

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, and Joseph T. Kelliher.

FPL Energy Marcus Hook, L.P.,  
Complainant

Docket No. EL04-57-001

v.

PJM Interconnection, L.L.C.  
Respondent

ORDER ON REHEARING

(Issued August 9, 2004)

1. On April 20, 2004, the Commission issued an order in the captioned case denying a complaint by FPL Energy Marcus Hook (FPL Energy) against PJM Interconnection, L.L.C. (PJM).<sup>1</sup> The complaint asserted that FPL Energy should not be required to pay some \$9.4 million for a second 230 kV line that PJM required to be constructed as part of FPL Energy's generation interconnection project. The Commission also required PJM submit additional information on the relevance of its Auction Revenue Rights/Financial Transmission Rights (ARR/FTR) program to that second line, and whether FPL Energy would be entitled to compensation if a subsequent Interconnection Customer utilized the capacity created by the expanded transmission facilities. PJM submitted a letter in response to the Commission's order on May 19, 2004, and FPL Energy filed a request for rehearing on the same date. On June 7, 2004, FPL Energy filed comments on the PJM's May 19 filing. The Commission accepts PJM's May 19 filing and denies FPL Energy's request for rehearing. This order benefits the public by affirming the proper allocation of interconnection costs and risks among the transmission customers of the PJM system.

**Background**

2. The central issue decided in the April 20, 2004 Order, and before the Commission on rehearing, is what entity bears risk under the PJM tariff of the changed circumstances involved here: FPL Energy as the Interconnection Customer, or PJM and its members owning transmission facilities within the PJM footprint. To summarize, FPL Energy was and is a PJM Interconnection Customer that plans to build an independent generating

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<sup>1</sup> FPL Energy Marcus Hook, L.P. v. PJM Interconnection, L.L.C., 107 FERC ¶ 61,069 (2004).

facility in Marcus Hook, Pennsylvania. At the time FPL Energy applied for interconnection, there were two additional projects projected for the same area, both senior in the queue to FPL Energy. One was enumerated project A13, and at the time of that project's application, there was sufficient capacity in the Marcus Hook area to accommodate that project. However, there was insufficient capacity to support two subsequent projects, A19, and A21. PJM therefore required projects A19 and A21 to bear the cost of constructing a second 230 kV Mickleton-Monroe transmission line at a cost of \$10,334,018 to FPL Energy's project A21 and \$1,148,000 to project A19, pursuant to a facilities study completed in January 2002.

3. The necessary network upgrades for projects A19 and A21 were substantially complete when project A13 was abruptly cancelled on December 5, 2002, after approximately \$240 million had been expended on the project. PJM and Conectiv, the relevant transmission owner, reviewed projects A19 and A21 and concluded that it would be less costly to complete the projects than to remove the facilities that had already been constructed. It is undisputed that once project A13 was withdrawn that there was sufficient network capacity in the area that the additional network capacity created by the second 230 kV line was no longer required.

4. FPL Energy requested that PJM be required to refund the \$9.4 million cost of this additional line, and filed a complaint when PJM declined to provide a refund. The complaint alleged that PJM's tariff required PJM to reallocate the costs of any withdrawn project. FPL Energy asserted that in the instant case this meant reallocating the \$9.4 million in additional costs to Conectiv, the transmission owner, and through Conectiv's transmission charges, to the users of the PJM transmission grid. FPL Energy argued in the alternative that the additional line provided system benefits, and as such the costs should be borne by PJM's transmission customers.

5. The Commission's April 20, 2004 Order rejected both theories on several grounds. First, the Commission concluded that PJM had correctly concluded that its tariff did not permit the retroactive allocation of interconnection costs to its transmission Interconnection Customers that had already occurred unless such a recalculation was consistent with a prospective construction program. The Commission also accepted PJM's analysis that the additional line had no system benefit because it was not part of PJM's five year plan for the upgrading of network facilities for the system-wide benefit of all Interconnection Customers. In doing so, the Commission rejected FPL Energy's argument that the fact that the relevant towers were double towers capable of holding a second line was evidence that that expansion and inclusion of a second line for system benefits had been contemplated at the time the towers were constructed.

6. The Commission further held that FPL Energy had assumed the risk of any such cancellation, and that consistent with Order No. 2003,<sup>2</sup> the risk of any such cancellation was on the Interconnection Customer. In this regard, the Commission also found that FPL Energy had participated in the determination that the second line should be constructed in parallel with the completion of project A13. Given the risk involved in such interrelated projects, which PJM calls the “cluster” approach, FPL Energy could have protected itself by negotiating to ameliorate the risk that project A13 might be cancelled. Finally, the Commission held that there was no evidence that there was gross negligence on PJM’s part in implementing the cluster approach or in monitoring the status of project A13. As noted, the Commission also required PJM to explain whether ARR’s might provide some relief to the costs that FPL Energy had incurred.

### **The Rehearing Request**

7. FPL Energy’s May 19 rehearing requests asserts that the Commission misconstrued PJM’s tariff by concluding that the requirement to reallocate costs applies only to projects for which work has yet to be done, and likewise, that costs that may have become redundant due to terminated projects need not be allocated to PJM or its transmission owners. FPL Energy also asserts the Commission ignored record evidence that the second 230 kV line will provide system benefits, that reliance only on PJM’s evidence on that point was error, and that such a narrow view of system benefit adopted in the April 19 Order is inconsistent with Commission precedent. It further asserts that Order No. 2003 and any comments and conclusions based thereon are not relevant here, and as such the Commission should not have relied on that order.

8. FPL Energy also argues that PJM did not assume the risk that a more senior project might be withdrawn, that FPL Energy did not have input into developing PJM’s cluster method for evaluating interconnection requests, and that the Commission improperly adopted a “gross negligence” standard for evaluating PJM’s implementation of the cluster method. FPL Energy further asserts that the alternative relief from FTRs and ARR’s raised by the April 19 Order is inadequate, and that the Commission should not have denied relief without a further evidentiary hearing or settlement process regarding disputed facts.

### **The Compliance Letter**

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<sup>2</sup> See Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003) (Order No. 2003), *order on reh’g*, Order No. 2003-A, 106 FERC ¶ 61,220 (2004) (Order No. 2003-A), *reh’g pending*.

9. On May 19, 2004, PJM filed a letter containing the information required by paragraphs 19 and 20 of the Commission's April 20, 2004 order. The May 19 letter states the FPL Energy was awarded ARR's from the Mickleton 230 kV bus to the Monroe 230 kV bus in the amount of 360 MW in connection with the second Mickleton-Monroe circuit for which FPL Energy bears cost responsibility under its Interconnection Service Agreement. The ARR's are good for 30 years from the date that the FPL Energy facility is placed in operation. PJM estimated the value of these ARR's at \$600,000 based on the results of the 2004/2005 annual Financial Transmission Rights auction. PJM also stated that FPL Energy would be eligible for compensation under section 37.7 of the PJM Tariff if another generator connects to the PJM system in a manner that contributes to the need for the use of the second 230 kV line. The costs would be allocated to the new generator in proportion to its need, but FPL Energy would have to give up its ARR's in proportion to the costs it recouped.

10. On June 7, 2004, FPL Energy submitted a brief comment regarding PJM's May 19 letter. It stated that the value of the ARR's appeared to be temporary and derived from the short term outage of a transformer in the area, and that in any event, payments over 30 years would not recover the \$9.4 million cost of the extra 230 kV line. FPL Energy also asserts that it is unlikely that any additional generators will require the capacity within five years after its plant is placed in operation, the maximum time that the relief would be available. It therefore concludes that the refund requested in its complaint is the only effective relief available.

### **Procedural Matters**

11. There are two preliminary matters that need to be resolved before proceeding to the merits. First, the Commission will reject additional material FPL Energy attached to its rehearing request. FPL included in its rehearing request extensive documentation addressing two versions of PJM's proposed six year capital improvement programs,<sup>3</sup> photographs of the double tower transmission facilities to which the lines were attached, and articles relating to Conectiv's proposed retirement of a 435 MW plant in southern New Jersey. All of this material was not submitted as part of FPL Energy's initial complaint or in its opportunity to reply to PJM's answer, and should have been available to FPL Energy at that time.

12. Parties seeking rehearing of Commission orders are not permitted to include additional evidence in support of their position, particularly when such evidence is

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<sup>3</sup> These are PJM's 1999 and 2000 Baseline Regional Transmission Enhancement Plan (RTEP) Reports for the periods 2001-2006 and 2002-2007 respectively.

available at the time of the initial filing.<sup>4</sup> Under the Commission's complaint regulations, a party filing a complaint must "include all documents that support the facts in the complaint in possession of, or otherwise attainable by, the complainant, including, but not limited to, contracts and affidavits."<sup>5</sup> The rule limiting new matter raised on rehearing is particularly important, since answers to rehearing requests are not permitted and other parties, therefore, will not have an opportunity to respond to newly submitted information. Therefore these materials are not properly before the Commission on rehearing, as are any arguments based solely on those materials. Therefore this additional evidence will be excluded from the record and arguments based solely on it are dismissed. Second, the Commission will accept FPL Energy's June 7 comments as the equivalent of a comment on a compliance filing.

## **Discussion**

### **The Background of the Tariff**

13. Before addressing the various technical and equitable arguments presented on rehearing, it is necessary to review the framework within which PJM reviews and acts on interconnection requests by Interconnection Customers, and how those procedures evolved. The procedures for a generation Interconnection Customer are contained in Part IV, Subpart A, of PJM's FERC Electric Tariff, Sheets 96 through 108. The initial tariff sheets were filed in March 1999 and approved by the Commission on June 7, 1999.<sup>6</sup> In the June 7, 1999 Order the Commission summarized the proposal at length, including PJM's proposal to require an Interconnection Customer to pay the full cost of the facilities necessary to physically connect its generation to the nearest PJM substation, plus the minimum necessary and local network upgrades that would not have been incurred under the RTEP<sup>7</sup> "but for" the interconnection request.<sup>8</sup> While commenting that

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<sup>4</sup> Section 285.713(c) (3) provides that parties may set forth new matters in a rehearing request only when rehearing is "based on matters not available for consideration by the Commission at the time of the final decision or final order." *See Central Maine Power Company*, 90 FERC ¶ 61,198 (2000) and cases cited at footnote 8.

<sup>5</sup> 18 C.F.R. §385.206 (8) (2004).

<sup>6</sup> *PJM Interconnection L.L.C.*, 87 FERC ¶ 61,299 (1999).

<sup>7</sup> The RTEP reflects transmission enhancements and expansions, load and capacity forecasts and generation additions and retirements for the next ten years, and includes, as a minimum, which entity will own a transmission facility and how the costs will be recovered. 87 FERC ¶ 61,299, at 62,202 n. 40. *See also* Schedule 6 attached to PJM's Operating Agreement, Third Revised Rate Schedule FERC No. 24 Sheets 182 through 188.

this proposal was different than those of certain other regional transmission organizations (RTO), the Commission concluded that the proposal was economically efficient and accepted it.<sup>9</sup> Rehearing on other issues was denied on November 19, 1999.<sup>10</sup>

14. On May 17, 2002, the Commission issued an order addressing proposed revisions to Part IV of PJM's tariff, and a complaint against the "but for" pricing provisions filed by Old Dominion Electric Cooperative (ODEC). The Commission accepted and suspended the tariff modifications and postponed action on ODEC's complaint, making both the tariff changes and the complaint subject to the outcome of the Commission's general rulemaking on interconnection procedures.<sup>11</sup> A subsequent order addressing PJM's request for RTO status also deferred ruling on interconnection issues until PJM made its compliance filing to the Commission's final rule on interconnection procedures.<sup>12</sup> On July 8, 2004, the Commission issued an order generally accepting PJM's proposed compliance filing to Order No. 2003<sup>13</sup> with certain conditions and modifications not relevant here. In accepting the compliance filing, the Commission expressly concluded that PJM's "but for" method for determining the assignment of interconnection costs was appropriate.<sup>14</sup>

15. As such, the various tariff provisions at issue here were not modified by the Commission upon further review and the overall structure and philosophy embodied in PJM's interconnection procedures were affirmed. In this regard, FPL Energy's assertion that Order No. 2003 is not relevant here is incorrect. As has been noted, in 2002 the

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<sup>8</sup> *Id.*, 62,202.

<sup>9</sup> *Id.*, 62,204.

<sup>10</sup> *PJM Interconnection L.L.C.*, 89 FERC ¶ 61,18 (1999).

<sup>11</sup> *Old Dominion Electric Company v. PJM Interconnection, L.L.C., and PJM Interconnection, L.L.C.*, 99 FERC 61,189 (2002).

<sup>12</sup> *PJM Interconnection L.L.C., et al.*, 101 ¶ 61,345 (2002) at P 19 and 20 (*July 8 order*).

<sup>13</sup> *Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003*, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003) (Order No. 2003), *order on reh'g, Order No. 2003-A*, 69 Fed. Reg. 15,932 (March 26, 2004), FERC Stats. & Regs., Regulations Preambles ¶ 31,160 (2004) (Order No. 2003-A), *reh'g pending*; see also *Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004).

<sup>14</sup> *PJM Interconnection L.L.C.*, 108 FERC ¶ 61,025 (2004) at P 20 (*July 8 order*).

Commission made PJM's interconnection tariff subject to the outcome of Order No. 2003. Thus, the complaint at issue here is subject to any changes to that tariff that were required by the Commission in its July 8, 2004 order, and of equal importance, to the standards and regulatory philosophy contained in Order No. 2003. It is therefore appropriate to resolve the complaint based on rulings and statements in Order No. 2003 if those bear on the matters at issue here.

### **The Tariff Procedures**

16. PJM's generator interconnection procedures involve several steps. The first is the filing of a Generation Interconnection Request under section 36.1 of the tariff. Assuming the request meets all the requirements, PJM performs a Generation Interconnection Feasibility Study under section 36.2 to make a preliminary determination of the type and scope of Attachment Facilities, Local Upgrades, and Network Upgrades that will be necessary to accommodate the Generation Interconnection Request and to provide the Interconnection Customer a preliminary estimate of the time that will be required to construct any necessary facilities and upgrades and the Interconnection Customer's cost responsibility. Upon completion of the Generation Interconnection Feasibility Study, PJM must tender to the Interconnection Customer a System Impact Study Agreement pursuant to section 36.3. Section 36.3.1 provides that the System Impact Study Agreement must state the Interconnection Customer's cost responsibility.

17. Section 36.3. provides that if more than one Interconnection Request is being evaluated in a single System Impact Study, the costs are allocated among the Interconnection Customers so that each Interconnection Customer pays 100 percent of the study costs associated with Attachment Facilities necessary to accommodate its request, and that its share of the study costs associated with evaluating the Network Upgrades will be proportionate to its projected cost responsibility for the upgrades. Under section 36.3.2, if an Interconnection Customer's Generation Interconnection Request is terminated or withdrawn and that Request was included in a System Impact Study evaluating more than one request, then the cost of the System Impact Study shall be redetermined and reallocated among the *remaining participating Interconnection Customers*. Section 36.4.1 provides in part that PJM, in its sole discretion, may determine to evaluate in the same System Impact Study one or more Interconnection Requests relating to interconnections or increases in capacity that are in electrical proximity to each other. Section 36.4.2 provides that PJM shall exercise due diligence to complete the System Impact Study within 120 days.

18. Upon completion of a System Impact Study, under section 36.6 PJM must tender to the affected Interconnection Customer(s) a Generation Interconnection Facilities Study Agreement, which at its sole discretion, may determine to evaluate multiple Interconnection Requests in the same study. Section 36.6.2 requires the deposit of certain funds and payments. If an Interconnection Request is withdrawn and terminated, and if

the withdrawn and terminated Interconnection Request was to be included in a Generation Interconnection Facilities Study evaluating more than one request, then the costs of that Study shall be redetermined and reallocated among *the remaining participating Interconnection Customers*.

19. Upon completion of the Generation Interconnection Facilities Study, under section 36.8 PJM must tender to each Interconnection Customer an Interconnection Services Agreement (based on Attachment O to PJM's Tariff) by which the Interconnection Customer agrees to reimburse PJM for the costs of constructing facilities and upgrades necessary to accommodate the Interconnection Request. That Agreement also provides the Interconnection Customer with any Capacity Interconnection Rights the Interconnection Customer is entitled to receive under section 45 of PJM's tariff. Section 36.8.4(c) addresses withdrawals and provides in part:

In the event that a terminated and withdrawn Interconnection Request was included in a Generation Interconnection Facilities Study that evaluated more than one Interconnection Request, or in the event that an Interconnection Customer's participation in and cost responsibility for a Network Upgrade is terminated in accordance with Subpart C of Part IV of the Tariff, the Transmission Provider [PJM] shall reevaluate the need for the facilities and upgrades indicated by the Generation Interconnection Facilities Study, shall redetermine the cost responsibility of *each remaining Interconnection Customer* for the necessary facilities and upgrades based on its assigned priority pursuant to section 36.10 and/or section 48.1 (determining the queue), and shall enter into an amended Interconnection Customer Service Agreement *with each remaining Interconnection Customer* setting forth its revised cost obligation.<sup>15</sup> (emphasis added).

Thus, the tariff consistently provides that if there is termination and withdrawal at any point in the generator interconnection process, the costs involved are allocated among the remaining participating Interconnection Customers.

### **Analysis**

20. The central issue here is the allocation of risk under the PJM tariff for the costs of network capacity constructed pursuant to an Interconnection Facilities Agreement if those costs become unnecessary to support the operations of the Interconnection Customer. In this instance the additional 230 kV line that the Interconnection Customer, FPL Energy, was required to pay for became unnecessary after a more senior project, A13, was cancelled after the expenditure of some \$240 million. There is no dispute what would

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<sup>15</sup> PJM FERC Electric Tariff, Sixth Revised Volume No. 1, Original Sheet No. 103.

happen if additional projects were added to the queue that would use some of the capacity involved in the additional 230 kV line. In such a case the project costs would be reallocated among the projects lower down in the queue and the obligation such projects to provide additional network capacity would be reduced accordingly.<sup>16</sup>

21. However, in the instant case here there are no projects lower in the queue among which the costs can be reapportioned. As such, there are only two groups of entities to which the risk of the cancellation of the A13 project can be allocated, along with the cost of some \$9.4 million of network upgrades that is no longer needed. These are: the Interconnection Customers involved in projects A19 and A21, or PJM and its transmission Interconnection Customers.<sup>17</sup> As noted, the prior order assigned this risk to the Interconnection Customers based on an interpretation of PJM's tariff. That determination was correct. All the relevant interconnection provisions discussed, and section 36.8.4(c) in particular, provide that the reallocation of costs after a withdrawal will be among the *remaining* Interconnection Customers, *i.e.* FPL Energy and project A19. Since in the instant case there are none, assignment back to PJM and the transmission owners would violate the structure of PJM's interconnection procedures which provide that an Interconnection Customer must assume responsibility for all costs attributable to its proposed interconnection based on its place in the queue.

22. The fact that the particular need for the facility disappeared after the PJM and FPL Energy executed an Interconnection Services Agreement does not change the allocation of risk under PJM's tariff. As PJM pointed out in its answer in this proceeding, FPL Energy is no more relieved of its obligation under the PJM Tariff under the facts involved here than if project A-13 had been completed, began operations, and then ceased operations. PJM would still have completed the additional 230 kV line and would required FPL Energy to reimburse it. An analogous situation was discussed by the Commission in Order No. 2003-A. The issue involved the impact on an Interconnection Customer lower down in the queue if a project higher up in the queue suspends construction of its generating facility for up to three years. In response to the concern that this might ultimately lead to the construction of additional facilities by the Interconnection Customer lower down in the queue that it might have otherwise avoided, the Commission stated:

Nevertheless, with the withdrawal of the higher queued Interconnection

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<sup>16</sup> *Id.*

<sup>17</sup> It would appear that if PJM were required to refund the \$9.4 million, this would likely be paid by the relevant transmission owner or PJM and recovered through transmission Interconnection Customers using the PJM interstate transmission grid.

Customer, such costs become a legitimate component of the Interconnection Customer's initial funding requirement. This is simply a business risk that Interconnection Customers must face; the Commission cannot protect them from all uncertainty. To help the Interconnection Customer manage this uncertainty, we are directing the Transmission Provider to provide an estimate of the Interconnection Customer's maximum possible funding exposure, if higher queued generating facilities drop out when the Transmission Provider tenders the draft LGIA [Large Generator Interconnection Agreement].<sup>18</sup>

23. While the situation here involves the opposite risk (although either could occur under the clustering method that PJM employs in dealing with interconnection requests), the conclusion is the same. As has been discussed, the clustering method is specifically included in its tariff, and is both permitted and encouraged by the Commission in Order No. 2003-A.<sup>19</sup> Thus, FPL Energy was, or with due diligence, should have been, aware that the clustering method was being used to evaluate its proposed project, which is in fact uncontested. FPL Energy should further have known that the construction of the additional 230 kV line was based on its relative status in queue, that its cost exposure was unknown, and that there was at least some risk that the higher queue project might be cancelled.

24. Thus, while FPL Energy argues on rehearing that it had no control over PJM's use of the cluster method, and that it had no alternative but to sign the Interconnection Services Agreement tendered by PJM, the same answer applies to both points. The cluster procedure is authorized under PJM's tariff, its use normally promotes efficiency, and FPL Energy was the one to decide whether to execute the proffered agreement. As previously noted, in Order No. 2003-A, the Commission stated it cannot insulate an Interconnection Customer from all risks. Given the clear tariff language that costs are reallocated among the *remaining participating* Interconnection Customers, part of FPL Energy's business due diligence was to assess that very risk and to determine whether to execute the Interconnection Services Agreement.

25. FPL Energy's remaining points are based on PJM's administration of its Interconnection Procedures rather than interpreting the tariff. It first argues, based on hindsight, that the parties' respective obligations under the interlocking Interconnection Services Agreements could have involved a different schedule that would have lowered FPL Energy's risk. While PJM presented a factual argument to the contrary, both arguments are essentially irrelevant. FPL Energy had the opportunity to submit any

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<sup>18</sup> *Order No. 2003-A* at P 320.

<sup>19</sup> *Id.* at P. 159.

disagreements it may have had with PJM to dispute resolution,<sup>20</sup> and for whatever reason, elected not to do so and executed the relevant Interconnection Services Agreement.

26. Thus, while FPL Energy and PJM may have both misjudged the risk that project A13 would be cancelled, this was ultimately FPL Energy's risk under the tariff. Moreover, there is no credible grounds to believe that PJM did not exercise due diligence in monitoring the progress of project A13 to determine whether the additional facilities would be required. As stated in the prior order, some \$240 million had been expended on project A13 when it was cancelled. FPL Energy does not contest the point that the cancellation was completely unexpected, nor does it assert that PJM failed to exercise due diligence in its role as the system administrator. Its assertion that there could have been a different contract and program structure is insufficient to unwind a process in which it was an active participant under PJM's Interconnection Procedures.

27. The previous paragraph in essence answers FPL Energy's argument that the Commission did not properly apply *Virginia Electric and Power Co.*<sup>21</sup> There the Commission held that the project lower down in the queue is permitted to use capacity that is available until such time as the higher project is sufficiently close to completion such that the additional capacity must be constructed to meet the needs of the lower ranked project. The Commission further held that transmission owners should take steps to reduce the risk that projects lower down in the queue might be required to build capacity that would be unnecessary as long as the project higher up in the queue was delayed. The cluster method adopted by PJM is intended to provide efficiencies and reduce such risks; as has been noted, the Commission concluded in Order No. 2003-A that it is not possible to protect against all such risks. The approach used by PJM in the instant case was not inconsistent with the general admonition in *Virginia Electric*.

28. FPL Energy's two remaining arguments assert that the additional 230 kV line provides system benefits, and that the alternative relief provided in the April 20 Order has uncertain economic value given the costs of that extra line. On the first point, both FPL Energy and PJM submitted arguments on whether the additional 230 kV line provides system benefits. On reflection, the Commission need not reach the merits of that argument. As discussed in the Commission's June 7, 1999 Order, the determination of whether an Interconnection Customer must pay for Local and Network Upgrades as part of an Interconnection Services Agreement is determined by the RTEP in effect at the time that the proposed Interconnection Request is reviewed and the requirements for the interconnection established. If the increased capacity that may be required to accommodate the Interconnection Request is included in the current RTEP, the Interconnection Customer has no liability for the improvements. If the required capacity

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<sup>20</sup> See section 37.4, Original Sheet No. 106.

<sup>21</sup> 104 FERC ¶ 61,249 (2003) (*Virginia Electric*).

is not part of the RTEP, sole responsibility for the Local and Network Upgrades falls on the Interconnection Customer.

29. It is undisputed that the additional 230 kV line was not part of the relevant RTEP during the time frames at issue here. Thus, under the PJM tariff, FPL Energy has the responsibility for the construction costs of the line. Given the tariff, it is irrelevant whether that additional 230 kV line may or may not have been anticipated in the past, or that its alleged need may or may not be evidence by the fact that double towers were available to support the line. Contrary to FPL Energy's arguments, whatever utility decisions may have been made in the past, as well as the prudence of those decisions, are relevant only to the past. Since the line was not part of the pertinent RTEP, FPL Energy's engineering arguments have no relevance here. If FPL Energy believed that the RTEP was incorrect in this regard at the time its Interconnection Request was being reviewed, PJM's tariff provides procedures to review that broader issue and to assure the RTEP is fairly applied.<sup>22</sup>

30. FPL Energy also argues that the alternative relief discussed in the April 20 order, namely FTRs, ARR, and possible compensation by a subsequent project, is inadequate. Responding to PJM's May 19 letter to the Commission on that matter, FPL Energy argues that the value PJM attributes to the ARRs may be transitory based on certain short term events, and that in any event it is insufficient to recover the cost of the additional 230 kV line in any reasonable time frame. It likewise argues that the prospects for reimbursement by a subsequent project are low given that the right expires after 5 years and there are no additional projects on the horizon.

31. There are two answers to these assertions. First, the Commission did not posit the possible grant of FTRs and ARRs, or the possibility of reimbursement, as specific remedies in this case; rather, the Commission desired to know for its own information whether such mitigations would in fact be available. Second, as is discussed in the Commission's July 8 Order regarding PJM's Interconnection Procedures, there is no guarantee that such procedures will permit the Interconnection Customer to recover the costs of Local or Network Upgrades.<sup>23</sup> It is sufficient that FTRs or ARRs are awarded that may permit the Interconnection Customer that pays for the facilities to recover some of those costs. The same conclusion applies for the possible reimbursement by a subsequent Interconnection Customer within 5 years after the Interconnection Customer responsible for the facilities begins taking transmission service under the PJM tariff.

32. The Commission accepted PJM's Interconnection Provisions as just and

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<sup>22</sup> See section 37.4, Original Sheet No. 106.

<sup>23</sup> July 8 order at P20.

reasonable in 1999, and more recently as complying with Order No. 2003. Nothing in the record here suggests that PJM misapplied its tariff in its negotiations with FPL Energy, or acted in a discriminatory manner in implementing the relevant Interconnection Services Agreements. While Commission policy is intended to minimize the construction of unnecessary Local and Network Upgrades, as has been stated, the Commission cannot protect Interconnection Customers against all risks. For the reasons stated, rehearing of the April 20, 2004 Order is denied. PJM's May 19, 2004 letter to the Commission complies with that order and is accepted.

The Commission orders:

(A) PJM's May 19, 2004 letter is accepted as complying with the requirements of the Commission's April 20 Order.

(B) FPL Energy's request for rehearing is denied.

By the Commission. Commissioner Kelly not participating.

( S E A L )

Magalie R. Salas,  
Secretary.