

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

PJM Interconnection, L.L.C.

Docket Nos. ER06-1127-000 and  
ER06-1127-001

ORDER ACCEPTING NON-CONFORMING TRANSMISSION SERVICE  
AGREEMENT AND NON-CONFORMING CONSTRUCTION SERVICE  
AGREEMENTS

(Issued September 8, 2006)

1. On June 14, 2006, PJM Interconnection, L.L.C. (PJM) filed a non-conforming Transmission Service Agreement (TSA) between itself and FirstEnergy Solutions Corp. (FirstEnergy)<sup>1</sup> and two accompanying, non-conforming Construction Service Agreements (CSAs) among PJM, FirstEnergy, Virginia Electric and Power Company (Dominion) and Monongahela Power Company and the Potomac Edison Company, both d/b/a Allegheny Power (Allegheny). The agreements are intended to facilitate long-term, firm point-to-point transmission service of up to 1,000 MW from Midwest Independent Transmission System Operator, Inc. (Midwest ISO) into PJM. Under the agreements, FirstEnergy will fund \$3.2 million worth of network upgrades on the PJM transmission system that PJM has determined to be necessary to accommodate FirstEnergy's transmission service. In return for funding the upgrades, PJM proposes to award FirstEnergy Incremental Auction Revenues Rights (Incremental ARRs). The Commission accepts FirstEnergy's TSA and the accompanying CSAs.

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<sup>1</sup> For convenience, both FirstEnergy Solutions Corp. and FirstEnergy Service Company will be referred to as FirstEnergy. FirstEnergy Service Company filed a Protest and Comments in this proceeding on behalf of FirstEnergy Solutions Corp. and other affiliates.

## **Background**

2. On June 8, 2004, FirstEnergy made a transmission service request under Part II of PJM's Open Access Transmission Tariff (PJM Tariff) for 1,000 MW of firm point-to-point service to move power from sources in the Midwest ISO to load that sinks in PJM. In March, 2005, PJM performed an impact study for this request. PJM concluded that some 230 kV and higher voltage facilities exhibited contingency overloads due to FirstEnergy's transmission service request and required relief.

3. PJM delivered a Facilities Study to FirstEnergy on January 6, 2006. The facilities study indicated that providing the requested transmission service for FirstEnergy for the initial year of the transaction would require replacing 1/10 mile of conductor on the Dominion end of the Pruntytown - Mt. Storm 500 kV circuit.<sup>2</sup> Another overload situation created by the proposed transmission service for FirstEnergy was corrected upon the completion by American Electric Power Company (AEP) of a new 765 kV circuit that went into service in June 2006. Because the service could not be provided prior to completion of these network upgrades, the facilities study notified FirstEnergy, pursuant to section 15.5 of the PJM Tariff, that the commencement of service would be deferred until January 1, 2007. PJM further advised that the service could be provided for FirstEnergy only during calendar year 2007, unless additional violations of reliability criteria identified for 2008 were first resolved. In March of 2006, PJM updated its facilities study, and added three network upgrades on facilities owned by Allegheny, that are necessary to accommodate FirstEnergy's requested transmission service on and after January 1, 2008. These upgrades included: (1) one new, 4000 amp, 500 kV wave trap to replace the existing 3000 amp wave trap on the Hatfield terminal of the Hatfield-Black Oak 500 kV circuit;<sup>3</sup> (2) replacement of the 2000 amp air switch at Pruntytown 500 kV with a 3000 amp air switch;<sup>4</sup> (3) upgrade of a Static VAR Compensator (SVC) identified in PJM RTEP as b0216 "Install -100/+525 MVAR dynamic reactive device at Black Oak" increasing MVAR range by +/-50MVAR.<sup>5</sup>

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<sup>2</sup> Estimated cost of this upgrade is \$340,660. Appendix I to Dominion CSA, Original Service Agreement No. 1495.

<sup>3</sup> Estimated cost of this upgrade is \$61,000. Appendix I to Allegheny CSA, Original Service Agreement No. 1496.

<sup>4</sup> Estimated cost of this upgrade is \$136,395. Appendix I to Allegheny CSA, Original Service Agreement No. 1496.

<sup>5</sup> Estimated cost of this upgrade is \$3.12 million. Appendix I to Allegheny CSA, Original Service Agreement No. 1496.

4. PJM states that in accordance with sections 13.5 and 27.1 of the PJM Tariff, FirstEnergy has elected to pay for the Network Upgrades that are needed to provide its requested firm transmission service on a long-term basis. FirstEnergy will also incur charges for firm, point-to-point transmission service.

5. PJM states that the TSA contains terms that do not conform to the form of service agreement for firm point-to-point transmission service in Attachment A to the PJM Tariff. Specifically, PJM states that the TSA includes terms to provide that PJM will award to FirstEnergy any Incremental ARRs created by the system upgrades FirstEnergy is funding. PJM states that providing for the award to FirstEnergy of any Incremental ARRs that are created by the network upgrades that FirstEnergy is financing is consistent with the PJM Tariff<sup>6</sup> and is required to ensure that FirstEnergy is treated the same as interconnection customers who similarly fund system upgrades to facilitate their requested services. PJM states that such provisions are not part of the PJM Tariff's standard form of service agreement. Additionally, PJM observes that Part II of the PJM Tariff does not contain a form of agreement for the construction by PJM Transmission Owners of system upgrades that a customer requesting transmission service has elected to fund in order to accommodate its request for service. Accordingly, PJM and the parties have created the instant CSAs.

6. In addition, PJM states that it has not previously had reason to set forth terms and conditions to govern the construction of upgrades for a transmission customer; similarly, PJM notes that the Commission's recent notice of proposed rulemaking concerning changes to the *pro forma* tariff<sup>7</sup> does not propose to add such terms. PJM states that it

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<sup>6</sup> PJM states that in the event that network upgrades are required in order to meet a customer's request for transmission service, section 19.4 of the PJM Tariff requires PJM to identify the customer's "appropriate share" of the cost of the necessary upgrades. Section 27.1 of the tariff, in turn, gives the customer the option to finance the upgrades to facilitate the service and, upon exercise of that option, make its entitlement to service contingent on its agreement to pay the actual cost of the required facilities. Similarly, Part IV of the PJM Tariff provides that, when network upgrades are required to accommodate an interconnection request, the interconnection customer may elect to pay for such upgrades. If the customer elects that option, the tariff makes the customer responsible for the cost of all upgrades that would not have been necessary "but for" the customer's interconnection. Thus, argues PJM, transmission customers and interconnection customers have essentially equivalent rights under the PJM Tariff to obtain the services they require upon their agreement to pay for the system upgrades (or portions thereof) that are needed to accommodate them.

<sup>7</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Notice of Proposed Rulemaking, 115 FERC ¶ 61,211 (2006).

will consider providing comment in the rulemaking proceeding on the need for a standard form of construction agreement for upgrades required to provide new transmission service and, upon the Commission's acceptance of the enclosed CSAs, may amend its tariff to add a form of agreement based on these CSAs.

7. PJM requests that the enclosed TSA and CSAs, designated respectively as Original Service Agreement Nos. 1494, 1495 and 1496, be made effective on August 14, 2006, 60 days following the date of this submission.

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

8. Notice of ER06-1127-000 was published in the *Federal Register*, 71 Fed. Reg. 37,063 (2006), with protests and interventions due on or before July 5, 2006. Timely motions to intervene were filed by Allegheny and FirstEnergy.<sup>8</sup> Dominion filed in support of the filing. H-P Energy Resources LLC (H-P) filed a protest and Chesapeake Transmission, L.L.C. (Chesapeake) filed a protest and motion to consolidate this docket with Docket No. EL06-67-000. PJM and FirstEnergy separately filed answers to the protests and answers opposing the motion to consolidate. H-P filed an answer to the answers of PJM. Chesapeake filed an answer to the answers of PJM and FirstEnergy.

9. Staff requested further information from PJM by letter dated June 22, 2006, and PJM submitted its response to the data request on July 7, 2006. PJM's response to staff's data request was noticed in the Federal Register, with protests, comments and motions for intervention due on July 17, 2006.

### **Comments and Protests**

10. By reference to its complaint in Docket No. EL06-67-000, Chesapeake asserts that it, and not FirstEnergy, should have been awarded the reconductoring project at Pruntytown - Mt. Storm and that Incremental ARR's do not pertain to transmission service customers such as FirstEnergy. In addition, Chesapeake argues that FirstEnergy and PJM violated the 30-day deadline in section 19.4 of the PJM Tariff for the execution of a TSA.<sup>9</sup> Chesapeake also argues that the appearance of a contingency at Wylie Ridge substation in the Allegheny CSA is an unexplained inconsistency with the facilities study.

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<sup>8</sup> FirstEnergy Service Company filed on behalf of its affiliates FirstEnergy Solutions Corp., Jersey Central Power and Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company.

<sup>9</sup> The TSA was tendered to FirstEnergy on March 13, 2006. It was executed on June 2, 2006.

Finally, Chesapeake also requests to consolidate the current proceeding with its complaint in Docket No. EL06-67-000.

11. H-P claims that, for the reasons set forth in the Chesapeake protest, H-P, not FirstEnergy, is entitled to perform its merchant transmission project and receive the associated rights. H-P is the sponsor of merchant transmission Project O15, which is the upgrade of the wavetrapp at the Black Oak terminal of the Hatfield-Black Oak circuit. In this proceeding, PJM proposes that this project be installed by Allegheny on behalf of FirstEnergy. H-P states that Project O15 was submitted to PJM on April 6, 2005 as part of PJM's Interconnection Queue O, which closed July 31, 2005. H-P states that section 41.2 of the PJM Tariff required PJM to provide a feasibility study by September 30, 2005. H-P states that because there were no system impacts associated with the project, PJM was obligated to provide an interconnection agreement at that time as well. Therefore, H-P states that, had the ISA been completed in the fall of 2005, this project would not have been included as an upgrade available to FirstEnergy.

12. Dominion requests that the Commission accept the three agreements without suspension or other conditions, effective as requested.

13. PJM and FirstEnergy state that the Commission should deny Chesapeake's motion to consolidate because no issue of material fact has been raised. PJM also states that it was not aware, at the time it commenced the studies for FirstEnergy, that merchant transmission developers would subsequently express interest in some of the same network upgrades that would be necessary to accommodate the FirstEnergy service. However, while completing its facility study reports for FirstEnergy in December 2005, PJM determined that H-P's Project O15 and Chesapeake's Project P45B involved facilities that are required to provide service for FirstEnergy. FirstEnergy, being first in time in the integrated queue of service requests, was determined by PJM to be first in right.

14. PJM and FirstEnergy dispute Chesapeake's claim that FirstEnergy's status as a transmission service customer, rather than an interconnection service customer, makes FirstEnergy ineligible to receive Incremental ARRs. FirstEnergy asserts that Commission precedent and policy require that FirstEnergy be compensated for funding the upgrades. PJM and FirstEnergy state that Chesapeake's position is without merit and would create an undue preference for interconnection customers over transmission service customers that choose to fund network upgrades.

## **Discussion**

### **A. Procedural Matters**

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely unopposed motions to intervene of Allegheny,

Dominion, Chesapeake, FirstEnergy, and H-P serve to make them parties to this proceeding.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed by PJM and FirstEnergy because they provided information that assisted us in our decision-making process.

17. We will deny Chesapeake's motion to consolidate the current proceeding with Docket No. EL06-67-000. Facts relevant to Chesapeake's dispute about its relative priority in PJM's queue for new services are resolved in a concurrently issued order in that docket. No other issues warrant an evidentiary hearing, and consolidation is therefore unjustified and inappropriate.

## **B. Analysis**

### **1. Priority in the Queue**

18. Most of Chesapeake's concerns, including its claim of priority with respect to the reconductoring project, are addressed in the concurrently issued order in Docket No. EL06-67-000. Therefore, below we will only address the three remaining issues – those pertaining to Incremental ARRs and FirstEnergy's TSA, which were not raised by Chesapeake in its Complaint in the EL06-67-000 docket.

19. H-P's concerns mirror those raised by Chesapeake in its complaint. The Commission is appreciative of H-P's interest in funding projects to enhance the transmission system within PJM and the positive steps it took to identify a project that it could undertake. Nonetheless, the Commission finds, as it did in the EL06-67-000 proceeding, that FirstEnergy should be designated to fund the wavetraps at the Black Oak terminal of the Hatfield-Black Oak circuit, because it has a higher priority in the PJM queue. As we state in the concurrently issued order in Docket No. EL06-67-000, priority for the requests of interconnection customers and transmission delivery customers for service is established on a first come, first served basis.<sup>10</sup> Since FirstEnergy's made its request in June of 2004, and H-P did not enter the queue until April of 2005, we find that H-P has an inferior priority in the queue. H-P's inferior priority in the queue also renders moot its contention that, if PJM had tendered H-P an interconnection service agreement

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<sup>10</sup> As we state in the concurrently issued order in Docket No. EL06-67-000, this case illustrates, however, that there is a need for PJM to clarify its tariff. Such clarifications would provide more certainty for merchant transmission projects and would help avoid disputes over priority in the future.

on September 30, 2005, then the upgrade H-P seeks to build would have been no longer available for funding by FirstEnergy when PJM completed the FirstEnergy facilities study.

## 2. Incremental ARRs

20. With respect to Chesapeake's claim that FirstEnergy is ineligible to receive Incremental ARRs, Chesapeake has failed to demonstrate that it is harmed by the contract provision at issue. Regardless of whether FirstEnergy is awarded the ARRs, Chesapeake would not be awarded the reconductoring project. Chesapeake's only contention is the speculation that FirstEnergy would not go ahead with its transmission request if it were not to receive the ARRs. However, according to PJM, the reconductoring project in which Chesapeake has asserted an interest does not by itself increase capacity and therefore does not warrant an award of Incremental ARRs.

21. Moreover, we find that inclusion of the provision with respect to awarding incremental ARRs in the TSA is just and reasonable. Although the PJM OATT does not expressly provide for the assignment of incremental ARRs for upgrades built pursuant to a transmission service request, it does not preclude PJM from reaching a just and reasonable agreement to provide ARRs.<sup>11</sup> We find that including such a provision in the TSA is just and reasonable. The PJM OATT contemplates that a firm transmission service customer may need to fund upgrades in order to receive transmission service. We agree with PJM that if a transmission customer funds upgrades, it should be treated no differently than an Interconnection customer funding the same upgrades. Both sets of customers should be entitled to receive whatever ARRs such upgrades produce. PJM, in fact, has recognized that its current tariff does not fully set forth the rights and procedures of the transmission customers required to build upgrades and has a filing pending before the Commission which would entitle all entities constructing network upgrades to be eligible for ARRs created by those upgrades.<sup>12</sup>

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<sup>11</sup> With respect to upgrades built by customers requesting transmission service, the PJM OATT does not provide specificity regarding the terms of such construction. For example, while the OATT specifically provides that a customer requesting transmission service may need to build upgrades, the OATT does not provide for the signing of a construction agreement nor include a pro forma construction agreement. Thus, the OATT leaves PJM and the party requesting transmission service to negotiate acceptable just and reasonable provisions.

<sup>12</sup> Docket No. ER06-1218.

### 3. Deadline for Filing TSA

22. Chesapeake argues that it was impermissible for PJM and FirstEnergy, by mutual agreement, to avoid the operation of the 30-day deadline set in section 19.4 of the PJM Tariff for the execution of a proffered TSA or the requested filing of an unexecuted TSA. Section 19.4 of the PJM Tariff, requires that a "Transmission Customer shall have thirty (30) days to execute a Service Agreement or request the filing of an unexecuted Service Agreement."

23. FirstEnergy argues that the TSA, a bilateral agreement with PJM, was finalized and ready for execution very quickly in the process. According to FirstEnergy, this transaction was atypical, however, insofar as the requested transmission service called for upgrades which in turn required negotiation and execution of two CSAs with two transmission owner parties. It adds that the 30-day time period set forth in section 19.4 does not appear to contemplate the time additionally needed to negotiate a CSA when a specific network upgrade is required to provide the requested service. FirstEnergy also argues that filing of completed, executed agreements is preferable to the filing of unexecuted agreements. PJM argues that section 15.3 of the PJM Tariff provides that PJM must file an unexecuted TSA within 30 days after "the Transmission Customer provides written notification directing" PJM to make such a filing.

24. We agree with FirstEnergy. Section 19.4 of the Tariff states that "The Transmission Customer shall have thirty (30) days to execute a Service Agreement or request the filing of an unexecuted Service Agreement and provide the required letter of credit or other form of security or the request will no longer be a Completed Application and shall be deemed terminated and withdrawn." (emphasis added).<sup>13</sup> In Appendix 1 of its Answer, FirstEnergy provides a letter dated April 12, 2006 (prior to the expiration of the 30-day deadline), which shows that FirstEnergy "requests that PJM file the TSA and associated CSA as unexecuted service agreement in order to preserve FirstEnergy's rights under the PJM OATT." Additionally, FirstEnergy's Answer shows that it posted the required security to maintain its transmission request. Thus, FirstEnergy fully complied with its obligations under the PJM OATT. Any delay in filing the TSA was caused by PJM and would not jeopardize FirstEnergy's queue position or other rights.

### 4. Wylie Ridge Substation

25. Chesapeake also argues that the appearance of a contingency at Wylie Ridge substation in the Allegheny CSA is an unexplained inconsistency with the facilities study.

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<sup>13</sup> PJM Interconnection, L.L.C., FERC Electric Tariff Sixth Revised Volume No. 1, Original Sheet No. 72

We agree with PJM, who argues that when PJM's transmission services staff performed the system impact study for the FirstEnergy transmission service request, their analysis correctly identified the Wylie Ridge transformers as a binding constraint. However, that study did not, and did not need to, identify how, when, or by whom that constraint would be resolved. The Wylie Ridge constraint is not mentioned in the final facilities study report for the FirstEnergy service because, by the time of that report, the upgraded transformers at Wylie Ridge were already included in the RTEP as a reliability upgrade and responsibility for its construction assigned to Allegheny.

26. No other issue has been raised with respect to the justness and reasonableness of the present agreements. We therefore accept the present filings effective August 14, 2006, as requested. We also encourage PJM to modify the PJM OATT to create pro forma CSAs and specifics on terms of construction and eligibility for Incremental ARRs by customers requesting transmission service consistent with this order.

The Commission orders:

FirstEnergy's TSA and CSAs are hereby accepted, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.