reactive supply costs. PJM contends, however, that "such ancillary service payments do not support the embedded costs of the transmission system; only those Up-To Congestion transactions that pay transmission access charges contribute to the fixed costs of the transmission system."³⁰ Further, PJM addresses Financial Marketers' argument that a credit from the

²⁶ *Id.* at 2.

²⁷ PJM Answer at 3-5 & accompanying notes.

²⁸ *Id.* at 7.

²⁹ *Id.* at 7.

³⁰ *Id.* at 8.

marginal line loss surplus should be allocated to every MWh of load, regardless of whether or not it is exempt from paying “OASIS charges.”³¹ PJM states that this argument fails because the allocation to MWh of load is based upon load customers’ payment of network transmission charges, which also directly contribute to the fixed costs of the transmission system. Thus, PJM avers that load customers and Up-To Congestion transactions are treated equally because they both receive an allocation of the surplus based upon their payment of transmission charges and, thereby, their direct contribution to fixed and embedded costs.

17. With respect to refunds, PJM notes the Commission’s discretionary authority to take retroactive action but points out that section 206 of the FPA permits the Commission to order prospective relief.

18. In their reply to PJM’s answer, Financial Marketers reaffirm that Up-To Congestion transactions bear the same amount of transmission access charges as export transactions. They remark that, with respect to their contribution to the fixed costs of the transmission system, any Up-To Congestion transactions that are exempt from OASIS charges are similarly situated to exports to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), which likewise do not pay such charges. Further, Financial Marketers maintain that “[b]lackstart and reactive control are costs of the transmission system and largely are fixed costs.”³² They state that PJM provides no justification for excluding the transactions that pay for black start and reactive control in its allocation of the marginal line loss surplus.³³ They reiterate that refunds, plus interest, should be directed from the date of the complaint.³⁴ Finally, Financial Marketers again argue their case for volumetric treatment with respect to allocating the marginal line loss surplus, remarking that the Commission is not administratively foreclosed from doing so. They also state that the Commission did not find the proposed allocation methodology to be just and reasonable and did not rule on Financial Marketers’ alternative proposal.

³¹ PJM states that it assumes that these OASIS (i.e., Open Access Same-Time Information System) charges refer to the point-to-point transmission access charges paid to reserve point-to-point transmission service on the PJM OASIS.

³² Financial Marketers Answer at 5 (citation omitted).

³³ *Id.* at 5-6.

³⁴ *Id.* at 6-7.

IV. Discussion

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motion to intervene serves to make the entities that filed it parties to this proceeding. We will grant the unopposed motions to intervene out-of-time given the NRG Companies' and Twin Cities' interest, the early stage of this proceeding, and the absence of undue prejudice or delay.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits a reply to an answer or to an answer to a protest unless otherwise ordered by the decisional authority. We will accept PJM's and Financial Marketers' answers because they have provided information that assisted us in our decision-making process.

21. Financial Marketers' submitted their protest and answer in the form of an electronic filing. However, this filing fails to comply with the Commission's requirements regarding text-searchable formats.³⁵ In this case, we will not reject those filings. However, we remind counsel and all parties submitting such filings in the future to comply with the Commission's regulations that are designed to ensure that electronic filings are user-friendly for both the Commission, Commission staff, and other parties to a proceeding.³⁶

B. Commission Determination

22. In the Rehearing and Clarification Orders the Commission found that PJM's tariff provision appeared to be unjust and unreasonable and unduly discriminatory, because it discriminated against one class of customers that paid transmission charges by not providing those customers with a share of the credits relating to marginal losses proportionate to their transmission payments. The Commission directed PJM to propose tariff revisions or to show cause why such a credit should not be provided to all those who pay transmission charges.³⁷ In its March 26, 2009 filing, PJM did not contest the Commission's reasoning that PJM's existing tariff is unjust and unreasonable insofar as it

³⁵ See *Filing Via the Internet*, Order No. 703, FERC Stats. & Regs. ¶ 31,259, at P 8, 23-24, 26, (2007); see also <http://www.ferc.gov/docs-filing/efiling.asp>.

³⁶ *Id.* (“[Non-scanned electronic filings provide] access to tools that permit faster searches, increased accuracy, and enhanced analytical and processing capabilities[.]”).

³⁷ Clarification Order, 126 FERC ¶ 61,164 at P 15.

does not allocate the marginal surplus to all customers that pay for the costs of the transmission system on a non-discriminatory basis.

23. PJM proposes to establish the just and reasonable replacement rate by allocating the marginal line loss surplus to Network Service Users and Transmission Customers (including virtual traders). Each user or customer would receive its proportionate share of the surplus based on the total MWhs of energy (a) delivered to load in PJM, (b) exported from PJM, or (c) related to cleared Up-To Congestion transactions (where the user or customer paid for transmission service). The Commission finds that PJM's proposal is a just and reasonable method of allocating the surplus, subject to the condition that PJM clarify that its tariff complies with our finding that payments be made only to those who pay for the costs of the transmission grid.

24. In the Rehearing Order, the Commission found that PJM had not satisfactorily explained why section 5.5 of its OATT, which limited distribution of the marginal line loss surplus to Network Service Users, is just and reasonable and not unduly discriminatory, given that other PJM services also support the fixed costs of the transmission grid.³⁸ Therefore, the Commission directed PJM to

either propose a revision to its tariff to include a credit to others who pay for the fixed costs of the transmission system in proportion to the load represented by their transmission usage or to show cause why its existing tariff provision is just and reasonable.^[39]

25. In compliance, PJM submitted a revised section 5.5, which reads

The total Transmission Loss Charges accumulated by the Office of Interconnection in any hour~~month~~ shall be distributed pro-rata to each Network Service User and Transmission Customer in proportion to its ratio shares of the total MWhs of energy delivered to load (net of operating Behind The Meter Generation, but not to be less than zero) in the PJM Region, or the total exports of MWh of energy from the PJM Region, or the total MWh of cleared Up-To Congestion transactions (that paid for transmission service during such hour), and the total exports of MWhs of energy

³⁸ Rehearing Order, 125 FERC ¶ 61,042 at P 49; *see also id.* P 37 (affirming distribution of marginal line loss surplus based on contribution to fixed costs of transmission grid).

³⁹ *Id.* P 49.

~~from such region during such month by all Transmission Customers.~~⁴⁰

26. We find that PJM's proposed revisions comply with the Commission's directive to credit those who pay for the fixed or embedded costs of the transmission system. We disagree with Financial Marketers that the parenthetical language, "that paid for transmission service during such hour," is broad and impermissibly vague and could be used to improperly exclude Up-To Congestion transactions that otherwise should be included in the allocation process for a credit relating to the marginal line loss surplus. As PJM acknowledges, some arbitrageurs or virtual traders pay transmission access charges related to Up-To Congestion transactions, which contribute to the fixed costs of the transmission system, and which should be included in the allocation process for disbursement of any surplus resulting from the over-collection of transmission line loss charges. However, as discussed below, we find that arbitrageurs or virtual traders that only pay for ancillary services do not support the fixed costs of the entire transmission system and should not be eligible to receive a share of the marginal line loss surplus.⁴¹

27. We also find that the tariff provision requires clarification. The tariff is not clear whether, to qualify for a credit, a Network User or Transmission Customer that exports energy from the PJM region must have paid for transmission service during the hour as is required for Up-To Congestion transactions. PJM is directed to file revisions to the tariff and operating agreement within 30 days of the date of this order to make clear that the credits to exporters are dependent on their having paid for transmission service for a time period that includes the hour, as is required for Up-To Congestion charges.

28. Financial Marketers argue that payments related to black start and reactive control are costs of the transmission system and are "largely" fixed costs and should be included

⁴⁰ Compliance Filing at Attachment B.

⁴¹ In Order No. 888, the Commission proposed separate ancillary services for which Transmission Customers pay separate charges. *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, at 31,703-04 (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); *see also Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 893, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008) *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

as part of transmission service. PJM justifies the exclusion of such transactions from its allocation of the surplus on the ground that “such ancillary service payments do not support the embedded costs of the transmission system; only those Up-To Congestion transactions that pay transmission access charges contribute to the fixed costs of the transmission system.”⁴²

29. As we have stated since the beginning of this proceeding, all customers paying a price based on marginal line losses are paying the just and reasonable price for energy. While the over-collections resulting from marginal cost pricing need to be equitably distributed, a number of different mechanisms may be used to distribute such over-collections. The key point is that the distribution of the over-collections must not bear a relation to the amount of marginal line losses paid to ensure that marginal cost pricing sends customers the correct price signal.⁴³ PJM has chosen to distribute the over-collections based on contributions to the costs of the transmission grid, and we concluded that such a mechanism is just and reasonable as long as it is equitably applied to all those who provide such contributions. PJM’s proposal here does provide for such an equitable distribution, and is not unjust and unreasonable for excluding payments based on black start and reactive control since, as PJM points out, these are ancillary service payments that do not support the embedded costs of the transmission system, and no party receives credits for such payments.

30. Financial Marketers raise a question about whether payments will be made for export transactions to the Midwest ISO which they claim are not assessed transmission costs. We have addressed this concern above by reiterating that the allocation of marginal line loss surpluses is dependent on payment for transmission service.

31. Complainants reiterate in their protest and answer what Complainants previously argued, namely, that they believe the most equitable allocation of the marginal line loss surplus would be to consider the virtual transactions’ proportional share by volume of all Day-Ahead transactions. Complainants argue again that, because virtual transactions are going to be subject to transmission line loss charges, it is just and reasonable that such transactions be included in any distribution of transmission line loss over-collections.⁴⁴

⁴² PJM Answer at 8.

⁴³ *Atlantic City Elec. Co. v. PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,132, at P 24 (2006) (*Atlantic City*) (“the Commission has made clear that the method for disbursing the amounts of any over collections should not directly reimburse customers for their marginal loss payments, as such a collection would interfere with the goal of basing prices on marginal losses”).

⁴⁴ Protest at 12.

This argument was addressed and rejected in the Rehearing Order;⁴⁵ their protest here is a collateral attack on the Commission's decision in that order. Moreover, as we have stated throughout this proceeding and reiterate again, the payment of marginal line losses should not be the criteria for determining who receives the credit. In the very first order issued in this proceeding, the Commission explained why payment of marginal line losses should not and cannot be the criteria for determining the credit:

Of course, a method needs to be determined for disbursing the over collected amounts. Customers, however, are not entitled to receive any particular amounts through disbursement of the over collections, since the price they are paying (based on marginal losses) is the correct marginal cost for the energy they are purchasing. In fact, the Commission has made clear that the method for disbursing the amounts of any over collections should not directly reimburse customers for their marginal loss payments, as such a collection would interfere with the goal of basing prices on marginal losses.⁴⁶

Accordingly, as the Commission previously said, we continue to find PJM's method of distributing returns of the surplus to those parties that support and pay for the fixed costs of the transmission grid to be a reasonable basis for determining the credit.⁴⁷

32. Pursuant to section 206 of the FPA, we therefore find that PJM's pre-existing tariff is unjust and unreasonable and unduly discriminatory, and that PJM's proposed tariff provision, subject to the condition discussed above, is just and reasonable and will become effective, as proposed by PJM, on June 1, 2009.

33. Section 206(b) of the FPA provides that upon the filing of a complaint, the Commission must establish a refund effective date that is no earlier than the date of the complaint and no later than five (5) months subsequent to the date of the complaint.⁴⁸ Our general policy is to provide maximum protection to a complainant and set the refund effective date as of the date of the complaint. Further, section 206(b) provides that the Commission may order refunds of amounts in excess of those which would have been paid under the just and reasonable rate for a period of fifteen (15) months subsequent to the refund effective date.

⁴⁵ Rehearing Order, 125 FERC ¶ 61,042 at P 36-38.

⁴⁶ *Atlantic City*, 115 FERC ¶ 61,132 at P 24.

⁴⁷ Rehearing Order, 125 FERC ¶ 61,042 at P 38.

⁴⁸ See FPA § 206(b), 16 U.S.C. § 824e(b) (2006).

34. PJM maintains that we should not order refunds because it charged the applicable filed rate and did not violate statutory or regulatory requirements or rules in its tariff. It argues that section 206 of the FPA permits the Commission to order prospective relief only from the date that an existing rate, rule, or regulation is determined to be unjust and unreasonable and that ordering refunds would constitute retroactive ratemaking.

35. As discussed above, the refund effective date provision is under section 206(b) of the FPA, and ordering refunds for fifteen months pursuant to that provision is not retroactive ratemaking. Therefore, we will follow our general policy and set the refund date as of the date of the complaint, December 3, 2007, and require PJM to pay refunds for the statutory fifteen-month period (i.e., until March 3, 2009), including interest as determined under the Commission's regulations.

The Commission orders:

(A) The compliance filing is hereby accepted to become effective June 1, 2009, as proposed by PJM, subject to the conditions and the filing of a compliance filing within 30 days of the date of this order, as discussed in the body of the order.

(B) PJM is hereby directed to pay refunds and file a refund report, within 30 days of the date of this order, as discussed in the body of the order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.