

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.	*	Docket Nos.	RT01-2-009,
	*		RT01-2-010,
	*		ER03-738-001

**REQUEST FOR REHEARING  
OF THE JOINT CONSUMER ADVOCATES**

Pursuant to Rule 713 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure, 18 C.F.R. ¶385.713 (2002), the Maryland Office of People's Counsel ("MPC"), the Pennsylvania Office of Consumer Advocate ("PA.OCA"), the Ohio Consumers' Counsel ("OCC"), and the District of Columbia Office of People's Counsel ("D.C. OPC") (collectively referred to as the "Joint Consumer Advocates") hereby file this Request for Rehearing of the Commission "Order on Rehearing and Compliance Filing Regarding Transmission Expansion Projects Needed to Promote Competition," issued in the above-captioned dockets on October 24, 2003. 105 FERC ¶61,123 (the "October 24, 2003 Order").

**I. Specification Of Errors**

The October 24 Order errs in the following respects:

1. The Commission erred by finding that PJM Interconnection, L.L.C. ("PJM") correctly proposed that third-party Financial Transmission Rights ("FTRs") should be included in the calculation of unhedgeable congestion.

2. The Commission erred by finding that PJM correctly proposed that economic generation in the load pocket should be counted as reducing unhedgeable congestion.

3. The Commission erred by directing PJM to produce preliminary cost allocation information prior to opening a one-year market response window.

## **II. Background**

By Order of July 12, 2001, in Docket No. RT01-2, the Commission granted PJM Interconnection, L.L.C. (“PJM”) provisional RTO status and required PJM to make a compliance filing demonstrating that PJM meets the necessary characteristics of a Regional Transmission Organization (“RTO”). PJM made that compliance filing on September 10, 2001. On December 20, 2002, the Commission issued an Order granting PJM full RTO status. *PJM Interconnection, L.L.C.*, 101 FERC ¶61,345 (“December 20, 2002 Order”). The Commission ordered that PJM make a further compliance filing in order to more fully explain how PJM’s planning process will identify “expansions that are needed to support competition.” *Id.* On March 20, 2003, PJM made such a compliance filing (Docket No. RT01-2-006), which was amended on March 27, 2003 (Docket No. RT01-2-007) and which it supplemented on April 27, 2003 (Docket No. RT01-2-008) (collectively, the “March 20 Compliance Filing”). In its “Order on Rehearing and Compliance Filing and on Tariff Filing,” issued in the above-captioned dockets on July 24, 2003, 104 FERC ¶61,124 (the “July 24, 2003 Order”), the Commission accepts PJM’s compliance filing and seeks another compliance filing to provide further clarification of the planning protocol, particularly the definition of “hedgeable” and “unhedgeable” congestion.

On April 11, 2003, the PJM Transmission Owners (“PJM TOs”) made a tariff filing revising Schedule 12 of the PJM Open Access Transmission Tariff (“PJM Tariff”)

to institute a surcharge to recover cost incurred by the PJM TOs as a result of transmission expansion ordered by PJM (Docket No. ER03-738-000). The July 24 Order largely rejected this proposal. The Commission found that the use of a single carrying charge for all PJM TOs based on average costs of the PJM TOs would be unjust and unreasonable. (July 24 Order, ¶66.) The Commission also approved the 50 basis point incentive proposed by the TOs in recognition of their membership in the PJM RTO.

The parties filed numerous rehearing requests in response to the July 24 Order and PJM made the required compliance filing on August 25, 2003 (“August 25 Filing”). PJM’s compliance filing primarily provided further detail on its proposed calculation of unhedgeable congestion. On September 24, 2003, the Joint Consumer Advocates, among others, filed comments on PJM’s compliance filing.

The October 24 Order addresses requests for rehearing of the July 24 Order and comments on the August 25 Filing. The Joint Consumer Advocates requested rehearing of the July 24 Order on the issue of the 50-basis point return on equity adder for joining an RTO and sought clarification of the starting point for the market response window. The Joint Consumer Advocates comments on the August 25 Filing included an objection to PJM’s proposed treatment of financial transmission rights (“FTRs”) available from third parties in the calculation of unhedgeable congestion. In the October 24 Order, the Commission did not rule on the issue of the 50-basis point adder, but stated that the transmission owners could again seek such an adder when they file a new cost recovery mechanism.<sup>1</sup> (October 24 Order, P 28.) Also, the Commission required that PJM provide information on the cost allocation of the transmission solution prior to opening

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<sup>1</sup> The PJM transmission owners have made such a filing in Docket ER04-156-000 and ER04-156-001, in which they seek the 50-basis point adder for joining an RTO.

the market response window. (October 24 Order, P 63.) Finally, the Commission agreed with PJM's proposed treatment of third-party FTRs. (October 24 Order, P 46.)

### **III. Argument**

#### **A. The Commission Erred By Finding That PJM Correctly Proposed That Third-Party FTRs Should Count Against Unhedgeable Congestion.**

The July 24 Order asked PJM to respond to the question, "If there are sufficient FTRs for all parties to be hedged, but those FTRs are obtainable only at very high prices, would PJM consider this to be hedgeable congestion?"<sup>2</sup> In its response, PJM correctly states that it will consider congestion hedgeable to the extent that load is allocated, or could have been allocated, Auction Revenue Rights (ARRs) or Financial Transmission Rights ("FTRs") for no additional charge as part of Network Transmission Service. (August 25 Filing, p. 12.) PJM proposed that it will also consider congestion hedgeable to the extent that there are ARRs or FTRs available from a third-party merchant. [CITE] The Joint Consumer Advocates, among others, commented that these third-party FTRs should not count against unhedgeable congestion.

The Commission responded to these comments in its October 24 Order. The Commission stated that "these comments fail to recognize that the use of the FTRs in the formula provided by PJM is basically a way of measuring the total capacity of the path, not whether any particular party is hedged or not."<sup>3</sup> As described below, the issue raised by the Joint Consumer Advocates in Comments did not relate to the capacity on a regulated transmission path (over which load is awarded ARRs or FTRs as part of

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<sup>2</sup> August 25 Filing, p. 12.

<sup>3</sup> October 24 Order, par. 46.

network transmission service) but rather a separate line that reduces congestion between the same two points but was built on a merchant basis (for which the merchant is awarded the FTRs that can be sold to load).

The example the Commission used in paragraph 41 of the October 24 Order can be used to illustrate the issue of treatment of third-party FTRs raised by the Joint Consumer Advocates. The Commission's example has 100 MW of transfer capability between points A and B that results in 100 MW of FTRs for the load at point B.<sup>4</sup> There is 175 MW of load and 25MW of economic generation at point B. Under the Commission's analysis, there is 50MW of "affected load" at point B ( $175 - 100 - 25 = 50$ ). The Commission is correct to subtract the 100MW capacity of the transmission line from the total load at B to arrive at "affected load" because the load at B is awarded ARRs from A to B as part of network transmission service.<sup>5</sup> Under PJM's proposed treatment of third-party FTRs, which the Commission endorsed in the October 24 Order, megawatts of FTRs between A and B that were held by a third-party merchant, which must be purchased by the load at B separately, would also be subtracted out in arriving at the "affected load" figure. So, if a merchant transmission line capable of carrying 50 MW from A to B were added to the Commission's example, PJM's and the Commission's analysis would count that 50 MW against "affected load" resulting in 0 MW of affected load, and thus no unhedgeable congestion, regardless of the price the third-party merchant would charge the load at point B for the FTRs. The load to point B would still be experiencing higher costs in the form of payments to the third-party merchant for the FTRs. These higher costs would result from the limitation of the

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<sup>4</sup> *Id.* The example is found in P 41.

<sup>5</sup> In the next section the Joint Consumer Advocates take issue with the Commission's treatment of the economic generation at point B but that issue is not relevant to the discussion of third-party FTRs.

regulated portion of the transmission system that load pays for in purchasing network transmission service. The Joint Consumer Advocates' comments argued that it would be wrong to ignore these higher costs by treating the third-party merchant FTRs against unhedgeable congestion. We proposed that the proper treatment is to exclude those FTRs from the calculation of unhedgeable congestion but acknowledge that those FTRs are available, at a price, in performing the cost-benefit analysis that determines if an upgrade is economic. In terms of the Commission's example at paragraph 41, the 100 MW of transmission between A and B that produces ARR for the load at B would be counted against "affected load" as the Commission does in its analysis of the example. But, the MW of FTRs associated with a separate line that was built by a third-party merchant, who controls the associated FTRs and the load must purchase those FTRs from the merchant, would not be counted against "affected load." The Commission should find on rehearing that it erred in dismissing the Joint Consumer Advocates' comment on this issue and direct PJM to alter its analysis accordingly.

**B. The Commission Erred By Finding That PJM Correctly Proposed That Economic Generation In The Load Pocket Should Be Counted As Reducing Unhedgeable Congestion.**

In the October 24 Order the Commission agreed with PJM that economic, also referred to as in-merit, local generation reduces the total affected load.<sup>6</sup> This finding is in error because it erroneously assumes that the economic generation will be available to the load at point B at its price, as opposed to the market clearing price.

Turning again to the example at paragraph 41 of the October 24 Order, the Commission correctly states that the "the appropriate measure of congestion costs is to

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<sup>6</sup> October 24 Order, P 47.

determine the costs imposed by the lack of transmission on all demand above the 100 MWs.”<sup>7</sup> The Commission’s analysis produces a gross congestion cost of \$7,000 (175MW \* \$40) and unhedgeable congestion of \$2,000 ( $\$7,000 * 50/175$ ).<sup>8</sup> This figure understates the cost of the transmission limitation to the load at point B. Because of PJM’s marginal clearing price methodology for its energy market, the load at point B will be charged \$10,500 (175 MW \* \$60/MWH \* 1 hour) for the energy it uses. The FTR revenue for the load at point B will be \$4,000 (100MW \* (\$60/MWH - \$20/MWH) \* 1 hour). The net bill for the load at point B is \$6,500. Without the transmission constraint, the price at point B would be the system average price (\$20/MWH) and the cost to serve the load at point B would be \$3,500 (175 MW \* \$20/MWH \* 1 hour). Thus, the cost of the constraint, and the unhedgeable congestion, is \$3,000 (\$6,500 - \$3,500).

The difference between the Joint Consumer Advocates’ figure and the Commission’s figure results from a different treatment of the 25MW at point B that is priced at \$10/MWH. Under our analysis, those megawatts of generation are compensated at the market clearing price of \$60/MWH. Thus, the owner of that generation would receive \$1,500 (25MW \* \$60/MWH \* 1hour). Under the Commission’s analysis, those megawatts are only compensated at the system price of \$20/MWH. Thus, the owner of that generation would receive \$500 (25MW \* 20/MWH \* 1 hour). The Commission’s analysis assumes that those megawatts would be available as a hedge to the load at point B through a bilateral agreement. This is an erroneous assumption because there is no reason to believe that the owner of that generation would sign a bilateral contract to sell the output of that unit for \$500 when it could receive \$1,500 by bidding and receiving the

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<sup>7</sup> *Id.*

<sup>8</sup> October 24 Order, P 44.

market clearing price. The load and generation at point B may reach a bilateral agreement, but it will certainly reflect at least some of the generation's opportunity to be compensated at the market clearing price of \$60/MWH in the situation described in the example.

Therefore, the Commission should find on rehearing that it erred in ruling that in-merit local generation reduces the total affected load. The Commission should direct PJM to alter its analysis such that the amount of in-merit local generation is not counted against unhedgeable congestion.

C. **The Commission Erred By Directing PJM To Provide Cost Allocation Information Prior To Opening A One-Year Market Response Window.**

The PJM's compliance filing proposed a one-year period of time during which the market would have an opportunity to produce a solution to a congestion problem before a PJM-directed solution is implemented (referred to as a "market response window"). This market response window would be opened as soon as congestion costs for a particular constraint exceeded a predetermined screen. PJM would conduct a cost-benefit analysis, including cost allocation, during the market response window. The Joint Consumer Advocates filed comments supporting this portion of PJM's plan and asking the Commission to clarify that the market response window is opened as soon as the trigger level is reached.

In the October 24 Order, the Commission directs PJM to amend procedure such that

at the time that PJM makes a finding of unhedgeable congestion as to any area or facility, it will also make a preliminary finding as to

what parties, if no market solution is found and an upgrade is ultimately required through the RTEP process, would be the beneficiaries of that upgrade, and would therefore be likely to be allocated the costs of the upgrade.<sup>9</sup>

The Commission made this finding based on a comment by Reliant that the market participants, on both the load and supply side, need this information to reach agreement on prices for merchant projects to relieve congestion. While the Joint Consumer Advocates do not take a position on the validity of Reliant's argument, we believe that the Commission's response unnecessarily extends the planning process and unreasonably delays the implementation of economic upgrades. If the cost allocation information is so useful to the market participants, PJM's production and publication of this information should move the parties that much further along in reaching an agreement on a merchant project. If PJM committed to producing the cost allocation information within a few months of opening the market window, the one-year total time of the window is more than adequate for the market participants to act if there is a viable market solution. Therefore, on rehearing the Commission should order direct PJM open the market window as soon as unhedgeable congestion reaches the trigger levels and to commit to produce the preliminary cost allocation information within a certain number of months of the opening of the market response window.

#### **IV. Conclusion**

WHEREFORE, for the foregoing reasons, the Joint Consumer Advocates request that the Commission grant rehearing as requested herein. Specifically, the Commission should:

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<sup>9</sup> October 24 Order, P 63.

1. reconsider its ruling that FTRs available from third-party merchants reduce the affected load for a constraint and order that PJM alter its proposed analysis such that such FTRs are not counted against unhedgeable congestion.

2. reconsider its ruling that in-merit local generation reduces the load affected by the constraint and order that PJM amend its procedure such that in-merit local generation is not counted against unhedgeable congestion.

3. order on rehearing that PJM open the market response window as soon as the unhedgeable congestion threshold has been reached and that PJM amend its procedures such that it commits to producing preliminary cost allocation information within a certain number of months of the opening of the market response window.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24<sup>th</sup> day of November, 2003, a copy of the forgoing Request for Rehearing of the Joint Consumer Advocates was mailed first-class, postage-prepaid to each person designated on the official service list compiled by the Secretary in these proceedings.

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November 24, 2003

Honorable Magalie Roman Salas  
Office of the Secretary  
Federal Energy Regulatory Commission  
Dockets Room – Room 1A  
888 First Street, N.E.  
Washington, DC 20426

**Re: Docket No. RT01-2 and ER03-738**

Dear Secretary Salas:

Attached is the Request for Rehearing of the Joint Consumer Advocates for electronic filing in the above-referenced proceeding.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

William F. Fields  
Assistant People's Counsel

WFF/mcm  
Enclosures  
cc: Service List