

169 FERC ¶ 61,039
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

PJM Interconnection, L.L.C.

Docket No. ER18-1730-001

ORDER DENYING REHEARING

(Issued October 17, 2019)

1. On June 1, 2018, PJM Interconnection, L.L.C. (PJM) filed, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² proposed revisions (Phase 2 Revisions) to the PJM Open Access Transmission Tariff (Tariff) and the Amended and Restated Operating Agreement (Operating Agreement) to: (1) charge or credit pseudo-tie transactions from MISO to the PJM-MISO interface for real-time deviations from day-ahead schedules for congestion resulting from market-to-market coordination pursuant to the Joint Operating Agreement (JOA) between Midcontinent Independent System Operator, Inc. (MISO) and PJM (together, the Regional Transmission Organizations or RTOs); and (2) provide a new transaction type to hedge exposure to financial risk for pseudo-tied resources from PJM into MISO. In an order accepting tariff revisions issued on July 31, 2018,³ the Commission accepted PJM's Phase 2 Revisions, effective August 1, 2018. On August 30, 2018, American Municipal Power, Inc. (AMP) filed a request for rehearing of the July 2018 Order, alleging, *inter alia*, that when the Commission accepted the tariff revisions it failed to evaluate the "end result" of the Phase 2 Revisions which resulted in impermissible "piecemeal" ratemaking.⁴ For the reasons discussed below, we deny AMP's request for rehearing.

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. pt. 35 (2019).

³ *PJM Interconnection L.L.C.*, 164 FERC ¶ 61,073 (2018) (July 2018 Order).

⁴ American Municipal Power, Inc. Request for Rehearing at 2, 4 (AMP Request for Rehearing).

I. Background

2. A pseudo-tie involves the real-time transfer of control of a generating resource or load from the Native Balancing Authority, in whose area that resource or load is physically located, to an Attaining Balancing Authority in a different geographic location.⁵ The existing MISO-PJM Joint Operating Agreement (JOA) contains provisions for coordinated congestion management over Reciprocally Coordinated Flowgates (RCFs).⁶ When an RCF binds simultaneously in both the PJM and MISO markets, that RCF can create overlapping congestion charges such that the day-ahead Locational Marginal Prices (LMPs) the pseudo-tied resource pays or is paid⁷ results in the resource paying twice for the congestion that occurs between the source (physical location of the pseudo-tied resource) and sink interface of the Attaining Balancing Authority.

3. Prior to the series of tariff revisions discussed below, when both markets bind on the same RCF, the Native Balancing Authority assessed the pseudo-tied resource a transmission usage charge for the energy transactions between the pseudo-tied resource and the border with the Attaining Balancing Authority. At the same time, the Attaining Balancing Authority also assessed the pseudo-tied resource a charge for delivery of energy, injection and withdrawal, along the path between the physical resource and the border interface.

4. To address the market and reliability challenges posed by the increased number of pseudo-tied resources from MISO to PJM, the RTOs have proposed a two-phase resolution of certain issues involving overlapping congestion charges affecting pseudo-tied resources. On October 23, 2017, MISO and PJM filed identical proposed revisions to the JOA to eliminate congestion payments between PJM and MISO associated with pseudo-tie impacts on RCFs as the initial step to address the congestion overlap (Phase 1 Revisions).⁸

⁵ See, e.g., *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,313, at P 2 (2017).

⁶ An RCF is a Flowgate that is subject to reciprocal coordination by Operating Entities. See JOA § 2.2.54. A Flowgate is defined under the JOA as “a representative modeling of facilities or groups of facilities that may act as significant constraint points on the regional system.” See *id.* § 2.2.24.

⁷ The overlap could be a payment or a charge depending on the location of the constraint and the impact of the pseudo-tie.

⁸ In Docket Nos. ER18-136-003 and ER18-137-003, the Commission accepted the Phase 1 Revisions. See *Midcontinent Indep. Sys. Operator, Inc.*, 164 FERC ¶ 61,069

5. However, the RTOs stated that the Phase 1 Revisions would not provide full congestion credits or charges to pseudo-tied resources because of the potential for real-time deviations from the day-ahead market.⁹ The RTOs explained that the Phase 2 Revisions would require them to make rebates available for the deviations from day-ahead commitments and these rebates would remove the remainder of the overlapping congestion charges not accounted for with the Phase 1 Revisions.

6. PJM's Phase 2 Revisions, as filed in this docket, contain three distinct enhancements. PJM explained that the proposed Phase 2 Revisions will: (1) for market participants that pseudo-tie their resources into PJM from MISO, charge or credit pseudo-tie transactions from MISO to the PJM-MISO interface for real-time deviations from day-ahead schedules for congestion resulting from market-to-market coordination pursuant to the JOA; (2) provide market participants that pseudo-tie out of PJM into MISO with a new transaction type to hedge exposure to financial risk (referred to as Day-Ahead Pseudo-Tie Transactions); and (3) include Day-Ahead Pseudo-Tie Transactions in the list of transaction types from which PJM recovers costs for administering the energy markets.¹⁰ AMP protested the Phase 2 Revisions.¹¹

7. In the July 2018 Order, the Commission accepted PJM's Phase 2 Revisions as just and reasonable and not unduly discriminatory or preferential because they provide a mechanism for market participants to balance real-time deviations between the day-ahead and the real-time energy markets.¹² The Commission found that PJM's Phase 2 Revisions address the overlapping congestion charges by providing: (1) a charge or credit to a pseudo-tied market participant for the balancing deviation congestion associated with the overlapping portion of the pseudo-tie path from MISO to the PJM-MISO border; (2) a proposed new type of transaction, Day-Ahead Pseudo-Tie Transactions, to allow resources pseudo-tied from PJM to MISO to hedge against

(2018). AMP filed a request for rehearing of that order, which the Commission is denying in a separate order issued concurrently with this order. *See Midcontinent Independent System Operator, Inc.*, 169 FERC ¶ 61,038 (2019).

⁹ *See id.* P 8 (citing MISO Deficiency Response, *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER18-136-002, at 14 (filed Jan. 29, 2018); PJM Deficiency Response, *PJM Interconnection, L.L.C.*, Docket No. ER18-137-002, at 14 (filed Jan. 29, 2018) (PJM Phase 1 Deficiency Response)).

¹⁰ PJM Transmittal at 1.

¹¹ *See* July 2018 Order, 164 FERC ¶ 61,073 at P 14.

¹² *Id.* P 17.

transmission congestion charges; and (3) an administrative charge to recover costs for activities performed by PJM to support the bidding of Day-Ahead Pseudo-Tie Transactions in the energy markets.¹³

II. AMP Request for Rehearing

8. AMP requested rehearing on the grounds that the Commission erred when it “failed to evaluate” the “end result” of accepting PJM’s Phase 2 Revisions “without fully addressing the congestion charges assessed against entities with pseudo-ties into PJM.”¹⁴ AMP argued that this results in “impermissible piecemeal ratemaking” because it “does not fully resolve the unhedgeable risk of excessive congestion charges faced by entities with pseudo-ties into PJM.”¹⁵

9. In addition, AMP contends that the “Commission implicitly found that the excessive congestion charges faced by entities with pseudo-ties into PJM after acceptance of PJM’s Phase 2 Revisions would be unjust, unreasonable or unduly discriminatory because the Commission relied on PJM’s assertion that MISO”¹⁶ would provide a “voluntary schedule-cutting option for pseudo-tie transactions from MISO into PJM in a future filing with the Commission.”¹⁷ In light of these claims, AMP concludes that “the only appropriate option for the Commission would be to reject PJM’s Phase 2 Revisions and direct the RTOs to file a complete solution.”¹⁸

III. Commission Determination

10. We deny rehearing and, for the reasons discussed in the July 2018 Order and below, affirm the Commission’s decision to accept PJM’s Phase 2 Revisions.¹⁹

11. On rehearing, AMP claims that the Commission erred by engaging in impermissible “piecemeal” ratemaking when it “failed to evaluate” the “end result” of

¹³ *Id.*

¹⁴ AMP Request for Rehearing at 4.

¹⁵ *Id.* at 4.

¹⁶ *Id.*

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 5.

¹⁹ July 2018 Order, 164 FERC ¶ 61,073 at P 17.

acceptance for filing of PJM's Phase 2 Revisions.²⁰ We disagree. The "end result" standard for ratemaking that AMP cites does not prohibit the acceptance of the Phase 2 Revisions, because the Commission did not, as AMP asserts, "examine only particular rate components in isolation."²¹ Rather, the Commission fully evaluated PJM's Phase 2 Revisions and accepted them as just and reasonable because they provide a mechanism for market participants to balance real-time deviations between the day-ahead and real-time energy markets.²²

12. We disagree with AMP's contention that the Commission "implicitly found" in the July 2018 Order that "the congestion charges faced by entities with pseudo-ties into PJM after acceptance of PJM's Phase 2 Revisions will be unjust, unreasonable, or unduly discriminatory"²³ because the Commission relied on "PJM's assertion that MISO would provide a voluntary schedule-cutting option²⁴ for pseudo-tie transactions from MISO into PJM in a future filing with the Commission."²⁵ In the July 2018 Order, the Commission rejected AMP's argument that PJM's proposed hedging mechanism is unduly discriminatory because it is available only for pseudo-tied resources that are exporting from PJM into MISO, and not for resources importing from MISO to PJM. The Commission explained that "[r]esources that are importing into PJM from MISO, and thus are not in PJM's geographic footprint, are not similarly situated to resources exporting from PJM, which are in PJM's geographic footprint."²⁶ Because AMP is pseudo-tied from MISO to PJM, the Commission explained that PJM's Phase 2 Revisions neither "provide nor require a hedging mechanism for AMP's transactions."²⁷ In other words, AMP's pseudo-tie transactions into PJM are outside the scope of PJM's hedging

²⁰ AMP Request for Rehearing at 4.

²¹ *Id.* at 2 (citing *FPC v. Hope*, 320 U.S. 591, 603 (1944); *Jersey Cent. Power & Light Co. v. FERC*, 810 F.2d 1168, 1177 (D.C. Cir. 1987)).

²² July 2018 Order, 164 FERC ¶ 61,073 at P 17.

²³ AMP Request for Rehearing at 4.

²⁴ We note that AMP characterizes PJM's hedging mechanism, *see supra* P 6, as a "schedule-cutting option." *See* July 2018 Order, 164 FERC ¶ 61,073 at PP 20, 22.

²⁵ AMP Request for Rehearing at 3-4.

²⁶ July 2018 Order, 164 FERC ¶ 61,073 at P 25. We note that AMP does not challenge this determination on rehearing.

²⁷ *Id.*

mechanism, which provides a hedging opportunity to market participants that pseudo-tie out of PJM into MISO. PJM filed under section 205 to address congestion only for its customers, and that filing does not become unjust and unreasonable because it does not address congestion on the MISO system. Accordingly, we continue to deny AMP's claim that the Commission should modify PJM's Phase 2 Revisions to address a hedging opportunity for pseudo-tie transactions into PJM from MISO.²⁸

13. Moreover, by noting PJM's expectation that "MISO will develop a similar hedging mechanism that will address pseudo-tied resources from MISO to PJM,"²⁹ the Commission did not find that the congestion charges faced by entities with pseudo-ties into PJM are unjust and unreasonable, either expressly or "implicitly." Nor did the Commission rely upon that potential filing as a basis for finding PJM's Phase 2 Revisions just and reasonable. Rather, the Commission merely identified a then-anticipated MISO filing that would address the treatment of pseudo-tied resources from MISO into PJM as a proceeding in which AMP's concerns regarding a hedging mechanism for pseudo-tie transactions from MISO to PJM, while outside the scope of this proceeding, potentially could be addressed.³⁰

14. Aside from its objection to PJM's hedging mechanism for resources pseudo-tied from PJM into MISO, AMP's request for rehearing does not specifically identify³¹ other objections to the Commission's July 2018 Order accepting PJM's Phase 2 Revisions.

²⁸ July 2018 Order, 164 FERC ¶ 61,073 at P 25.

²⁹ *Id.*

³⁰ We note that the Commission accepted MISO's Phase 2 Revisions on March 19, 2019. Those revisions clarify that pseudo-tie transactions may make use of Virtual Transactions as a hedging mechanism. *See Midcontinent Indep. Sys. Operator, Inc.*, 166 FERC ¶ 61,186, at P 57 (2019). AMP has filed a request for rehearing of that decision.

³¹ Section 313(a) of the FPA requires that an application for rehearing "set forth specifically the ground or grounds upon which such application is based." 16 U.S.C. § 825l(a) (2018). The Commission requires and the courts likewise have repeatedly found that rehearing arguments should be raised with specificity. *See* 18 C.F.R. § 385.713(c)(2) (2019); *see also Constellation Energy Commodities Group, Inc. v. FERC*, 457 F.3d 14, 20 (D.C. Cir. 2006) ("Parties are required to present their arguments to the Commission in such a way that the Commission knows 'specifically ... the ground on which rehearing [i]s being sought"); *Allegheny Power v. FERC*, 437 F.3d 1215, 1220 (D.C. Cir. 2006) (noting that objections in a rehearing request must be raised with specificity).

AMP continues to generally assert that, after PJM's Phase 2 Revisions, "PJM's assessment of congestion charges against pseudo-tie in transactions, including charges for balancing congestion, exposes these pseudo-tied entities to unhedgeable risk of excessive congestion charges."³² AMP further fails to substantiate this claim with evidence or argument, and we accordingly reject it. We nonetheless note that the Commission has further addressed those claims in response to complaints brought by AMP and others. In orders on those complaints, the Commission has determined that there was the potential for the RTOs to assess unjust and unreasonable overlapping or duplicative congestion charges prior to the effective dates of the RTOs' Phase 1 and Phase 2 filings, and has established hearing and settlement procedures to consider the extent to which refunds are appropriate.³³

15. Finally, we disagree with AMP's contention that "the only appropriate option" for the Commission would be to reject PJM's Phase 2 Revisions as unjust and unreasonable and direct the RTOs to file a single "complete solution" to the problem of unhedgeable risk of excessive congestion charges.³⁴ As AMP acknowledges, however, the Commission may only reject PJM's Phase 2 Revisions on a finding that the revisions are unjust and unreasonable, a finding the Commission has found is unwarranted. Moreover, the Commission's authority to review proposed rates under section 205 is limited to the question whether the proposed rate is just and reasonable and does not "extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs."³⁵

³² AMP Request for Rehearing at 4; *see also id.* at 5 ("those risks are embedded in the end result that exists upon the acceptance of the filing").

³³ *See Tilton Energy LLC v. Midcontinent Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,147, at P 78 (2019); *Am. Mun. Power, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,148, at P 88 (2019); *N. Ill. Mun. Power Agency v. PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,149, at PP 52-53 (2019); *Dynegy Mktg. and Trade, LLC v. Midcontinent Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,150, at P 61 (2019). The July 2018 Order denied AMP's motion to consolidate this proceeding with the complaint proceedings against PJM in Dockets Nos. EL17-31-000 and EL17-37-000. *See* July 2018 Order, 164 FERC ¶ 61,073 at P 44. We note that AMP does not seek rehearing of this determination.

³⁴ AMP Request for Rehearing at 4-5.

³⁵ *See, e.g., Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984).

The Commission orders:

The request for rehearing is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.