

127 FERC ¶ 61,208  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

FirstEnergy Solutions Corp.

Docket No. EL09-39-000

ORDER DENYING PETITION FOR DECLARATORY ORDER

(Issued May 29, 2009)

1. On March 4, 2009, FirstEnergy Solutions Corp. (Solutions) filed a petition requesting a declaratory order authorizing PJM Interconnection, L.L.C. (PJM) to convert a 1,000 MW of firm point-to-point service reservation to a comparable network integration transmission service (network service) reservation (Petition).<sup>1</sup> The Commission denies the Petition, because we find that, under the PJM Open Access Transmission Tariff (OATT), there is no right to convert point-to-point service to network service.

**I. Background**

2. Solutions is currently party to four transmission service agreements with PJM for 1,000 MW of firm point-to-point service from Solutions' generation resources located in the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) footprint to affiliates in the PJM footprint (i.e., Pennsylvania Electric Company (Penelec) and Metropolitan Edison Company (MetEd)). Each agreement has a term of one year with rollover rights, with the current term expiring on June 1, 2009. In 2006, Solutions funded \$3.4 million worth of network upgrades of the PJM transmission system in order to

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<sup>1</sup> In arguing on behalf of the pleading, Solutions characterizes this conversion in several ways, including referring to a transmission customers' designation of an external resource for delivery via its network service as "Network External Designated" transmission service. Based on Solutions' subsequent clarification that it seeks network service, this order will address the request for conversion of point-to-point service to network service.

ensure that there is sufficient transmission capacity on PJM's system to provide the 1,000 MW of firm point-to-point service.

3. In this proceeding, Solutions submits a Petition requesting that the Commission permit Solutions to convert its existing reservation of 1,000 MW of firm point-to-point service to a comparable reservation of network service with continued rollover rights.<sup>2</sup> Under PJM's rules, owners of external capacity resources desiring to participate in the Reliability Pricing Model (RPM) capacity market can demonstrate deliverability of their resources within PJM by either: (1) obtaining firm point-to-point service or (2) obtaining network service under PJM's OATT. Solutions prefers network service because it gives Solutions the flexibility to deliver power from the Midwest ISO to anywhere in PJM, not only to Penelec and MetEd.<sup>3</sup> Additionally, Solutions states that when the deliverability requirement is satisfied through network service, external capacity resources and internal capacity resources are treated on a non-discriminatory basis because no resource owner is required to pay congestion and loss charges within the PJM market.

4. The PJM OATT states that any modification to firm point-to-point service must be treated as a new request for service.<sup>4</sup> However, the OATT also gives PJM the discretion to determine that no additional system study or upgrades are needed to accommodate a new service request based on past system usage, where there is no additional system use and no adverse impact on system operation or markets.<sup>5</sup> While PJM does not currently have available transfer capability available for firm imports from the Midwest ISO, Solutions previously paid for network upgrades in 2006 to support firm point-to-point service. On this basis, PJM has determined that the PJM transmission system is capable of providing 1,000 MW of network service in lieu of the 1,000 MW of firm point-to-

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<sup>2</sup> Solutions would be willing to accept a lesser amount of network service if PJM reasonably determines, through its planning process, that the amount is equivalent to the existing point-to-point reservations.

<sup>3</sup> The source-sink combinations for the converted service would be changed from "MISO-Penelec" and "MISO-MetEd" to "MISO-PJM" in recognition of the fact that network service would give Solutions the flexibility to deliver power to anywhere in PJM.

<sup>4</sup> PJM OATT section 22.2.

<sup>5</sup> *Duquesne Light Co.*, 125 FERC ¶ 61,141 (2008) (interpreting PJM OATT section 19.1, Notice of Need for Initial Study for point-to-point service requests). Solutions' request would be reviewed under the nearly identical provision for network service requests, OATT section 32.1.

point service. PJM does not oppose Solutions' Petition, and confirms that there is sufficient transmission capacity on PJM's system to accommodate the conversion, and no new studies are necessary in order to effectuate the conversion.<sup>6</sup> However, Solutions acknowledges that PJM is uncertain about whether the terms and conditions of the PJM OATT authorize such a conversion.

## **II. Notice of Filing and Responsive Pleadings**

### **A. Notice and Interventions**

5. Notice of Solutions' filing was published in the *Federal Register*, 73 Fed. Reg. 76,626 (2009), with interventions and protests due on or before April 3, 2009. Constellation<sup>7</sup>, Exelon Corporation, Mirant Corporation,<sup>8</sup> NRG Companies,<sup>9</sup> Pepco Holdings, Inc. (PHI Companies),<sup>10</sup> PJM, and PSEG Companies<sup>11</sup> filed interventions. Allegheny Power (Allegheny),<sup>12</sup> and the Electric Power Supply Association (EPSA) filed interventions and protests, and FPL Energy Generators (FPL) filed an intervention with

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<sup>6</sup> PJM Answer at 3-4.

<sup>7</sup> Constellation for Constellation Energy Commodities Group, Inc. and Constellation NewEnergy Inc.

<sup>8</sup> Mirant Corporation for Mirant Energy Trading, LLC, Mirant Mid-Atlantic, LLC, Mirant Chalk Point, LLC, and Mirant Potomac River, LLC.

<sup>9</sup> NRG Companies for NRG Power Marketing LLC, Conemaugh Power LLC, Indian River Power LLC, Keystone Power LLC, NRG Energy Center Dover LLC, NRG Energy Center Paxton LLC, NRG Rockford LLC, NRG Rockford II LLC, and Vienna Power LLC.

<sup>10</sup> The PHI Companies are Potomac Electric Power Company, Delmarva Power & Light Company, Atlantic City Electric Company, Conectiv Energy Supply Company, and Pepco Energy Services, Inc.

<sup>11</sup> Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC.

<sup>12</sup> Allegheny Power for Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company.

comments.<sup>13</sup> Solutions and PJM filed answers on April 20, 2009, and Allegheny and Solutions filed follow up answers on April 30 and May 5, 2009 (respectively).

**B. Comments and Protests**

6. Many of the comments object to Solutions' request insofar as it seeks "Network External Designated transmission service" referenced in the PJM manuals. Given Solutions' clarification that it seeks network service, as discussed earlier, we do not address these comments.

7. EPSA states that the conversion is not consistent with the PJM OATT. EPSA asserts that network service is a more flexible service that does not specify delivery points and notes that the PJM OATT specifies that any request to modify receipt and delivery points on a firm basis be treated as a new request for service. Therefore, EPSA concludes that Solutions' request should be treated as a new request for service. EPSA asserts that Solutions should be required to present its conversion request to a PJM stakeholder process to consider the need for changes to the PJM OATT or PJM's rules governing the participation of external resources in the RPM market to permit the conversion. Lastly, EPSA asserts that Solutions' Petition is contrary to existing Commission precedent,<sup>14</sup> and cites a prior Commission denial of a request to rollover point-to-point service into network service, which the order characterized as a completely different service that was outside the scope of the customer's rollover rights.

8. Allegheny raises similar issues and also suggests that if Solutions believes the OATT provisions are unjust and unreasonable, and that the OATT should provide for a new service or new conversion rights, Solutions should seek changes through the PJM stakeholder process or a section 206 proceeding. Furthermore, Allegheny argues that Solutions should follow the process for obtaining network service under the OATT. Allegheny suggests that seeking network service via a declaratory order bypasses the OATT and may permit Solutions to obtain economically beneficial network service through procedures not available to other PJM customers.

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<sup>13</sup> FPL Energy Marcus Hook, L.P., North Jersey Energy Associates, L.P., Doswell Limited Partnership, Backbone Mountain Windpower LLC, Mill Run Windpower LLC, Somerset Windpower LLC, Meyersdale Windpower LLC, Waymart Wind Farm LP, and Pennsylvania Windfarms, Inc.

<sup>14</sup> EPSA protest at 7-8 (citing *Louisiana Energy and Power Authority*, 116 FERC ¶ 61,284 (2006) (denying Louisiana Energy's request to roll over existing firm point-to-point service because the request would require significant transmission upgrades, was untimely, and was outside the scope of Louisiana Energy's rollover rights ) (*Louisiana Energy*)).

9. Allegheny argues that Solutions already has the firm transmission service it needs to participate in the RPM capacity market and serve retail load in PJM, which appears to be the primary PJM market that Solutions emphasizes it seeks to access through firm transmission over PJM's external interfaces. Allegheny asserts that Solutions fails to address in its Petition any costs borne by the markets if the request were to be granted. Allegheny states that Solutions would be relieved of paying its firm point-to-point transmission costs going forward and, under network service, may effectively socialize at least a portion of these costs among loads within PJM transmission zone or zones for the network delivery points specified by Solutions (unless Solutions otherwise agrees to bear the network service costs). Allegheny asserts that PJM load would bear some or all of the costs of this transmission twice: once to the extent that it is built into the offer price of Solutions' cleared external RPM capacity, and a second time when Solutions' converted network service charge would ultimately be borne by load.

10. FPL asserts that the conversion is not consistent with the PJM OATT or PJM procedures and that satisfying PJM's deliverability test by an external (or internal) resource does not remove responsibility for energy or capacity congestion charges. FPL states that Solutions does not fully explain how the proposed conversion would change the nature of the existing firm point-to-point service or the implications of changing source-sink combinations.

### C. Answers

11. Solutions asserts that Allegheny's, EPSA's and FPL's opposition to the Petition is unfounded because they misconstrue the relief sought. Solutions states that under PJM's RPM rules, external generation resources may participate in the PJM RPM markets if they demonstrate that the capacity will be delivered to PJM and is deliverable within PJM either by (1) reserving firm point-to-point service or (2) by reserving network service. By arguing that Solutions should be denied the ability to use the capacity it reserved for firm point-to-point service as network service, the intervenors would deny Solutions' external generating resources the opportunity to participate in PJM's markets on a comparable basis and erect unnecessary barriers. Further, Solutions states that it is not seeking a new service, but rather seeking to obtain appropriate recognition for the position it occupies, having paid to expand the import capability of the PJM system when Solutions requested firm point-to-point service.

12. Solutions states that it need not present its conversion request to a PJM stakeholder process because it is not seeking changes in PJM's OATT or rules; it simply seeks to remove uncertainty as to whether PJM may allow a customer that has reserved firm point-to-point service for a capacity import to use the same capacity to obtain a reservation of network service.

13. Solutions argues that *Louisiana Energy* does not apply in this case. In *Louisiana Energy*, the Commission denied a request to convert or rollover transmission service under a grandfathered transmission service agreement into network service under the utility's open access tariff because, among other reasons, the resulting transmission service would place different demands on the transmission system and would require transmission upgrades to accommodate the new demands. Solutions argues that here, in contrast, Solutions does not seek to modify either the generation resources or the points of receipt and delivery specified in its four transmission service agreements. Although Solutions does seek to convert to network service in order to change the sink location (though not the source location) for the provision of power under the four agreements, that is a different request than the one the Commission considered in *Louisiana Energy*.

14. Solutions asserts that Commission policy supports its Petition. Solutions seeks the right to use network service to participate in PJM's RPM market and other PJM markets on a basis that is comparable to other generators. Comparable treatment includes recognition of the fact that Solutions has paid for the upgrades necessary for the delivery of capacity and energy from its resources in the Midwest ISO to any location in PJM. Solutions asserts that use of the PJM Midwest-ISO interface will not change and the conversion will not adversely affect any other market participant.

15. PJM explains in its answer that its rules allow for external capacity resources to participate in the RPM capacity market by demonstrating deliverability of their resources within the PJM region through the procurement of one of two firm transmission service products, either firm point-to-point service pursuant to Part II of the PJM OATT or network service under Part III of the PJM OATT.

16. PJM states that, in this case, PJM can convert Solutions' existing reservation of 1,000 MW of firm point-to-point service to network service. PJM agrees that network service is treated the same as firm point-to-point service under the RPM rules and the PJM OATT when PJM evaluates deliverability RPM capacity. Therefore, the fact that Solutions takes 1,000 MW of firm point-to-point service under the PJM OATT indicates there is sufficient transmission capacity for PJM to instead provide 1,000 MW of network service. Additionally, PJM states that for deliverability study purposes, the points of receipt, delivery, source and sink would remain the same. Therefore, the concerns raised by Allegheny and EPSA regarding treating Solutions' request as a new service requiring new studies are misplaced.

17. In its follow-up answer, Allegheny contends that the PJM OATT does not provide conversion rights to accommodate Solutions' request. Even if PJM's statement that it evaluates deliverable capacity for firm point-to-point service the same way that it evaluates network service is correct, the PJM OATT would need to be modified to provide for conversion rights.

18. In response to Allegheny's answer, Solutions states that it seeks a conversion of Solutions' existing firm point-to-point service to the appropriate form of network service, through which it would designate external capacity resources consistent with the PJM manuals.

### **III. Discussion**

#### **A. Procedural Matters**

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

20. Solutions, PJM, and Allegheny filed answers to the protests and/or subsequent answers. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept Solutions', PJM's and Allegheny's answers because they provide information that assisted us in our decision making process.

#### **B. Commission Determination**

21. Based on our review of the information provided in the request and the tariff provisions referenced, the Commission denies Solutions' request to find under the circumstances that PJM should convert Solutions' point-to-point reservation to network service and finds that the PJM OATT does not specifically authorize the conversion. Solutions relies on the external resource designation provisions found in PJM manual 18 as the mechanism for conversion. However, the designation provisions found in the manual apply to network service customers, not to a point-to-point customer seeking to change to network service. Solutions' Petition, as well as our review of PJM's OATT, provides no support for finding that the OATT permits the conversion of point-to-point service to network service. Instead, Solutions may request network service on the same terms and conditions as other customers under the PJM OATT.

22. Solutions argues that its request can be granted because the service it seeks is essentially identical to its existing firm point-to-point service. Specifically, Solutions asserts that its conversion from point-to-point to network service is appropriate because PJM has determined that transmission is available for continued service, and because the sink location under the agreements would not require PJM to perform a different study than it performed in granting the point-to-point service. Even if that is true, it does not relieve Solutions of the obligation to request transmission service consistent with the terms of the PJM OATT. The request for network service should be processed consistent with PJM's existing procedures for review and evaluation of network service requests, including an application for such service under the procedures set forth in Part III of the PJM OATT. As Solution notes, should it submit such a request, section 32.1 of the PJM

OATT provides that PJM has the discretion to decide whether a study is needed in a given case to grant network service.<sup>15</sup> The need for such a study will depend on the individual circumstances of the request for service, which circumstances are not before us in the Declaratory Order request. That determination must be made by PJM should Solutions file a request for network service.

23. If PJM concludes that providing for such a conversion has general value, PJM may seek to file a tariff provision to provide the rights for such conversions which should identify the circumstances in which a conversion would be justified.

The Commission orders:

The Commission denies the Petition filed by Solutions.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>15</sup> Section 32.1 of the PJM OATT states as follows:

Notice of Need for Initial Study: After receiving a request for service, the Transmission Provider shall determine on a non-discriminatory basis whether an Initial Study is needed. The purpose of the Initial Study shall be to assess whether the Transmission System has sufficient available capability to provide the requested service. If the Transmission Provider determines that an Initial Study is necessary to evaluate the requested service, it shall so inform the Eligible Customer, as soon as practicable.