

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 No. ER06-133-000

ORDER ACCEPTING AND SUSPENDING FILING AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 30, 2005)

I. Introduction

1. In this order, we accept for filing PJM Interconnection, L.L.C.'s (PJM) proposed Network Integration Transmission Service Agreement (NITSA) and amended Interconnection Service Agreement (ISA), suspend them for a nominal period, to become effective January 1, 2006, subject to refund. We also establish hearing and settlement judge procedures.

II. Background

2. On November 1, 2005, PJM filed an unexecuted NITSA with the City of Geneva (Geneva) and an unexecuted, amended ISA among PJM, Geneva, and Commonwealth Edison (ComEd). PJM states that the NITSA and amended ISA are being filed in unexecuted form because Geneva disputes the amount of the Direct Assignment Facilities Charges and Wholesale Distribution Charges, respectively, to be assessed under the agreements. PJM states that it does not take a position with respect to the amount of these charges. PJM seeks an effective date of January 1, 2006 for the proposed NITSA and amended ISA.

3. PJM explains that the NITSA is necessitated by Geneva's termination of the transmission and distribution service it presently receives from ComEd pursuant to ComEd Rate Schedule No. 80 (Rate Schedule 80). The NITSA is required to ensure that the continuity of Geneva's transmission service is not affected by its termination of Rate Schedule 80 service and to provide an alternative rate mechanism that will allow ComEd to continue to recover the costs associated with Geneva's use of ComEd's distribution

facilities to serve Geneva's load. The NITSA provides that the relevant distribution costs be collected as Direct Assignment Facilities Charges. The proposed ComEd calculated annual revenue requirement for the NITSA Direct Assignment Facilities Charges is \$1,384,378, which translates into a proposed monthly charge of \$115,365.

4. PJM states that the amended ISA (First Revised Service Agreement No. 1350) is required to allow ComEd to continue to recover distribution costs related to Geneva's use of ComEd's distribution facilities to sell the output of its generating facility into the PJM Interchange Energy Market. The amended ISA is intended to supersede the ISA that is currently in effect. PJM states that the only proposed amendments to the currently effective ISA are (1) to revise the date of agreement in section 1.0; (2) to revise the amount of other charges listed in section 4.4 of the Specifications to refer to Schedule F; and (3) to revise and include new language in Schedule F that reflects the proposed inclusion of a distribution rate collected as Geneva Wholesale Distribution Charge of \$267,952 per annum, based upon ComEd's costs and system configuration as of December 31, 2004.

5. PJM gives the following reason for the separate Direct Assignment Facilities Charges and Geneva Wholesale Distribution Charges: though Geneva's load and merchant generator are both connected to the transmission grid via ComEd's distribution system, there are distinct costs associated with the two separate uses – i.e., serving its load and selling the output of its generating unit. To reflect the different distribution costs in the charges that correspond to the use that is responsible for creating them, the costs associated with serving the City's load and generating facility are proposed to be recovered in the relevant charges in the NITSA and the amended ISA, respectively.

6. PJM also explains the need to prevent double recovery, which may occur with the commonality of use associated with certain distribution facilities. The commonality of use arises because the distribution facilities used to serve the City's generating station are a subset of the facilities used to serve its load. Because the common facilities can only be used for one purpose at any given time, and the facilities are always in use for one purpose or the other, only one charge can be assessed for the use of the common facilities for any given time period. Since the NITSA Direct Assignment Facilities Charges and amended ISA Geneva Wholesale Distribution Charges cannot be cumulative, the relevant charges collected under the ISA must be credited against the relevant NITSA charges to prevent double recovery.

III. Notice of Filing and Responsive Pleadings

7. Notice of PJM's filing was published in the *Federal Register*, 70 Fed. Reg. 69,335 (2005), with interventions and protests due on or before November 22, 2005. Exelon Corporation¹ (Exelon) filed a timely motion to intervene. Geneva filed a timely motion to intervene and protest. On November 29, 2005, Geneva also filed a motion to accept late-filed statement of issues, which was omitted from its previously filed protest. On December 7, 2005, Exelon filed a late answer to Geneva's protest.

IV. Discussion

Procedural Matters

8. 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 of Geneva and Exelon, make them parties to this proceeding.

9. Geneva failed to file a timely Statement of Issues as required by Order No. 663.² Order No. 663 applies to all pleadings, including protests, and requires that any issues that a movant wishes the Commission to address must be specifically identified in a section entitled "Statement of Issues" that must list each issue presented to the Commission in a separately enumerated paragraph that includes representative Commission and court precedent on which the party is relying. Any issues not so listed in a separate section will be deemed to have been waived. Order No. 663 became effective September 23, 2005. Geneva's Protest filed on November 22, 2005 omitted the Statement of Issues. Although Geneva attempted to cure this deficiency with a Motion to Accept Late-Filed Statement of Issues, this filing was untimely. For this reason, we deem Geneva to have waived the issues in its Protest.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise permitted by the decisional authority. Waiver is appropriate when the response will assist the Commission in the decision-making process

¹ Exelon is a registered holding company which owns Commonwealth Edison Company (ComEd) of Chicago, Illinois and PECO Energy Company (PECO) of Philadelphia, Pennsylvania.

² Revision of Rules of Practice and Procedure Regarding Issue Identification, Order No. 663, 70 Fed. Reg. 55,723 (September 23, 2005), FERC Stats. & Regs. ¶ 31,193 (2005).

and help to ensure a complete and accurate record in the case. Because Geneva has waived all issues in its protest, Exelon's Answer will not assist the Commission in the disposition of the case. Therefore, we will deny Exelon's request for a waiver of Rule 213.

Hearing and Settlement Judge Procedures

11. Upon review of the filing, we find that PJM's unexecuted NITSA and amended ISA raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below. Such issues include how to treat the costs of the direct assignment facilities being used for transmission and distribution. Our preliminary analysis indicates that PJM's proposed NITSA and ISA amendment have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Therefore, we will accept PJM's unexecuted NITSA and unexecuted ISA amendment, suspend them for a nominal period, make them effective January 1, 2006, as requested, subject to refund, and set them for hearing and settlement judge procedures. In both the hearing and settlement judge proceedings intervenors will have the opportunity to raise any issues regarding the proposed NITSA and amended ISA.

12. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.³ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose. The settlement judge shall make an initial report to the Chief Judge and the Commission within thirty (30) days of the date of appointment concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The proposed NITSA and amended ISA are hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2006 as requested, subject to refund, as discussed in the body of this order.

³ 18 C.F.R. §385.603 (2005).

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning PJM's proposed NITSA and amended ISA. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within thirty (30) days of being appointed by the Chief Judge, the settlement judge shall file an initial report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Such conference shall be held for the purpose

of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission. Commissioner Brownell concurring with a
separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

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Nora Mead BROWNELL, Commissioner *concurring*:

Since issuing Order No. 663, many entities have been quick to comply with our newest filing requirement. However, a few entities have not kept pace, as demonstrated here by the City of Geneva. I strongly urge the executive leadership of APPA, NRECA, EPSA, and NARUC to more progressively and actively work with their entire membership, large and small, to ensure their members become sufficiently familiar with the Commission's filing requirements, including Order No. 663, to avoid having some or all of their issues waived procedurally.

Nora Mead Brownell