151 FERC ¶ 61,205
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

FirstEnergy Solutions Corp.
Allegheny Energy Supply Company, LLC

v.

PJM Interconnection, L.L.C.

Docket No. EL13-47-001

ORDER DENYING REHEARING

(Issued June 8, 2015)

1. On June 5, 2013, the Commission dismissed a complaint by FirstEnergy Solutions Corp. and Allegheny Energy Supply Company, LLC (collectively, FirstEnergy) seeking to modify provisions of PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (Tariff) and Operating Agreement related to the funding of Financial Transmission Rights (FTRs) (Complaint).[1] Requests for rehearing were filed by FirstEnergy, J. Aron & Company (J. Aron), DC Energy LLC and Vitol Inc. (collectively, Indicated Parties), and the PSEG Companies.[2] This order denies the requests for rehearing.

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[1] *FirstEnergy Solutions Corp. and Allegheny Energy Supply Company, LLC v. PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,209 (2013) (June 2013 Order). FirstEnergy had previously filed a complaint on FTR underfunding on December 28, 2011. The Commission denied that complaint, without prejudice, finding that it was not appropriate to initiate action at that time, given the lack of record as to the causes of underfunding and an ongoing stakeholder process. *See FirstEnergy Solutions Corp. and Allegheny Energy Supply Co. v. PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,158 (2012), *order on reh'g*, 140 FERC ¶ 61,051 (2012).

[2] The PSEG Companies consist of Public Service Electric and Gas Company (PSE&G), PSEG Power LLC (PSEG Power) and PSEG Energy Resources and Trade LLC (PSEG ER&T).

I. **Background**

2. PJM introduced its competitive auction-based market for fixed transmission rights in 1999 as a financial replacement for physical, firm transmission service to allow market participants to protect against incurring transmission congestion costs.[3] In 2003, PJM created Auction Revenue Rights (ARR) in conjunction with modifying its FTR framework to include an annual FTR auction.[4] PJM awards FTRs in the auction process, with the quantity that can be auctioned limited by the actual physical capabilities of the transmission system.[5] The value of an FTR is based upon the difference between the day-ahead congestion price at specific source (sending end/generator) and sink (receiving end/load) points on the transmission system. ARRs are financial entitlements allocated to transmission customers and are the mechanism by which the proceeds from the annual FTR auction are allocated. ARRs, which may be converted to FTRs at the option of the participant, are awarded through a multi-stage allocation process based on participant request, and available transmission capability.

3. The PJM Tariff includes both day-ahead and real-time energy market congestion charges in the settlement of transmission congestion charges to FTR holders. Balancing congestion exists because system conditions in the real-time market are not the same as captured in the day-ahead market. If less transmission system capability is available in the real-time energy market than in the day-ahead energy market and there are constraints, then negative balancing (real-time) congestion occurs, reducing the congestion charges paid to FTR holders. If insufficient congestion charges are collected from the day-ahead and real-time energy markets to satisfy the FTR target allocations, then FTR credits are discounted on a *pro rata* basis, first from excess congestion charges from current and subsequent months, and to the extent that uncovered year-end FTR target allocations remain, an "uplift" charge is assessed to all FTR holders.

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

[4] *See PJM Interconnection, L.L.C.*, 102 FERC ¶ 61,276, at P 18 (2003). FTRs were renamed as "Financial Transmission Rights" to reflect more accurately the nature of the product. Auction Revenue Rights are defined in Section 1.3.1A of the PJM Operating Agreement as the right to receive the revenue from the Financial Transmission Right auction.

[5] PJM conducts a Simultaneous Feasibility Test (SFT) to insure that the transmission system can support the subscribed set of FTRs and ARRs during normal system conditions. The SFT models planned system conditions; however, there can be differences between the expected system capability at the time of the auction, and the actual system capability at the time when congestion charges are incurred.

II. FirstEnergy's Complaint

4. FirstEnergy argued that the PJM Tariff requires FTR holders to bear the risks of FTR underfunding associated with increased real-time congestion costs.[6] FirstEnergy contended that FTRs were intended to provide a hedge against day-ahead congestion and that FTR revenue inadequacies demonstrate that FTRs are not funded to the levels that are necessary to provide the intended hedge against day-ahead congestion. FirstEnergy explained that FTR holders must pay additional costs, to make up for increased congestion in the real-time market. As a result, FirstEnergy argued that the PJM Tariff provisions have become unjust, unreasonable and unduly discriminatory and preferential.

5. FirstEnergy requested removal of real-time congestion costs from the calculation of transmission congestion charges. FirstEnergy explained that removing incremental real-time congestion costs from the calculation of transmission congestion charges will give FTR holders an opportunity to hedge congestion, 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. FirstEnergy contended that the just and reasonable replacement rate should be to allocate real-time congestion charges to all transmission customers on a *pro rata* basis.

III. June 2013 Order

6. In the June 2013 Order the Commission dismissed FirstEnergy's complaint. The Commission found that FirstEnergy had not demonstrated that the existing Tariff is unjust and unreasonable.

7. The Commission recognized that full funding of FTRs is a goal, but found the PJM Tariff does not ensure full funding. The Commission concluded, however, that neither FirstEnergy nor any of the commenters had shown the existing allocation unjust and unreasonable. First Energy did not identify the parties causing the underfunding, asserting only that FTR holders do not necessarily cause real-time congestion. The PJM Market Monitor argued, however, that allocating real-time congestion costs to FTR holders is a rational allocation. Since FTRs are based on PJM's modeling of the transmission system, to the extent that PJM's modeling is inaccurate, the Commission agreed with the Market Monitor that allocating the results of that inaccuracy to the holders is not unreasonable in light of the lack of evidence of causation. In addition, the Commission found FirstEnergy had not shown that allocating these costs to other parties not responsible for causing the underfunding will benefit the market or will create any better incentive to address the underlying causes of FTR underfunding.

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[6] With the Complaint, FirstEnergy provided an affidavit of Robert B. Stoddard (Stoddard Affidavit).

IV. Request for Rehearing

8. As previously noted, requests for rehearing were filed by FirstEnergy, J. Aron, Indicated Parties, and the PSEG Companies.

9. FirstEnergy states that the June 2013 Order (i) violates the Commission's principles of cost causation, (ii) is inconsistent with the Commission precedent and prior determinations regarding the purpose and functions of FTRs, (iii) errs by not finding that the current provisions of the PJM Tariff are unjust and unreasonable and not establishing a just and reasonable alternative, (iv) ignores evidence supporting the complaint, and (v) mischaracterizes the relief requested, and arguments of the parties.

10. J. Aron contends that by allowing the persistent underfunding of FTRs, the June 2013 Order fails to address substantive arguments and evidence, and represents an unexplained departure from prior Commission precedent. J. Aron also contends that the June 2013 Order permits undue discrimination by allowing ARR holders to receive firm point-to-point firm transmission service while eliminating meaningful firm point-to-point transmission service for FTR holders. J. Aron further repeats arguments that the June 2013 Order is inconsistent with cost causation principles.

11. Indicated Parties contend that it was an error to allow the current methodology for real-time congestion cost allocation to continue without change. Indicated Parties argue that, because the current allocation does not provide transmission customers and load serving entities with an ability to properly hedge congestion costs, the Tariff is unjust and unreasonable. Indicated Parties state that FTR holders do not cause real-time congestion and contend that it was an error not to require PJM to remove real-time congestion costs from the day-ahead FTR funding methodology.

12. PSEG Companies contend that the June 2013 Order ignored evidence and was arbitrary and capricious in finding that FirstEnergy had not demonstrated that the current rate is unjust and unreasonable. PSEG Companies argue that the current underfunding of FTRs is significantly harming the efficient operation of the market. PSEG Companies maintain that the Commission's original approval of the FTR mechanism was based on FTRs providing an effective method of protecting against congestion costs. PSEG Companies argue that FTRs can no longer be said to be effective for their intended use. The PSEG Companies further state that the Commission erred by not setting this matter for hearing.

13. Answers to the request for rehearing were submitted by the Maryland Public Service Commission and the PJM Independent Market Monitor.[7] Responsive pleading were submitted by the New Jersey Board of Public Utilities and PSEG.

V. Request to Supplement Record

14. On December 17, 2013, J. Aron submitted a motion to provide limited and specific factual information as further evidence of changes in market conditions and operating practices that have contributed to making the current market rules unjust and unreasonable. J. Aron explains that on September 10 and 11, 2013, PJM experienced high load levels and implemented demand response resources to maintain reliability and enforce the American Transmission Systems Inc. (ATSI) interface constraint.[8] J. Aron contends that the ATSI interface was not modeled in the day-ahead market, and these events led to significant FTR underfunding during this period.

15. FirstEnergy submitted an answer supporting J. Aron's motion, contending that the events of September 10 and 11, 2013 demonstrate the difficulty of valuing FTRs. The PSEG Companies submitted an answer in support of J. Aron's pleading, contending that this information further supports that PJM's Tariff and Operating Agreement have been rendered unjust and unreasonable due to changes in PJM's market conditions since the creation of FTRs. The Market Monitor submitted an answer in opposition to the pleading submitted by J. Aron, contending that underfunding for the events of September 10 and 11, 2013 is not unusual, and that while FTR funding is calculated hourly, it is settled on a monthly basis and subject to an annual true up. The Market Monitor states that the issue raised by the September 10 and 11, 2013 events illustrate that interfaces need to be identified for consideration in the FTR auctions, and appropriately included in the day-ahead as well as the real-time markets.

16. On January 22, 2014, the Indicated Parties submitted a motion to lodge a report prepared by PJM regarding the operational events and market impacts caused by unusually high temperatures in PJM's territory on September 10 and September 11, 2013 (PJM Report).[9] Indicated Parties contends that the PJM Report will assist the Commission in its decision making process.

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[7] By Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (Market Monitor).

[8] The ATSI interface was created in July 2013.

[9] PJM Interconnection, LLC, Technical Analysis of Operational Events and Market Impacts During the September 2013 Heat Wave (Dec 23, 2013), available at: http://www.pjm.com/~/media/documents/reports/20131223-technical-analysis-of-
(continued ...)

17. On December 16, 2014, J. Aron submitted an additional motion to provide supplemental factual information. Specifically, J. Aron notes underfunding during extreme weather events, FTR underfunding caused by actions taken by PJM to address other uplifts, and most importantly, actions taken by PJM in implementing the SFT that have resulted in fully funded FTRs. The Market Monitor submitted an answer in opposition, and indicating that additional stakeholder proposals are under discussion.

18. On January 27, 2015, Indicated Parties and Inertia Power I, LLC (Inertia Power) (together, January 27, 2015 Filing Parties) filed a motion for leave to submit and supplemental pleading, noting that while a current surplus of FTR funding levels exists, a recurrence of any of extreme weather events or the activation of closed loop interfaces could again cause significant FTR underfunding. The January 27, 2015 Filing Parties further contend that FTRs should be defined as a hedge against day-ahead congestion. On February 11, 2015, the Market Monitor submitted an answer in opposition, contending that the January 27, 2015 Filing merely reiterates the same arguments that are pending with the Commission.

19. On April 29, 2015,[10] J Aron filed a motion to submit an additional supplemental factual pleading of noteworthy events since filing an initial supplemental pleading. Specifically, J. Aron notes a continuation of FTR funding improvements, the persistence of negative balancing congestion, and a net surplus in congestion revenues for the current planning year. On May 11, 2015, the Market Monitor submitted an answer in opposition, again contending that the April 29, 2015 motion attempts to reargue the same arguments that are pending with the Commission. On June 2, 2015, PJM filed a response noting the need for continued improvement in the funding and allocation process for ARRs and FTRs, and welcoming additional Commission guidance.

VI. **Discussion**

A. **Procedural Issues**

20. On January 20, 2015, Inertia Power filed a late-filed motion to intervene contending that it is PJM participant formed after this proceeding was established. When ruling on a late-filed motion to intervene, the Commission applies the criteria set forth in Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), and considers, among other things, whether the movant had good cause for failing to file the motion within the time prescribed, whether any disruption to the proceeding might result from permitting the intervention, and whether any prejudice

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[10] With an errata correction filed on May 4, 2015.

to or additional burdens upon the existing parties might result from permitting the intervention. In addition, it is generally the Commission's policy to deny motions to intervene out of time that are, as here, filed following issuance of a dispositional order.[11] We find that Inertia Power failed to make a showing of good cause to justify late intervention, and accordingly we deny Inertia Power's late-filed motion to intervene.

21. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2014) prohibits an answer to a request for rehearing. Accordingly, we reject the answers to the requests for rehearing.

22. We deny the requests to supplement the record. J. Aron and the January 27, 2015 Filing Parties seek to supplement the record on rehearing. It is well settled that the Commission does not accept new evidence at the rehearing stage of the proceeding.[12] Moreover, as we explain below, although the new information regarding underfunding related to extreme weather events is consistent with the initial arguments, that including real-time congestion costs in the calculation of congestion charges may result in FTRs not being fully funded, the fact that FTRs are not fully funded does not make the current Tariff unjust and unreasonable.

B. Requests for Rehearing

23. We deny the requests for rehearing. The rehearing requests state that the evidence supports that including real-time congestion costs in the calculation of congestion charges results in an underfunding of FTRs. However, as pointed out in the June 2013 Order, neither PJM's Tariff nor Commission policy guarantees that FTRs will be fully funded.[13] While the evidence indicates that FTRs may not always be fully funded,[14] the underfunding of FTRs does not demonstrate that the current allocation method for the underfunding is unjust and unreasonable. Further, while fully funding FTRs is a goal,

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[11] *Columbia Gas Transmission*, 111 FERC ¶61,431 (2005).

[12] *See Southern California Edison Company*, 137 FERC ¶ 61,016 (2011) (citing *Ocean State Power II*, 69 FERC ¶ 61,146 (1994)).

[13] *PJM Interconnection, L.L.C.,* 143 FERC ¶ 61,209 at P 41 (citing *PPL EnergyPlus, L.L.C. v. PJM Interconnection, L.L.C.,* 134 FERC ¶ 61,263, at P 46 (2011) (the Tariff contemplates the possibility of underfunding FTRs in a planning period)). *See also* Tariff, Attachment K-Appendix § 5.2.5(c).

[14] Even if the supplemental evidence had been admitted, it does no more than reinforce the fact acknowledged by all, that FTRs are often underfunded. Accordingly, we see no factual issue presented by the Complaint requiring hearing procedures.

that FTRs may not always be fully funded does not make the Tariff unduly discriminatory.

24. We continue to find that allocation of real time balancing congestion to current FTRs has a reasonable basis, because FTR holders are in the best position to reflect the associated underfunding in the value of FTRs.[15] FirstEnergy contends that whether FTR holders have an interest in the value of FTRs is not relevant to whether FTR holders should be the ones responsible for real time balancing congestion.[16] However, we agree with the Market Monitor that FTR holders are the parties most closely connected with the underfunding and are better situated to reflect the underfunding in the valuation of FTRs.[17] Allocation to other parties would not create any incentive to reduce real time balancing congestion and would provide even less of an ability to provide any reflection of the value of the underfunding in any instrument. Complainants' own expert witness recognized this fact, stating that the most obvious and direct consequence of the declining FTR revenue adequacy is the erosion of the value of holding FTRs as a congestion management tool for load-serving entities,[18] and that underfunding FTRs will result in lower auction prices for FTRs.[19] The Market Monitor, noting that real time balancing congestion occurs when real-time market conditions are inconsistent with modeling in the day-ahead market, further stated that the allocation of real time balancing congestion to FTR holders is a practical way to capture the impacts of modeling issues and ensure that any differences will affect the funding for FTRs. The Market Monitor concluded that FTR purchasers are in the best position to evaluate the revenues that an FTR will generate, and they can therefore factor potential underfunding into their determinations of value.[20] We found the Market Monitor's arguments most compelling, and no arguments presented on rehearing persuade us otherwise.

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[15] For example, a general uplift to all PJM stakeholders or customers would not provide an incentive for any party to reduce the underfunding and would provide even less ability for parties to value FTRs based on the expected underfunding.

[16] FirstEnergy rehearing Request at 6. J. Aron and Indicated Parties raise similar arguments.

[17] Market Monitor Initial Comments at 10-11. *See* Maryland Commission Initial Comments at 10 (citing 2011 State of the Market Report, Vol. I at 64). *See also* Maryland Commission Initial Comments, Affidavit of Craig R. Roach, at 4.

[18] Complaint, Stoddard Affidavit at 19.

[19] Complaint, Stoddard Affidavit at 4.

[20] Market Monitor Initial Comments at 10, Market Monitor Answer at 4.

25. The rehearing requests continue to characterize the underfunding of FTRs as a cost causation issue, repeating arguments that FTR holders do not cause real time balancing congestion and that therefore the associated FTR underfunding is an uplift payment that should be assigned to load. However, we continue to view the associated underfunding of FTRs as affecting the value of FTRs,[21] and as previously discussed, FTR holders are in the best position to reflect this valuation. Moreover, as the June 2013 Order further recognized, neither FirstEnergy, nor any of the commenters,[22] has identified the parties causing real time balancing congestion or has provided evidence demonstrating why all transmission customers, who already pay for access to the transmission system, should pay for real time balancing congestion.

26. We continue to recognize that full funding of FTRs is a goal that PJM should strive to meet and the costs associated with real time balancing congestion are real costs that PJM should work to reduce. The PJM FTR Report identified (1) an increase in congestion along the PJM borders; and (2) increased amounts of unexpected transmission outages and de-ratings over the past few years as contributing to the FTR underfunding,[23] and the FTR Task Force has identified proposals to address underfunding issues.[24] The Market Monitor, in addition to the proposals identified by the FTR Task Force, has identified several proposals that he claims would eliminate a substantial portion of the underfunding issue.[25] While we acknowledge that PJM and its stakeholders have made some progress in certain areas,[26] we appreciate that PJM may identify broader issues

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[21] For example, the Maryland Commission contends that the Complaint addresses market costs reflecting the difference between day-ahead modeling effort and the results of actual system operations and not costs attributable to capital investment, fuel or other services. Maryland Commission Initial Comments at 6. Maryland Commission Answer at 2.

[22] PSEG Companies agree that FirstEnergy has not shown that its proposal for broad allocation to load addresses the underlying causes of the FTR underfunding. PSEG Companies Rehearing Request at 7.

[23] *See* PJM FTR Revenue Stakeholder Report (April 30, 2012). http://www.pjm.com/~/media/documents/reports/20120430-ftr-revenue-stakeholder-report.ashx.

[24] *See* PJM FTR Revenue Stakeholder Report, Appendix A.

[25] *See* Market Monitor Initial Comments at 10-17.

[26] Indeed, the Commission has approved several PJM Tariff revisions that improve the allocation of ARRs and reduce the risk of FTR revenue inadequacy. *See FirstEnergy (continued ...)*

relating to FTR underfunding and real time balancing congestion that it cannot resolve unilaterally and that may need to be the subject of separate and/or additional proceedings.[27]

The Commission orders:

The requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Solutions Corp. and Allegheny Energy Supply Company, LLC v. PJM Interconnection, L.L.C., 140 FERC ¶ 61,019 (2012), *PJM Interconnection, L.L.C.*, ER13-1198-000, Delegated Letter Order (April 12, 2013), *PJM Interconnection, L.L.C.*, ER13-2142-000, Delegated Letter Order (September 27, 2013).

[27] *See Order on Initiatives to Address Seams Issues*, 145 FERC ¶ 61,258 (2013).