

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 Nos. ER06-509-000
ER06-509-001

ORDER REJECTING FILING

(Issued May 24, 2006)

1. On January 18, 2006, PJM Interconnection, L.L.C. (PJM) filed an unexecuted Interconnection Service Agreement (ISA) among PJM, Boone Heritage Wind Farm, LLC (Boone) and Commonwealth Edison (ComEd). This agreement concerns the interconnection of Boone's wind generating plant to ComEd's local distribution system. The Commission finds that it lacks jurisdiction over the interconnection proposed in this type of ISA and, therefore, rejects the ISA.

Background

2. The ISA is intended to facilitate the interconnection of the Boone wind generating plant, which is to be located in Caledonia, Illinois, to ComEd's local distribution facilities. This ISA also provides that Boone is to pay an annual Wholesale Distribution Charge (WDC) for its use of the ComEd local distribution system to deliver power from the wind plant into the PJM transmission system.¹

3. PJM states that the ISA does not completely conform to the pro forma ISA set forth in Attachment O to the PJM OATT because it contains non-conforming language to accommodate the interconnections. The non-conforming language in Schedule F

¹ Section 52.4 of PJM's Open Access Transmission Tariff (OATT) provides: "To the extent that a Generation Interconnection Customer uses distribution facilities for the purpose of delivering energy to the Transmission System, Interconnection Service under this Tariff shall include the construction and/or use of such distribution facilities. In such cases, to such extent as Transmission Provider determines to be reasonably necessary to accommodate such circumstances, the Interconnection Service Agreement may include non-standard terms and conditions mutually agreed upon by all Interconnection Parties as needed to conform with Applicable Laws and Regulations and Applicable Standards relating to such distribution facilities."

Statement of Charges of the Boone ISA (i) sets forth the wholesale distribution charges, (ii) indicates that Boone's generating facility will be interconnected to ComEd's distribution system, and (iii) requires Boone to provide an additional 1.11% of power into ComEd's distribution facilities to compensate for losses.

4. PJM also states that because Boone disputes the WDC included in this ISA,² it has been filed in unexecuted form. PJM states that it does not take a position with respect to this charge.³

5. PJM seeks waiver of the 60-day notice requirement required by section 205 of the FPA and section 35.3 of the Commission's regulations to permit the ISA to become effective as of January 13, 2006. It asserts that waiver is appropriate because the agreement is being filed within thirty days of its requested effective date.

Notice of Filing and Responsive Pleadings

6. Notice of the filing was published in the *Federal Register*, with comments, interventions, and protests due on or before April 17, 2006. Exelon Corporation⁴ (Exelon) filed a timely motion to intervene and comment. Exelon also filed a motion to lodge the Commission order.⁵

7. On February 8, 2006, Exelon filed a motion to intervene and comments in support of ComEd recovering a WDC. Exelon argues that ComEd is entitled to charge transmission customers for use of its local distribution system, pursuant to Order No. 888-A.⁶

² Original Service Agreement No. 1413.

³ Also, no party to this proceeding has challenged the jurisdiction of the Commission in this filing.

⁴ Exelon is a registered holding company that owns ComEd of Chicago, Illinois and PECO Energy Company (PECO) of Philadelphia, Pennsylvania.

⁵ Exelon's Motion seeks to include in this docket the order in Docket Nos. ER06-407 and ER06-408, *PJM Interconnection. L.L.C.*, 114 FERC ¶ 61,191 (2006) (*PJM Interconnection*), *reh'g pending*.

⁶ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997); *order on reh'g*,

8. On March 13, 2006, the Commission issued a deficiency letter requesting additional information in order to assist staff in its analysis. On March 28, 2006, PJM, in consultation with ComEd, filed a response to the Commission's deficiency letter. PJM states that the Boone interconnection is similar to those addressed in Docket Nos. ER06-407-000 and ER06-408-000⁷ in relevant part. That is, in all three of these dockets, the ComEd distribution facilities to which the generators are interconnecting are not operated by PJM and are not reflected in the PJM OATT. Also, PJM explains that the distribution facilities to which Boone will interconnect are currently used exclusively to provide retail service to ComEd's retail customers under state jurisdiction. Further, PJM indicates that unlike the facilities in Docket Nos. ER06-407-000 and ER06-408-000, the Boone facilities do not involve distribution lines interconnected with a Qualifying Facility.

Discussion

Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), those filing timely, unopposed motions to intervene filed prior to the date of this order are made parties to these proceedings. The timely, unopposed motion to intervene of Exelon makes it a party to this proceeding.

Commission Determination

10. The Commission rejects this filing because the Commission lacks jurisdiction over the interconnection proposed in this ISA. In Docket Nos. ER06-407-000 and ER06-408-000, the Commission rejected two filings of ISAs for generators connecting to ComEd's local distribution system that are similar in relevant part to the Boone interconnection. In this prior order, the Commission stated:

In Order No. 2003, the Commission found that it does not have jurisdiction over an interconnection where the interconnection customer seeks to interconnect to a "local distribution" facility that is unavailable for jurisdictional transmission service under a Commission-approved OATT at the time an interconnection request is made. Thus, under Order No. 2003, in order for the Commission to assert jurisdiction over interconnections to local distribution facilities, there must be a preexisting interconnection and a wholesale transaction over these local

Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁷ *PJM Interconnection*, 114 FERC ¶ 61,191 (2006)

distribution facilities prior to the new interconnection request being made. In the absence of these requirements being met, and as discussed below, we find that the Commission lacks jurisdiction under Order No. 2003 over interconnections to these local distribution facilities.⁸

11. As described by PJM in its response to the deficiency letter, the distribution facilities to which Boone will interconnect are currently used exclusively for retail service. Thus, there was no wholesale transaction over these local distribution facilities prior to the new Boone interconnection request being made. Consequently, as we concluded in *PJM Interconnection*, pursuant to Order No. 2003, the Commission lacks jurisdiction over interconnection to the local distribution facilities at issue in this filing.

12. Since we are not accepting the ISA, we will not address the issue concerning whether a wholesale distribution charge is appropriate here. This ruling is without prejudice to ComEd filing for a wholesale distribution charge as part of a separate delivery service, rather than generator interconnection service, as proposed by the company, if ComEd's distribution system is used subsequently to provide wholesale delivery service.⁹

The Commission orders:

The filing is hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁸ *Id.*, footnotes omitted.

⁹ *Cf. American Electric Power Serv. Corp.*, 110 FERC 61,187 at P 19, 32-33 (2005) (AEP) (AEP directed to file service agreement under PJM's OATT to address, among other things, rates, terms, and conditions associated with delivery service over non-PJM facilities).