

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. ER05-1010-003

ORDER ON REHEARING

(Issued November 23, 2005)

1. On June 23, 2005, the Commission issued an order which, among other things, accepted an unexecuted interconnection service agreement (ISA) and an unexecuted construction service agreement (CSA) among PJM Interconnection, L.L.C. (PJM), Neptune Regional Transmission System, L.L.C. (Neptune), and Jersey Central Power & Light Company (Jersey Central), a FirstEnergy Company.<sup>1</sup> On July 25, 2005, FirstEnergy Companies<sup>2</sup> filed a request for rehearing of the ISA Order. In this order, the Commission denies the request for rehearing.

**Background**

2. On July 27, 2001, the Commission approved negotiated rates for the Neptune project, subject to certain conditions.<sup>3</sup> 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.

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<sup>1</sup> *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,456 (2005) (ISA Order).

<sup>2</sup> Jersey Central, Metropolitan Edison Company, and Pennsylvania Electric Company (collectively, FirstEnergy Companies).

<sup>3</sup> *Neptune Regional Transmission System, LLC*, 96 FERC ¶ 61,147 (2001) (Neptune Order).

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 (Tariff), regarding PJM's right to restudy the impact of the Neptune project's interconnection on PJM's system, 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.<sup>4</sup> The Commission ordered PJM to provide an ISA to Neptune.

4. In compliance with the Complaint Order, on May 23, 2005, as amended on May 25, 2005, in Docket Nos. ER05-1010-000 and ER05-1010-001, PJM submitted for filing the ISA and CSA among PJM, Neptune and Jersey Central. PJM included with its filing, for informational purposes only, the portions of the Technical Specifications dealing with telephonic interference. FirstEnergy Companies protested the Technical Specifications and requested that modifications be made to them. In the ISA Order, the Commission accepted the ISA, subject to conditions. Among other things, the Commission, with regard to modifications to the Technical Specifications, dismissed FirstEnergy Companies' protest, without prejudice, finding that it would be premature to address the substance of the Technical Specifications since they had not been filed with the Commission.

5. On July 8, 2005, in Docket Nos. ER05-1010-002 and ER05-1213-000, in compliance with the ISA Order, PJM submitted an unexecuted substitute ISA among PJM, Neptune and Jersey Central. In addition, pursuant to section 205 of the Federal Power Act,<sup>5</sup> PJM submitted for filing the portions of the Technical Specifications dealing with telephonic interference. FirstEnergy Companies again protested the Technical Specifications. On September 6, 2005, the Commission issued an order accepting the compliance filing without modification.<sup>6</sup> The Commission found that, since Neptune is responsible for any of the costs that may arise from telephonic interference as a result of the Neptune project, Jersey Central would not be held responsible for such costs.

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<sup>4</sup> *Neptune Regional Transmission System, LLC v. PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,098 (2005) (Complaint Order), *reh'g denied*, 111 FERC ¶ 61,455 (2005) (Complaint Rehearing Order).

<sup>5</sup> 16 U.S.C. § 824d (2000).

<sup>6</sup> *PJM Interconnection, L.L.C.*, 112 FERC ¶ 61,251 (2005) (Technical Specifications Order).

### **Request for Rehearing**

6. On July 25, 2005, FirstEnergy Companies sought rehearing of the ISA Order. FirstEnergy Companies allege that the Commission erred in failing to address the issue of cost responsibility. Specifically, FirstEnergy Companies argue that, although PJM identified over \$26.3 million in network upgrades associated with the Neptune project, the Commission failed to address who would be responsible for any network upgrade costs above the \$6.5 million allocated to Neptune under the ISA. FirstEnergy Companies contend that the Commission should have addressed this issue in the ISA Order because it was not addressed in the Neptune complaint proceeding. Further, FirstEnergy Companies argue that the Commission inappropriately deferred consideration of the issue until Neptune or one of its customers seeks transmission service, since any additional costs for transmission service will be minimal. In addition, FirstEnergy Companies state that section 44.2 of the PJM Tariff requires merchant transmission owners to pay for the costs of system upgrades which would not have been incurred “but for” the project. FirstEnergy Companies further note that the Commission orders approving merchant transmission projects require merchant transmission developers to assume full market risk and financial risk for their projects and prohibit the subsidization of merchant transmission projects by captive customers of regulated public utilities.<sup>7</sup> FirstEnergy Companies contend that the ISA and the CSA are deficient since they are silent on Neptune’s responsibility to pay for these upgrades. FirstEnergy Companies therefore request that the Commission address the issue of cost responsibility and assign cost responsibility for network upgrades above \$6.5 million to Neptune.

7. FirstEnergy Companies further allege that the Commission erred in failing to set for hearing issues dealing with reliability, system operations and cost subsidization. Specifically, FirstEnergy Companies contend that the DC converter station handles a very specialized type of load with heavy harmonics characteristics that can potentially interfere with communications systems or local customers’ telephone service. FirstEnergy Companies argue that the converter station “may interfere with reliable operations in PJM and New Jersey due to the controllable character of the station to satisfy Long Island requirements.” FirstEnergy Companies also state that “additional resources will be required to mitigate the large levels of real and reactive losses and voltage instability on the transmission system introduced by deliveries to the Neptune project terminal, as well as to maintain the reliability margin

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<sup>7</sup> Citing *TransEnergie Ltd.*, 91 FERC ¶ 61,230 (2000); *Neptune Regional Transmission System, LLC*, 96 FERC ¶ 61,147, *order on reh’g*, 96 FERC ¶ 61,326 (2001); *TransEnergie Ltd.*, 98 FERC ¶ 61,144 (2002); *TransEnergie Ltd. and Hydro One Delivery Services Inc.*, 98 FERC ¶ 61,147 (2002); *Northeast Utilities Service Co.*, 98 FERC ¶ 61,310 (2002).

of the transmission system consumed by the Neptune Project.” Finally, FirstEnergy Companies argue that deliveries to and withdrawals from the Neptune project will increase locational marginal prices and congestion costs in PJM and adversely affect the rates paid by other regional transmission and wholesale generation customers. FirstEnergy Companies contend that PJM never adequately addressed these concerns in any of the study phases for the Neptune project or in the unexecuted ISA or CSA, nor did the Commission adequately address them in any prior Neptune proceeding. FirstEnergy Companies therefore request on rehearing that the Commission set the issues for hearing or other procedures.

## **Discussion**

8. FirstEnergy Companies contend that PJM identified over \$26.3 million in network upgrade costs associated with the Neptune project, but failed to address who would be responsible for those costs above \$6.5 million. We disagree. This issue was addressed in the Complaint Order and the Complaint Rehearing Order. The Commission noted that the \$26.5 million in network upgrades were identified by PJM in its fourth System Impact Study on the Neptune project,<sup>8</sup> and the Commission noted that the third, fourth and fifth System Impact Studies were only performed because of unanticipated generator retirements<sup>9</sup> which were announced several years after Neptune was assigned its place in the interconnection queue.<sup>10</sup> The Commission explained that queue position provides a method for cost allocation by assigning an interconnecting generator or transmission project a position in the queue based upon the date the transmission provider determined that the customer’s application is valid.<sup>11</sup> The Commission also explained that, if an interconnecting generator or transmission project were to be held financially responsible for the costs of events occurring *after* its System Impact Study is completed, it would be impossible for such

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<sup>8</sup> Complaint Order at P 5.

<sup>9</sup> Complaint Order at P 28-29. *Cf.* SNL Energy Power Daily Northeast (Feb. 14, 2005) (stating that some of the planned retirements by PSEG Power LLC will no longer take place).

<sup>10</sup> Complaint Order at P 5.

<sup>11</sup> *Id.* at P 22 (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 at P 35 (2003), *order on reh’g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh’g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh’g*, Order No. 2003-C, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005)).

entities to make reasoned business decisions.<sup>12</sup> Finally, the Commission explained how the costs above those identified in the earlier, second System Impact Study, i.e., costs above those properly allocable to Neptune, are to be allocated. The Commission stated that these costs, which are solely reliability upgrade costs, are to be allocated to transmission owners and then assigned to transmission customers (i.e., load) through PJM's Transmission Enhancement Charge specified in Schedule 12 of the PJM Tariff.<sup>13</sup>

9. FirstEnergy Companies further contend that it is not appropriate for the Commission to defer consideration of cost allocation until Neptune or one of its customers seeks transmission service. First, as described above, the Commission did not "defer" the consideration of the allocation of costs. Rather, the Commission specifically found that *interconnection-related* costs are allocated based on the queue position.<sup>14</sup> With respect to *transmission upgrade* costs, the Commission noted that the appropriateness of allocation will be addressed when a transmission owner makes a filing to recover such costs.<sup>15</sup> The fact that PJM performed further and later System Impact Studies and established cost estimates to reflect the impact of subsequently-announced generator retirements is not germane. Under the interconnection procedures in PJM's Tariff, the subsequent announcement of the potential retirement of generators (which may or may not ultimately be taken out of service) is not a reason to allocate further costs to Neptune. Finally, the Commission has noted that *reliability* upgrade costs are allocated to transmission owners and then assigned to transmission customers through PJM's Transmission Enhancement Charge specified in Schedule 12 of the PJM Tariff.<sup>16</sup> Thus, the Commission did not defer consideration of the costs; rather, it explained how different costs, including costs due to subsequent actions by entities other than Neptune, are appropriately allocated.

10. FirstEnergy Companies state that section 44.2 of the PJM Tariff sets forth the "but for" test, which requires merchant transmission owners to pay for the costs of system upgrades which would not have been incurred "but for" the merchant transmission project. The Commission specifically addressed this issue -- in response to FirstEnergy Companies' argument that, under both the PJM Tariff and Commission precedent, Neptune must be held responsible for all of the "but for" costs of its

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<sup>12</sup> Complaint Rehearing Order at P 22-23.

<sup>13</sup> *Id.* at P 25.

<sup>14</sup> *Id.* at P 23.

<sup>15</sup> *Id.* at P 26.

<sup>16</sup> *Id.* at P 25.

project, and that merchant transmission developers must assume full market and financial risk for their projects. The Commission stated:

Merchant transmission developers, and the Neptune project specifically, are held responsible for the costs and the risks of their projects based on the system configuration *at the time of their queue position*. However, these costs must be determined within the framework of PJM's tariff, properly and reasonably construed, as discussed above. Projects cannot be held responsible for costs that occur *after their queue positions are established*, because that could lead the interconnection provider, as was the case here, to fail to not determine a final level of interconnection costs within a reasonable period of time.<sup>17</sup>

11. FirstEnergy Companies further state that the Commission has explicitly prohibited the subsidization of merchant transmission projects by captive customers of regulated public utilities. As noted in the Neptune Order, Neptune has no captive customers of its own and therefore cannot shift costs to them.<sup>18</sup> Moreover, FirstEnergy Companies' implication that Neptune will indirectly shift costs to captive customers of others is based on the premise that Neptune is responsible for system upgrades that are identified after PJM completed its earlier System Impact Study. The Commission, in addressing this concern, stated:

Allowing repeated re-studies for possible speculative events occurring after a project joins the queue unfairly delays the ability of projects to receive financing and commence construction. Project sponsors are entitled to a timely upfront determination of costs based on reasonably foreseeable events.<sup>19</sup>

12. FirstEnergy Companies raise a series of factual issues on cost subsidization, reliability and operations, which they contend, were never adequately addressed in any of the other Neptune proceedings or by PJM during the System Impact Study phase. FirstEnergy Companies' request to have these issues set for hearing is denied. As discussed above, the Commission has fully addressed cost subsidization concerns. Further, the Commission addressed the telephonic interference issues in the Technical Specifications Order.<sup>20</sup> With regard to the remaining reliability and operations issues,

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<sup>17</sup> *Id.* at P 22 (emphasis added).

<sup>18</sup> Neptune Order, 96 FERC at 61,632.

<sup>19</sup> Complaint Rehearing Order at P 23.

<sup>20</sup> Technical Specifications Order at P 16-17.

a review of the record indicates that the issues raised by FirstEnergy Companies on operations and reliability were addressed by PJM. FirstEnergy Companies contended that Neptune should provide additional capacity to accommodate for increased losses. FirstEnergy Companies also stated that two capacitor banks are needed to address reactive power concerns. PJM responded that its Tariff addressed both of these issues. PJM explains that section 3.4 of Attachment K specifies how transmission customers are charged for losses and that section 54.7.1 of the PJM Tariff sets forth the design criteria for HVDC merchant projects with respect to reactive power. PJM noted that Neptune would be held responsible for meeting the tariff specifications.

13. Accordingly, FirstEnergy Companies' request for rehearing is denied.

The Commission orders:

FirstEnergy Companies' request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas  
Secretary