

133 FERC ¶ 61,277
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

PJM Interconnection, L.L.C.

Docket Nos. ER10-1196-001
ER11-1987-000
ER11-1988-000
ER11-1988-001

ORDER ON COMPLIANCE FILINGS

(Issued December 30, 2010)

1. On September 3, 2010, the Commission issued an order¹ conditionally accepting PJM Interconnection, L.L.C.'s (PJM Interconnection) filing of revised tariff sheets to the PJM Open Access Transmission Tariff (PJM Tariff)² and the PJM Amended and Restated Operating Agreement (Operating Agreement)³ designating PJM Settlement, Inc. (PJM Settlement), a new public utility, as the counterparty to transactions in the PJM Interconnection markets, to become effective January 1, 2011, subject to PJM Interconnection making a compliance filing. PJM Interconnection and PJM Settlement (collectively, PJM Parties) submitted three compliance filings in response to the September 3, 2010 Order. In this order, we accept the PJM Parties' compliance filings, as discussed below, to be effective on January 1, 2011, as requested, and direct PJM Parties to make a compliance filing. A fourth filing (Docket No. ES11-8-000) will be addressed in a separate Commission order.

¹ *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,207 (2010) (September 3, 2010 Order).

² PJM Interconnection, L.L.C., FERC Electric Tariff, Sixth Revised Vol. No. 1.

³ PJM Interconnection, L.L.C., Third Revised Rate Schedule FERC No. 24.

I. Background

2. On May 5, 2010, in Docket No. ER10-1196-000, PJM Interconnection submitted for filing pursuant to section 205 of the Federal Power Act (FPA)⁴ revised tariff sheets to the PJM Tariff and the PJM Operating Agreement designating PJM Settlement, a new public utility, as the counterparty to transactions in the PJM Interconnection markets (May 5, 2010 Filing). In addition, PJM Interconnection requested certain waivers from the Commission's regulations for PJM Settlement.

3. In its May 5, 2010 Filing, PJM Interconnection stated that PJM Settlement would be a public utility under the FPA and subject to the Commission's jurisdiction, and that PJM Settlement, while not yet formed, would be a not-for-profit corporation under Pennsylvania law. PJM Interconnection argued that its counterparty proposal would establish mutuality between market participants and a specified counterparty to best ensure the enforceability of netting and set-off of a market participant's debits and credits in a default situation, thus reducing the risk of exposure of members to defaults. PJM Interconnection stated that PJM Settlement would take over certain functions currently performed by PJM Interconnection, including: (i) performing billing and settlement functions for the PJM Interconnection markets; (ii) issuing invoices to, and receiving payments from, market participants; and (iii) serving as the entity with which market participants establish credit and be a beneficiary under market participant guarantees and letters of credit.

4. In its September 3, 2010 Order, the Commission found PJM Interconnection's counterparty proposal to be just and reasonable, and conditionally accepted PJM Interconnection's filing of revised tariff sheets designating PJM Settlement as the counterparty to transactions in the PJM Interconnection markets, to become effective January 1, 2011, subject to PJM Interconnection making a compliance filing.⁵ The Commission directed PJM Interconnection to file with the Commission: (1) the services agreement between PJM Interconnection and PJM Settlement, and (2) copies of PJM Settlement's articles of incorporation and PJM Settlement's by-laws, or any comparable documents, within either 30 days of the date of the order or 15 days after execution of the document. The Commission also directed PJM Interconnection to explain the proposed

⁴ 16 U.S.C. § 824d (2006).

⁵ The Commission also granted PJM Interconnection's requests for waiver for PJM Settlement of: (1) the annual charge requirements of section 382.201 of the Commission's regulations, (2) the market-based rate authority requirements under part 35 of the Commission's regulations, and (3) the electronic quarterly reporting requirements.

financing and the capital structure of PJM Settlement, whether PJM Interconnection will guarantee the financial commitments of PJM Settlement, and whether the proposal will trigger any filing requirements under sections 204⁶ and 305⁷ of the FPA.

5. The Commission denied PJM Interconnection's request for waiver of the section 205 filing requirements for PJM Settlement and directed PJM Interconnection to make a compliance filing with proposed tariff language setting forth the rates, terms, and conditions of PJM Settlement's jurisdictional sales. The Commission explained that section 205 of the FPA requires that all public utilities file with the Commission schedules showing all rates and charges for any transmission or wholesale sales subject to the jurisdiction of the Commission, and therefore PJM Settlement must have a rate schedule on file with the Commission as it is a public utility that, as a seller to every buyer, will be selling for resale energy, capacity, and ancillary services. The Commission stated that PJM Interconnection must split out in the tariffs the rates, terms, and conditions of the services provided by each entity (PJM Interconnection and PJM Settlement), including the break out of the administrative charge. Finally, the Commission stated that PJM Interconnection could establish the rates, terms, and conditions of service for PJM Settlement by proposing an individual rate schedule as an attachment to the PJM Tariff.

II. Details of the Filings

A. Docket No. ER10-1196-001

6. On November 1, 2010, in Docket No. ER10-1196-001, the PJM Parties filed: (1) the Support Services Agreement between PJM Interconnection and PJM Settlement; (2) copies of PJM Settlement's articles of incorporation and by-laws; and (3) explanations regarding: (a) the proposed financing and capital structure of PJM Settlement, (b) whether PJM Interconnection will guaranty the financial commitments of PJM Settlement, and (c) whether the proposal will trigger any filing requirements under section 204 and 305 of the FPA.

7. PJM Parties state that the Support Services Agreement was executed on October 29, 2010, and is the contract for PJM Interconnection's provision of certain

⁶ 18 U.S.C. § 824c (2006). Section 204 requires, generally speaking, Commission authorization for the issuance of securities and the assumption of obligations or liabilities.

⁷ 18 U.S.C. § 825d (2006). Section 305 requires, among other things, prior authorization for an individual to hold the position of an officer or director of one public utility and to also hold the position of an officer or director of another public utility.

services to, and uses of property by, PJM Settlement in exchange for reasonable charges. PJM Parties state that it also provides for PJM Settlement's billing and collecting of PJM Interconnection's charges to market participants under Schedule 9 of the PJM Tariff.

8. PJM Parties state that, on October 20, 2010, PJM Settlement was incorporated as a nonprofit member organization formed on a nonstock basis under the Pennsylvania Nonprofit Corporation Law of 1988, with PJM Interconnection serving as the Executive Member with all voting rights.

9. In response to the September 3, 2010 Order's directive to explain the proposed financing and capital structure of PJM Settlement, PJM Parties explain that, at this time, PJM Settlement does not require any capitalization and will not own any capital assets. PJM Parties state that, as provided in the Support Services Agreement, PJM Settlement will pay PJM Interconnection for services needed by PJM Settlement to perform its functions and will recover its costs through the cost-based rates set forth in Schedule 9-PJM Settlement of the PJM Tariff. PJM Parties state that PJM Settlement will have a line of credit with PJM Interconnection to facilitate cash management associated with variations in billing cycles regarding payments from and to others, and PJM Settlement will provide PJM Interconnection with a line of credit up to the balance of any cash that PJM Settlement holds due to remittances from market participants that PJM Settlement is not yet obligated to disburse.

10. In response to the September 3, 2010 Order's directive to explain whether PJM Interconnection will guarantee the financial commitments of PJM Settlement, PJM Parties explain that, in order for both PJM Interconnection and PJM Settlement to maintain appropriate credit ratings, PJM Interconnection and PJM Settlement will provide mutual guarantees regarding their responsibilities, activities, assets, and liabilities. PJM Parties state that a copy of each Unconditional, Irrevocable Guaranty is attached to its section 204 application filed in Docket No. ES11-8-000.⁸

11. PJM Parties explain that section 204 of the FPA is triggered by PJM Settlement's guaranty of PJM Interconnection's obligations and the mutual lines of credit between PJM and PJM Settlement. Therefore, PJM Parties state that they are submitting a separate section 204 request for Commission authorization of the PJM Settlement guaranty to PJM Interconnection and each of the lines of credit in Docket No. ES11-8-000.

⁸ PJM Parties' section 204 application and related protests are addressed in a separate order under Docket No. ES11-8-000.

12. PJM Parties explain that no filings pursuant to the interlocking directorate provisions of section 305 of the FPA are required because, as of January 1, 2011, when PJM Settlement becomes a public utility, none of the PJM Settlement board members or elected or appointed corporate officers also is a corporate officer of PJM Interconnection.

B. Docket No. ER11-1987-000

13. On November 1, 2010, in Docket No. ER11-1987-000, PJM Interconnection submitted a compliance filing to incorporate into its electronic tariff a portion of the revisions submitted in the May 5, 2010 Filing and accepted by the September 3, 2010 Order.⁹ PJM Interconnection explains that, because the May 5, 2010 tariff revisions were accepted effective January 1, 2011, the revisions were not included in PJM Interconnection's September 17, 2010 filing of its baseline electronic tariff in Docket No. ER10-2710-000. Therefore, PJM Interconnection states that it is required to submit a separate ministerial compliance filing to incorporate the Tariff and Operating Agreement revisions accepted by the September 3, 2010 Order into the electronic version of the PJM Tariff and Operating Agreement. PJM Interconnection represents that this filing makes no substantive modifications to the PJM Tariff or Operating Agreement that have not already been accepted by the Commission and requests that the ministerial revisions in this filing be made effective January 1, 2011. Finally, PJM Interconnection states that, prior to January 1, 2011, it will submit an additional separate ministerial compliance filing to incorporate the rest of the PJM Tariff and Operating Agreement revisions accepted by the September 3, 2010 Order into the electronic version of the PJM Tariff and Operating Agreement.

C. Docket Nos. ER11-1988-000 and ER11-1988-001

14. On November 1, 2010, in Docket No. ER11-1988-000, PJM Parties filed revisions to the PJM Tariff and Operating Agreement in order to comply with certain other Commission directives in the September 3, 2010 Order.¹⁰ Specifically, PJM Parties state that the filing establishes new attachments to the PJM Tariff and Operating Agreement that will serve as PJM Settlement's rate schedules along with other ministerial Tariff and

⁹ Specifically, PJM submitted the previously accepted revisions to the PJM Tariff section 6A, schedule 9, Attachment K- Appendix sections 5.4 and 7.2, and Attachment Q, and Operating Agreement sections 3.3 and 15.2, and Schedule 1 sections 5.4, 5.5, and 7.2.

¹⁰ On November 5, 2010, in Docket No. ER11-1988-001, PJM Parties filed four eTariff sections that PJM Interconnection determined were either not submitted or were submitted incorrectly in the November 1, 2010 filing in Docket No. ER11-1988-000.

Operating Agreement revisions. PJM Parties state that the filing includes: (1) a new Attachment HH to the PJM Tariff and a new Schedule 13 to the Operating Agreement, setting forth the rates, terms, and conditions of PJM Settlement's jurisdictional sales, as "shared tariffs"¹¹ through these attachments; (2) a new Schedule 9-PJM Settlement setting forth, in the form of a shared tariff, the breakout of the administrative charges for PJM Settlement; (3) conforming revisions to accommodate the new Attachment HH and Schedule 9-PJM Settlement; and (4) ministerial revisions to the revisions submitted in the May 5, 2010 Filing, including revisions to incorporate conforming language regarding the counterparty into other tariff revisions filed and accepted since the May 5, 2010 Filing.

15. PJM Parties state that the new Schedule 9-PJM Settlement sets forth the PJM Settlement Market Support Service Rate, which is a formula rate designed to recover the actual costs of the functions of PJM Settlement.¹² PJM Parties state that Attachment A to the filing provides a calculation of the initial PJM Settlement charge of \$0.0062/MWh under the formula rate, which is based on PJM Settlement's projected 2011 costs and estimated 2011 billing determinants. PJM Parties also state that they have revised Schedules 9 and 9-3 (PJM Interconnection's administrative rates) to take account of the new charges established under Schedule 9-PJM Settlement. First, PJM Interconnection states that the revisions state that the rates and charges in Schedules 9-1 through 9-5 do not include the charges for PJM Settlement services to transmission customers and market participants. Second, PJM Interconnection states that the revisions to Schedule 9-3 establish credits to the PJM Interconnection rates in that schedule in the identical amounts that are charged to customers under Schedule 9-PJM Settlement.

16. In addition, PJM Settlement requests authorization to record: (1) a deferred regulatory liability in the amount of any revenues accrued according to generally accepted accounting principles (GAAP) under Schedule 9-PJM Settlement that are in

¹¹ Shared tariffs are described in *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276, at P 65-73 (2008).

¹² PJM Parties state that the rate is the sum of: (1) the current calendar year budgeted annual costs of PJM Settlement associated with the PJM Settlement Market Support Service Rate divided by the estimated calendar year billing determinants; plus (2) the amount of over- or under-recovery of PJM Settlement's costs for the prior calendar quarter divided by estimated billing determinants for the current calendar quarter. PJM Parties state that the formula provides that at the end of each calendar quarter, the charge will be adjusted to reflect under- and over-recovery of PJM Settlement's costs in the prior quarter to allow PJM Settlement to recover its actual costs.

excess of PJM Settlement's costs as accrued according to GAAP, and (2) a deferred regulatory asset in the amount of any PJM Settlement costs as accrued according to GAAP that are not recovered by revenues as accrued according to GAAP under Schedule 9-PJM Settlement. PJM Parties contend that it is appropriate not to recognize income and losses, but instead record deferred regulatory assets and liabilities, because PJM Settlement will be obligated by the terms of its tariff to re-set its charges when there are any under- or over-recoveries of actual costs and ensure that revenues from the rates match actual costs.

III. Notice of Filing and Responsive Pleadings

17. Notice of the filings in Docket Nos. ER10-1196-001, ER11-1987-000, ER11-1988-000, and ES11-8-000 was published in the *Federal Register*, 75 Fed. Reg. 68,777-68,778 (2010), with protests and interventions due on or before November 22, 2010. Notice of the filing in Docket No. ER11-1988-001 was published in the *Federal Register*, 75 Fed. Reg. 70,230 (2010), with protests and interventions due on or before November 26, 2010. American Municipal Power, Inc. filed a motion to intervene in Docket Nos. ER11-1987-000 and ER11-1988-000. Old Dominion Electric Cooperative and North Carolina Electric Membership Corporation filed motions to intervene in Docket Nos. ER11-1988-000, ER11-1988-001, and ES11-8-000. Shell Energy North America (US), L.P. (Shell) filed a timely motion to intervene and protest, and Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC (collectively, PSEG Companies) filed a motion to intervene and protest out-of-time in Docket Nos. ER10-1196-001, ER11-1987-000, ER11-1988-000, and ES11-8-000. On December 7, 2010, PJM Parties filed an answer to the protests. On December 14, 2010, Shell filed an answer to PJM Parties' answer.

A. Protests

18. Shell argues that the proposed tariff and operating agreement provisions are inadequate to establish PJM Settlement as a public utility and real counterparty (as opposed to a billing agent). Shell asserts that, with the exception of Schedule 9-PJM Settlement, it is unclear if any aspect of the tariff is attributable to PJM Settlement or what section 205 rights PJM Settlement holds. Therefore, Shell urges the Commission to require PJM Interconnection to clarify this point. Shell also argues that PJM Interconnection has not provided documentation of PJM Interconnection's assignment of its right to use the transmission capacity of the transmission system to PJM Settlement.

19. Shell argues that the proposed tariff changes provide little comfort to market participants that PJM Settlement will be a counterparty and not merely a billing agent. Shell asserts that the proposed tariff does not set forth what obligations PJM Settlement has to its counterparties. Shell states that it would expect PJM Settlement to make appropriate representations, such as good title to the products it is selling, in either the

tariff or a service agreement of some sort. Accordingly, Shell requests that the Commission require PJM Interconnection to provide a further compliance filing to fully address PJM Settlement's section 205 rights, role, duties, obligations, representations, and warranties to its counterparties in the PJM OATT and Operating Agreement.

20. Shell also expresses concern that there may be interlocks that require prior authorization under section 305 and requests that the Commission direct PJM Settlement to identify its officers and directors.

21. PSEG Companies agree with Shell's protest and argue that PJM Interconnection should be required to implement the central counterparty concept in a fashion that fulfills its stated role.

B. PJM Parties' Answer

22. In their answer, PJM Parties contend that the arguments in Shell's protest are barred in this proceeding as beyond the scope of the compliance directive, because Shell is attempting to challenge aspects of the counterparty arrangements that were already before the Commission when it approved PJM Interconnection's proposal and which do not relate to anything new submitted in the compliance filings. PJM Parties point out that no parties requested rehearing of the September 3, 2010 Order, and protestors may not challenge the Commission's already-granted approvals in the guise of a protest to the compliance filings. PJM Parties argue that Shell is therefore barred from raising issues concerning the clarity of PJM Settlement's title and PJM Interconnection's assignment of its right to use the capacity of the transmission system to PJM Settlement. Regardless, PJM Parties argue that the representations and warranties that Shell wants to add to the PJM Tariff regarding PJM Settlement's title are unnecessary because whatever quality of title Shell enjoyed as a buyer prior to the counterparty clarification it will continue to enjoy.

23. PJM Parties argue that, in any event, PJM Settlement will be a "real" counterparty. PJM Parties state that PJM Settlement is providing far more than mere billing services and assumes the role of billing entity as a result of its function as counterparty to billions of dollars of market transactions. In response to Shell's assertion that it is not clear whether PJM Settlement will have section 205 rights, PJM Parties assert that its compliance filings fully address the functions and legal standing of PJM Settlement and that Attachment HH of the PJM Tariff and Schedule 13 to the Operating Agreement establish the rates, terms, and conditions of PJM Settlement's services. PJM Parties state that PJM Interconnection will retain filing rights with respect to the PJM Tariff and Operating Agreement, in accordance with the desire of PJM stakeholders and consistent with the May 5, 2010 Filing, which proposed to retain PJM Interconnection as the public utility with all filing rights. PJM Parties argue that, while the Commission concluded in the September 3, 2010 Order that PJM Settlement must have a tariff or rate schedule on

file, PJM Settlement may still voluntarily cede its section 205 filing rights to PJM Interconnection, which PJM Parties states PJM Settlement has done.

24. PJM Parties respond to Shell's arguments regarding section 305 by stating that the Commission's interlock regulations are not triggered by the establishment of PJM Settlement and none of the PJM Settlement officers and directors is required to obtain prior authorization from the Commission in order to hold his or her position with PJM Settlement. PJM Parties also provide the names of PJM Settlement's officers and directors, as requested by Shell.

C. Shell's Answer

25. In its answer, Shell responds to PJM Parties' assertion that its protests amount to an impermissible out-of-time rehearing request of the September 3, 2010 Order by arguing that a compliance filing is subject to the same scrutiny and burden as the initial section 205 filing giving rise to it. Shell argues that the material scope of the compliance requirements in this case make it clear that this is not a trivial compliance filing merely fixing technical tariff elements. Shell also argues that PJM Parties have not adequately addressed PJM Settlement's section 205 rights. Shell cites *Atlantic City*¹³ and states that, in that case, the court recognized that a public utility can, in certain cases, cede its section 205 rights by contract. Shell asserts that PJM Settlement is different because it came into the world without ever having section 205 rights and there is no contract known to Shell by which such rights were ceded. Finally, Shell reiterates that PJM Settlement's title to any transmission service sold by it is unclear.

IV. Discussion

A. Procedural Matters

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁴ the timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings.

27. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,¹⁵ the Commission will grant the PSEG Companies' late-filed motion to intervene in Docket

¹³ *Atl. City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002) (*Atlantic City*).

¹⁴ 18 C.F.R. § 385.214 (2010).

¹⁵ 18 C.F.R. § 385.214(d) (2010).

Nos. ER11-1987-000 and ER11-1988-000 given the early stage of this proceeding, their interest in the proceeding and the absence of undue prejudice or delay.¹⁶

28. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹⁷ prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept PJM Parties' and Shell's answers because they have aided us in our decision-making.

B. Substantive Matters

29. We find that PJM Parties' filings in Docket Nos. ER11-1987-000, ER11-1988-000, and ER11-1988-001 comply with the Commission's directives in the September 3, 2010 Order and therefore we accept the compliance filings, effective January 1, 2011, as requested.¹⁸ In the September 3, 2010 Order, we stated that PJM Interconnection must split out the rates, terms, and conditions of the services provided by each entity. In Docket Nos. ER11-1988-000 and ER11-1988-001, the PJM Parties filed tariff language setting forth the rates, terms, and conditions of PJM Settlement's jurisdictional sales as an attachment to the PJM Tariff, and we find that its submissions fulfill our compliance directives. However, we will require PJM Parties to make a compliance filing within 30 days of this order, as discussed below.

30. In the September 3, 2010 Order, we also required PJM Interconnection to file the services agreement between PJM Interconnection and PJM Settlement, copies of PJM Settlement's articles of incorporation and PJM Settlement's by-laws, and explanations of the proposed financing and capital structure of PJM Settlement, whether PJM Interconnection will guarantee the financial commitments of PJM Settlement, and whether the proposal will trigger any filing requirements under sections 204 and 305 of the FPA. We find that PJM Parties' filing in Docket No. ER11-1196-001 complies with the directives of the Commission's September 3, 2010 Order with respect to their filing of: the services agreement and corporate documents; the explanation of the proposed

¹⁶ PSEG Companies were already a party in Docket No. ER10-1196-000, and their filing as to Docket No. ES11-8-000 will be addressed in that proceeding.

¹⁷ 18 C.F.R. § 385.213(a)(2) (2010).

¹⁸ In light of the fact that we have established a separate proceeding in Docket No. ES11-8-000, we will address in an order in that docket: (1) PJM Parties' section 204 application and any protests related to the section 204 application, and (2) PJM Parties' explanation of whether PJM Interconnection will guarantee the financial commitments of PJM Settlement, as well as any already-filed protests that address these matters.

financing and the capital structure of PJM Settlement; and whether the proposal will trigger any filing requirements under section 305 of the FPA. While Shell raises concerns about the possibility of jurisdictional interlocks under section 305, PJM Parties represent that there are no jurisdictional interlocks.

31. Although the Commission does not require a utility to obtain authorization prior to recording regulatory assets or liabilities,¹⁹ it appears appropriate for PJM Settlement to record regulatory assets and liabilities to ensure that its revenues match its costs. The Commission's Uniform System of Accounts defines regulatory assets and liabilities as revenues and expenses that would have been included in net income determination in one period under the general requirements of the Uniform System of Accounts but for it being probable that such items will be included in a different period for purposes of developing the rates the utility is authorized to charge. Since PJM Settlement will be required by the terms of its tariff to collect any under-recoveries and return any over-recoveries of its costs under Schedule 9-PJM Settlement, it appears appropriate for it to account for such under and over recoveries of costs as regulatory assets and liabilities.

32. Shell argues in its protest that the proposed tariff and operating agreement provisions are inadequate to establish PJM Settlement as a public utility and "real" counterparty (as opposed to a billing agent). Shell asserts that it is generally unclear if any aspect of the tariff is attributable to PJM Settlement, what section 205 rights PJM Settlement holds, or what obligations PJM Settlement has to its counterparties. Accordingly, Shell requests that the Commission require PJM Interconnection to provide a further compliance filing to fully address PJM Settlement's section 205 rights, role, duties, obligations, representations, and warranties to its counterparties in the PJM OATT and Operating Agreement. PSEG Companies agree with Shell.

33. In the September 3, 2010 Order, we directed PJM Interconnection to split out in the tariff the rates, terms and conditions of the services provided by each entity. As discussed above, we find that the PJM Parties have complied with this requirement. We find that PJM Parties' filing clearly sets forth the rates, terms, and conditions provided by PJM Interconnection and PJM Settlement and makes sufficiently clear the manner in which the OATT and Operating Agreement apply to each PJM entity. The Commission reiterates that the functions performed by PJM Settlement are the same functions performed until now by PJM Interconnection in settlement and netting of market transactions. These functions are simply being carved out of PJM Interconnection in their entirety and placed into PJM Settlement. However, we will require PJM Parties to make a compliance filing within 30 days of this order either to revise PJM Settlement's

¹⁹ It is a utility's responsibility to determine whether particular items of revenue and expense meet the definition of regulatory assets or liabilities.

tariff, or provide an explanation as to why a revision is not necessary, with respect to whether PJM Settlement will be providing a guarantee of good title as well as other warranties or agreements to operate as a counterparty. If PJM Parties do not propose a tariff revision, they should explain how their proposal will provide sufficient protection to buyers and is sufficient to establish PJM Settlement as a legitimate counterparty.

34. We dismiss the rest of Shell's arguments in its protest and answer as beyond the scope of the compliance filings and a "second bite at the apple" with respect to the September 3, 2010 Order. Protests to compliance filings are limited to whether the filing meets the Commission's compliance directive and cannot properly function as late rehearings of the initial order, relitigating matters that are now final and non-appealable.²⁰ In the September 3, 2010 Order, we accepted the substance of PJM Interconnection's tariff sheets, and merely directed PJM Interconnection to change the form of the tariff by splitting out PJM Settlement's rates, terms, and conditions. In the September 3, 2010 Order, we stated in paragraph 52 that "[w]e deny PJM's request for waiver of the section 205 filing requirements and require PJM to make a compliance filing with proposed tariff language setting forth the rates, terms, and conditions of PJM Settlement's jurisdictional sales." Therefore, the only question presented to the Commission in this proceeding is whether the PJM Parties' filings comply with the limited directives of the September 3, 2010 Order to change the form of the tariff, not its substance. In its protest and answer, by alleging that the substance of the proposed tariff is insufficient, Shell raises issues already decided in the September 3, 2010 Order. This includes Shell's arguments regarding PJM Settlement's section 205 rights and assertion that PJM Parties should be required to provide additional information regarding such rights.²¹ If Shell opposed the Commission's acceptance of PJM Interconnection's proposed tariff in the September 3, 2010 Order, Shell should have filed a timely request for rehearing of that order. But Shell failed to timely request rehearing of the September 3, 2010 Order, and cannot now raise issues in a protest to a compliance filing that should have been raised in a rehearing request. The only question that Shell may properly present to the Commission is whether the PJM Parties' filings comply with the directives of the September 3, 2010 Order. As discussed above, we find that PJM Parties' compliance filings comply with the September 3, 2010 Order.

²⁰ See, e.g., *Cal. Indep. Sys. Operator*, 120 FERC ¶ 61,147, at P 15 (2007).

²¹ In PJM's answer, we note, PJM states that PJM Interconnection will retain filing rights for the PJM Tariff and Operating Agreement, and that PJM Interconnection also has been ceded PJM Settlement's filing rights.

The Commission orders:

(A) PJM Parties' compliance filings are accepted, effective January 1, 2011, as discussed in the body of this order.

(B) PJM Parties are directed to make a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)

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