

110 FERC ¶ 61,186
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Delmarva Power & Light Company	Docket Nos. ER04-509-000 ER04-509-001 ER04-509-002 ER04-509-003 ER04-509-004 ER04-1250-000 ER04-1250-001 ER04-1250-002 ER04-1250-003
PJM Interconnection, LLC	EL05-62-000

ORDER ON PROPOSED AGREEMENTS AND DATA RESPONSES
AND INSTITUTING SECTION 206 PROCEEDING

(Issued February 25, 2005)

1. On September 24, 2004, Delmarva Power & Light Company (Delmarva) filed seven executed mutual operating agreements between Delmarva and various municipalities, and revisions to the PJM Interconnection, LLC (PJM) Open Access Transmission Tariff (OATT or Tariff). The agreements, designated as Delmarva Rate Schedule FERC Nos. 129 through 135 (see Appendix), provide for Delmarva and the municipalities to remain electrically interconnected, and to coordinate planning and operations of the interconnection points. The OATT revisions (Original Sheet Nos. 300A through 300D) provide a loss factor for metered deliveries, a load power factor charge, and an under frequency load shedding charge. The OATT revisions are accepted for filing effective July 1, 2004. The agreements are accepted for filing effective July 1, 2004 subject to a proceeding under section 206 of the Federal Power Act (FPA) which the Commission is instituting in this order. This order benefits customers because it ensures that the terms and conditions of jurisdictional service are just and reasonable.

Background and Filing

2. Initially, on January 30, 2004, Delmarva filed proposed unexecuted interconnection agreements. Delmarva stated that the agreements were intended to provide interconnection service to the municipalities. Delmarva also proposed to collect charges from the municipalities under the interconnection agreements. It would collect 110 percent of the amount PJM billed Delmarva for any failure of a municipality to meet its obligations under the Interconnection Agreement. It would also collect a reactive power deficiency penalty if a municipality did not maintain a power factor comparable to that in Delmarva's zone. The municipalities receive wholesale power through their Load Serving Entity LSE, Delaware Municipal Electric Corporation (DEMEC). DEMEC has a contract for network integration transmission service with PJM.

3. In an order issued March 25, 2004, the Commission found that the PJM OATT does not require an agreement between a network integration transmission service customer and a Transmission Owner.¹ The Commission also found that interconnection service was already being provided to the municipalities through the network integration transmission service for which its LSE, DEMEC, had contracted with PJM. The Commission, therefore, stated that it appeared that the proposed interconnection agreement was not like the interconnection agreements the Commission has required, which have been for generators, and was more akin to an operating agreement. Because it was not clear why these agreements were necessary, the Commission directed the parties, and PJM, to file information as to why these agreements were necessary.

4. The Commission directed Delmarva to explain why the PJM OATT was not sufficient for the municipalities to obtain network transmission service through DEMEC. It directed DEMEC to explain how it will be able to carry out the PJM Tariff requirements for a network transmission customer and to describe and file executed copies of any agreements that would bind its members to performing according to its network integration transmission service agreement with PJM. The Commission directed PJM to explain whether there are any PJM requirements that make Delmarva's proposed interconnection agreements necessary; whether PJM made a determination that DEMEC was able to fully satisfy all of PJM's requirements for a network transmission customer;

¹ *Delmarva Power & Light Company*, 106 FERC ¶ 61,290 (2004) (March 25 Order).

whether DEMEC should be treated differently from the network customer in *Occidental Power Services, Inc. v. PJM Interconnection, L.L.C. (OPSI)*² and, if so, why; and whether agreements such as those proposed by Delmarva are common on PJM's system and the circumstances under which parties have entered into such agreements.

5. On September 24, 2004, Delmarva submitted a compliance filing, which included renegotiated agreements or Mutual Operating Agreements (MOAs). The filing also proposed revisions to Attachment H-3 of PJM's Tariff consisting of a Loss Factor to be applied to metered deliveries to the municipalities' delivery points; a Load Factor Power charge for facilities constructed by Delmarva to bring a municipality into compliance with a specified Power Factor; and an Under-Frequency Load Shedding charge equal to any penalty PJM assesses Delmarva for a municipality's failure to comply with the related PJM requirements. None of the parties provided any of the information that the Commission directed them to provide in the March 25 Order. Delmarva stated that the filing of the executed MOAs and the Tariff Amendments should moot the need to provide this information. The parties believed their obligation to provide the information should be terminated.³

6. The September 24, 2004, filing was noticed on September 30, 2004, with comments due on October 15, 2004. No protests or adverse comments were filed.

7. On November 23, 2004, deficiency letters were sent to Delmarva and PJM directing that they submit the information contained in the March 25 Order and answer certain additional questions. The additional questions were (1) whether Delmarva was the correct party to propose the proposed OATT revisions and whether the proposed revisions are properly part of Attachment H-3 of the PJM OATT, (2) the reason for the requested July 1, 2004, effective date rather than the January 1, 2004, effective date proposed for the unexecuted agreements filed on January 30, 2004, and what provisions would govern between January 1, and July 1, 2004, and (3) to explain why Delmarva would be assessed a penalty caused by a municipality's failure to comply with PJM under-frequency load shedding requirements. Delmarva, PJM, and DEMEC submitted responses on December 29, December 30, and December 21, 2004, respectively.

² 103 FERC ¶ 61,285 at P 20, 24, 25, 28, *order on reh'g*, 104 FERC ¶ 61,289 at P 15 and 16 (2003).

³ Transmittal Letter at p. 3, Docket No. ER04-509-001 (September 24, 2004).

Responses

8. With respect to the Commission direction that PJM explain whether there are any PJM requirements that make the MOAs necessary, PJM responds that section 4.7 of the PJM Transmission Owners Agreement (TOA) provides that a PJM transmission owner shall not interconnect its facilities with the facilities of any entity that is not a party to the TOA unless the transmission owner and the other entity first enter into “an interconnection agreement that contains provisions for the safe and reliable operation of each interconnection in accordance with Good Utility Practice, NERC and MAAC principles, guidelines and standards.” PJM states that the municipalities that are members of DEMEC are not members of PJM and are not parties to the TOA. PJM also believes that matters having to do with physical connection of the two systems should be dealt with in a separate agreement between the transmission owner and the connecting municipalities.⁴

9. With respect to the Commission’s direction Delmarva to explain why the PJM OATT was not sufficient for the municipalities to obtain network transmission service through DEMEC, Delmarva states again that the municipalities are not members of PJM and that DEMEC, although it is a PJM member, does not own, control, or operate the municipalities’ distribution systems and facilities and is not liable to Delmarva for harm caused by the municipalities. Thus, Delmarva states that the MOAs are necessary to establish a contract between it and the municipalities that specifies each will comply with the operational requirements of PJM and provides a basis for a suit if a party breaches the contract. Delmarva states the MOAs are also needed to provide for identification of the interconnected facilities, metering, cooperation in operating the interconnected facilities, and requirements for reactive capability.

⁴ The Commission asked PJM to describe whether agreements such as those proposed by Delmarva here are common on PJM’s system and the circumstances under which parties have entered into such agreements. PJM responds that it identified twenty agreements that appear similar to the agreements in this proceeding. These agreements have all been filed with the Commission. PJM states that it is not a party to these agreements and does not routinely review them.

10. The Commission asked PJM whether it made a determination that DEMEC was able to fully satisfy all of PJM's requirements for a network transmission customer. PJM responds that it determined that DEMEC is qualified to receive network integration transmission service under Part III of its Tariff.⁵ It states that DEMEC is responsible for meeting the requirements for an LSE specified in PJM's governing documents, but that the ways in which DEMEC may meet those requirements are not specified in those documents.⁶

11. The Commission directed DEMEC to explain how it will be able to carry out the PJM Tariff requirements for a network transmission customer and to describe and file executed copies of any agreements that would bind its members to perform according to DEMEC's network integration transmission service agreement with PJM. In response, DEMEC filed copies of agreements between it and each of the seven municipalities.⁷ In these agreements, the members commit themselves to operating their systems, including their sides of all delivery points, in accordance with PJM requirements, thus satisfying section 29.4 of the PJM OATT.⁸ These agreements also address the planning and construction of members' facilities in accordance with Good Utility Practice as required by section 35.1 of the PJM OATT. In addition DEMEC has an agency agreement with Constellation Power Source, Inc. (Constellation)⁹ in which it authorizes Constellation to satisfy a number of DEMEC's obligations as an LSE, including those relating to capacity,

⁵ DEMEC states its network integration transmission service agreement with PJM was executed on December 31, 2003, showing that it met the initial PJM conditions for network service. *Citing* section 2 of Attachment 2 to its Filing of December 21, 2004.

⁶ The Commission also asked PJM whether DEMEC should be treated differently from the network customer in *OPSI*, at P 20, 24, 25, 28, *order on reh'g*, at P 15 and 16 (2003)) and, if so, why. PJM responds that DEMEC is a network service customer just like the wholesale entity in *OPSI* and that it treats DEMEC the same as all other network service customers.

⁷ Attachments 4-10 to its Filing of December 21, 2004.

⁸ Section 29.4 of the PJM OATT provides, among other things, that the provision of Network Integration Transmission Service by PJM shall be conditioned upon the Network Customer's constructing, maintaining and operating the facilities on its side of each delivery point or interconnection necessary to reliably deliver capacity and energy from PJM's system to the Network customer. Third Revised Sheet No. 84, PJM OATT.

⁹ Attachment 3 to its Filing of December 21, 2004.

such as providing Unforced Capacity, submitting capacity plans, arranging for Capacity Resources, and satisfying Accounted-for Obligations, and those related to providing data to PJM on loads.¹⁰ DEMEC states it has in-house load forecasting software and can provide load forecasting services to its members and provide PJM with new network load, changes in load, and updates of network load forecasts as required by sections 31.2, 31.4, 31.6 of the PJM Tariff. DEMEC also states that it carries out its obligations as an LSE and an Electric Distributor under section 11.3 of PJM's OA either itself or through its agency agreement with Constellation.

12. The Commission asked Delmarva and PJM whether Delmarva was the correct party to propose revisions to Attachment H-3 of PJM's OATT and whether the proposed revisions are properly part of Attachment H-3. PJM responds that Attachment H-3 describes charges for transmission service in the Delmarva Zone of the PJM system. It states the proposed revisions to Attachment H-3 are additional charges applicable to transmission service supplied to the municipalities at their points of interconnection. PJM states, with respect to the Load Power Factor charge, that section 11.3.3(d) of the PJM OA requires that a member of PJM that is an Electric Distributor, in this case, Delmarva, must arrange for reactive capability to meet the reactive requirements of its system. One way of accomplishing this, states PJM, is for the Electric Distributor to execute power factor agreements with loads connected to its system.¹¹ Delmarva and

¹⁰ DEMEC states it is a joint action agency under the laws of Delaware and that it is empowered, among other things, to buy and sell electric power and energy. It states that its members are nine Delaware cities and towns and that its Board of Directors consists of one representative from each member. A member of DEMEC is not committed to any purchase of power unless it agrees to the purchase. Compliance Filing Submitted on Behalf of Delaware Municipal Electric Corporation, Inc., at pp. 4-5 (December 21, 2004).

¹¹ For larger retail loads, this may be done through bilateral interconnection agreements; for wholesale loads like the municipalities, some transmission owners have historically addressed load power factor standards in their transmission service or other bilateral agreements. PJM indicates that these methods of arranging for power factors are under review within PJM and may change.

PJM state Delmarva is the proper party to submit these proposed charges under the terms of the “Atlantic City” settlement among PJM and the PJM Transmission owners.¹² This settlement, PJM states, authorized individual PJM Transmission Owners to file amendments to the respective OATT Attachments that state their revenue requirements and charges.

13. The Commission asked Delmarva and PJM why PJM would assess Delmarva a penalty for a municipality's failure to comply with PJM's under-frequency load shedding requirements rather than assessing DEMEC or the municipality the penalty. PJM responds that its current metering and billing systems can assess compliance with load-shedding directives only at a zonal level. Therefore, any penalties associated with failure to comply with load-shedding requirements would be billed to Delmarva rather than to DEMEC, the LSE, or to the individual municipalities, which, in any case, are not transmission customers or PJM members.

14. The Commission asked Delmarva the reason for the requested July 1, 2004, effective date rather than the January 1, 2004, effective date proposed for the unexecuted agreements filed on January 30, 2004, and what provisions would govern between January 1, and July 1, 2004. Delmarva states that the July 1 effective date was negotiated between Delmarva and DEMEC, and that as a result of the March 25 Order, there were no formal agreements between Delmarva and the municipalities governing the physical interconnection of their respective facilities after January 1, 2004. Delmarva further states that recognizing that their systems needed to remain physically interconnected in order for power to continue to flow to the municipalities' customers, the parties operated their respective facilities in good faith, anticipating a resolution of the issues concerning the MOAs. Delmarva explains that because nothing occurred from January 1, 2004, through June 30, 2004, that would have required formal enforcement of any obligation under the MOAs, the parties agreed that the new MOAs should be made effective on July 1, 2004.

Discussion

15. The Commission finds that its directives with respect to the submission of information have been fulfilled and that the parties have addressed the Commission's concerns. As described above, the parties' responses show that the proposed MOAs are required by PJM's Tariff and are necessary for Delmarva's operations, that DEMEC is

¹² PJM cites the PJM OATT, section 9.1(e); *Pennsylvania-New Jersey-Maryland Interconnection*, 105 FERC ¶ 61,294 (2003).

able to satisfy the requirements for a PJM network integration service customer, that the proposed revisions to the PJM Tariff were properly submitted, and that the proposed effective date is reasonable. In sum, we find that the parties' responses demonstrate the need for the proposed agreements and Tariff amendments and that the proposed agreements and revisions are just and reasonable. Therefore, we will accept the seven executed mutual operating agreements between Delmarva and the various municipalities, and the revisions to the PJM OATT.

16. However, section 205(c) of the FPA¹³ provides that a public utility shall "file with the Commission . . . in such form as the Commission may designate, and shall keep open in a convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission." The filing at issue here governs the interconnection of a transmission owner that is a member of a regional transmission organization (RTO) to non-generating entities. In order to make the agreements filed here readily accessible to interested parties, the Commission believes that such agreements should properly be designated as related to the PJM OATT, rather than as Delmarva rate schedules.

17. Doing so will promote "one-stop shopping" for customers in the PJM footprint, and will enhance the transparency of the PJM Transmission Owners' operations as well as make it easier to locate these agreements for anyone that wishes to do so. As the Commission moves toward electronic filing,¹⁴ moreover, it is important that all agreements relating to an RTO's operations be designated as related to that RTO's OATT. Designation of the agreements as related to that RTO's OATT is not meant to imply, however, that that RTO is responsible for their negotiation, administration and enforcement, or that that RTO is liable in any manner with regard to the agreements. Accordingly, in Docket No. EL05-62-000 the Commission will direct, pursuant to sections 205(c) and 206 of the FPA, that PJM, within 30 days of the date of this order, either designate these agreements as related to its OATT and provide that designation, or

¹³16 U.S.C. § 824d(c) (2000).

¹⁴ See *Electronic Tariff Filings*, Notice of Proposed Rulemaking, 108 FERC ¶ 61,021 (2004) (Docket No. RM01-5-000).

show cause why such agreements should not be so designated. Should PJM designate these agreements as related to its OATT and provide that designation, Delmarva, within 60 days of the date of this order, is directed to refile the agreements with the appropriate designations.

18. Pursuant to section 206 of the FPA, the Commission must establish a refund effective date in a case such as this one that is no earlier than sixty days after the date of publication in the *Federal Register* of notice of the Commission's initiating the proceeding, and no later than five months subsequent to the expiration of the 60-day period. The Commission will establish a refund effective date of 60 days from the date of publication in the *Federal Register* of notice of the Commission's initiating this proceeding.¹⁵ However, the Commission does not see a need for refunds in these circumstances, because any change to the designations would not affect rates or charges under the agreements. The Commission is also required by section 206 to indicate when it expects to issue a final order; the Commission expects to issue a final order in this proceeding within 180 days of the date of issuance of this order.

The Commission orders:

(A) The PJM OATT revisions shown in the Appendix are accepted to be effective July 1, 2004.

(B) The Mutual Operating Agreements are accepted to be effective July 1, 2004, subject to further Commission action in the section 206 proceeding established by this order, as discussed in the body of this order. This acceptance does not make the proposed agreements part of Delmarva's tariff.

(C) The refund effective date in Docket No. EL05-62-000, established pursuant to section 206 of the Federal Power Act, will be 60 days from the date of publication in the *Federal Register* of notice of the initiation of this proceeding.

¹⁵ See, e.g., *Canal Electric Company*, 46 FERC ¶ 61,153, reh'g denied, 47 FERC ¶ 61,275 (1989).

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(D) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the proceeding in Docket No. EL05-62-000.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

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Appendix

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PJM Interconnection, LLC
Tariff Sheet Accepted
Effective July 1, 2004

Original Sheet Nos. 300A through
300D under FERC Electric Tariff
Sixth Revised Volume No. 1

Loss Factor, Load Power Factor Charge,
and Under-Frequency Load Shedding
Charge