

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. ER06-611-000  
ER06-611-001  
ER06-691-000  
ER06-691-001

ORDER REJECTING FILINGS

(Issued June 21, 2006)

1. On February 6, 2006 and March 1, 2006, PJM Interconnection, L.L.C. (PJM) filed, respectively, an executed Interconnection Service Agreement (ISA)<sup>1</sup> and a related, executed Construction Service Agreement (CSA).<sup>2</sup> Each agreement is among PJM, Southeastern Chester County Refuse Authority (SECCRA) and PECO Energy Company (PECO). These agreements concern the interconnection of SECCRA's two 0.87 MW landfill gas generators to PECO's local distribution system. The Commission finds that it lacks jurisdiction over the interconnection proposed in these types of agreements and, therefore, rejects them.

**Background**

2. The ISA is intended to facilitate the interconnection of the SECCRA generating plant, which is to be located in West Grove, Pennsylvania, to PECO's local distribution facilities. This ISA also provides that SECCRA is to pay an annual Distribution

---

<sup>1</sup> Original Service Agreement No. 1434.

<sup>2</sup> Original Service Agreement No. 1444.

Facilities Charge (DFC) for its use of the PECO's local distribution system to deliver power from the generating plant into the PJM transmission system.<sup>3</sup>

3. PJM states that it submitted the ISA because it contains non-conforming changes to the current *pro forma* ISA set forth in Attachment O to PJM's tariff. PJM states that the non-conforming changes include: (1) new Appendices 1 and 2 which reflect the definitions and standard terms and conditions set forth in Subpart E of Part IV of the PJM Tariff; and (2) new language in Schedule F which sets forth the DFC and indicates that SECCRA's generating facility will be interconnected to PECO's distribution system.

4. The CSA facilitates the construction of facilities necessary to accommodate the SECCRA interconnection to PECO's distribution system. PJM states that the CSA conforms to the *pro forma* CSA set forth in Attachment P to PJM's tariff except that it (1) includes the new Appendices 1 and 2 described above, (2) excludes revisions to the *pro forma* CSA accepted by the Commission and effective on January 26, 2006, in Docket Nos. ER06-28-000 and ER06-28-001, and (3) excludes the new *pro forma* CSA section 15 and schedule entitled "Interconnection Requirements for a Wind Generating Facility," which was effective January 18, 2006.<sup>4</sup>

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 and CSA to become effective as of January 6, 2006 and January 30, 2006, respectively. It asserts that waiver is appropriate because the agreements are being filed within thirty days of the requested effective dates.

### **Notice of Filing and Responsive Pleadings**

6. Notices of the filings (as supplemented on April 24, 2006) were published in the *Federal Register*, with comments, interventions, and protests due on or before May 15,

---

<sup>3</sup> 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."

<sup>4</sup> PJM explains that the proposed CSA was executed on November 11, 2005, prior to these changes in provisions to the *pro forma* CSA.

2006. On March 14, 2006 and March 15, 2006, Exelon Corporation<sup>5</sup> (Exelon) filed timely motions to reject the ISA and the CSA filings, respectively, for want of jurisdiction.

7. Exelon pleads that the Commission should reject the ISA and CSA for the reasons set forth in the Commission's order in Docket Nos. ER06-407-000 and ER06-408-000.<sup>6</sup> Exelon asserts that the only differences between the facts of the ISA and CSA cases and those at issue in *PJM* are that the SECCRA facility has a capacity of only 1.74 MW, and thus is a small generator facility, and that the CSA is an agreement to construct facilities rather than an ISA. Exelon argues that the Commission's Small Generator Interconnection Order No. 2006 (Order No. 2006),<sup>7</sup> which relies upon the same jurisdictional finding as the Commission's Large Generator Interconnection Order No. 2003 (Order No. 2003),<sup>8</sup> is the relevant order for determining the Commission's jurisdiction over the instant ISA and CSA. Exelon also argues that if the interconnection itself is not jurisdictional, then it follows that the CSA also cannot be jurisdictional.

8. On March 31, 2006, the Commission issued a deficiency letter requesting additional information in order to assist staff in its analysis of both filings. On April 24, 2006, PJM, in consultation with Exelon and PECO, filed a response to the Commission's deficiency letter. PJM contends that the SECCRA interconnection is

---

<sup>5</sup> Exelon is a registered holding company that owns ComEd of Chicago, Illinois and PECO Energy Company (PECO) of Philadelphia, Pennsylvania.

<sup>6</sup> Docket Nos. ER06-407-000 and ER06-408-000, *PJM Interconnection, L.L.C.*, 114 FERC ¶ 61,191 (2006) (*PJM*), *reh'g pending*.

<sup>7</sup> *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, 70 Fed. Reg. 34,190 (June 13, 2005), FERC Stats. & Regs. ¶ 31,180 (2005), *order on reh'g*, Order No. 2006-A, 113 FERC ¶ 61,195 (2005); *see also Standardization of Small Generator Interconnection Agreements and Procedures, Notice of Proposed Rulemaking*, 68 Fed. Reg. 49,974 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 32,572 (2003).

<sup>8</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (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); *see also Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004).

similar to those addressed in *PJM*<sup>9</sup> in relevant part. That is, in that proceeding as well as the filings herein, the 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 SECCRA will interconnect are currently used exclusively to provide retail service to PECO's retail customers under state jurisdiction. Finally, PJM indicates that unlike the facilities in *PJM*, the SECCRA 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 motions to intervene of Exelon make it a party to these proceedings.

### **Commission Determination**

10. The Commission rejects these filings because the Commission lacks jurisdiction over the interconnection proposed in this ISA and the related CSA. In *PJM*, the Commission rejected two filings of ISAs for generators connecting to ComEd's local distribution system that are similar in relevant part to the SECCRA 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 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.<sup>10</sup>

11. In *PJM*, the generators at issue were large generators and, thus, the Commission's order in that proceeding is based upon an analysis of Order No. 2003.

---

<sup>9</sup> *PJM*, 114 FERC ¶ 61,191 (2006).

<sup>10</sup> *Id.*, footnotes omitted.

However, in the instant cases, because the SECCRA facilities are small generators, as Exelon correctly avers, Order No. 2006, the rulemaking for small generator interconnection agreements, is the applicable authority for the instant filings. Nonetheless, in Order No. 2006, the Commission stated that its assertion of jurisdiction is identical to the jurisdiction asserted in Order No. 2003. Thus, the analysis in *PJM* that the Commission lacked jurisdiction over interconnections where the distribution facilities are being used exclusively for retail service at the time the request for interconnection is made is also applicable to small generators, including the SECCRA facilities at issue here.

12. As described by PJM in its response to the deficiency letter, the distribution facilities to which SECCRA will interconnect are currently used exclusively for retail service. Thus, there was no wholesale transaction over these local distribution facilities prior to the new SECCRA interconnection request being made, and therefore, there is no factual basis upon which to establish Commission jurisdiction. Consequently, in keeping with our reasoning above, we find that pursuant to Order No. 2006, the Commission lacks jurisdiction over the interconnection to the instant local distribution facilities because they were used exclusively for retail service at the time SECCRA made its request for interconnection service.

13. Since we are not accepting the ISA, we will not address the issue concerning whether a wholesale distribution facilities charge is appropriate here. This ruling is without prejudice to PECO filing for a wholesale distribution facilities charge as part of a separate delivery service, rather than generator interconnection service, as proposed by the company, if PECO's distribution system is used subsequently to provide wholesale delivery service.<sup>11</sup>

---

<sup>11</sup>*Cf. American Electric Power Serv. Corp.*, 110 FERC 61,187 at P 19, 32-33 (2005) (AEP) (AEP was directed to file a service agreement under PJM's OATT to address, among other things, rates, terms, and conditions associated with delivery service over non-PJM facilities).

The Commission orders:

The filings are hereby rejected, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.