

119 FERC ¶ 61,052  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Old Dominion Electric Cooperative                      Docket No. EL01-106-001  
v.  
PJM Interconnection, L.L.C.

ORDER DENYING REHEARING

(Issued April 19, 2007)

1. On July 22, 2005, the Commission dismissed a complaint by Old Dominion Electric Cooperative (ODEC) against PJM Interconnection, L.L.C. (PJM) finding that ODEC was not entitled to capacity credits for network upgrades built as part of a generation interconnection project.<sup>1</sup> ODEC filed a request for rehearing, which the Commission denies for the reasons discussed below.

**I. Background**

2. The facts underlying ODEC's July 31, 2001 complaint stem from its decision in 1998 to construct a power plant in Rock Springs, Maryland, and which would interconnect with the PJM grid at that point. At the time ODEC filed its complaint, it was a Network Customer receiving transmission service pursuant to the terms of PJM's Open Access Transmission Tariff (PJM OATT).<sup>2</sup> The plant itself was to consist of three gas-fired combination units that would directly impact the transmission facilities of three existing transmission owners, primarily PECO Energy Company (PECO), but also Conectiv Energy, Inc.(Conectiv), and Baltimore Gas & Electric Company.<sup>3</sup> Pursuant to an Interconnection Agreement dated May 18, 2001, PJM required ODEC to pay for network upgrades to these facilities at an estimated

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<sup>1</sup> *PJM Interconnection, L.L.C.*, 112 FERC ¶ 61,094 (2005) (July 2005 Order).

<sup>2</sup> *See* ODEC's Complaint dated July 31, 2001, at 3.

<sup>3</sup> *See* ODEC's Complaint at 5; PJM's Answer to the ODEC Complaint dated August 20, 2001 at 5. These basic facts are uncontested, as is the amount of the upgrades that PJM required through the Interconnection Agreement.

cost of \$12,070,400, and attachment facilities of \$1,990,000.<sup>4</sup> The network upgrades were required under the then existing “but for” provisions in Sections 37.2 and 37.3 of Part IV of PJM’S OATT, and, as a result, were to be paid for by ODEC.<sup>5</sup> The attachment facilities were those required to physically connect the proposed power plant to the PJM interstate transmission grid, and as such was also to be constructed at ODEC’s expense.<sup>6</sup> However, these “but for” upgrades were not associated with a request for transmission service that would insure that the output of the Rock Springs facility could be delivered without incurring congestion costs.

3. ODEC filed the instant complaint on July 31, 2001 pursuant to section 206 of the Federal Power Act (FPA). The complaint alleged that the “but for” provisions of the interconnection procedures then contained in Part IV of PJM’s OATT were unjust and unreasonable.<sup>7</sup> Under those “but for” provisions an interconnecting generator was required to pay for network upgrades that would not be required except for the construction to interconnect the generator. ODEC claimed it should be permitted to recoup the costs of those upgrades through transmission credits against the rates it would pay as a transmission customer once the new generator was in service. ODEC asserted that requiring it to pay for both the interconnection upgrades and the transmission rates was impermissible “and” pricing.

4. On May 17, 2002, the Commission issued an order accepting and suspending certain proposed changes to the interconnection procedures of PJM’s OATT, subject

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<sup>4</sup> See Interconnection Service Agreement between PJM and ODEC dated May 18, 2001, attached to PJM’s August 20, 2001, Answer to ODEC’s Complaint.

<sup>5</sup> See PJM’s Answer at 5-6. Similar assertions were made in Conectiv’s Motion to Intervene and Protest to the Complaint at 4-5, the Motion to Intervene and Protest of PPL Electric Utilities Corporation at 4-5, and PECO’s Motion to Intervene and Protest at 3-4.

<sup>6</sup> See Section 37.1 of PJM’s OATT, *cited* at page 4, footnote 7, of PJM’s Answer.

<sup>7</sup> The relevant version of Part IV of the PJM OATT was first approved in 1999 and addressed the same cost and efficiency issues that have been discussed in this proceeding. See *PJM Interconnection, L.L.C.*, 87 FERC ¶ 61,299 at 62,202-04, *reh’g denied*, 89 FERC ¶ 61,186 (1999).

to the final outcome of the rulemaking then pending in Docket No. RM02-1-000, which became Order No. 2003 once the final rule issued.<sup>8</sup>

5. Based on these subsequent filings, the Commission deferred action on ODEC's complaint pending the outcome of the Order No. 2003 rulemaking.<sup>9</sup> PJM modified its interconnection provisions somewhat in its August 9, 2004 Order No. 2003 compliance filing, but the "but for" concept was retained. The Commission accepted the Order No. 2003 compliance filing on February 10, 2005 with certain modifications not relevant here.<sup>10</sup>

6. In the July 2005 Order, the Commission found that PJM had complied with the "but for" provisions of its OATT and found that those provisions were not unjust and unreasonable because they conformed to Order No. 2003, and therefore did not violate the Commission's policy against "and" pricing. The Commission therefore dismissed the July 31, 2001 complaint. ODEC filed a request for rehearing on August 22, 2005.

## II. Rehearing Request

7. ODEC's request for rehearing asserts that the Commission improperly determined that it was not entitled to a capacity credit for the network upgrades it constructed. ODEC does not challenge PJM's technical analysis that the network upgrades for which ODEC paid would not have been incurred under the RTEP "but for" the generation project and that these upgrades did not provide system benefits justifying a reduction in ODEC's interconnection capital costs pursuant to Section 37.2 of PJM's OATT.<sup>11</sup>

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<sup>8</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 on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (March 26, 2004), FERC Stats. & Regs., Regulations Preambles ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005) FERC Stats. & Regs. ¶ 31,171 (2005), Order No. 2003-C, 111 FERC ¶ 61,401 (2005); *see also* Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 (2004).

<sup>9</sup> *Old Dominion Electric Cooperative v. PJM Interconnection, L.L.C. and PJM Interconnection L.L.C.*, 99 FERC ¶ 61,189 (2002).

<sup>10</sup> *See PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025 at P 18 (2004), *order on reh'g*, 110 FERC ¶ 61,099 (2005).

<sup>11</sup> Section 37.2, Sixth Revised Vol. No. 1, Original Sheet No. 105 and First Revised Sheet No. 105D.

8. Rather, it first argues that PJM's OATT does not properly reflect Order No. 2003 because it is a transmission customer as well as a generator, and that therefore the application of section 37.2 here constitutes impermissible "and" pricing. As such, PJM's pricing policy in this case violates the Commission's own policy against "and" pricing. It also maintains that since PJM failed to provide it Firm Transmission Rights (FTRs) that reflect the cost of its network upgrades, it has received no value for building the network upgrades in violation of the Commission's "and" pricing prohibition. ODEC further argued that financial transmission rights (FTRs) are of questionable value and therefore do not meet the standards contained in Order No. 2003.

9. Second, in a procedural argument ODEC emphasizes a sentence in the July 2005 Order, which stated: "Under the right circumstances, a well-designed and independently administered participant funding policy for network upgrades offers the potential to provide more efficient price signals and a more equitable allocation of costs than the crediting approach."<sup>12</sup> Given that language, ODEC asserts that it should be provided an opportunity to establish at hearing that the "right circumstances" were not involved in its transaction and therefore it is not subject to the policy against payment of transmission credits in the context of generator interconnections with Regional Transmission Organizations (RTOs).

### **III. Discussion**

#### **A. ODEC's Status as a Transmission Customer Does Not Render PJM's OATT Unjust and Unreasonable.**

10. As discussed, the Commission accepted the "but for" test in section 37.2 of PJM's OATT in 1999<sup>13</sup> and again in 2003 as part of its Order No. 2003 compliance filing. This provision charges the interconnection customer with the costs of the upgrades that would not have been otherwise incurred by transmission customers to meet the reliability needs of the PJM system. However, those costs are reduced if the upgrades are necessary under the Regional Transmission Expansion Plan (RTEP) or would otherwise provide reliability benefits to the PJM system.<sup>14</sup> ODEC argues that the Commission acted arbitrarily in applying the "but for" participant funding regime of the PJM OATT, contending that these are not the "right circumstances" for

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<sup>12</sup> July 2005 Order at P 7.

<sup>13</sup> *PJM Interconnection L.L.C.*, 87 FERC ¶ 61,299 (1999) at 62,202-04, *reh'g denied*, 89 FERC ¶ 61,186 (1999).

<sup>14</sup> *See FPL Energy Marcus Hook, L.P. v. FERC*, 430 F.3d 441 (D.C. Cir. 2005).

applying this approach under Order No. 2003.<sup>15</sup> In particular, ODEC argues that application of the “but for” test in these circumstances constitutes impermissible “and” pricing because it is a transmission customer as well as a generator.<sup>16</sup> It asserts that this dual status results in its paying twice for transmission capacity under the interconnection provisions of PJM’s OATT.

11. The PJM OATT, accepted by the Commission, appropriately reflects the concerns addressed in Order No. 2003. The Commission explained in Order No. 2003 that the “but for” test is an appropriate test to apply in the context of an independent RTO, because it encourages generators to make proper siting decisions that take into account all the costs of building the generation facility.<sup>17</sup> The Commission stated that “a well-designed and independently administered participant funding policy for Network Upgrades offers the potential to provide more efficient price signals and a more equitable allocation of costs than the crediting approach.”<sup>18</sup> Because an RTO is independent, it can be expected to make such determinations of system benefits fairly without the prospect of undue discrimination.<sup>19</sup> The Commission explained that it adopted the transmission credit approach (originally sought by ODEC) only for non-independent transmission owners because of the potential for undue discrimination.<sup>20</sup> In fact, in response to a rehearing request by ODEC with respect to PJM’s Order No. 2003 compliance filing, the Commission explained that PJM’s OATT was consistent with Order No. 2003:

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<sup>15</sup> Order No. 2003, Order No. 2003, FERC Stats. & Regs., Regulations Preambles ¶ 31,146 at P 695.

<sup>16</sup> “And” pricing generally refers to the policy allowing a utility to charge transmission-only customers the higher of embedded costs (for the system as expanded) or incremental expansion costs, but not the sum of the two. See Inquiry Concerning the Commission’s Pricing Policy for Transmission Services, FERC Stats. & Regs. Regulations Preambles [January 1991 - June 1996] ¶ 31,005, at 31,137-38 (1994).

<sup>17</sup> Order No. 2003, FERC Stats. & Regs., Regulations Preambles ¶ 31,146 at P 695 (2003).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at P 696.

<sup>20</sup> *Id.* at P 696. See Order No. 2003-A, 69 Fed. Reg. 15932 (March 26, 2004), FERC Stats. & Regs., Regulations Preambles ¶ 31,160 at P 691 (March 5, 2004).

As explained in the July 8 order, because of the lower risk of discrimination against interconnection customers by an RTO, the Commission permits RTOs to require interconnection customers to pay for the incremental facilities that are required to support their interconnection to the grid. These include not only facilities required to connect the interconnection to the grid, but the improvements that are necessary to assure efficient transmission of the additional load that the interconnection customer will be delivering to PJM's grid. This in turn creates important incentives for efficiency. Such improvements are known as local network upgrades and are the minimum necessary upgrades that would not have been incurred under the Regional Transmission Expansion Plan (RTEP), and as such are considered "but for" facilities necessary to support the interconnection request.<sup>21</sup>

12. ODEC now claims that PJM has improperly applied the "but for" test in this case, because it is a transmission customer as well as a generator. ODEC alleges that this violates the Commission's general policy against "and" pricing. The Commission disagrees. PJM's interconnection procedures, including section 37, apply to all interconnection customers regardless of any other status. For example, these procedures apply equally to transmission owners that build generation and interconnect with the PJM grid.<sup>22</sup> Indeed, one of the goals of Order No. 2003 was to require transmission providers to implement interconnection procedures that can be applied in a non-discriminatory manner. Simply because ODEC is a transmission customer that decides to build its own generation facility does not relieve ODEC of cost responsibility for transmission upgrades that would not have been needed "but for" ODEC's interconnection request. Moreover, because ODEC is paying for the network upgrades, the costs of those upgrades may not be included in the transmission owners' cost-of-service transmission rate, which eliminates the risk of double payment. Additionally, as the Commission explained in Order No. 2000-A:

While the pricing proposals we will entertain for RTOs may combine elements of embedded cost rates and incremental cost rates, they do not constitute corporate "and" pricing. Indeed, we

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<sup>21</sup> 110 FERC ¶ 61,099 at P 8 (2005).

<sup>22</sup> See *CED Rock Springs, LLC*, 114 FERC ¶ 61, 285, at P 12 (2006) (transmission owner generation projects must comply with the same OATT provisions as all other requests); PJM OATT § 1.13B, § 8.33, Article IV Preamble (requiring that all generation interconnection requests, including those of transmission owners fall within the OATT's Interconnection procedures).

have already approved these rate forms for most existing ISOs, noting for example, that it is acceptable to charge both a non-pancaked access fee based on embedded costs and an incremental charge reflecting opportunity costs or expansion costs.<sup>23</sup>

Thus, the Commission allows RTO's greater flexibility in developing pricing mechanisms to allocate and recover the incremental costs caused by generation interconnections.

13. ODEC cites to a June 17, 1999 order dealing with PJM's generation interconnection procedures for the proposition that impermissible "and" pricing can result if a generator is itself a transmission customer.<sup>24</sup> ODEC's reliance on the June 17, 1999 Order is misplaced. That order, which predated Order No. 2003, accepted the "but for" test to apply to interconnections built within PJM and deliverable to PJM.<sup>25</sup>

**B. PJM's OATT Is Not Unjust and Unreasonable If Network Upgrades Do Not Provide Capacity Rights.**

14. ODEC asserts that the failure to provide credits for ODEC's network upgrades is unjust and unreasonable as impermissible "and" pricing, since PJM has not provided it with firm transmission rights. It cites to Order No. 2003, claiming that the Commission provided that "and" pricing can be avoided only if the generation interconnection customer receives these "well defined capacity rights, which provide some protection from having to actually pay congestion charges."<sup>26</sup> In this case, in which the network upgrades do not create additional transmission capability between points and thus do not give rise to capacity rights (FTRs or IARRs), the Commission

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<sup>23</sup> See *Regional Transmission Organizations*, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs., Regulations Preambles, ¶ 31,092, at 31,388 (2000).

<sup>24</sup> *PJM Interconnection, LLC*, 87 FERC ¶ 61,299, at 62,204 (1999) (the only issue raised with respect to "and" pricing concerned exports from PJM, which are not at issue here).

<sup>25</sup> *Id.* at 62,202.

<sup>26</sup> ODEC Rehearing, at 13, citing Order No. 2003, FERC Stats. & Regs., Regulations Preambles ¶ 31,146, at P 700.

finds that under the terms of PJM's tariff<sup>27</sup> ODEC is not entitled to receive capacity rights. PJM's "but for" pricing test appropriately allocates the costs of network upgrades occasioned by the interconnection request by ODEC. This does not violate the Commission's transmission pricing policy.

15. ODEC cites to the following statement in Order No. 2003 in support of its argument.

the Commission wishes to emphasize that, by allowing an independent Transmission Provider to adopt a pricing policy, such as the "but for" approach, that differs from the crediting approach that the Commission is requiring for non-independent entities, the Commission is not abandoning the goals that the Commission has established for interconnection pricing, as described above. First, even though the "but for" approach allows the cost of certain Network Upgrades to be assigned to the Interconnection Customer, it is not "and" pricing if, for example, the Interconnection Customer is allowed to receive well-defined capacity rights that are created by the upgrades.<sup>28</sup>

16. ODEC misinterprets the scope of the Commission's statement. The Commission has held that interconnection costs can be directly assigned by independent Transmission Providers because they can fairly administer the "but for" test thereby assuring that there is no undue preference or discrimination. The system upgrades required for interconnection merely ensure that the generator can operate without compromising the integrity of the grid; these system upgrades are distinct from system upgrades needed to make that generator deliverable without congestion. Not every system upgrade required simply to interconnect a generating facility safely to the grid entitles the generator to capacity rights; however, a generation interconnection customer would be "allowed to receive" capacity rights if a network upgrade creates additional transmission capability.

17. ODEC did not assert that its network upgrades created additional transmission capability sufficient to warrant an award of transmission capacity rights. Indeed, on this record, it does not appear that ODEC even sought to avail itself of the allocation

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<sup>27</sup> See sections 46.2 and 46.3 of PJM's OATT. While Order No. 2003 refers to "capacity rights," this means Firm Transmission Rights (FTRs) or Incremental Auction Revenue Rights in the context of the PJM tariff. See footnote 29, *infra*.

<sup>28</sup> Order No. 2003, FERC Stats. & Regs., Regulations Preambles ¶ 31,146, at P 700.

provisions for securing transmission capacity rights under the PJM tariff.<sup>29</sup> ODEC has only argued that, under Order No. 2003, there is an absolute requirement to receive capacity credits as a result of the construction of network upgrades.

18. The Commission concludes that PJM is not required to provide transmission capacity rights where, as here, the network upgrades create no additional transmission capability. While it is true that the Order No. 2003 series of orders stated that generation interconnection customers would receive capacity rights, those statements were based on the assumption that a network upgrade provided by an interconnection customer would create additional transmission capability beyond that needed to simply interconnect with the grid.<sup>30</sup> As such, the Commission's prior statements do not require capacity rights to be awarded where the network upgrades create no transmission capability beyond that necessary to safely and reliably interconnect to the PJM system.

19. Indeed, in response to ODEC's rehearing request, the July 8, 2004 order on PJM's Order No. 2003 compliance filing found that the provision of capacity rights for network upgrades need not in this case bear any relation to the costs of the

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<sup>29</sup> Under the PJM OATT transmission capacity rights allocated to a generation interconnection customer are determined by the amount of simultaneously feasible transmission capability created by the interconnection customer's network upgrades. However, the generation interconnection customer must first request the allocation of Incremental Auction Revenue Rights (IARRs) between designated points. Under section 46.3 of its OATT, PJM assigns IARRs to the generation interconnection customer based on its point to point request that represent the difference in transmission capability between the base case (without the upgrade) and the system with the upgrade between those two points. The generation interconnection customer is assigned the IARRs based on the additional transmission capability created by the network upgrades it builds. However, if the network upgrades do not create any incremental IARRs along the path requested by the generation interconnection customer, then the customer will not be assigned any additional IARRs. The OATT states that additional transmission capability may be created by an interconnection customer's network upgrades but awards transmission capacity rights for any additional transmission capability created by such upgrades. *See* sections 46.2 and 46.3 of PJM's OATT.

<sup>30</sup> Order No. 2003 stated only that the generator would be "allowed to receive" capacity rights, not that the allocation of such rights is required if the upgrades do not create additional transmission capability. Order No. 2003, FERC Stats. & Regs., Regulations Preambles ¶ 31,146, at P 700.

network upgrade.<sup>31</sup> The Commission specifically found that the risk of not recovering these costs is one the generator must take into account in deciding where to most efficiently locate its plant:

there is no requirement that ARRAs awarded for Network Upgrades have equal value to the cost of the Network Upgrades, as the costs would not exist “but for” the proposed interconnection. They are part of a project’s construction cost and business risk, and the Interconnection Customer must consider those cost [sic] in determining whether the project is economically worthwhile.<sup>32</sup>

20. This principle has been embedded in PJM’s OATT since 1999 and was affirmed in Order No. 2003. Thus, the PJM OATT properly assigns firm transmission capacity rights only where the network upgrades create additional transmission capability giving rise to such rights. Under the facts presented here, ODEC is not entitled to capacity credits for the network upgrades that were required to interconnect its Rock Spring power plant to the PJM grid. Accordingly, we deny rehearing.

The Commission orders:

ODEC’s request for rehearing of the July 2005 Order is hereby denied as discussed in the body of the order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>31</sup> 108 FERC ¶ 61,025 at P 20.

<sup>32</sup> *Id.*