UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C. Docket No. ER04-742-001

ORDER ON REHEARING AND CLARIFICATION

(Issued September 21, 2004)

1. On May 28, 2004, the Commission issued an order conditionally accepting the annual allocation of Financial Transmission Rights (FTRs) and Auction Revenue Rights (ARRs)[1] for the Commonwealth Edison Company (ComEd) zone for the period June 1, 2004 through May 31, 2005.[2] Several parties request rehearing of the Annual Allocation Order. For the reasons discussed below, the Commission grants or denies the requests.

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[1] At the beginning of each Annual Planning Period, PJM allocates ARRs to Network Transmission Customers and to long-term firm point-to-point transmission customers. ARRs entitle the holder to receive the revenue from the sale of FTRs on a specific path. FTRs are financial entitlements to collect congestion charges paid by the Firm Transmission Service customers on a specific path. (In effect, an FTR is a rebate the customer pays the congestion charge, but gets it back by exercising its FTR.) A holder of an ARR may also convert its ARR to an FTR (on the same path) and give itself the right to collect the congestion charges on that path. *See* Operating Agreement, Schedule 1, sections 5 and 7, PJM Interconnection, L.L.C., Third Revised Rate Schedule FERC No. 24; "ARR/FTR Business Rules, Effective February 1, 2004," www.pjm.com/markets/ftr/Auction User Information, paragraphs 4, 30, and 31.

[2] 107 FERC ¶ 61,223 (2004) (Annual Allocation Order).

Procedural Matters

2. MidAmerican Energy Company (MidAmerican) filed a request for rehearing. Requests for rehearing and clarification were filed by the Illinois Commerce Commission (Illinois) and by Exelon Corporation on behalf of its subsidiary Commonwealth Edison Company (ComEd).

3. On July 7, 2004, WPS Resources Corporation filed an Answer to the requests for rehearing and clarification on behalf of Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Power Development, Inc., and WPS Energy Services Inc. On July 9, 2004, Madison Gas and Electric Company filed a Motion for Leave to File Answer and Answer. On July 12, 2004, PJM filed an Answer to the requests for clarification. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2004), prohibits an answer to a request for rehearing. The motions to file answers are denied and the Answers are dismissed. In addition, Wisconsin Public Service Corporation was granted a late intervention in this proceeding and is a party,[3] but the Upper Peninsula Power Company, WPS Power Development, Inc. and WPS Energy Services Inc. have not intervened, are not parties, and may not make rehearing requests.

4. On June 21, 2004, Old Dominion Electric Cooperative (ODEC) filed a late motion to intervene in this proceeding. ODEC states it wishes to participate in the investigation established in the Annual Allocation Order under section 206 of the FPA concerning PJM's FTR and ARR allocation process. ODEC believes it is unclear whether this investigation will affect the allocation process for PJM as a whole. The Commission denies the motion. On June 9, 2004, the Commission issued an Errata Notice and a Notice of Initiation of Proceeding and Refund Effective Date in this proceeding. These notices revised the Annual Allocation Order and established a separate proceeding for the section 206 investigation in Docket No. EL04-105-000. If ODEC wishes to participate in the section 206 investigation, it should intervene in Docket No. EL04-105-000. The Commission notes that on June 30, 2004 it granted PJM an extension of time until February 1, 2005 to make the filing required in Docket No. EL04-105-000.[4]

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[3] 107 FERC ¶ 61,223 at P 24.

[4] Notice of Extension of Time, Docket Nos. ER04-742-000 and EL04-105-000 (June 30, 2004).

5. On August 2, 2004, the North Carolina Electric Membership Corporation (NCEMC) filed a late motion to intervene. NCEMC states that it seeks to intervene in order to participate in the section 206 investigation, which it believes might be conducted in this docket as well as in Docket No. EL04-105-000, and also because this docket may affect NCEMC's ability to obtain FTRs in the allocation processes for the new PJM zones for American Electric Power Service Corporation (AEP) and Dominion Virginia Power (Virginia Power or VEPCO). NCEMC states it did not intervene earlier because it did not foresee that PJM's filing related to allocation of FTRs in the ComEd zone could have an impact on other zones. The Commission denies NCEMC's request to intervene in this docket. The Commission finds NCEMC has not shown good cause for its failure to intervene in a timely fashion. In addition, NCEMC has intervened in Docket No. ER04-1077, the proceeding for the allocation of FTRs in the AEP zone in which it is directly concerned. NCEMC may also intervene in Docket No. EL04-105-000. The section 206 investigation of PJM's FTR/ARR allocation procedures will be conducted in Docket No. EL04-105-000 and NCEMC may express its views concerning those procedures in that docket.

Background

6. On April 15, 2004, PJM filed its annual allocation of Financial Transmission Rights (FTRs) and Auction Revenue Rights (ARRs) for the Commonwealth Edison Company (ComEd) zone for the period June 1, 2004 to May 31, 2005. Several customers protested the allocation stating that they did not receive all of the FTRs that they had requested. These customers consisted, for the most part, of the following long-term point-to-point customers located in Wisconsin: Alliant Energy Corporate Services, Inc. (Alliant), the Madison Gas and Electric Company (MGE), Wisconsin Electric Power Company (WEPC), the Wisconsin Public Service Corporation (WPSC), and Wisconsin Public Power, Inc. (WPPI). In addition, MidAmerican Energy Company (MidAmerican) protested that PJM had not permitted it to request FTRs for short-term firm transmission service. As mitigation for customers whose FTR requests had been prorated, PJM proposed to provide the opportunity to terminate their existing transactions by forgoing payment of access charges to the extent they did not receive FTRs. It also proposed that long-term firm point-to-point customers could redirect their FTR requests to alternative resources for which FTRs were available.

7. The Commission accepted PJM's filing subject to conditions for the allocation year June 1, 2004 through May 31, 2005, because it was in accordance with PJM's tariff provisions. The Commission encouraged customers to use the redirect option, but did not require that they do so. Instead, the Commission made its acceptance of the filing subject to additional mitigation for customers that did not receive an allocation of FTRs/ARRs

reasonably consonant with their prior long-term firm contracts for transmission service.[5] The Commission required PJM to pay congestion revenues associated with the FTRs/ARRs that were requested but not received to the protesting parties that did not receive nominated FTRs/ARRs up to their firm long-term point-to-point contract levels. The payments were to be recovered through an uplift payment assessed to all customers within the ComEd zone.[6] The Commission stated the additional mitigation was consistent with the Commission's order concerning the allocation of FTRs in the ComEd zone for the month of May, 2004.[7] The Commission noted that this mitigation approach is only a short-term solution.

8. For MidAmerican's short-term contracts, the Commission found that the option of canceling existing firm transactions was sufficient mitigation. The Commission stated that, unlike customers with long-term point-to-point contracts, customers with short-term point-to-point contracts do not have a reasonable expectation that they will be able to retain their capacity and, therefore, do not have an equal claim to guaranteed FTRs.[8]

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[5] Under its current Tariff and Operating Agreement, PJM conducts an annual process of selling and buying FTRs through a multi-round auction. The annual FTR auction offers for sale the entire transmission entitlement that is available on the PJM system on a long-term basis. ARRs are the mechanism by which the proceeds from the Annual FTR auction are allocated. PJM's current Tariff and Operating Agreement provide that at the beginning of each planning period (June 1 of a calendar year to May 31 of a subsequent calendar year), ARRs are allocated to network transmission customers and to firm point-to-point transmission customers for the duration of the planning period. The annual FTR and ARR allocation is conducted in two stages. In the first stage, network service users are allocated ARRs/FTRs based on generation resources that historically served load in each transmission zone or historic load aggregation zone. In the second stage, which includes a four round allocation process, both network service users and firm point-to-point customers are allocated FTRs/ARRs in a comparable manner. Both network service users and firm point-to-point customers are limited to load serving entities' share of zonal peak load.

[6] 107 FERC ¶ 61,223 at P 48.

[7] 107 FERC ¶ 61,090 at P 28, 29 (2004) (May Allocation Order). *See also*, 106 FERC ¶ 61,253 at P 41 (2004) (ComEd Integration Order).

[8] 107 FERC ¶ 61,090 at P 49.

9. The Commission found PJM's Tariff and Operating Agreement provide network customers with preferential access to capacity and energy resources in the first stage of the annual FTR and ARR allocation process. Point-to-point customers may request FTRs and ARRs only in the second stage of the allocation process. The Commission found that, as a result, PJM pro-rated customers holding firm point-to-point reservations to a greater degree than network service users. The Commission also found that the current Tariff and Operating Agreement procedures were harmful to the Wisconsin ratepayers whose service was unduly pro-rated. Nor do they fulfill the Commission's previously imposed condition in the ComEd integration proceeding of providing customers holding firm long-term reservations with FTRs for a comparable level and term in the PJM allocation process.[9]

10. Consequently, the Commission found that PJM's annual allocation process for FTRs and ARRs appears to be unjust and unreasonable under section 206 of the Federal Power Act.[10] The Commission instituted an investigation under section 206 of the Federal Power Act to determine whether PJM's existing process for allocating FTRs/ARRs is unduly preferential and to determine a just and reasonable allocation process. The investigation will be conducted in a separate proceeding, Docket No. EL04-105-000, with PJM's compliance filing due on February 1, 2005, as discussed in the procedural section of this order.

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[9] ComEd Integration Order, 106 FERC ¶ 61,253 at P 41 (2004).

[10] 107 FERC ¶ 61,090 at P 47.

Discussion

Assessment of Uplift Charges

11. Exelon and Illinois state that PJM posted business rules on its website implementing the mitigation measure and that these rules collect the uplift amounts only from network service users within the ComEd zone.[11] Exelon and Illinois ask the Commission to clarify or to grant rehearing that all customers in the ComEd zone will be assessed uplift charges, including the customers who are receiving the additional congestion revenue payments for FTRs nominated but not received. They state the Commission required that all customers be assessed the uplift charges.[12] Exelon asserts the other customers should not subsidize the customers located in MISO and therefore should not be the only ones to bear the burden of the uplift charges. Additionally, Illinois maintains that PJM should not simply file these provisions as business rules, but should be required to file these procedures as part of its tariff.

12. The Commission grants the request that mitigated customers be assessed the uplift charges. The Commission also clarifies that customers who must pay the uplift charges are those customers who accepted FTRs or mitigation or both, as discussed further below. Each of these customers is responsible for paying its proportionate share of the uplift costs. The mitigation payments are intended to compensate firm long-term transmission customers for not receiving FTRs commensurate with their contracts. Since customers who were assigned FTRs are responsible for paying their share of uplift costs, so should be those customers receiving mitigation. The mitigation is being paid in lieu of the receipt of FTRs. Thus, those receiving mitigation should be treated the same as those customers who did receive FTRs. However, we note that the Commission has determined that this mitigation measure shall only be in effect for the short term. The Commission expects that new allocation procedures will be adopted in the proceeding

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[11] "PJM Business Rules to Implement the FERC Mitigation Measure for the FTR Allocation in the Com-Ed zone for period of June 1, 2004, to May 31, 2005 (FERC order in docket [*sic*] ER04-742-000)," www.pjm.com/markets/ftr/Auction User Information/[under 2004/2005 Annual ARR Allocation] Business Rules for FERC FTR Allocation Mitigation (last accessed August 26, 2004).

Section 6 of these Business Rules provides that any uplift payments required to support the credits to holders of the unallocated FTRS will be collected on a monthly basis from all Network Service Users with the Com-Ed zone in proportion to their Demand Charges for Network Service.

[12] Illinois cites 107 FERC ¶ 61,223 at P 48.

established in Docket No. EL04-105-000. The Commission anticipates that once new allocation procedures are in effect, it will not be necessary to require mitigation for prorated FTRs of long-term firm customers located in MISO. In addition, the Commission agrees with Illinois, and grants rehearing to require PJM to file tariff provisions, within 15 days of the date of this order, that provide the methodology for determining and allocating the uplift charge paid by all customers in the ComEd zone.

Crediting of Congestion Revenues

13. Exelon and Illinois assert that an FTR holder need not schedule its transactions, so that the MISO customers could receive congestion revenues in excess of congestion payments. Exelon asserts the MISO customers should not be allowed to retain profits from FTRs over and above the additional congestion payments they face. Exelon asks

the Commission to clarify or grant rehearing that any excess revenues the MISO customers receive from FTRs should be credited to reduce uplift charges.

14. The mitigation requirement was designed to ensure that customers paying for long-term firm transportation service reasonably receive the service for which they contracted, without incurring added transmission costs. It was not designed to provide added compensation to such customers. Accordingly, a customer should receive mitigation payments only when necessary to offset congestion charges they have incurred. Therefore, we grant the parties' rehearing request regarding this matter. We also require PJM to include in its tariff provision providing for the crediting of any excess revenues mitigated customers receive against the uplift charges that customers pay.

Mitigation Measure

15. Illinois objects to the uplift payments. It asserts the allocation was performed in accordance with PJM's Commission approved Tariff and should not be mitigated. It also asserts that the uplift payments will harm the retail competitive environment in Illinois. Illinois asserts they will make Alternative Retail Energy Suppliers (ARES) less competitive than the incumbent utilities because the uplift charge on the transmission component of unbundled services will make these alternatives more expensive than the bundled service offered by the incumbent utility. Illinois also asserts the uplift payments will add to the total service cost of unbundled service customers if it is passed through by retail suppliers. Illinois is concerned as well that the regulatory uncertainty and volatility created by the Commission's last minute adoption of the mitigation measure will have a chilling effect on the competitive environment in Illinois. Illinois asks the Commission to rescind the mitigation measure.

16. The Commission denies these rehearing requests. The Commission accepted

PJM's FTR allocation procedures in November, 2003, [13] subject to further Commission action in Docket No. ER03-406-000. In that docket it found that further procedures were necessary to ensure that the allocation of FTRs in new areas would be fair and reasonable and required PJM to make compliance filings showing the proposed allocation of FTRs in new regions. Subsequently, in ruling on the integration of ComEd into PJM, on March 18, 2004, the Commission found that customers holding firm reservations should receive FTRs for a comparable level and term.[14] The Commission has carried out that ruling by requiring mitigation for prorated long-term firm customers in the form of uplift payments in the May, 2004 allocation in Docket No. ER04-653-000 and in the annual allocation in this docket.

17. Moreover, with respect to the allegation that the mitigation measure is bad regulatory practice and will have a chilling effect on the market, the Commission determined in the Annual Allocation Order that the mitigation approach is only a short-term solution to the problem, and the proceeding in Docket No. EL04-105-000 is intended to result in a long-term non-discriminatory solution that does not require mitigation.[15] In addition, we find that permitting unduly discriminatory access to energy and capacity in the FTR/ARR allocation process without sufficient remedy could have a negative effect on the market. Accordingly, we deny Illinois's request for rehearing for these reasons as well.

18. Contrary to Illinois's assertion, the uplift payments will not favor incumbent utilities over ARES who must pay the uplift charges. The incumbent utilities are also customers of PJM and they too will pay the uplift charges if they received FTRs or mitigation.[16] In addition, this order requires that the mitigated companies also pay the uplift charges. Consequently, the uplift charges will affect the costs of these market participants in the ComEd zone equally. They will not make transmission charges to ARES higher than those of other sellers. And these PJM customers, whether or not they are ARES, will face the same choice as to whether to seek to pass through the uplift charges to their retail customers.

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[13] Director Letter Order, Docket No. ER03-1409-000 (November 24, 2003).

[14] 106 FERC ¶ 61,253 at P 41 (2004).

[15] 107 FERC ¶ 61,223 at P 48 (2004).

[16] See section 28.3, Original Sheet No. 80, PJM Interconnection, L.L.C. FERC Electric Tariff, Sixth Revised Volume No. 1.

19. In the alternative, Illinois asks the Commission to provide mitigation to the prorated MISO customers consisting of treating all parties as though they had been allowed to request FTRs on an equal basis. Illinois believes that under those circumstances the mitigated parties would not receive all of the FTRs they request. Illinois states the mitigated customers are thus receiving more risk coverage than they would have if all parties had been allowed to request FTRs on an equal basis and that the current mitigation is thus unduly discriminatory.

20. The Commission denies this request. The Commission will not provide mitigation to the prorated MISO customers consisting of treating all parties as though they had been allowed to request FTRs on an equal basis. Illinois's approach would leave the mitigated customers with the same quantity of prorated FTRs that they received in the annual allocation, but reduce the amount of their mitigation. The mitigated customers would thus be left without FTRs equivalent to their firm and network service contracts.

Short-term Firm Transmission

21. MidAmerican asserts that PJM wrongfully denied it the opportunity to request FTRs for its short-term firm service. MidAmerican relies on section 13.2 of PJM's Open Access Transmission Tariff (OATT).[17] Section 13.2 concerns reserving capacity for point-to-point transmission service. MidAmerican contends that this section gives it the right to request FTRs. MidAmerican states that it had firm reservations for its short-term contracts as of the integration of ComEd into PJM on May 1, 2004. It argues that, thus, its short-term contracts were as firm as long-term contracts, it had a reasonable expectation of retaining its capacity, and it should receive FTRs for these contracts. If this rehearing request is not granted, MidAmerican asks that no uplift charges be assessed on its monthly firm point-to-point service.

22. The Commission denies MidAmerican's rehearing requests. PJM has rules for the allocation of Auction Revenue Rights (ARRs).[18] The PJM rules provide that to qualify to participate in the Annual ARR Allocation process, firm point-to-point ARR requests must be associated with firm point-to-point service that spans the entire next planning period, which is one year, and is confirmed by the opening of the Annual ARR Nomination

[17] Original Sheet Nos. 54 and 55, PJM Interconnection, L.L.C. FERC Electric Tariff, Sixth Revised Volume No. 1.

[18] "ARR/FTR Business Rules, Effective February 1, 2004," www.pjm.com/markets/ftr/Auction User Information.

period,[19] which in this case was March 11, 2004.[20] It does not appear that MidAmerican met either of these criteria. Thus, it was not entitled to an allocation of ARRs under PJM's business rules.[21] Moreover, the intent of the rules is to allocate ARRs (and, hence, FTRs) in the annual allocation to those entities that are paying the embedded fixed costs of the transmission grid. Such entities have long-term firm service and pay those costs throughout the year. MidAmerican's short-term firm contracts do not make it the kind of entity for which ARRs were intended.

23. We addressed similar issues in the Annual Allocation Order, explaining that with respect to MidAmerican's concern regarding short-term firm transactions, the Commission finds that the option to cancel the contract if the customer is dissatisfied with its FTR allocation is sufficient.[22] Moreover, MidAmerican recognizes that when it cancels the short-term firm reservations, it will not be charged for services it will not receive. Additionally, consistent with our determination in the Annual Allocation Order, we affirm that, unlike customers with long-term firm point-to-point contracts, customers with short-term firm point-to-point contracts do not have a reasonable expectation that they will be able to retain their capacity and therefore do not have an equal claim to guaranteed FTRs.[23]

24. Last, the Commission grants MidAmerican's request that it not be assessed the uplift charges with respect to its short-term firm transportation service. Only those customers who received FTRs or mitigation or both should be assessed the uplift charge.

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[19] "ARR/FTR Business Rules, Effective February 1, 2004," Paragraph 73, page 10.

[20] Filing of April 15, 2004 at 5, Docket No. ER04-742-000.

[21] In a response to a data request in Docket No. ER04-653-002 filed August 23, 2004, PJM stated that "PJM's preexisting business rules for annual FTR allocations treat firm point-to-point services spanning the entire allocation period in the same category as long-term firm service, even if that service is composed of multiple short-term (e.g., monthly) contracts, so long as the entire allocation period is under firm contracts for the reservation amount for which FTRs are requested." Letter of August 23, 2004, Docket No. ER04-653-002. MidAmerican's short-term contracts do not appear to have consisted of contracts for the entire allocation period.

[22] 107 FERC ¶ 61,223 at P 49 (2004).

[23] *Id*.

MidAmerican was never eligible to benefit from the FTRs for its short-term contracts, so should not have to bear the burdens of those who were eligible for FTRs, but received a prorated amount.

The Commission orders:

(A) The requests for rehearing and clarification are granted or denied as discussed in the body of this order.

(B) PJM is required to file tariff provisions within fifteen days of the date of this order as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.