

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

PJM Interconnection, L.L.C.

Docket No. ER05-1103-000

ORDER ACCEPTING UNEXECUTED SERVICE AGREEMENT

(Issued July 12, 2005)

1. In this order, the Commission accepts an unexecuted construction service agreement among PJM Interconnection, L.L.C. (PJM), Neptune Regional Transmission System, L.L.C. (Neptune), and Public Service Electric and Gas Company (PSE&G).

Background

2. On July 27, 2001, the Commission approved negotiated rates for the Neptune project, subject to certain conditions.¹ The Neptune project is a merchant transmission project which will provide for the delivery of 660 MW of capacity from New Jersey to Long Island via a high-voltage, direct-current (HVDC) underwater transmission cable. The project's expected commercial operation date is June 2007.

3. On December 21, 2004, in Docket No. EL05-48-000, Neptune filed a complaint against PJM with respect to PJM's interpretation of the interconnection provisions of its open access transmission tariff, regarding PJM's right to restudy the impact on its system of the interconnection of the Neptune project in light of unexpected announced generation retirements on PJM's system. On February 10, 2005, the Commission issued an order finding that PJM's restudies were not performed in accordance with PJM's tariff.² The Commission ordered PJM to provide an interconnection agreement to Neptune. On June 23, 2005, the Commission denied rehearing and reaffirmed its earlier findings.³

¹ *Neptune Regional Transmission System, LLC*, 96 FERC ¶ 61,147 (2001).

² *Neptune Regional Transmission System, LLC v. PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,098 (2005) (Neptune Complaint Order).

³ *Neptune Regional Transmission System, LLC v. PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,455 (2005) (Neptune Rehearing Order).

4. On May 23, 2005, as amended on May 25, 2005, in Docket Nos. ER05-1010-000 and ER05-1010-001, respectively, PJM submitted for filing an interconnection agreement among PJM, Neptune and Jersey Central Power & Light Company (Jersey Central). The interconnection agreement, among other things, identified the facilities to be constructed by Jersey Central as well as the facilities to be constructed by PSE&G. PJM also submitted a construction service agreement among PJM, Neptune and Jersey Central (Jersey Central CSA). The Jersey Central CSA indicated that Jersey Central, as the interconnected transmission owner, would construct certain facilities necessary to accommodate Neptune's merchant transmission facility. On June 23, 2005, the Commission issued an order accepting the interconnection agreement and the Jersey Central CSA.⁴

Proposal

5. On June 10, 2005, in Docket No. ER05-1103-000, PJM submitted for filing a construction service agreement⁵ among PJM, Neptune and PSE&G (PSE&G CSA). PJM explains that as part of the contractual arrangements for completing the Neptune interconnection, the PSE&G CSA is needed. The PSE&G CSA provides for the installation of two 50 MVAR capacitors by PSE&G on PSE&G's facilities. One of the capacitors will be built at PSE&G's Brunswick 230 kV substation; the other will be built at PSE&G's West Orange 138 kV substation. PJM states that, except for being unexecuted, the PSE&G CSA is a conforming agreement. PJM further states that, while both PJM and Neptune executed the PSE&G CSA, PSE&G declined to do so. PJM explains that PSE&G did not execute the agreement because of concerns that issues affecting the scope of work and cost responsibility provision are subject to requests for rehearing. PJM therefore filed the PSE&G CSA as unexecuted, *i.e.*, without PSE&G's signature, as permitted by its tariff.

Notice of Filings and Responsive Pleadings

6. Notice of the filing in Docket No. ER05-1103-000 was published in the *Federal Register*, 70 Fed. Reg. 35,665 (2005), with protests or interventions due on or before July 1, 2005.

7. On June 30, 2005, PSE&G filed a motion to intervene and protest. PSE&G states that, although the Neptune Rehearing Order has been issued, it continues to believe that the Commission has not properly defined Neptune's cost responsibility

⁴ *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,456 (2005).

⁵ That construction service agreement is designated as Original Service Agreement No. 1337.

for network upgrades to the PJM system.⁶ PSE&G requests that language be included in the PSE&G CSA that would protect its interests in the event that the Commission and/or the courts ultimately rule in a manner that changes Neptune's cost responsibility.

8. PSE&G also states that the scope of work for the construction of the network upgrades to the PSE&G system is incorrect. Specifically, PSE&G states that the January 2004 System Impact Study for the Neptune project specified that Neptune is responsible for installing two 230 kV 50 MVAR capacitor banks – one at the Mercer substation and one at the Aldene substation. However, PSE&G notes that the April 2005 Facilities Study Report identifies the locations of the capacitor banks to be at the Brunswick and West Orange substations. PSE&G states that the scope of the work for the network upgrades should be reset back to January 2004. Due to this error, PSE&G requests that Neptune's cost responsibility be set so that Neptune pay an amount equal to "twice the actual cost of construction of one 230 kV 50 MVAR capacitor bank at Brunswick."

9. On July 1, 2005, Neptune filed a motion to intervene and comments in support of PJM's application, as well as an answer to PSE&G's protest. Neptune states that, consistent with its action on the Jersey Central CSA, the Commission should dismiss PSE&G's protest on the allocation of network upgrade costs, as this issue was addressed in the Neptune Rehearing Order.

10. Neptune notes that a change in Neptune's cost responsibility would be contrary to (1) the provisions of the PJM tariff, (2) the previously accepted interconnection agreement, and (3) the 2005 Facilities Study Report. Neptune further notes that the location of the capacitor banks was changed due to a request by PSE&G. Finally, Neptune notes that PSE&G is not protesting the scope of the facilities in the CSA, just the costs Neptune will pay for the capacitors. Neptune therefore requests that the Commission dismiss PSE&G's protests.

Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding

⁶ PSE&G notes that an order on rehearing has not yet been issued in a related proceeding in Docket No. EL05-60-000 involving PJM's interconnection procedures and, in particular, PJM's re-study procedures. See *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,099 at P 10 (2005), *reh'g pending*.

B. Commission Conclusion

12. The Commission finds that the PSE&G CSA is a conforming agreement and accepts it for filing.

13. PSE&G requests that language be inserted into the PSE&G CSA to provide it with protection in case the Commission or the courts rule in a manner that changes Neptune's cost responsibility. PSE&G's request for such language is denied as premature. Should PSE&G ultimately prevail, the Commission will determine at that time, and in the particular circumstances that may exist at that time, what the appropriate remedy may be.⁷

14. PSE&G also contends that the scope of work for the construction of the network upgrades to the PSE&G system is incorrect. PSE&G's protest is misplaced. If PSE&G had concerns about the scope of the work, it should have raised this issue in Docket No. ER05-1010-001, given that the interconnection agreement clearly stated that the 50 MVAR capacitors would be located at PSE&G's Brunswick and West Orange substations.⁸ While PSE&G protested the interconnection agreement, it did not raise any concerns about the scope of work. And, as noted earlier, the Commission approved the interconnection agreement, along with the Jersey Central CSA, on June 23, 2005. Hence, PSE&G's protest is no more than a collateral attack on that earlier order.⁹

15. In addition, PSE&G notes that there is an inconsistency between the January 2004 System Impact Study which specifies that PSE&G is responsible for installing capacitors at the Mercer and Aldene substations, and the April 2005 Facilities Study Report, which specifies that PSE&G is responsible for installing capacitors at the Brunswick and West Orange substations. To remedy this inconsistency, PSE&G requests that Neptune be required to pay twice the cost of the capacitor at Brunswick. PSE&G has not explained the logic of requiring Neptune to pay twice the cost of a capacitor at Brunswick. Further, PSE&G has not explained why Neptune should be responsible for the costs of an extra, and "phantom," capacitor at Brunswick, as opposed to the actual costs of the two required capacitors at Brunswick and West

⁷ See, e.g., *Southwestern Public Service Co.*, 63 FERC ¶ 61,295 at 63,092, *order on reh'g*, 65 FERC ¶ 61,088 (1993); *accord Gulf States Utilities Co.*, 67 FERC ¶ 61,035 at 61,108-09 (1994).

⁸ See Specification for Interconnection Service Agreement attached to the Interconnection Agreement, sections 3.0(c) and 4.2.

⁹ See *supra* note 4.

Orange. Finally, as explained in the Neptune Complaint Order, the earlier System Impact Study and the later Facility Study Report are part of a series of studies, which refine the system upgrades and costs to the interconnection customer.¹⁰ The Facilities Study Report notes that one of the refinements to the earlier System Impact Study was the change in the location of the capacitors.¹¹ If PSE&G had a concern about the change in location, it should have raised the concern when the Facilities Study Report was being prepared. Accordingly, PSE&G's request for a change in the cost allocation for Neptune is denied.

C. Waiver of Prior Notice Requirement

16. PJM requests waiver of the Commission's 60-day prior notice requirement to allow an effective date of June 10, 2005, the date the parties executed the PSE&G CSA. Because the agreement is being filed within thirty days of its requested effective date,¹² we will grant waiver of the 60-day prior notice requirement to permit the PSE&G CSA to become effective on June 10, 2005, as requested.

The Commission orders:

(A) The PSE&G CSA, designated as Original Service Agreement No. 1337, is hereby accepted for filing.

(B) Waiver of the 60-day prior notice requirement to permit the PSE&G CSA to become effective on June 10, 2005 is hereby granted.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

¹⁰ Neptune Complaint Order at P 4.

¹¹ See www.pjm.com/planning/project-queues/merch-facilities/g07_mtx1_fac.pdf (Version 2, May 2005).

¹² *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,983-84, *order on reh'g*, 65 FERC ¶ 61,081 (1993).