

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

PJM Interconnection, L.L.C.

Docket Nos. ER05-1010-002  
ER05-1213-000

ORDER ON COMPLIANCE FILING  
AND TECHNICAL SPECIFICATION

(Issued September 6, 2005)

1. In this order, the Commission accepts a substitute unexecuted interconnection service agreement (ISA) among PJM Interconnection, L.L.C. (PJM), Neptune Regional Transmission System, L.L.C. (Neptune), and Jersey Central Power & Light Company, a FirstEnergy company (Jersey Central), filed in compliance with the Commission's June 23, 2005 Order in Docket No. ER05-1010-000, *et al.*<sup>1</sup> The Commission also accepts portions of the "PJM Interconnection, LLC and FirstEnergy Corporation Technical Performance for the Neptune HVDC Project Sayerville, NJ" (Technical Specifications), dealing with telephonic interference, filed pursuant to section 205 of the Federal Power Act (FPA).<sup>2</sup>

**Background**

2. On July 27, 2001, the Commission approved negotiated rates for the Neptune project, subject to certain conditions.<sup>3</sup> The Neptune project is a merchant transmission project which will provide for the delivery of 660 MW of capacity from New Jersey to Long Island via a high-voltage, direct-current (HVDC) underwater transmission cable. The project's expected commercial operation date is June 2007.

3. On December 21, 2004, in Docket No. EL05-48-000, Neptune filed a complaint against PJM with respect to PJM's interpretation of the interconnection provisions of its tariff, regarding PJM's right to restudy the impact on its system of the interconnection of the Neptune project in light of unexpected announced

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<sup>1</sup> *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,456 (2005) (June 23 Order).

<sup>2</sup> 16 U.S.C. § 824d (2000).

<sup>3</sup> *Neptune Regional Transmission System, LLC*, 96 FERC ¶ 61,147 (2001).

generation retirements on PJM's system. On February 10, 2005, the Commission issued an order finding that PJM's restudies were not performed in accordance with PJM's tariff.<sup>4</sup> The Commission ordered PJM to provide an ISA to Neptune.

4. In compliance with the Neptune Order, on May 23, 2005, as amended on May 25, 2005, in Docket Nos. ER05-1010-000 and ER05-1010-001, PJM submitted for filing the ISA among PJM, Neptune and Jersey Central. PJM included with its filing, for informational purposes only, the portions of the Technical Specifications dealing with telephonic interference. FirstEnergy Companies protested the Technical Specifications and requested that modifications be made to them.

5. In the June 23 Order, the Commission accepted the ISA, subject to conditions. As relevant here, the Commission noted that certain portions of the Technical Specifications should be filed with the Commission in a FPA section 205 filing.

### **Proposal**

6. On July 8, 2005, in compliance with the June 23 Order, PJM submitted an unexecuted substitute ISA among PJM, Neptune and Jersey Central.<sup>5</sup> Among other things, pursuant to FPA section 205, PJM submitted for filing the portions of the Technical Specifications dealing with telephonic interference.<sup>6</sup>

7. PJM notes that section 2.6.2.2 of the Technical Specifications requires Neptune to bear full responsibility for telephonic interference that its facility causes and creates no potential liability for Jersey Central, while section 2.6.2.2.4 specifically provides that Jersey Central will not be responsible for any mitigation for which Neptune is responsible. PJM contends that section 2.6.2.2 fully implements the "but for" causal standard of Part IV of the PJM Tariff, which requires that Neptune pay for mitigation interference that its facility causes, *i.e.*, interference that would not arise but for the operation of the Neptune facility.

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<sup>4</sup> Neptune Regional Transmission System, LLC v. PJM Interconnection, L.L.C., 110 FERC ¶ 61,098 (2005), reh'g denied, 111 FERC ¶ 61,455 (2005) (Neptune Order).

<sup>5</sup> The ISA is designated as Second Substitute Original Service Agreement No. 1303.

<sup>6</sup> The relevant portions of the Technical Specifications are set forth in Schedule G of the ISA.

### **Notice of Filings and Responsive Pleadings**

8. Notice of the filing in Docket Nos. ER05-1213-000 and ER05-1010-002 was published in the *Federal Register*, 70 Fed. Reg. 42,046 (2005), with protests or interventions due on or before July 29, 2005.

9. Neptune filed a timely motion to intervene. Jersey Central, Metropolitan Edison Company and Pennsylvania Electric Company (collectively, FirstEnergy) filed a timely motion to intervene and protest. FirstEnergy argues that future telephonic interference is very likely to occur since the Neptune converter terminal is located in a highly populated area. However, FirstEnergy contends, as drafted, section 2.6.2.2 appears to place Jersey Central as the *de facto* backstop for all future telephonic interference mitigation costs resulting from the operation of the Neptune project, while completely absolving Neptune from any liability. Further, FirstEnergy contends, section 2.6.2.2.4 offers no protection for Jersey Central against potential responsibility for telephonic interference resulting from the operation of the Neptune project. FirstEnergy therefore requests that the Commission modify section 2.6.2.2.4 of the Technical Specifications to establish that Jersey Central would not be liable for such future costs. FirstEnergy argues that Jersey Central has no control over the cause of the interference when: (1) Neptune is liable for the operation of the Neptune project, (2) PJM directs changes in the system pursuant to PJM's Regional Transmission Expansion Plan (RTEP) process, and (3) another HVDC project comes online. FirstEnergy contends that all three circumstances are out of Jersey Central's control, and thus, Jersey Central should be relieved of liability under such circumstances.

10. On August 12, 2005, PJM filed an answer in response. According to PJM, section 2.6.2.2 of the Technical Specifications requires Neptune to bear full responsibility for telephonic interference that its facility causes and thus creates no potential liability for Jersey Central. PJM believes that the application of the "but for" standard leaves no doubt as to the responsibilities each party bears for telephonic interference. PJM contends that the application of the "but for" test ensures that responsibility for such interference will be allocated fairly and in the same manner that costs for network upgrades are assigned. In addition, PJM contends that the "but for" standard is consistent with PJM's allocation of responsibility pursuant to the RTEP and that there is no reason to modify the process in this proceeding.

11. With respect to the modifications proposed by FirstEnergy for section 2.6.2.2.4, PJM states that the alternative language is neither necessary nor appropriate. PJM states that the proposed modifications are overly broad and beyond the scope of the Technical Specifications. Further, the proposed modifications address projects that may occur in the future as a result of the RTEP and future HVDC projects. PJM notes that there is no reason to try to define through the ISA the scope of Jersey

Central's potential liabilities relating to interference that is not caused by the Neptune project, but which may result from some hypothetical future project. Indeed, PJM contends that it is not appropriate to allow Jersey Central a "blanket hold harmless" for any and all future or hypothetical liabilities arising from another project.

12. On August 15, 2005, Neptune filed an answer supporting PJM. According to Neptune, PJM has clearly articulated why FirstEnergy's proposed additional language regarding liability due to interference from future projects is neither justified nor necessary.

## **Discussion**

### **A. Procedural Matters**

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept PJM's and Neptune's answers because they have provided information that assisted us in our decision-making process.

### **B. Commission Conclusion**

15. The Commission finds that the ISA satisfactorily complies with the June 23 Order. The ISA is therefore accepted for filing, effective May 20, 2005, as requested.

16. FirstEnergy requests that the Commission modify section 2.6.2.2.4 of the Technical Specifications to establish that Jersey Central would not be "responsible for mitigation obligations or related cost responsibility for communications or customer interference resulting from: (1) the operation of the HVDC Project; (ii) subsequent changes in the PJM AC system made pursuant to the Regional Transmission Expansion Plan; or (iii) future HVDC projects."<sup>7</sup> We see no reason, however, to modify the terms of section 2.6.2.2.4. As PJM states (and Neptune acknowledges), section 2.6.2.2.2 specifically requires Neptune to bear full responsibility for any

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<sup>7</sup> FirstEnergy Protest at 5.

future telephonic interference that its facility causes.<sup>8</sup> The “but for” language in section 2.6.2.2.2, as written, attributes the costs, responsibility and mitigation obligations to the party requesting interconnection for any impact such interconnection request may have on the system. Further, section 2.6.2.2.4 provides that Jersey Central is not liable for costs due to telephonic interference for which Neptune is responsible.<sup>9</sup> The language in that section, rather, holds Neptune fully responsible for telephonic interferences. Furthermore, Jersey Central is fully absolved of any “residual [or otherwise potential] mitigation obligations” that would not arise but for operation of the Neptune project.<sup>10</sup>

17. Since section 2.6.2.2.2 specifically states that Neptune is fully responsible for any telephonic interference attributable to its project, and further since section 2.6.2.2.4 states that Jersey Central would not be liable for mitigation of cost

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<sup>8</sup> Section 2.6.2.2.2 states:

Notwithstanding section 2.6.2.2.3 below, the (i) calculations, analysis, and verification of per line IT Product by the Developer, PJM, the Transmission Owner and any of their respective consultants, and (ii) Developer’s mitigation obligations and related cost responsibility set forth in section 2.6.2.2.3 shall be based on the System Impedance Model finalized on or before May 31, 2005 along with the Harmonic Sectors developed from that model. Any subsequent changes in the PJM AC system or future HVDC projects thereafter, including, but not limited to, new transmission lines, capacitor banks or new power-electronic based devices, that contribute to telephone interference due to harmonics caused by the Project along transmission or distribution lines, shall relieve Developer of any subsequent mitigation obligations herein provided, that are not the “but for” result of the Project. In the event Developer’s mitigation obligations are relieved, Developer shall cooperate with subsequent remediation studies and efforts as necessary to determine the responsibility for the interference. PJM shall oversee and approve subsequent mitigation plans for mitigation of interference as applicable to facilities within the PJM system and the Regional Transmission Expansion Plan.

<sup>9</sup> Section 2.6.2.2.4 states:

In no event shall the Transmission Owner be responsible for Developer’s mitigation obligations or related cost responsibility set forth in sections 2.6.2.2.1, 2.6.2.2.2 and 2.6.2.2.3 above.

<sup>10</sup> Jersey Central Protest at 4.

obligations that are Neptune's responsibility, we are satisfied that Jersey Central would not be held responsible for any costs that may arise from telephonic interference as result of the Neptune project. We find no justification to modify the terms of the Technical Specifications and therefore deny FirstEnergy Companies' request.

The Commission orders:

The substitute ISA, designated as Second Substitute Original Service Agreement No. 1303, is hereby accepted for filing effective May 20, 2005, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.