

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. ER06-1177-000
ER06-1177-001

ORDER ACCEPTING TARIFF REVISIONS
SUBJECT TO CONDITIONS

(Issued November 9, 2006)

1. In this order, the Commission will accept, subject to conditions, Open Access Transmission Tariff (OATT or Tariff) revisions that PJM Interconnection, L.L.C. (PJM) filed under section 205 of the Federal Power Act (FPA).¹ The proposed revisions to Part IV of the OATT pertain to the Option to Build provisions, the definition of “local upgrades” and “network upgrades,” amounts of security required for upgrades, and cost reimbursement. As discussed below, the Commission will accept PJM’s June 29, 2006, filing, as amended on September 12, 2006, subject to conditions, to become effective August 29, 2006, as requested.

Background

2. PJM explains that, under its existing OATT, interconnection customers seeking to interconnect with the PJM system have two options in how the interconnection facilities and merchant network upgrades will be built.² Under the first option, the interconnection customer may enter into a Construction Service Agreement with the transmission owner under which the transmission owner will carry out and be reimbursed by the interconnection customer for the construction. Under the second option, which under the current Tariff is available only in the event that the interconnection customer and the

¹ 16 U.S.C. § 824d (2000).

² PJM Proposal at 2.

transmission owner cannot reach agreement on the terms of a Construction Service Agreement, the interconnection customer may select the Option to Build. Under this Option to Build, the interconnection customer itself constructs the upgrades.³

3. PJM proposes to amend section 82.2.3 of its Tariff to provide that an interconnection customer has the right to elect the Option to Build “if mutually agreed by and between the Interconnection Customer and the Transmission Owner.”⁴ Relatedly, PJM proposes to require that when an interconnection customer elects the Option to Build, the interconnection customer notify the transmission owner and PJM that the election is by mutual agreement or that it is electing the Option to Build as the result of disagreement over specific terms and conditions of the Construction Service Agreement.⁵ PJM proposes that its Tariff be revised to specify that interconnection customers⁶ reimburse transmission owners’ costs associated with upgrades, “including but not limited to costs for inspections, testing, tie-in work and Cancellation Costs.”⁷

4. PJM proposes to change the security requirements for certain upgrades, whether performed by the transmission owner or by the interconnection customer. As part of the realigning of its security requirements, PJM proposes to redefine “Local Upgrades” and “Network Upgrades” to create distinctions between different types of upgrades. Specifically, both Local Upgrades and Network Upgrades will be further distinguished as either Direct Connection upgrades or Non-Direct Connection upgrades.⁸ Direct Connection upgrades “only serve the Customer Interconnection Facility and have no

³ This includes the right to design, procure, construct, and install all or any portion of the transmission owner’s interconnection facilities and any merchant network upgrades. *See* PJM OATT at section 83.2.3, Original Sheet No. 187.

⁴ PJM OATT, Proposed First Revised Sheet No. 187.

⁵ *See Id.*

⁶ “Interconnection customers” refers to both generation interconnection customers and transmission (*i.e.*, merchant) interconnection customers.

⁷ PJM OATT at section 36.8.1 (Generation Interconnection Customer Cost Reimbursement, First Revised Sheet No. 101D); section 41.7.1 (Transmission Interconnection Customer Cost Reimbursement, Proposed First Revised Sheet No. 115D); section 89 (Security, Billing and Payments, Third Revised Sheet No. 201).

⁸ *See* PJM OATT section 1.17A (First Revised Sheet No. 37A) (providing for Direct Connection Local Upgrades and Non-Direct Connection Local Upgrades); PJM OATT section 1.26 (Second Revised Sheet Nos. 39-39.01) (providing for Direct Connection Network Upgrades and Non-Direct Connection Network Upgrades).

impact or potential impact on the Transmission System until the final tie-in is complete.”⁹ Non-Direct Connection upgrades, meanwhile, “are parallel flow [upgrades] that are not Direct Connection [upgrades] and do have an impact on the Transmission System commencing with their construction.”¹⁰ PJM’s rationale in distinguishing these upgrades is that Direct Connection facilities have no impact on the operation of the transmission system until the tie-in for such facilities is complete while Non-Direct Connection facilities may have an impact during their construction.

5. PJM proposes changes to its security obligations to, it asserts, create greater parity between interconnection customers choosing the Option to Build and those choosing to have the transmission owner construct the facilities. For transmission owner-built upgrades, the Tariff currently requires full security for local and network upgrades. The proposal requires full security only for costs associated with Non-Direct Connection upgrades. For Direct Connection upgrades, PJM proposes to reduce the security requirement to the estimated cost of the work that the transmission owner will be responsible for performing during the first three months after such work commences.¹¹

6. For the Option to Build, PJM proposes to revise the Tariff to require interconnection customers to provide security to cover:

All Cancellation Costs and the first three months of estimated Transmission Owner’s Costs associated with the Interconnection Customer’s building Attachment Facilities, Direct Connection, Local Upgrades, and/or Direct Connection Network Upgrades, including but not limited to Costs for inspections, testing, and tie-in work;¹²

⁹ PJM OATT section 1.17A(i) (First Revised Sheet No. 37A); PJM OATT section 1.26(i) (Second Revised Sheet No. 39). PJM proposes that these will be treated in the same manner as “Attachment Facilities” for purposes of determining the amount of security. PJM Transmittal Letter at 7.

¹⁰ PJM OATT section 1.17A(ii) (First Revised Sheet No. 37A); PJM OATT section 1.26(ii) (Second Revised Sheet No. 39).

¹¹ PJM OATT, proposed section 36.8.4(b)(1)(iii) (Fourth Revised Sheet No.102-102A); *see also* proposed section 41.7.3(b)(1)(iii) (Second Revised Sheet No.116).

¹² PJM OATT, proposed section 36.8.4(b)(1)(iv) (Second Revised Sheet No.102A); *see also* proposed section 41.7.3(b)(1)(iv) (Second Revised Sheet No.116A).

7. PJM states that it received support for all of the proposed revisions through its stakeholder process.¹³ PJM specifies that the Interconnection Project Management Working Group reviewed the Option to Build issues and provided input and direction to PJM. Using that input, PJM states, PJM presented revised alternative proposals to the Interconnection Project Management Working Group. As a next step, PJM presented the proposal to the PJM Markets and Reliability Committee, which voted to endorse. A draft of the specific proposed revisions was presented to the PJM Tariff Advisory Committee. This committee then referred the proposed changes to the PJM Members Committee for review and endorsement. The Members approved the changes through a unanimous consent agenda endorsement vote.

Notice of Filings and Responsive Pleadings

8. Notice of PJM's filing was published in the *Federal Register*, 71 Fed. Reg. 40,486, with motions to intervene and protests due on or before July 20, 2006. Indeck-Elwood, L.L.C. (Elwood) filed a protest. On August 4, 2006, PJM filed an answer to Elwood's protest. On August 17, 2006, Elwood filed an answer to PJM's answer. On August 28, 2006, the Commission's Director of Tariffs and Market Development – East issued a deficiency letter to PJM directing PJM to respond to a series of questions. On September 12, 2006, PJM filed a response. Notice of PJM's response was published in the *Federal Register*, 71 Fed. Reg. 55,461, with motions to intervene and protests due on or before October 3, 2006. Elwood filed a timely protest to PJM's answer to the deficiency letter. On October 18, 2006, PJM filed a motion to reject and an answer.

Discussion

Procedural Matters

9. Pursuant to Rule 214, 18 C.F.R § 385.214 (2006), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits answers to protests and answers to answers unless otherwise ordered by the decisional authority. The Commission will accept all answers because they provide information that assists in our decision-making process.

¹³ See PJM Transmittal Letter at 3-5.

Upgrade Definitions

Protest and Answer

10. Elwood first argues that PJM's proposal creates a new class of network upgrades, upgrades that serve only an interconnection customer interconnection facility. Elwood states that this is counterproductive and contrary to long-standing Commission policy that network upgrades benefit all users of the system.¹⁴ According to Elwood, PJM's proposal would require a case-by-case examination of each upgrade to classify the interconnection as either Direct or Non-Direct Connection facility.¹⁵ This approach, states Elwood, is "directly contrary to sound Commission policy and precedent."¹⁶ Elwood cites *Entergy Gulf States, Inc.*¹⁷ as support for the proposition that "network facilities include all facilities at or beyond the point where the customer or generator connects to the grid without regard to the purpose of the upgrade."¹⁸ Elwood also cites Order No. 2003 in arguing that determining what constitutes a Network Upgrade does not require a case-specific determination, but only whether the upgrade is at or beyond the Point of Interconnection. Elwood requests that the Commission reject PJM's proposal, or alternatively, accept the proposal subject to the requirement that PJM modify the Tariff to require that all interconnection customers post security "equal to the estimated cost of the work on the required Network Upgrades, Local Upgrades, and Attachment Facilities that is scheduled to be completed during the first three months after such work commences."¹⁹

11. Elwood also argues that the proposed security requirements impose "a substantial barrier to entry for new market participants."²⁰ Elwood's fundamental concern in this regard is that the additional security requirements PJM proposes to impose on interconnection customers electing the Option to Build exceed those necessary to protect the Transmission Provider and the transmission owner from non-payment of upgrade costs by the interconnection customer. Elwood argues that interconnection customers who themselves build the interconnection are financially responsible for paying for

¹⁴ Elwood Protest at 6-10.

¹⁵ *Id.* at 8-9.

¹⁶ *Id.* at 9.

¹⁷ 99 FERC ¶ 61,095 (2002) (Order Denying Rehearing and Accepting Compliance Filing).

¹⁸ Elwood Protest at 9, quoting *Entergy Gulf*, 99 FERC ¶ 61,095 at P 3.

¹⁹ *Id.* at 10.

²⁰ *Id.* at 13-14.

equipment and for performing the interconnection-related work. Thus, Elwood reasons, these customers need not provide security to the Transmission Provider on the ground that the Transmission Provider incurs no liability. Elwood recognizes that PJM's proposal is an effort to ensure that interconnection customers exercising the Option to Build complete the upgrades they agreed to build, but argues that the specifics are "misguided" and that PJM "twists the logic behind the Commission's securitization policy and impermissibly attempts to turn the security requirement into a type of insurance policy."²¹

12. PJM answers that its proposal to change the definition of Local Upgrades and Network Upgrades "does not blur the 'bright line' for determining network upgrades."²² According to PJM, the proposal "merely distinguishes between two types of Network Upgrades for the purpose of security - those that only serve the Interconnection Customer's facilities and do not impact the transmission system while being constructed until they are energized (Direct Connection upgrades), and all other network upgrades that are not Direct Connection upgrades and therefore will impact the system commencing with their construction (Non-Direct Connection upgrades)."²³ PJM further points out that the Commission has recognized a similar distinction among types of network upgrades in Order No. 2003, where the Commission differentiated between stand-alone network upgrades and other network upgrades. "Stand-Alone Network Upgrades," which PJM states are defined in Order No. 2003, are those upgrades that the interconnection customer "may construct without affecting day-to-day operations of the Transmission System during their construction."²⁴

13. PJM also rebuts Elwood's concern that each upgrade will require analysis to determine whether the upgrade is a Direct Connection or a Non-Direct Connection upgrade.²⁵ In short, PJM argues that the definitions "provide a bright line standard," create a "straight-forward distinction," and will not cause disputes that would delay the interconnection process or result in costly legal battles.²⁶

²¹ *Id.* at 14.

²² PJM Answer at 3.

²³ *Id.* at 3-4 (citations omitted).

²⁴ *Id.* at 4, quoting Order No. 2003 at P 337 and n.69.

²⁵ *Id.* at 4-5.

²⁶ *Id.* at 5.

14. As for Elwood's argument against the imposition of higher security requirements on interconnection customers who choose the Option to Build,²⁷ PJM responds that the proposed security requirements are reasonable and should apply.²⁸ PJM explains that the proposed amendments provide security requirements based on the level of financial or reliability risk posed by the failure to complete construction of a particular type of network upgrade, and extend those security requirements to interconnection customers that choose the Option to Build. With regard to the Non-Direct Connection upgrades, the proposed security which Elwood opposes, PJM explains that the risk from failing to complete construction is more substantial than the risk for not completing Direct Connection upgrades. The reason, according to PJM, is that Non-Direct Connection upgrades impact the transmission system from the start of construction, and failure to complete the Non-Direct Connection upgrade is more likely than failure to complete a Direct Connection upgrade to threaten the transmission system's reliability. Accordingly, PJM states, it is reasonable and prudent to continue requiring the posting of full security for such upgrades.

15. PJM also explains that once an Interconnection Service Agreement is executed, the upgrades needed to facilitate an interconnection are included in the Regional Transmission Expansion Plan. Failure to complete these upgrades, according to PJM, would adversely affect future transmission plans and future interconnection customers that are relying on the completion of the earlier interconnection customer's construction. PJM states that:

when an Interconnection Customer abandons a project – whether it has chosen to have the Transmission Owner build the upgrade or has chosen the Option to Build – the result is the same. The upgrade must be completed (or the system otherwise restored to a safe and reliable condition. . . . Security protects against this risk.²⁹

PJM further notes that, consistent with Order No. 2003, the posted security “shall be reduced as portions of the work on required Local Upgrades and/or Network Upgrades is completed,” thereby protecting the interconnection customer from having to provide

²⁷ See Elwood Protest at 13-14.

²⁸ PJM Answer at 5-8.

²⁹ *Id.* at 7.

too much security.³⁰ PJM also states that, for many interconnection customers, the proposal will reduce the security required because most upgrades that are required to facilitate interconnections fall within the Direct Connection category.

Commission Determination

16. The Commission will accept PJM's proposed revisions to create two definitions of network upgrades, Direct Connection and Non-Direct Connection. Direct Connection upgrades only serve the customer interconnection facility and have no impact or potential impact on the transmission system until the final tie-in is complete. In contrast, Non-Direct Connection upgrades do have impact or potential impact on the transmission system prior to the final tie-in. These are reasonable distinctions between types of upgrades. These distinctions will reduce the security requirements for customers. Customers building Non-Direct Connection upgrades will still pay the same security they do under the current Tariff. In contrast, customers building Direct Upgrades will have their security reduced to three months of charges.

17. Elwood protests PJM's creation of different categories of upgrades as blurring the definition of network upgrades and being contrary to Commission policy. The Commission finds that PJM's proposed modifications to the definitions of local and network upgrades do not "blur" the definition of Network Upgrades, as argued by Elwood. Elwood takes *Entergy Gulf States, Inc.* out of context in claiming that PJM has improperly redefined network upgrades. *Entergy Gulf States* concerned the prohibition of direct assignment of network costs and the determination of whether the interconnection customer could recover interest on transmission credits for the upgrades. PJM's proposal does not redefine what constitutes a network upgrade. It merely distinguishes between Direct Connection upgrades that will not affect the transmission system until the project is connected and energized, and Non-Direct Connection upgrades that may affect the system as soon as their construction begins. These distinctions are not related to classifying network upgrades as between stand-alone and other types of network upgrades. They are solely for the purpose of determining the amount of security to be provided by interconnection customers. The Commission finds that these are reasonable distinctions between classes of network upgrades for the purpose of requiring security.

³⁰ *Id.* at 8.

Tariff Revisions' Effect on Security Required of Option to Build Customers

18. Elwood protests what it perceives as a proposed increase in security requirements for Option to Build. It maintains that under these provisions Option to Build customers will have to post security equal to the cost of the project, over \$10 million in Elwood's case, rather than security for the transmission owner's costs related to oversight responsibility, approximately \$1.2 million in Elwood's case.³¹ It argues that the risks associated with Option to Build are different from those associated with construction by the transmission owner, because the interconnection customers under the Option to Build are responsible for paying for their own equipment and doing the required construction, and, therefore, do not need to provide security to the transmission owner to cover its costs of providing such services. Elwood specifically protests that under PJM's proposal, Elwood will be required to post more security for its project in Docket No. ER06-1336-000 than it is currently obligated to post.

19. Despite some ambiguous statements by PJM in its transmittal letter, the Tariff revisions filed by PJM do not change the security requirements for Option to Build customers for Non-Direct Connection upgrades. The current Tariff provides that:

the Generation Interconnection Customer also shall provide the Transmission Provider (for the benefit of the affected Transmission Owner(s)) with a letter of credit or other reasonable form of security ... equivalent to the sum of the estimated costs determined by the Transmission Provider of (i) the required Local Upgrades and Network Upgrades.

20. PJM's only modification to this provision was to revise section (i) to limit the reach of the provision to Non-Direct Connections: "(i) the required Non-Direct Connection Local Upgrades and Non-Direct Connection Network Upgrades." (underlined phrases added). Thus, these revisions will not change Elwood's security requirements for Non-Direct Connections with respect to its project.³²

³¹ See generally *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,168 (accepting, in Docket No. ER06-1336-000, *et al.*, interconnection service agreement providing terms under which Elwood's coal-fired power plant would be interconnected with the PJM transmission system as a capacity resource).

³² PJM for example has stated that "If you [Elwood] choose the Option to Build (see PJM Tariff for the ComEd Network Upgrades before the ISA security is due (60 days), then, under our current Tariff, the Security requirements would be reduced to the estimated cost of ComEd oversight work." Complaint of Indeck-Elwood, Docket
(continued...)

21. PJM did propose to add section 36.8.4(iv) which requires that for Direct Connection Upgrades, Option to Build customers are responsible for collateral for cancellation costs and the “first three months of estimated Transmission Owner’s Costs”³³ Thus, these costs are also limited to the transmission owner’s costs related to oversight responsibilities. This provision of the proposal reduces the collateral required to only three months of estimated transmission owner’s costs, and the Commission finds this provision just and reasonable.

22. PJM further clarified in its response to the Commission’s deficiency letter that items (ii) and (iii) in sections 36.8.4(1) and 41.7.3(1) should be separated by the words “and either”, while items (iii) and (iv) should be separated by the word “or.” Accordingly, PJM will be directed to make these insertions in a compliance filing.

Option to Build Election

23. Elwood objects to the requirement that interconnection customers and transmission owners must “mutually agree” on the Option to Build, arguing that this gives transmission owners, who may compete with the interconnection customer, discretion to discriminate against new generation and invites disputes.³⁴ Elwood states that interconnection customers “should continue to have the discretion to freely elect the Option to Build”³⁵ and urges the Commission to reject this aspect of the proposal.

24. PJM responds that under its current OATT, section 83.2.3.1, interconnection customers only have an option to build when a dispute has arisen between the interconnection customer and the transmission owner over the terms of the construction service agreement. The instant proposal, states PJM, expands the Option to Build by offering, as an alternative to the dispute required by the current language of the Tariff, that the interconnecting parties may agree to allow the interconnection customer to build the upgrades.

No. EL06-103-000, Attachment B to Affidavit of Rex A. Roehl (E-mail from BURDIS@PJM.com to Elwood) (filed August 31, 2006). *See* Interconnection Service Agreement between PJM and Elwood, Docket No. ER06-1336-000, Attachment A, at 11 (filed August 4, 2006) (limiting security to \$1,177,102).

³³ In its answer to the deficiency letter, PJM explained that: “Cancellation Costs would apply only to the applicable Transmission Owner’s costs for project construction.” Response to Deficiency Letter at 4 (September 12, 2006).

³⁴ Elwood Protest at 11-13.

³⁵ *Id.* at 11.

25. The Commission finds PJM's proposal to expand the Option to Build just and reasonable, since it broadens the conditions under which an interconnection customer may elect the Option to Build. Order No. 2003 does not require that interconnection customers be afforded an unlimited option to build. Elwood has failed to provide sufficient evidence to satisfy its burden of showing that PJM's existing OATT, as well as the new proposal, is unjust and unreasonable because it fails to provide an interconnection customer with an unfettered right to build.

Cost Reimbursement

Protest and Answer

26. Elwood argues that new provisions imposing costs on interconnection customers exercising the Option to Build "are unnecessary, ill-defined, and contrary to Commission policy."³⁶ Specifically, Elwood objects to the proposal to modify section 36.8.1 of the Tariff to require interconnection customers electing the Option to Build to pay for "the Transmission Owner's Costs associated with the Interconnection Customer's building of such [Upgrades], including, but not limited to Costs for inspections, testing, tie-in work, and Cancellation Costs."³⁷ Elwood argues that PJM fails to define the terms "inspecting" or "testing," and that these terms are vague and susceptible to abuse.³⁸ Furthermore, Elwood argues that the list of potential cost items is "completely open-ended."³⁹ The potential for abuse is great, according to Elwood, because "it is the self-interested Transmission Owner and not PJM, the independent Transmission Provider, that would be exercising this provision."⁴⁰ Elwood argues that, according to Order No. 2003, Transmission Providers cannot collect costs relating to oversight activities relating to inspections of interconnection customer-built upgrades. To support this position, Elwood cites Order No. 2003-A for the proposition that expenses associated with oversight activities "are a part of the cost of doing business."⁴¹

27. Elwood also argues that the proposed requirement that interconnection customers agree to pay for tie-in work and Cancellation Costs is redundant and thus, not necessary.

³⁶ *Id.* at 14-17.

³⁷ *Id.* at 15.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

According to Elwood, tie-in work, along with other work listed, is always performed by the transmission owner, and the obligation of the interconnection customer to pay the transmission owner for such work is contained in the requirement to reimburse “the Transmission Owner’s expenditures for the design, engineering, and constructions of the facilities that it is responsible for building.”⁴²

28. Finally, Elwood opposes PJM’s proposal to increase the required security to account for the interconnection customer’s increased liability for inspection, testing, tie-in work and Cancellation Costs on the grounds that these items should not be added to the cost reimbursement section of the Tariff.

29. PJM counters that its proposal regarding reimbursement of certain oversight costs is reasonable,⁴³ though PJM does acknowledge in its answer that the Tariff already permits reimbursement of costs for tie-in work and Cancellation Costs.⁴⁴ In defense of the general reimbursement policy, PJM explains that the proposed and current Option to Build provisions are broader in scope than those proposed in Order No. 2003. For example, says PJM, the PJM Tariff currently allows all types of upgrades to be constructed by the interconnection customer (rather than only stand-alone upgrades). PJM also states that the Commission’s rejection of transmission owner’s recovery of oversight costs in Order 2003-A was based on the premise that the Option to Build was exercised as a result of an unresolved dispute, thereby making this the option of last resort. PJM asks the Commission to approve this expanded recovery of oversight costs under the “independent entity variation” standard of review.⁴⁵

Commission Determination

30. PJM’s current OATT does not permit interconnection customers to be charged oversight costs under the Option to Build. PJM has proposed revising its current Tariff to charge interconnection customers with oversight costs. This change would apply in two situations: when there is a dispute with the transmission owner over the construction agreement and when the interconnection customer and the transmission owner reach mutual agreement that the interconnection customer will build. The Commission finds that PJM has failed to show that changing its Tariff with respect to oversight costs is just and reasonable with respect to transmission interconnection customers exercising the

⁴² *Id.* at 16, quoting current sections 94.3.1.1 and 83.4.1 of PJM’s Tariff.

⁴³ PJM Answer at 11-13.

⁴⁴ *Id.* at 11 n.30.

⁴⁵ *Id.* at 12, citing *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025 at P 7.

Option to Build based on a dispute with the transmission owner. However, with respect to mutual agreements between transmission owners and interconnection customers, it would be appropriate to permit the parties to consider the treatment of oversight costs as part of their negotiations.

31. In Order No. 2003-A, we held that with respect to disputes between transmission owners and interconnection customers resulting in construction by the interconnection customer, the transmission owner could not charge for oversight costs.⁴⁶ We do not find justification here for changing that determination. As we stated in Order No. 2003-A, interconnection customers are required to build as a “last resort,” and that in such a circumstance they should not be required to pay oversight costs: “[i]f the Transmission [Owner] is concerned about non-recovery of oversight costs, it can itself construct the Transmission [Owner’s] Interconnection.” As stated in Order No. 2003-A, a transmission owner may engage in oversight activities to satisfy itself that the interconnection customer is, in fact, abiding by such standards and specifications. The expenses associated with such activities remain a part of the cost of doing business.⁴⁷

32. The “independent entity variation” standard that PJM cites permits an independent entity such as PJM to adopt interconnection procedures that are responsive to specific regional needs. Under this standard, the Commission affords greater flexibility on the theory that because the independent entity does not own generation, it lacks the incentive to discriminate in favor of certain generation or to obstruct access to the grid by independent generators. But the Commission’s concern in this case is not purely whether the costs are unduly discriminatory, but whether they are just and reasonable. This provision would apply in situations where there is a dispute leading the customer to choose the Option to Build, and as discussed above it is not appropriate to charge for oversight costs in this situation.⁴⁸

33. However, the instant proposal expands the Option to Build beyond what was contemplated in Order No. 2003, to permit a transmission customer to elect the Option to Build based on mutual agreement with the transmission owner. In a situation in which the parties are negotiating over an option to build, the Commission does not find it would be unreasonable as part of that negotiation for the parties to consider whether costs relating to oversight should be paid by the interconnection customer.

⁴⁶ Order No. 2003-A, 106 FERC ¶ 61,220, at P 218 (2004).

⁴⁷ *Id.* P 219.

⁴⁸ *Id.*

34. Accordingly, PJM is directed to file, within 30 days of the date of this order, revised tariff sheets to remove the reimbursement requirement related to oversight costs in cases of dispute, and to permit (but not require) the inclusion of such costs as part of the “mutual agreement” option.

Timing of Agreement

Protest and Answer

35. In its protest to the initial filing, Elwood argues that the timeline for the Option to Build notification is unworkable and internally inconsistent.⁴⁹ Elwood asserts that it would not be possible for an interconnection customer to elect the Option to Build until after it signs the Interconnection Agreement, that PJM does not support this change, and that it creates unnecessary hurdles to project construction.⁵⁰ In its protest to PJM’s response to the Commission’s deficiency letter, Elwood states that there is no need to tie the deadline for selecting the Option to Build to the deadline for a particular Construction Services Agreement.⁵¹

36. PJM responds that it is not changing the timing of when an interconnection customer can choose to build and that it is not, as Elwood claims, foreclosing the right of the interconnection customer to insist on the Option to Build prior to the signing of an interconnection agreement. In its answer to Elwood’s protest to the deficiency letter response, PJM states that it is not making the Option to Build contingent upon stating the terms of disagreement in the Construction Service Agreement that is tendered by PJM within 45 days after the receipt of the executed Interconnection Service Agreement. Instead, PJM asserts that it intends for the parties to begin negotiating using the model Construction Service Agreement included in the PJM Tariff as Attachment P, not the actual agreement.⁵²

Commission Determination

37. The current Tariff, which permits the Option to Build only in cases of disagreement over the terms of a Construction Service Agreement, provides that interconnection customers electing the Option to Build must provide notice of such

⁴⁹ Elwood Protest at 17-18.

⁵⁰ *Id.* at 18.

⁵¹ Protest to PJM Response to Data Request at 10.

⁵² PJM Response to Data Request at 9.

election no later than seven days after the date that is 30 days after the interconnection customer executes the Interconnection Service Agreement.⁵³ There is currently no requirement to explain the issues underlying the disagreement.

38. Under the proposed revision to this section, interconnection customers electing the Option to Build based on a disagreement over the terms of a Construction Service Agreement still must provide such notice within 30 days, but now the notice would have to include “the specific terms and conditions of the Construction Service Agreement upon which the Transmission Owner and the Interconnection Customer are unable to agree”⁵⁴ The Commission observes that the Tariff provides that the Construction Service Agreement may be tendered up to 45 days after receipt of the executed Interconnection Service Agreement.⁵⁵ When the Interconnection Service Agreement is unexecuted, the Construction Service Agreement is never tendered until any disputes are resolved, unless otherwise agreed.

39. The proposed revision appeared to create an inconsistency, because the notice of disputed issues in the Construction Service Agreement is required to be filed prior to the tendering of the Construction Service Agreement. PJM’s response to the deficiency letter on this point explains that when there is a disagreement over the terms of a Construction Service Agreement and the agreement is not tendered, the parties are to reference the model Construction Service Agreement in Attachment P to the Tariff, rather than the not-yet tendered agreement. PJM explains that the references to the model agreement versus the actual agreement may be distinguished in its Tariff by whether the Tariff refers to “a Construction Service Agreement or “the Construction Service Agreement.”

40. The Commission will accept PJM’s proposed change to the notice provision conditioned on PJM revising its Tariff to make clear the distinction between the model Service Agreement and the Construction Service Agreement. Interpretation of PJM’s tariff should not depend on whether “a” or “the” precedes the term “Construction Service Agreement.”

⁵³ PJM OATT section 83.2.3.1 (Original Sheet No. 187).

⁵⁴ Proposed PJM OATT section 83.2.3.1 (First Revised Sheet No. 187).

⁵⁵ PJM OATT sections 36.8.6 (First Revised Sheet No. 104) (generation); 41.7.5 (First Revised Sheet No. 118) (merchant transmission).

Deference to Stakeholder Process

41. Last, Elwood argues that PJM's reliance on stakeholder support "ignores the fact that most new market entrants . . . do not yet have a seat at the stakeholder table."⁵⁶ The heart of Elwood's objection in this regard is its claim that it did not "have a seat at the stakeholder table."⁵⁷ Elwood acknowledges that it is not a member of PJM and lacks the staff and resources to monitor every PJM stakeholder meeting. Elwood also alleges that "most new market entrants would not be a participant" but even if they were participants, they "would be soundly outvoted by incumbents."⁵⁸ Elwood urges the Commission to "grant no deference to the stakeholder process."⁵⁹

42. PJM rejects Elwood's suggestion that the Commission give no deference to the stakeholder process, pointing out that such a concept turns on its head the very reason for the stakeholder process. PJM also invites Elwood to join the stakeholder process at any time Elwood chooses to become a PJM member.

43. The Commission continues to believe that the stakeholder process helps to resolve disputes between parties and is entitled to due weight.⁶⁰ However, the Commission nevertheless must address each filing on its merits and be able to find the proposal just and reasonable.⁶¹ The Commission has done such a review of PJM's filing here and, with the changes noted above, finds the proposal just and reasonable.

The Commission orders:

(A) PJM's proposed revisions to its Tariff are hereby accepted to become effective August 29, 2006, subject to the conditions, as discussed in the body of this order.

⁵⁶ Elwood Protest at 18-19.

⁵⁷ *Id.* at 18.

⁵⁸ *Id.* at 19.

⁵⁹ *Id.*

⁶⁰ *See, e.g., PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,321, at P 8 (2003).

⁶¹ *Id.*

(B) PJM is directed to file, within 30 days of the date of this order, to revise its tariff sheets as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.