138 FERC ¶ 61,158
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

FirstEnergy Solutions Corp. and Allegheny Energy Supply Company, LLC — Docket No. EL12-19-000

v.

PJM Interconnection, L.L.C.

ORDER DISMISSING COMPLAINT
WITHOUT PREJUDICE

(Issued March 2, 2012)

1. On December 28, 2011, FirstEnergy Solutions Corp. and Allegheny Energy Supply Company, LLC (FirstEnergy Companies) submitted a complaint to modify provisions of PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (Tariff) and Operating Agreement as related to the funding of Financial Transmission Rights (FTR). In this order, the Commission dismisses the complaint without prejudice in light of the absence of sufficient evidence as to the root cause of the FTR underfunding and PJM's commitment to develop a comprehensive report detailing the circumstances resulting in the FTR underfunding for stakeholder review and discussion.

I. Background

2. FTRs are a financial replacement for physical, firm transmission service that allow market participants to hedge the costs of day-ahead transmission congestion. FTRs are valued based upon the difference between the day-ahead prices at two points on the transmission system. PJM introduced its competitive auction-based market for fixed transmission rights on May 1, 1999.[1] In 2003, PJM created Auction Revenue Rights

[1] *See Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257, at 62,241 (1997).

(ARR) in conjunction with modifying its FTR framework to include an annual FTR auction.[2] FTRs are obtained through the conversion of ARRs that are allocated to participants annually in a similar manner that FTRs were allocated to participants prior to the creation of ARRs.

3. PJM established a ten-year ARR in two separate components, a ten-year ARR and the remaining ARRs preserving the historical native load priority.[3] PJM provided a full funding cost allocation mechanism that allocates any required uplift charges to all FTR holders on a pro-rata basis.

4. Under the current PJM rate schedules, if sufficient congestion charges are collected from the day-ahead and real-time energy markets to satisfy FTR Target Allocations calculated by PJM, then FTRs will be fully funded. Excess congestion charges are then used to cover deficiencies in FTR Target Allocations within the relevant planning period. To the extent there are any remaining year-end excess congestion charges, these will be applied to cover any deficiencies in ARR Target Allocations from previous months within the relevant planning period. Any remaining year-end excess congestion charges will be distributed to FTR participants on a pro rata basis to total FTR Target Allocations.[4]

5. If insufficient congestion charges are collected from the day-ahead and real-time energy markets to satisfy FTR Target Allocations, then FTR credits are prorated proportionately to FTR Target Allocations.[5] FTR Target Allocation deficiencies are first funded from excess congestion charges from the current month and subsequent months. To the extent that there are any remaining uncovered year-end FTR Target Allocation deficiencies thereafter, an uplift charge is assessed to all FTR holders on a pro-rata basis according to total Target Allocations for all FTRs held at any time during the planning

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[2] *PJM Interconnection, L.L.C.*, 102 FERC ¶ 61,276, at P 18 (2003). PJM also renamed “Fixed Transmission Rights” to “Financial Transmission Rights” to reflect more accurately the nature of the product. Auction Revenue Rights are defined as 1.3.1A of the PJM Operating Agreement shall mean the right to receive the revenue from the Financial Transmission Right auction, as further described in section 7.4 of this Schedule.

[3] *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,220, at P 6 (2006).

[4] Schedule 1 Section 5.2.5 (Calculation of Transmission Congestion Credits) of PJM’s Operating Agreement and parallel provisions in Attachment K-Appendix of PJM’s Tariff.

[5] *Id.*

period. If less transmission system capability is available in the real-time energy market than in the day-ahead energy market, then negative balancing (real-time) congestion can result. Since most of the transmission system capability is subscribed in the day-ahead energy market, the amount of balancing congestion is generally near zero or below. Negative balancing congestion is common because transmission system capability in the real-time energy market is generally the same or lower than transmission system capability in the day-ahead energy market. However, the recent trend of increasing negative balancing congestion has not been previously observed.[6]

II. FirstEnergy Companies' Complaint

6. FirstEnergy Companies state that the PJM Tariff provisions allow real-time market conditions to significantly and adversely affect FTR value by requiring FTR holders to bear the risks associated with incremental real-time congestion.[7] FirstEnergy Companies explain that FTR holders are now experiencing severe shortfalls in FTR revenues and must pay additional uplift costs, to make up for incremental congestion in the real-time market that PJM cannot anticipate and therefore is not recognized in the value of FTRs as established by the day-ahead market. FirstEnergy Companies state that as a result of this revenue inadequacy, FTRs cannot be used to adequately hedge congestion as originally intended and are sending less efficient price signals than would be the case if FTRs were fully funded. As a result, FirstEnergy Companies argue that the PJM Tariff provisions have become unjust, unreasonable and unduly discriminatory and preferential.

7. FirstEnergy Companies contend that there is no nexus between FTR holders (in their role as FTR holders) and such incremental real-time congestion costs. FirstEnergy Companies assert the revenue shortfall for FTRs is caused by a variety of events in the real-time market (and not in the day-ahead market) that are the result of unexpected changes in transmission outage schedules, real-time changes in transmission system capability, unexpected system loop flows, and real-time modifications in neighboring balancing authority areas.[8] FirstEnergy Companies state that PJM has explained that the recent significant revenue inadequacy is due to certain unexpected events occurring in real-time that PJM cannot model, which, in turn, alters the congestion on certain transmission paths in the PJM balancing authority area dramatically from the day-ahead

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[6] *See* PJM Answer filed on January 13, 2012 at 15-21.

[7] In support of the complaint, the FirstEnergy Companies provided the affidavits of Brian A. Farley (Farley Affidavit) and Robert B. Stoddard (Stoddard Affidavit).

[8] Additional real-time operational uncertainties from new regulatory and other compliance obligations may further erode the level of funding of FTRs.

market.[9] FirstEnergy Companies explain PJM has identified several factors that are leading to large disparities between the day-ahead and real-time market, and thus, the significant revenue inadequacy. FirstEnergy Companies argue that regardless of the exact cause or causes of the discrepancy, incremental real-time congestion is precluding adequate funding of FTRs.

8. FirstEnergy Companies contend that the proper solution is to remove the effects of real-time operations from the calculation of what FTR holders are paid for FTRs commencing in the 2012/2013 planning year. FirstEnergy Companies explain, as the PJM independent market monitor's (Market Monitor) data indicate, had incremental real-time congestion costs not been paid with day-ahead FTR revenues, FTR holders would have achieved full, or nearly full, funding in the 2010/2011 planning year. FirstEnergy Companies explain removing incremental real-time congestion costs from the calculation of FTR value will give FTR holders a real opportunity to hedge congestion effectively, better align costs with service taken under the PJM Tariff, and allow FTRs to be the financial equivalent of firm and network transmission service as originally intended by the ARR and FTR provisions of the PJM Tariff. FirstEnergy Companies state that such revisions would have to be implemented by early March 2012 in order to be in effect for the 2012/2013 planning year.

9. FirstEnergy Companies contend that the Commission should direct PJM to revise the PJM Tariff to eliminate references to the real-time or balancing market in the calculation of the Transmission Congestion Charges in Attachment K – Appendix, sections 5.25(a) and (b) and any other corresponding provisions. In addition, FirstEnergy Companies argue that PJM should be directed to revise any other provisions of the Tariff and Operating Agreement that would require that FTRs be funded based on both day-ahead and real-time Transmission Congestion Charges. FirstEnergy Companies also contends the just and reasonable replacement rate should be to allocate Incremental Real-Time Congestion Charges to all Transmission Customers on a pro rata basis.

10. FirstEnergy Companies respectfully request fast track processing under Rule 206(h) of the Commission's Rules of Practice and Procedure,[10] so that the Commission can act on this Complaint and direct PJM to provide a suitable replacement for the currently unjust, unreasonable and unduly discriminatory and preferential FTR funding mechanism before the 2012/2013 planning year commences. Moreover, FirstEnergy Companies assert it would be prudent to expeditiously remedy the currently flawed

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[9] Farley Affidavit at P 12.

[10] 18 C.F.R. § 385.206(h) (2011).

processes before the beginning of the next annual ARR allocation, which commences in March 2012.

III. Notice of Filing and Responsive Pleadings

11. Notice of the First Energy Companies' submittal was published in the *Federal Register*, 77 Fed. Reg. 790 (2012), with protests and interventions due on or before January 13, 2012.

12. Timely motions to intervene were submitted by Maryland Public Service Commission; Pennsylvania Public Utility Commission; Exelon Corporation (Exelon); PSEG Companies (PSEG);[11] Electric Power Supply Association (EPSA); Dayton Power and Light Company (Dayton); Edison Mission Marketing & Trading, Inc. (Edison Mission); PJM Industrial Customer Coalition (PJM ICC); PPL Energy Plus, LLC (PPL); NRG Companies (NRG);[12] Constellation Commodities Group, Inc. and Constellation NewEnergy, Inc. (Constellation); American Municipal Power (AMP); J. Aron & Company (J. Aron); Monitoring Analytics, LLC;[13] Financial Institutions Energy Group (Financial Group); DC Energy, LLC, Vitol Inc. and Brookfield Energy Marketing L.P. (DC Energy); DB Energy, LLC (DB Energy); Retail Energy Supply Association (RESA); American Electric Power Service Corporation; Dominion Resource Services, Inc.; GenOn Parties;[14] Xcel Energy Services Inc.; Allegheny Electric Cooperative, Inc.; JP Morgan Ventures Energy Corporation; Morgan Stanley Capital Group Inc.; Duke Energy Corporation; Hess Corporation; Consolidated Edison Solutions, Inc.; Old Dominion Electric Cooperative; Rockland Electric Company; Borough of Chambersburg, Pennsylvania; North Carolina Electric Membership Corporation; Calpine Corporation;

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[11] Public Service Electric and Gas Company, PSEG Power LLC and PSEG Energy Resources & Trade LLC.

[12] The NRG Companies are 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.

[13] As the PJM independent market monitor (Market Monitor).

[14] The GenOn Parties are GenOn Energy Management, LLC, GenOn Chalk Point, LLC, GenOn Mid-Atlantic, LLC, GenOn Potomac River, LLC, GenOn REMA, LLC, and GenOn Wholesale Generation, LP.

Citigroup Energy Inc.; Elliot Bay Energy Trading, LLC; NextERA Energy Generators;[15] Cargill Power Markets, LLC; and Duquesne Light Company. Out-of-time motions to intervene were filed by the Indiana Utility Regulatory Commission (Indiana Commission and the New Jersey Board of Public Utilities (NJBPU).

13. PJM filed an answer to the complaint on January 13, 2012. Comments, protests and responsive pleading were also filed by Exelon, PSEG, EPSA, Dayton, Edison Mission, PJM ICC, PPL, NRG, Constellation, AMP, J. Aron, Market Monitor, Financial Group, DC Energy, DB Energy, and the Joint Commenters.[16]

14. Motions to leave and answers were filed by the FirstEnergy Companies, PPL, RESA, Market Monitor, J. Aron, and PJM.

IV. PJM's Answer

15. PJM states that it is concerned about the degree of recent FTR underfunding and generally supports the complaint and the FirstEnergy Companies' proposal to allocate real-time congestion costs, positive or negative, to all transmission customers on a *pro-rata* basis. PJM agrees with FirstEnergy Companies that FTR revenue inadequacy is not caused by FTR holders, and it agrees with FirstEnergy Companies that the FTR underfunding may affect the otherwise expected benefits of FTR markets. While supporting the FirstEnergy Companies complaint, PJM notes that full funding of FTRs is a goal, not a guarantee, as evidenced by the Operating Agreement. PJM states that while it is pursuing solutions to the causes of the FTR underfunding, the process is time-consuming. In the interim, PJM contends that the costs associated with the FTR underfunding can be allocated more equitably.

16. PJM notes that if the Commission accepts FirstEnergy Companies' proposed revisions, corollary funding provisions must be implemented to reallocate the real-time congestion costs. PJM supports FirstEnergy Companies' proposal to allocate real-time congestion costs, positive or negative, to all transmission customers on a pro rata basis.

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[15] The NextERA Energy Generators are FPL Energy Marcus Hook, L.P., North Jersey Energy Associates, L.P., Backbone Mountain Windpower LLC, Mill Run Windpower LLC, Somerset Windpower LLC, Meyersdale Windpower LLC, Waymart Wind Farm, LP, and Pennsylvania Windfarms, Inc.

[16] The Joint Commenters are American Electric Power and Dominion Resource Services, Inc.

PJM does not agree that the current level of FTR underfunding is caused by either the flawed design or implementation of it Simultaneous Feasibility Test (SFT) modeling.[17]

V. Comments

A. Changes to the PJM Tariff

17. The majority of commenters, including Exelon, PSEG, Edison Mission, PPL, NRG, Financial Group and J. Aron express support for altering the PJM tariff to eliminate references to real-time congestion costs in the calculation of FTR revenues.

18. PJM ICC does not support altering PJM's tariff as requested. While PJM ICC agrees that while the FirstEnergy Companies' Complaint further highlights the need to address the root causes of FTR under-funding, it states that the FirstEnergy Companies have not demonstrated that the existing allocation of real-time congestion costs is inherently unjust, unreasonable, or unduly discriminatory, or that FirstEnergy Companies' socialization approach is just and reasonable. Joint Commenters argue that the Commission has already rejected the FirstEnergy Companies' proposed new uplift allocation.[18]

19. The Market Monitor argues that the FirstEnergy Companies have not supported its claim that balancing congestion should be removed from the FTR revenue calculation nor has it adequately addressed the issue of how to treat balancing congestion dollars. The Market Monitor further explains that FTR revenue shortfalls are not evidence that there is any deficiency with PJM's approach. The Market Monitor argues that the true issue is FTR revenue adequacy and not balancing congestion. As result, the Market Monitor contends that the relief requested by FirstEnergy Companies should be denied. The Market Monitor complains that the causes of FTR underfunding have not been specified exactly or quantified based on a full, root cause analysis. The Market Monitor explains that balancing congestion charges are not the cause of underfunding, and that balancing congestion charges predate the FTR underfunding issue. Therefore, the Market Monitor claims that the discussion of removing balancing congestion charges to address FTR underfunding is irrelevant.

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[17] The SFT models expected, planned system conditions based on past experience, historical and current data and other confidential information that is available to PJM at the time the SFT model is executed.

[18] Joint Commenters' Filing at 10, *citing PJM Interconnection, L.L.C.*, 121 FERC ¶ 61,073, at P 13 (2007).

B. Allocation of FTR Revenue Underfunding

20. Several Commentors, including Exelon, Edison Mission, PPL and DB Energy support FirstEnergy Companies' proposal to allocate real-time congestion costs to all transmission customers on a pro rata basis, while others argued that an alternative cost allocation method should be developed after further study and consideration. DC Energy states that allocating real-time congestion to all transmission customers is just and reasonable, and that further analysis is not necessary. DB Energy supports revisions to the PJM Tariff, Operating Agreement and manuals to eliminate real-time congestion costs in the FTR funding equation, while also allowing accurate and appropriate cost causation allocations as soon as practicable.

21. Several commenters express concern with FirstEnergy Companies' proposed cost allocation for real-time congestion costs, and recommended further study to develop a more appropriate cost allocation method. For example, PSEG contends that issue should be returned to PJM to consider an approach that would assign costs to those market participants deviating from day-ahead schedules and to then make a compliance filing. PSEG also suggests an alternative cost allocation method, assigning these costs with greater granularity in order to create the constructive behavioral incentives. PSEG asserts that it supports an approach that would assign real time congestion costs on the same basis as balancing operating reserves to those causing the incurrence of these costs, specifically, those deviating from their day-ahead schedules. According to PSEG, assigning costs in this manner will encourage market participants to take steps such as improving their load forecasts in order to minimize their responsibility.

22. Financial Group suggests that the Commission encourage PJM to examine whether some component of balancing congestion costs can be more accurately attributed to certain market participants or transaction. Financial Group states that until such time that a methodology can be developed to accurately attribute real-time balancing congestion costs to specific classes of market participants, the best approach would be to allocate these costs as broadly as possible to all transmission users. J. Aron asserts while it may not be easy to develop an allocation of balancing congestion costs that accurately reflects cost causation, there is no basis to link these costs to FTR holders as FTR holders play no role in the real-time market.

23. Other commenters argue that real-time congestion costs should not be allocated to a particular class of customers, but propose no alternative method. NRG also did not specifically address which entities should be allocated real-time congestion costs in its comments, but did clearly state that these costs should not be allocated to FTR holders. NRG states that cost causation does not have to be perfect, but there must be some articulable basis for charging real-time congestion charges to FTR holders. In the absence of such an explanation, NRG argues that the Commission is obligated to grant

FirstEnergy Companies request that PJM find another method of recovering these real-time congestion costs.

24. AMP states that it does not take a position on whether the PJM Tariff and Operating Agreement must or should be modified to remove incremental real-time congestion from the calculation of FTRs. It further claims that it does not take a position with respect to whether incremental real-time congestion costs must or should be allocated to all transmission customers on a pro rata basis. However, AMP submits a limited response to the FirstEnergy Companies' Complaint for the narrow purpose of commenting on the suggestion made in the Stoddard Affidavit that the transmission loss surplus be used to balance a negative balancing market settlement surplus. AMP argues that this resolution that would be grossly unfair to market participants that are due payment form the transmission loss surplus account.

25. Joint Commenters argue that the FirstEnergy Companies' solution to allocating negative, real-time congestion to load serving entities (i.e., "transmission system customers") could exacerbate the current inequities borne by PJM market participants in the FTR under-funding without providing a long-lasting and just and reasonable solution to the under-funding problems. Joint Commenters further argue that FTR under-funding is the result of many different factors, including factors that affect the day-ahead congestion on which FTR funding is based. Joint Commenters contend that the sole focus on shifting costs in real-time markets among FTR holders is not an appropriate solution and would financially harm PJM transmission customers. Accordingly, Joint Commenters assert while it supports reform of the funding mechanisms of FTRs and the allocation of shortfalls, it believes that the FirstEnergy Companies have neither shown the under-funding problem is unjust and unreasonable nor offered a just and reasonable solution.

26. Joint Commenters contend that FirstEnergy Companies' claim that FTR under-funding is caused primarily by the inclusion of real-time congestion in the algorithm for funding FTRs is an oversimplification. Dominion complains that this view over-simplifies the situation because real-time congestion costs are not always negative and could be positive. Joint Commenters assert that the reason negative congestion costs occur in the real-time market is because the real-time transfer capabilities of congested transmission facilities are lower than their day-ahead expected level. Thus, Joint Commenters argue a more appropriate remedy than merely removing real-time congestion from FTR funding is for market participants to investigate the causes of real-time reductions in transfer capabilities. Joint Commenters also argue that this approach would more effectively resolve the FTR underfunding issue, in addition to the available proposals being discussed at the stakeholder process. Constellation states that the FirstEnergy Companies proposal does nothing to address the root cause of recent FTR underfunding, but instead urges a sudden market design change that simply shifts market costs and risks under the guise of a solution to a problematic trend.

27. Constellation further states that the FirstEnergy Companies propose an inequitable cost allocation for real time congestion values. Constellation contends that the FirstEnergy Companies seek to socialize the cost of real time congestion to all transmission customers with scant opportunity for a meaningful examination of the causes of real time congestion. Constellation contends that evidence exists that indicates that other allocation methods would respect cost-causation principles. Constellation argues that the FirstEnergy Companies, however, fails to carry the requisite burden of proof to sustain the Complaint. According to Constellation, the solution that the FirstEnergy Companies propose bolsters FTR funding, but fails to remedy the cause of funding erosion over the past 21 months. In addition, Constellation states FirstEnergy Companies fails to prove or even articulate credible evidence that exclusion of real time congestion as a FTR funding source will address the cause of the recent erosion in FTR funding levels. As a result, Constellation argues that the costs and risks would be shifted between market participants without remedying the root problem causing of the underfunding.

C. Support for a Root Cause Analysis

28. The majority of commenters express support for PJM conducting an expedited root cause analysis to study the underlying reasons for FTR underfunding and increased real-time congestion in general. Exelon states that identifying and correcting the underlying trends that are causing increased real time negative congestion is essential. Exelon therefore urges the Commission to require PJM to undertake a root cause analysis to determine and then to address the sources of the deviations between day-ahead and real-time congestion. In addition, Exelon requests that the Commission order PJM to perform a root cause analysis to determine all the factors resulting in underfunding of FTRs and to correct those causes so that ARRs are more accurately allocated and FTRs are more accurately funded.

29. PPL states that the Commission should require the development and implementation of further improvements in the FTR processes on an expedited basis. To this end, PPL contends that the Commission should require a compliance filing to be made by PJM within 90 days of the date of its order on the FirstEnergy Companies' Complaint and require such filing to contain a comprehensive proposal to resolve the FTR underfunding problem in an equitable manner as between and among FTR market participants. NRG similarly states that the Commission should direct PJM to undertake a comprehensive analysis of the causes of FTR underfunding. NRG contends that this analysis should be provided to stakeholders on an expedited basis and (i) identify all reasons that FTRs are being underfunded, and (ii) comprehensive solutions to fix the FTR market *prior* to the 2013 Annual FTR auction.

30. PJM ICC supports continued efforts to identify and rectify the root causes of the FTR under-funding issue, in a manner that achieves the objective of delivering efficiently

priced electricity to retail customers. EPSA and DP&L file limited comments, focusing on the need for PJM to undertake a study of the root causes of FTR underfunding.

31. Joint Commenters argue that there are multiple reasons for shortfalls in FTR underfunding, including overall changes in transmission capability, loop flows, load, generation and other factors that impact FTR funding over the course of a year. While Joint Commenters support a process to evaluate and fix the funding mechanisms of FTRs and the allocation of shortfalls, Joint Commenters argue that the FirstEnergy Companies have neither identified the underlying problem nor provided a just and reasonable solution. Joint Commenters further argue the FirstEnergy Companies' complaint is an effort to circumvent the stakeholder process, which is still in the process of driving for a total solution to the FTR under-funding issue. As a result, Joint Commenters state that they could not support the FirstEnergy Companies' request for fast track processing of the complaint.

32. The Market Monitor agrees with FirstEnergy Companies that FTR holders do not cause real-time congestion, and the Market Monitor states that they do not cause day-ahead congestion either. The Market Monitor further states that holding an FTR does not cause any energy market result in which it also states holding an FTR means holding a right to a share of congestion revenues. In addition, the Market Monitor agrees with PJM and FirstEnergy Companies that FTR holders are not the cause of FTR underfunding. The Market Monitor also agrees with FirstEnergy Companies original argument that FTR holders are not causing the revenue shortfall in the real-time market due to incremental congestion. The Market Monitor argues that PJM should be directed to conduct a root cause analysis of FTR underfunding which results in a detailed and quantified specification of the reasons for underfunding. The Market Monitor contends that it is inappropriate to attempt to resolve the issue of underfunding before the reasons for underfunding have been identified.

33. The Market Monitor states that the reasons for recent increased shortfalls in FTR funding, identified by PJM, do not support the proposed changes to the current definition of FTR revenues, which includes balancing congestion. The Market Monitor further states that over-selling FTRs creates balancing congestion, which reduces the funds available to pay FTR holders. The Market Monitor contends that it is appropriate that FTR holders are paid less when FTR revenues, including balancing congestion, are reduced. The Market Monitor states that this recognizes the reality that FTR auctions should be run well before the time that congestion is experienced and that reality does not always match the model used in the auction to define available FTRs.

34. In addition, the Market Monitor states that underfunding is a logical consequence of overselling FTRs, and when FTRs are oversold, a decline in their value can be expected. The Market Monitor states that a reduction in FTR revenue sufficiency is a correct market signal. The Market Monitor states that the level of FTRs sold reflects

PJM's judgment. The Market Monitor further states the logical conclusion is not that underfunding must be eliminated through a change in the funding mechanism, but that it is an expected consequence of the ongoing transmission upgrades on the system. In addition, the Market Monitor states that if full funding is the goal, fewer FTRs should be sold, reflecting the reduced capability of the transmission system.

35. The Market Monitor states that nothing in its pleading should be taken as a criticism of PJM's modeling efforts. The Market Monitor states that PJM has done an excellent job in balancing the sometimes conflicting objectives in modeling and selling FTRs. The Market Monitor further states that this does not mean that the assumptions made in the modeling and their basis in market developments should not be carefully reviewed in order to understanding their role in underfunding. The Market Monitor explains that FTR revenue shortfalls are not evidence that there is any deficiency with PJM's approach. The Market Monitor states that it would agree to participate in an analysis of underfunding with PJM, as proposed in PJM's answer.

36. However, some commenters did not state a root cause analysis was necessary, pointing to real-time congestion as the clear cause of FTR underfunding. PSEG states that because the Net Negative Congestion occurring in the real-time markets is being subtracted from day-ahead congestion revenues, FTR holders are not being fully compensated and the value of the FTRs they hold is being significantly eroded. Edison Mission similarly states that the root cause of FTR underfunding is the net negative congestion experienced in the real-time energy market (real-time congestion shortfall).

D. Stakeholder Process

37. DB Energy and DC Energy argue that although the PJM stakeholders have recognized that the underfunding is a problem, the PJM stakeholders have failed to adopt a solution to solve the underfunding problem and the unduly discriminatory allocation of real-time congestion costs. For these reasons, and due to the detrimental impact of the unduly discriminatory real-time congestion cost allocation, DB Energy and DC Energy argue that the Commission should not delay in granting FirstEnergy Companies' complaint. DB Energy contended that any significant delay that results in a Commission decision after PJM's 2012/2013 ARR/FTR annual process would effectively delay the solution until 2013/2014.

38. Other commenters, including PJM ICC and RESA, contend that the PJM stakeholder process, which is currently examining this issue, is the appropriate venue for this examination to continue.

E. PJM's Reply

39. PJM states that parties are confusing and/or combining two separate issues: (1) the settlement aspect of the FTR rules, i.e., the funding calculus for FTRs, which

presently includes real-time congestion and which FirstEnergy Companies seek to change; and (2) the causes of FTR underfunding, which admittedly has increased over recent years. PJM states that it has established a FTR task force to address FTR revenue underfunding, and has conducted extensive analysis and identified several factors contributing to FTR revenue inadequacy.[19] PJM explains that several factors lead to the 2010/2011 Planning Period FTR revenue inadequacy, including but not limited to, zero cost FTRs, external flow gates/constraints, loop flows, forced outages, and unforeseen de-ratings and construction and maintenance outages. PJM further explains that the cause of recent revenue inadequacy is a downward trend in balancing congestion,[20] which is predominately caused by (1) an increase in congestion along the PJM borders; and (2) increased amounts of unexpected transmission outages over the past few years.[21]

40. PJM asserts that balancing congestion is inherently unavoidable and its potential to contribute to FTR underfunding will likewise exist, to the extent it remains a factor included in the calculating of FTR revenues. For this reason, PJM agrees with FirstEnergy Companies that the costs of balancing congestion are more equitably reassigned by removing the cost of real-time congestion from FTR holders, whose FTR values are determined solely based on congestion price differences in the day-ahead energy market, and assigning such costs to market participants in the real-time energy market. PJM asserts that examining those pleadings that address the actual allocation question posed by FirstEnergy Companies' complaint reveals that the majority of the parties agree with the proposed change, even if only as a viable short-term approach to FTR underfunding.

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[19] *See* PJM Answer at 4-5, 14. *See also* Market Monitor Comments at 2 ("PJM has done significant work and made useful suggestions for resolving the FTR funding issues …").

[20] PJM Answer at 5 and n. 11 defines balancing congestion as congestion that occurs in PJM's Real-time (or "balancing") Energy Market, which is not forecast and therefore considered in PJM's Day-ahead Energy Market. System conditions are never exactly the same in real-time as captured in the Day-ahead Energy Market. One primary reason is that the Day-ahead Energy Market is based solely on the bids and offers of Market Participants; PJM does not incorporate its own load forecast into the Day-ahead Energy Market model. Since conditions are always different in real-time than they were in the Day-ahead Energy Market model, real-time congestion differs from Day-ahead congestion, and that difference can be either positive or negative.

[21] PJM Answer at 14-18.

41. PJM further states that resolving questions associated with how it models its system for purposes of allocating ARRs will not remove the potential for balancing congestion, and therefore will not answer the question of where the costs of balancing congestion should be imposed. PJM respectfully requests that the Commission address only this question and find that the costs of congestion in the real-time market should not factor into the funding of FTRs, which by design are priced based on day-ahead market outcomes.

42. In its reply comments, PJM commits to developing for stakeholder review and discussion a comprehensive report detailing the circumstances (e.g., an increase in congestion along the PJM borders; and increased amounts of unexpected transmission outages over the past few years) resulting in FTR underfunding. PJM states that in explaining the causes of recent increased underfunding, the report will explore options to address these causes. In light of this explanation, PJM states that the report will also examine modeling assumptions and inputs and will consider the impact of Operating Agreement provisions guaranteeing full ARR allocations to firm transmission customers on the question of underfunding. PJM states that the report will offer recommendations for changes, if any, to existing rules and/or processes and practices undertaken by PJM in allocating ARRs. PJM states that the report will be prepared by PJM's Markets Division with input sought from PJM's Market Monitor. PJM further commits to publish this report to the PJM stakeholders by May 1, 2012.

VI. Discussion

A. Procedural Matters

43. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[22] the timely, unopposed motions to intervene serve to make the parties that filed them parties to this proceeding. Given the early stage of this proceeding and the absence of undue prejudice or delay, we grant the unopposed out-of-time motions to intervene submitted by the Indiana Commission and the NJBPU.

44. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority.[23] We accept the answers FirstEnergy Companies, PPL, Retail Energy Supply Association (RESA), Market Monitor, J. Aron, and PJM because they have aided us in our decision-making process.

[22] 18 C.F.R. § 385.214 (2011).

[23] 18 C.F.R. § 385.213(a)(2) (2011).

B. Commission Determination

45. We will exercise our discretion and deny the complaint, finding that it is not appropriate to initiate action at this time. As the FirstEnergy Companies and commenters supporting the complaint note, the FTR underfunding is the result of unexpected changes in transmission outage schedules, real-time changes in transmission system capability, unexpected system loop flows, and real-time modifications in neighboring balancing authority areas. Most commenters also recognize that at this time, the root causes of these changes remain unknown. The Market Monitor similarly does not recommend proceeding with changes to the PJM tariff in the absence of determination of root cause. PJM too recognizes that complex factors affect the underfunding of FTRs and has committed to developing for stakeholder review and discussion a comprehensive report detailing the circumstances resulting in FTR underfunding and will explore options to address the causes. This report will investigate the causes of the FTR underfunding and indentify potential improvements, including modeling, that could be made to minimize the revenue inadequacy. Finally, the report will be prepared by PJM's Markets Division with input from PJM's Market Monitor and will be published to stakeholders by May 1, 2012. The Commission suggests that, as part of the report, PJM provide an analysis of the causes of the real-time congestion costs, the remedial actions, i.e., transmission infrastructure, that can alleviate the problems and the time-frame for addressing such remediation, and whether real-time congestion costs can be attributed to certain market participants or transactions.

46. Without a record determining the root cause of the transmission congestion, we find that the present record is insufficient for us to resolve this issue. Given that a sufficient record does not exist for the Commission to resolve this issue, and PJM has committed to providing additional evidence as to such causes by May 1, 2012, we find it would not be an efficient use of Commission or industry resources for the Commission to circumvent PJM's processes by establishing our own proceedings to evaluate the complaint at this time.

47. We therefore will dismiss the complaint without prejudice to FirstEnergy Companies or any other affected entity filing a complaint based on PJM's report if the stakeholder proceedings prove unavailing. To the extent that PJM is unable to publish a report to stakeholders by May 1, 2012, we direct PJM to file a status update, on an informational basis,[24] with the Commission to identify when it expects the report to be published.

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[24] Upon receipt, the Commission will not act on this informational filing.

<u>The Commission orders</u>:

FirstEnergy Companies' complaint is hereby dismissed without prejudice, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.