

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. American Electric Power Service Corporation	Docket Nos. ER04-1072-001
PJM Interconnection, L.L.C. American Electric Power Service Corporation	EL04-138-001
PJM Interconnection, L.L.C. Commonwealth Edison Company	ER04-718-006

ORDER GRANTING CLARIFICATION

(Issued December 21, 2004)

1. This order addresses the request for clarification or, in the alternative, rehearing, sought by Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (together, ComEd) of the Commission's order of September 28, 2004.¹ In Docket Nos. ER04-1072-000 and EL04-138-001, the September 28 Order conditionally accepted, suspended, and set for hearing the proposal proffered by the American Electric Power System (AEP) to determine appropriate hold harmless compensation due utilities in Michigan and Wisconsin resulting from AEP's choice to join PJM Interconnection, L.L.C. as its regional transmission organization (RTO), instead of the Midwest Independent Transmission System Operator (AEP Hearing). The September 28 Order also consolidated the ordered AEP Hearing with the on-going hearing in Docket No. ER04-718-000, pertaining to similar hold harmless compensation to be paid by ComEd (ComEd Hearing).

¹ *PJM Interconnection, L.L.C. and American Electric Power Service Corp.*, 108 FERC ¶ 61,317 (2004) (September 28 Order).

2. The September 28 Order and the Commission orders cited therein give the history of the Commission's determination that ComEd and AEP must compensate utilities in Michigan and Wisconsin for impacts on loop flows and congestion caused by ComEd's and AEP's RTO choices.² The Commission's previous order of April 27, 2004³ instituted the ComEd Hearing to determine the justness and reasonableness of the hold harmless compensation proffered by ComEd.

Clarification Request

3. In its October 28, 2004 request for clarification or, in the alternative, rehearing, ComEd notes that three entities, Alliant Energy Corporate Services, Inc. (Alliant), American Municipal Power-Ohio (AMP-Ohio), and the entities constituting the Association of Businesses Advocating Tariff Equity (ABATE), moved to intervene only in the Docket No. ER04-1072-000 proceeding, not in the Docket No. ER04-718-000 proceeding. ComEd is concerned that these or other entities that are not otherwise parties to the Docket No. ER04-718-000 proceeding will now seek hold harmless protection from ComEd by virtue of their status as parties to the AEP Hearing proceeding and the September 28 Order's consolidation of the two hearings.⁴ ComEd states that it has reached settlement with a number of parties to the Docket No. ER04-718-000 proceeding, and that it made these settlements based on a known set of parties.⁵ It asks the Commission to clarify that its hold harmless obligation is limited to Michigan and Wisconsin utilities that sought and were granted intervention in the Docket No. ER04-718-000 proceeding. Regarding Alliant, AMP-Ohio and ABATE, ComEd states that they did not so intervene, and that ABATE is not a utility but an association of end-users of electricity.

² *Id.* at P 3-4.

³ *PJM Interconnection, L.L.C. and Midwest Independent System Operator, Inc.*, 107 FERC ¶ 61,087 (2004).

⁴ On November 24, 2004, clarified on November 29, 2004, the administrative law judge presiding over the consolidated hearings granted North Carolina Electric Membership Corporation's petition to intervene in Docket No. ER04-1072-000.

⁵ On November 26, 2004, the Commission approved the uncontested settlement filed by ComEd and International Transmission Company in Docket No. ER04-718-000. *PJM Interconnection, L.L.C. and American Electric Power Service Corp.*, 109 FERC ¶ 61,228 (2004). Action is pending on the remaining offers of settlement in this proceeding.

4. The September 28 Order's consolidation of the on-going ComEd Hearing with the AEP Hearing was only for the purpose of addressing similar issues.⁶ We clarify that we do not intend consolidation of the two hearings to confer new eligibility to receive hold harmless compensation from ComEd on parties who failed to intervene in the Docket No. ER04-718-000 proceeding. To hold otherwise would be disruptive of the settlement process and would create an unwarranted opportunity for entities that could have intervened in timely fashion but chose to sit on their rights.⁷

The Commission orders:

The motion for clarification or, in the alternative, rehearing, filed by ComEd in this proceeding is hereby granted as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

⁶ September 28 Order, 108 FERC ¶ 61,317 at P 13.

⁷ See, e.g., *Pacific Gas and Electric Co. v. Sunnyside Cogeneration Partners, L.P.*, 97 FERC ¶ 61,378 at 62,727 (2001) (entities that do not act in a timely fashion to protect their interests must live with the results).