

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Atlantic City Electric Co.	Docket Nos. ER96-1361-008 ER96-1361-007
Potomac Electric Power Co.	ER98-4138-004 ER98-4138-003
Delmarva Power & Light Co.	ER99-2781-006 ER99-2781-005 ER99-2781-002
Pepco Energy Services, Inc.	ER98-3096-010 ER98-3096-009 ER98-3096-008
Potomac Power Resources, LLC	ER01-202-003 ER01-202-002 ER01-202-001
Conectiv Energy Supply, Inc. Conectiv Atlantic Generation, LLC Conectiv Delmarva Generation, Inc.	ER00-1770-009 ER00-1770-008 ER00-1770-004
Conectiv Bethlehem, LLC	ER02-453-005 ER02-453-004
Fauquier Landfill Gas, LLC	ER04-472-002 ER04-472-001
Rolling Hills Landfill Gas, LLC	ER04-529-002 ER04-529-001

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS, TARIFF SHEETS,  
AND NOTICE OF CHANGE IN STATUS

(Issued May 26, 2005)

1. In this order, we accept an updated market power analysis filed by Atlantic City Electric Co. (Atlantic City), Potomac Electric Power Co. (Pepco), Delmarva Power & Light Co. (Delmarva), Pepco Energy Services, Inc. (PES), Potomac Power Resources, LLC (PPR), Conectiv Energy Supply, Inc. (Conectiv Energy), Conectiv Atlantic Generation, LLC (Conectiv Atlantic), Conectiv Delmarva Generation, Inc. (Conectiv Delmarva), Conectiv Bethlehem, LLC (Conectiv Bethlehem), Fauquier Landfill Gas, LLC (Fauquier), and Rolling Hills Landfill Gas, LLC (Rolling Hills) (collectively, Pepco Entities). In addition, we accept a notice of change in status and certain tariff sheets filed by the Pepco Entities. This order benefits customers by reviewing the conditions under which market-based rate authority is granted, thus ensuring that the prices charged for jurisdictional sales are just and reasonable.

**Background**

2. On March 11, 2002, Conectiv Energy filed an updated market power analysis pursuant to the Commission's order granting Conectiv Energy authority to sell electric capacity at market-based rates.<sup>1</sup> This filing used the Supply Margin Assessment test for generation market power.

3. On July 29, 2002, Delmarva filed an updated market power analysis pursuant to the Commission's order granting Delmarva authority to sell electric capacity at market-based rates.<sup>2</sup> This filing used the Supply Margin Assessment test for generation market power.

4. On March 1, 2004, PES and PPR jointly submitted an updated market power analysis pursuant to the Commission's orders granting them market-based rate authority.<sup>3</sup> This filing used the Supply Margin Assessment test for generation market power.

5. On December 23, 2004, the Pepco Entities submitted for filing a joint updated market power analysis pursuant to the Commission's order issued on May 13, 2004.<sup>4</sup>

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<sup>1</sup> *Conectiv Energy Supply, Inc.*, 91 FERC ¶ 61,076 (2000).

<sup>2</sup> *Delmarva Power & Light Co.*, 75 FERC ¶ 61,331 (1996).

<sup>3</sup> *Pepco Services, Inc.*, 84 FERC ¶ 61,024 (1998) and *Potomac Power Res., Inc.*, 93 FERC ¶ 61,246 (2000).

<sup>4</sup> *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

The May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004, and clarified on July 8, 2004.<sup>5</sup> In addition, this filing contained tariff revisions to include the Commission's market behavior rules in the market-based rate tariffs of Pepco, Delmarva, PES, Conectiv Energy, and PPR.<sup>6</sup> The market behavior rules for Atlantic City, Conectiv Delmarva, Conectiv Bethlehem, Fauquier, and Rolling Hills were previously accepted by the Commission.<sup>7</sup>

6. On April 25, 2005, the Pepco Entities submitted for filing a notice of change in status notifying the Commission that Conectiv Energy has obtained an additional 490 MW of generating capacity through contract. The Pepco Entities also filed tariff sheets incorporating the Commission's change in status provision in their tariffs as required by Order No. 652.<sup>8</sup>

7. Atlantic City is a transmission and distribution utility that provides retail electric service to customers in the southern half of New Jersey. Delmarva is also a transmission and distribution utility. Delmarva provides retail electric service to customers in Delaware, Maryland, and Virginia. Pepco is the transmission and distribution utility serving the District of Columbia, Montgomery County, Maryland and Prince George's County, Maryland. PES is a power marketer that sells at wholesale and retail. PES does not own generation, transmission, or distribution facilities. PPR is a subsidiary of PES and owns two oil-fired generating plants in the District of Columbia. Conectiv Energy is a power marketer that does not own generation, transmission, or distribution assets. Conectiv Atlantic and Conectiv Delmarva were formed in 2000 to hold the generating assets previously owned by Atlantic City and Delmarva respectively. Conectiv Bethlehem owns a combined cycle generating facility near Bethlehem, Pennsylvania. Fauquier and Rolling Hills own landfill gas projects located in Virginia and Pennsylvania, respectively.

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<sup>5</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

<sup>6</sup> *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004).

<sup>7</sup> *See Acadia Power Partners, LLC*, Docket No. ER03-1372-001 (March 29, 2004) (unpublished letter order), *Fauquier Landfill Gas, LLC*, Docket No. ER04-472-000 (March 11, 2004) (unpublished letter order), and *Rolling Hills Landfill Gas, LLC*, Docket No. ER04-529-000 (March 11, 2004) (unpublished letter order).

<sup>8</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005); FERC Stats. & Regs. ¶ 31,175 (2005).

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

8. Notice of Conectiv Energy's March 2002 filing was published in the *Federal Register*, 67 Fed. Reg. 12,984 (2002), with interventions or protests due on or before April 1, 2002. None was filed.
9. Notice of Delmarva's July 2002 filing was published in the *Federal Register*, 67 Fed. Reg. 51,554 (2002), with interventions or protests due on or before August 19, 2002. On August 19, 2002, Old Dominion Electric Cooperative (ODEC) and Delaware Municipal Electric Corporation, Inc. (Delaware Municipal) filed motions to intervene and protest. ODEC argues that despite the exemption of entities in an RTO or ISO from the Supply Margin Assessment, the Commission should direct Delmarva to provide a quantitative market power analysis for it and its affiliates with respect to localized market power on the Delmarva Peninsula. Delaware Municipal argues Delmarva's July 2002 updated market power analysis is deficient because it failed to consider transmission constraints when evaluating generation market power.
10. Notice of PES's and PRR's March 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 11,612 (2004), with interventions or protests due on or before March 22, 2004. None was filed.
11. Notice of the Pepco Entities' December 2004 filing was published in the *Federal Register*, 70 Fed. Reg. 3,009 (2005), with interventions or protests due on or before January 14, 2005. None was filed.
12. Notice of the Pepco Entities' April 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 23,859 (2005), with interventions or protests due on or before May 5, 2005. None was filed.

### **Discussion**

#### **Procedural Matters**

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

#### **Market-Based Rate Authorization**

14. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and

transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.<sup>9</sup>

15. As discussed below, the Commission concludes that the Pepco Entities satisfy the Commission's standards for market-based rate authority.

### **Generation Market Power**

16. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen.<sup>10</sup> The Pepco Entities have prepared both the pivotal supplier and the wholesale market share screens for the PJM Interconnection, L.L.C. (PJM) market.

17. As discussed above, the Pepco Entities filed to inform the Commission that Conectiv Energy has obtained through contract with separate unaffiliated entities 490 MW of additional generation capacity. Specifically, the Pepco Entities state that Conectiv Energy has purchased 175 MW of capacity from a plant owned by City of Dover, Delaware and 315 MW of capacity from the Commonwealth Chesapeake Generating Station. The Pepco Entities state that both of these plants are located in the PJM market. In their change in status filing, the Pepco Entities submitted both the pivotal supplier and the wholesale market share screens for the PJM market revised to reflect the additional 490 MW.

18. The Commission has determined that the Pepco Entities pass the generation market power screens in the PJM market.<sup>11</sup> Accordingly, the Commission finds that the Pepco Entities satisfy the Commission's generation market power standard for the grant of market-based rate authority.

19. With regard to ODEC's and Delaware Municipal's protests filed in response to Delmarva's July 2002 market power analysis asserting that the Supply Margin Assessment filed by Delmarva is inadequate, we note that the Commission has replaced the Supply Margin Assessment with the pivotal supplier and wholesale market share

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<sup>9</sup> See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281 at 61,899 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

<sup>10</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (2004).

<sup>11</sup> We note that, for certain nameplate capacity data, Pepco has cited public sources as well as a filing currently pending before the Commission. Since the Commission has not acted on the pending filing, we here clarify that we have relied on the applicant's data from FERC Form 714 filings, EIA-860, and other public sources rather than on data which is pending before the Commission.

screens as discussed in the April 14, May 13, and July 8 Orders. In particular, the April 14 Order stated that, when performing the generation market power screens, applicants located in ISO/RTOs with sufficient market structure and a single energy market may consider the geographic region under the control of the ISO/RTO as the default relevant geographic market for purposes of completing their analyses.<sup>12</sup> The current generation market power screens require application to provide a quantitative analysis of a geographic region under the control of an ISO/RTO like PJM.

20. The Commission has also stated that intervenors can present evidence on a case-by-case basis to show that some other geographic market should be considered as the relevant market.<sup>13</sup> In their protests, ODEC and Delaware Municipal ask the Commission to consider transmission constraints on the Delmarva Peninsula and to consider localized market power there.

21. In the April 14 Order, the Commission noted that structured markets with market monitoring and mitigation generally result in a market where prices are transparent and attempts to exercise market power are sufficiently mitigated.<sup>14</sup> The Commission noted in the April 14 Order that markets with Commission-approved market monitoring and mitigation undertake daily and hourly oversight of seller's pricing behavior to ensure, consistent with clearly established Commission approved rules, that prices do not exceed competitive levels.<sup>15</sup> In the July 8 Order, the Commission noted that all ISOs and RTOs have some sort of local market power mitigation in place, and this mitigation can be taken into account in the market power analysis.<sup>16</sup>

22. The Pepco Entities state in their December 2004 updated market power analysis that PJM has comprehensive, Commission-approved market monitoring and mitigation procedures which police concerns about potential generation dominance within the PJM market.<sup>17</sup> PJM's Operating Agreement establishes offer caps intended to mitigate generation market power. Among other things, there is effectively an offer cap of

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<sup>12</sup> April 14 Order, 107 FERC ¶ 61,018 at P 187.

<sup>13</sup> July 8 Order, 108 FERC ¶ 61,026 at P 177.

<sup>14</sup> April 14 Order, 107 FERC ¶ 61,018 at P 189.

<sup>15</sup> *Id* at P 190.

<sup>16</sup> July 8 Order, 108 FERC ¶ 61,026 at P 177.

<sup>17</sup> *See, e.g. PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,112 (2004).

\$160/MW-day in the capacity market.<sup>18</sup> In addition, the PJM Operating Agreement provides that PJM shall cap the offers of units when conditions on the transmission system and the absence of sufficient competition in the area defined by the transmission constraint put generating units in a position to exercise local market power. These rules provide that units will be offer-capped – generally at the marginal cost of the unit plus 10 percent – when they are dispatched out of economic merit order.<sup>19</sup> Thus, we are satisfied that PJM has clear Commission-approved rules in place to address instances where transmission constraints would otherwise allow generators to exercise local market power and that these rules and procedures apply in the Delmarva Peninsula within PJM.

23. With respect to mitigating transmission congestion on the Delmarva Peninsula, PJM has made several revisions to its market rules and operations to address congestion. PJM has implemented a post-contingency dispatch program that enables PJM to initiate out-of-merit dispatch operations when simulated contingency flows on facility reach the facility's 30-minuted short term rating, rather than its four or two hour long-term emergency rating. In the summer of 2003, PJM conducted a pilot program of post-contingency operations for certain flowgates in chronically congested areas on the Delmarva Peninsula that resulted in a calculated savings of over \$2 million in real-time.<sup>20</sup> Additionally, PJM has adopted a process for identifying upgrades that are needed to support competition, or economic upgrades. PJM will first identify constraints in the system where congestion is chronic and “unhedgeable.” If PJM determines that the congestion is unhedgeable, it will post a notice of the need for relief, which will start a one-year period for market solutions to be proposed. Market solutions may include generation, demand response, or merchant transmission resources.<sup>21</sup> Further, PJM has two demand response programs: (1) an emergency load response program designed to provide a method by which end-use customer may be compensated for voluntarily reducing load during an emergency; and (2) an economic load response program designed to provide an incentive to end-use customers or curtailment service providers to reduce consumption when locational marginal prices are high. Both programs have non-hourly metered programs that permit participation by small residential, commercial and

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<sup>18</sup> See *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,187 (2004). Although PJM has not explicitly established such a cap in the capacity markets, the deficiency charge of \$160/MW-day that is imposed on load-serving entities for their failure to comply with their capacity requirements sets a cap on capacity payments because a customer will not pay more than the \$160/MW-day deficiency charge to procure capacity.

<sup>19</sup> PJM Operating Agreement, Schedule 1, section 6.4.2.

<sup>20</sup> See *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,196 (2004).

<sup>21</sup> See, e.g., *PJM Interconnection, L.L.C.*, 102 FERC ¶ 61,276 (2003).

industrial customers.<sup>22</sup> We find that these improvements and others (*e.g.*, revisions to FTR/ARR operations)<sup>23</sup> to market rules and operations facilitate the mitigation of congestion on the Delmarva Peninsula.

### **Transmission Market Power**

24. When a transmission-owning public utility seeks market-based rate authority, the Commission has required the public utility to have an open access transmission tariff (OATT) on file before granting such authorization. The Pepco Entities state that their transmission facilities are operated by PJM pursuant to the PJM OATT.<sup>24</sup> No intervenor has raised transmission market power concerns. Based on the Pepco Entities' representations, we find that the Pepco Entities satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

### **Other Barriers to Entry**

25. The Pepco Entities state that they do not own or control any natural gas transportation or distribution facilities that could hinder competitors' access to natural gas supplies, and that they do not have the ability to prevent the siting of new generation facilities. The Pepco Entities further state that Delmarva owns a local gas distribution system. Finally, the Pepco Entities state that they are aware that should the Pepco Entities or their affiliates deny, delay, or require unreasonable terms, conditions or rates for natural gas service to a potential electric competitor in bulk power markets, that electric competitor may file a complaint with the Commission that could result in the suspension of the Pepco Entities' authority to sell power at market-based rates.<sup>25</sup> No intervenor has raised concerns regarding barriers to entry. Based on the Pepco Entities' representations, the Commission is satisfied that the Pepco Entities cannot erect barriers to entry.

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<sup>22</sup> See, *PJM Interconnection, L.L.C.*, 92 FERC ¶ 61,059 (2000); and *PJM Interconnection, L.L.C.*, 95 FERC ¶ 61,011 (2001); *PJM Interconnection, L.L.C.*, 95 FERC ¶ 61,306 (2001); *PJM Interconnection, L.L.C.*, 99 FERC ¶ 61,139 (2002); *PJM Interconnection, L.L.C.*, 101 FERC ¶ 61,308 (2002); *PJM Interconnection, L.L.C.*, 103 FERC ¶ 61,167 (2003). PJM's proposal to extend and amend its emergency and economic load response programs was accepted under delegated authority on October 29, 2004 in Docket No. ER04-1193-000.

<sup>23</sup> See, *e.g.*, *PJM Interconnection, L.L.C.*, 101 FERC ¶ 61,254 (2005).

<sup>24</sup> See *PJM Interconnection, L.L.C.*, 92 FERC ¶ 61,178 (2000).

<sup>25</sup> See, *e.g.*, *Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 (1993).

### **Affiliate Abuse**

26. The Pepco Entities state that the Commission has previously found that there are no concerns regarding affiliate abuse and reciprocal dealings with respect to the Pepco Entities. The Pepco Entities state that there have been no subsequent events warranting a change in the instant filing. They note that the Commission has allowed the three Pepco entities with franchised service territories, Atlantic City, Pepco, and Delmarva, to waive or cancel their codes of conduct.<sup>26</sup> The Pepco Entities further explain that Atlantic City is the only one of the Pepco Entities that serves both retail customers and owns generation assets. They note that Atlantic City sells all of its own generation output as well as the output it purchases from non-utility generators, directly to the PJM power market. The Pepco Entities state that Atlantic City, Pepco, and Delmarva serve customers that do not select other competitive suppliers (Default Service Customers) with power purchased from wholesale suppliers. According to the Pepco Entities, all of their Default Service Customers are protected from affiliate abuse and reciprocal dealing through a combination of state administered competitive bid programs and state imposed retail rate freezes. The Pepco Entities state that these rate freezes and state administered competitive bid programs prevent the Pepco Entities from passing through higher-than-market rates to the Default Service Customers of Atlantic City, Pepco, and Delmarva. No intervenor has raised affiliate abuse concerns. Based on the Pepco Entities' representations, we find that the Pepco Entities satisfy the Commission's concerns with regard to affiliate abuse.

### **Reporting Requirements**

27. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.<sup>27</sup> Electric

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<sup>26</sup> *Conectiv Energy Supply, Inc.*, 91 FERC ¶ 61,076 (2000), *order on reh'g*, 94 FERC ¶ 61,068 (2001) and *Potomac Electric Power Co.*, 93 FERC ¶ 61,240 (2000) (Pepco Order).

<sup>27</sup> *Revised Public Utility Filing Requirements, Order No. 2001*, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>28</sup>

28. The Pepco Entities must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.<sup>29</sup> Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. As noted above, the Pepco Entities have revised their tariffs to include the change in status reporting requirement.

29. The Pepco Entities are directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) The Pepco Entities' updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) The Pepco Entities next updated market power analysis is due within three years of the date of this order.

(C) The revised tariff sheets incorporating the market behavior rules filed by Pepco, Delmarva, PES, Conectiv Energy, and PPR are accepted for filing, effective December 17, 2003.<sup>30</sup>

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<sup>28</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

<sup>29</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005); FERC Stats. & Regs. ¶ 31,175 (2005).

<sup>30</sup> Potomac Electric Power Company, FERC Electric Tariff Original No. 5, Original Sheets Nos. 30 – 31; Delmarva Power & Light Company, FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 7 – 8; Pepco Energy Services, Inc., FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 3 – 4; Conectiv Energy Supply, Inc., FERC Electric Tariff, First Revised Volume No. 1, Original Sheet Nos. 4 – 5; Potomac Power Resources, LLC, FERC Rate Schedule No. 1, Original Sheet Nos. 3 – 4.

(D) The revised tariff sheets incorporating the change in status provision filed by the Pepco Entities are accepted for filing, effective March 20, 2005.<sup>31</sup>

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

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<sup>31</sup> Atlantic City Electric Co., FERC Electric Tariff Third Revised Volume No. 1, Original Sheet No. 13; Potomac Electric Power Company, FERC Electric Tariff Original No. 5, Original Sheet No. 3; Delmarva Power & Light Company, FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 9; Pepco Energy Services, Inc., FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 5; Potomac Power Resources, LLC, FERC Rate Schedule No. 1, Original Sheet No. 5; Conectiv Energy Supply, Inc., FERC Electric Tariff, First Revised Volume No. 1, Original Sheet No. 6; Conectiv Atlantic Generation, LLC, FERC Electric Tariff, First Revised Volume No. 1, Original Sheet No. 7; Conectiv Delmarva Generation, LLC, FERC Electric Tariff, First Revised Volume No. 1, Original Sheet No. 7; Conectiv Bethlehem, LLC, FERC Electric Tariff, First Revised Volume No. 1, Original Sheet No. 7; Fauquier Landfill Gas, LLC, FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 7; Rolling Hills Landfill Gas, LLC, FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 7.