

120 FERC ¶ 61,224
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Strategic Transmission, LLC

Docket No. EL07-63-000

v.

PJM Interconnection, LLC

ORDER DENYING COMPLAINT

(Issued September 7, 2007)

1. On May 21, 2007, Strategic Transmission, LLC (Strategic) filed a complaint against PJM Interconnection, LLC (PJM) requesting that the Commission direct PJM to identify the Incremental Capacity Transfer Rights (ICTRs) for merchant transmission project S16 (Project S16) so that this project can move forward to meet the lead-time claimed by PJM. Strategic also requests that PJM provide an appropriate Upgrade Construction Service Agreement (Upgrade CSA) that includes the project cost. In this order, we deny Strategic's complaint for the reasons discussed below.

I. Background

2. On July 21, 2006, PJM filed a report of recommended allocations of cost responsibility for Regional Transmission Expansion Plan (RTEP) transmission upgrades, including Project B0268, the reconductoring of the 8-mile Gilbert-Glen Gardner 230 kV circuit,¹ to alleviate a thermal overload reliability problem, at an estimated upgrade cost of \$7.0 million. Jersey Central Power and Light Company (JCP&L) owns the Gilbert-Glen Gardner 230kV circuit, and is responsible for the construction of Project B0268. A

¹ Strategic asserts that the Gilbert-Glen Gardner 230 kV circuit is the single most limiting facility for the Capacity Emergency Transfer Limit (CETL) into the Eastern MAAC Locational Deliverability Area (LDA) for the 2009-2010 Delivery Year that commences June 1, 2009.

June 1, 2011 in-service date was assigned to ensure that the upgrades would be in place in advance of the summer peak period in that year.

3. On March 19, 2007, Strategic submitted a Transmission Interconnection Feasibility Study Agreement (Feasibility Study Agreement) to PJM seeking to advance the in-service date for Project B0268 from June 1, 2011 to June 1, 2009. In the Feasibility Study Agreement, Strategic indicated that the “proposed facilities” are “Merchant A.C. Transmission Facilities.” PJM has queued Strategic’s Interconnection Request as a “Merchant Transmission Request” and designated it as “Project S16.”

4. Strategic asserts that Project S16 would relieve the Gilbert-Glen Gardner 230 kV circuit into the Eastern MAAC LDA for the 2009-2010 Delivery Year, increasing the import capability/CETL into the Eastern MAAC LDA, and reducing the RPM capacity prices otherwise paid by consumers in Eastern MAAC.

5. Based on preliminary information received from JCP&L, PJM informed Strategic that JCP&L indicated it could advance the Gilbert-Glen Gardner 230 kV Circuit Upgrade project to meet the June 1, 2009 in-service date, but it would require initiating work by June 1, 2007. Assuming that to be the case, Strategic immediately requested that PJM identify the ICTRs, along with the project cost, so that Strategic could commence financing of the Project.

6. In response to Strategic’s Feasibility Study Agreement and \$10,000 deposit, PJM held a “kick-off” meeting on April 11, 2007. At the kick-off meeting, PJM requested that FirstEnergy Service Company (FirstEnergy)² provide an updated cost estimate for Project B0268, assuming that construction of the Project were advanced to June 1, 2007, a project schedule, and a proposal for cost responsibility. On May 22, 2007, FirstEnergy provided a cost estimate of \$6.275 million.

7. On May 21, 2007, Strategic filed its complaint with the Commission. At about the same time, Strategic, FirstEnergy, and PJM began alternative dispute resolution (ADR) discussions with the assistance of the Commission’s Dispute Resolution Service. The parties terminated the ADR process on or about July 12, 2007.

II. Notice of Filings and Responsive Pleadings

8. Notice of Strategic’s May 21, 2007 complaint requesting fast track processing was published in the *Federal Register*, 72 Fed. Reg. 30,366 (2007), with comments, interventions, and protests due on or before May 29, 2007. PJM timely filed an answer to the complaint (PJM Answer). On May 29, 2007, FirstEnergy on behalf of its affiliate

² FirstEnergy Corp. is a public utility holding company and is the ultimate parent of FirstEnergy and JCP&L. FirstEnergy provides certain management and support services to FirstEnergy Corp.’s affiliates, including JCP&L.

JCP&L filed a motion to intervene, protest, and motion to dismiss (FirstEnergy Protest). On June 4, 2007, Strategic filed a motion for leave to answer and answer (Strategic Answer) to PJM's Answer and FirstEnergy's Protest. On June 19, 2007, FirstEnergy filed a motion for leave to answer and answer (FirstEnergy Answer) to Strategic's Answer. On June 20, 2007, Strategic filed another answer responding to FirstEnergy's Answer (Strategic Second Answer). On July 12, 2007, Strategic filed a request for expedited decision (Strategic Request) and FirstEnergy filed an answer on July 13, 2007 (FirstEnergy Second Answer) to the Strategic Request. On July 25, 2007, the PSEG Companies filed an answer and supplemental comments responding to the Strategic Request (PSEG Answer), to which Strategic responded by filing an answer on July 31, 2007 (Strategic Third Answer).

9. In addition, FirstEnergy, the PSEG Companies, the New Jersey Board of Public Utilities, and the PJM Industrial Customer Coalition filed timely motions to intervene. The Long Island Power Authority and LIPA, Dominion Resources Services, Inc., and Pepco Holdings, Inc., filed motions to intervene out of time.

III. Strategic's Complaint Allegations and Responses

A. Procedural Issues

10. Strategic filed its complaint on May 21, 2007, requesting fast track processing asking the Commission to issue an order as close to June 1, 2007 as possible to allow Strategic to meet a June 1, 2007 deadline imposed by PJM for the start of project development. Strategic requested that the Commission direct PJM to: (1) identify the ICTRs for Project S16, and the project cost, as close as possible to June 1, 2007, and (2) to provide a draft Upgrade CSA. At or about the same time, Strategic, PJM, and FirstEnergy entered into ADR discussions, which, on or about July 12, 2007 were terminated.

11. Both PJM and FirstEnergy contend that the PJM Tariff does not require that Strategic receive the relief requested in its complaint until the completion of applicable studies. PJM notes that under its tariff (and as Strategic acknowledges), ICTRs associated with merchant transmission facilities are allocated in the corresponding system impact study associated with the interconnection request requesting the acceleration. PJM states that preliminary cost estimates for interconnection projects are provided at the feasibility study stage and then more refined cost estimates are determined and provided to the interconnection customer in the system impact study.³ Under the PJM Tariff, PJM will use due diligence to complete the feasibility studies related to interconnection requests submitted in March (like Strategic's) by September 30 and system impact studies are commenced on November 1. In addition, PJM contends that under its tariff,

³ PJM Tariff §§ 36.2, 205.2 and 205.3.

Upgrade CSAs for projects such as Project S16 are not tendered until completion of the facilities study, or if no facilities study is required, upon completion of the system impact study.⁴ PJM and FirstEnergy request that the complaint be dismissed because, among other things, PJM has complied fully with its obligations under the PJM Tariff and the issues in the complaint are not ripe for Commission resolution.

12. Strategic argues that FirstEnergy's and PJM's arguments that timetable deadlines in the PJM Tariff allow them to delay and eventually kill Project S16 are contrary to the PJM Tariff and public policy. Citing section 234.2 of the PJM Tariff, Strategic argues that PJM is obligated to provide ICTRs year-round on an ongoing basis in System Impact Studies as they are completed. However, Strategic notes that PJM is not required to provide ICTRs until 45 days before the Base Residual Auction in accordance with section 5.6.4 of Attachment DD of the PJM Tariff. Strategic argues that PJM's position that Project S16 must commence by June 1, 2007, conflicts with this tariff requirement. Specifically, Strategic contends that if PJM does not provide the ICTRs associated with Project S16 to Strategic until August 2007, it will prohibit implementation by denying Strategic the ICTR determination that it must have to arrange financing and meet the project start date - Strategic contends that it is impossible to arrange financing for a project of this magnitude in 45 days.

13. Strategic argues that if PJM's position is upheld, this will be a recurring problem for the RPM construct and merchant transmission projects in RPM, as any project with a lead time greater than the time between the Base Residual Auction and the Delivery Year will not be built because PJM will not provide ICTRs on a timely basis. Strategic contends that if new resources are delayed or otherwise hindered, the only consequence of RPM is to artificially inflate prices paid by load for existing resources. Further, Strategic asserts that a critical prerequisite for the success of RPM is the ability of new resources to freely and timely enter the market in response to price signals.

14. FirstEnergy claims that it is Strategic, rather than PJM or FirstEnergy, that is being "unreasonable" with respect to timing matters. FirstEnergy contends that the PJM Tariff provisions, specifying the deadlines for acting on Interconnection Requests, are clear and straightforward and have been accepted by the Commission.⁵ Additionally, Strategic's desire to bid its "project" into the RPM auction does not obligate PJM to take action that is not required under the PJM Tariff. PJM notes that since the Gilbert-Glen Gardner 230

⁴ *Id.* § 213.

⁵ FirstEnergy quotes *PJM Interconnection, L.L.C.*, 94 FERC ¶ 61,283 at 62,023 (2001) ("PJM's proposal to conduct feasibility and comprehensive system impact studies on a biannual basis should provide PJM with adequate time to complete the studies in a timely manner, thereby increasing efficiency and timeliness of the interconnection process and adding greater certainty for interconnection customers").

kV Circuit Upgrade was included in the RTEP in June 2006, Strategic could have requested that the upgrade be accelerated nine months before it actually made its Project S16 interconnection request in March 2007. Had Strategic submitted its interconnection request last June, the necessary study process would now be complete, the acceleration could go forward, and there would be no hindrance to Strategic participating in the PJM Reliability Pricing Model auctions, as it alleges.

15. FirstEnergy also requests that the complaint be dismissed because Strategic failed to comply with the requirements of section 206 of the Federal Power Act (FPA) and the Commission's Rules of Practice and Procedure. Not only did Strategic fail to serve FirstEnergy with a copy of the complaint and fail to seek relief of any kind against FirstEnergy or JCP&L, who were not named as respondents to the complaint, Strategic, in its Answer, attempted to retroactively make FirstEnergy or JCP&L a respondent to Strategic's complaint and failed to amend the complaint to include FirstEnergy or JCP&L as a respondent.⁶ Additionally, Strategic's complaint failed to "[e]xplain how the action or inaction violates applicable statutory standards or regulatory requirements."

16. FirstEnergy requests that, should the Commission decline to dismiss the complaint, a hearing should take place, as there is substantial disagreement regarding several key factual predicates underlying Strategic's complaint. Strategic claims that the material facts of the case, as set forth in the complaint, are not in dispute.

B. Substantive Issues

1. Determination of ICTRs

17. Strategic alleges that PJM has not provided the necessary ICTR determination and that there is no reason PJM cannot do so at this time. Strategic notes that ICTRs are the sole revenue source for Project S16, and thus, are a prerequisite for financing the project.

18. PJM contends that it has satisfied this element of the complaint since, on May 23, 2007, PJM informed an officer of Strategic via email that the ICTRs associated with Project S16 would be 197 MW for the Eastern MAAC LDA for the 2009/2010 planning year. As noted previously, PJM states that according to Sections 234.2 and 205.3 of its tariff, the allocation of ICTRs associated with merchant transmission facilities (including projects that advance the construction of upgrades included in the RTEP such as Project S

⁶ FirstEnergy notes that Strategic urges the Commission to find that FirstEnergy is in violation of the PJM Tariff, asks the Commission to direct FirstEnergy to provide certain information sought by Strategic, and should the instant project not be in service by June 1, 2009, find that FirstEnergy should be responsible for the estimated annual \$130,600,000 of increased RPM capacity costs.

16) is not required until the associated System Impact Study is completed - after November 1.

19. FirstEnergy contends that under section 234 of the PJM Tariff, ICTRs will be available only to “[a] Transmission Interconnection Customer that interconnects Merchant Transmission Facilities with the Transmission System,” or “a New Service Customer that (a) reimburses the Transmission Provider for the costs of, or (b) pursuant to its Construction Service Agreement, undertakes responsibility for, constructing or completing Customer-Funded Upgrades” and that Strategic does not fall into either of these categories. FirstEnergy contends that Strategic’s “minimal” funding of costs associated with advancing the construction of Project B0268 does not make it eligible for ICTRs. FirstEnergy also notes that Section 234.6 states that a New Service Customer shall not receive ICTRs with respect to transmission investment that is included in the rate base of a public utility and on which a regulated return is earned, which will be the case with regard to Project B0268.

2. Preliminary Project Cost Determination

20. Strategic requests that the project cost (including both the capital cost of the upgrade and the costs associated with advancement of the project) for Project S16 and the Upgrade CSA be provided by PJM. Strategic asserts that, while FirstEnergy provided an estimate of the capital cost of the transmission upgrade at \$6,275,000 (after Strategic filed the instant complaint), neither FirstEnergy nor PJM has provided the time value cost of advancing the planned transmission upgrade from June 1, 2011 to June 1, 2009.⁷ Strategic alleges that FirstEnergy’s refusal to provide the time value estimate in response to a request by PJM is a flagrant violation of section 210 of the PJM Tariff and a direct attack on the Commission’s policy that RTOs be in charge of the interconnection process. Strategic contends that FirstEnergy need simply estimate the time value cost of \$6,275,000 in accordance with Commission precedent. According to Strategic, the time value of advancement in PJM has been determined by the Commission as simply the utility carrying charge for the advancement period, discounted to net present value.⁸ In its answer, Strategic states that, contrary to FirstEnergy’s allegations, there are no “complex factual issues.”

21. PJM states that preliminary cost estimates for interconnection projects are provided at the feasibility study stage and then more refined cost estimates are determined and provided to the interconnection customer in the system impact study.

⁷ Strategic asserts that the necessary components of the Upgrade CSA have been well understood since the project scoping meeting on April 11, 2007.

⁸ Strategic cites *PJM Interconnection, L.L.C.*, Docket No. ER04-11-000, Letter Order issued December 1, 2003.

PJM asserts that under its tariff, the cost of accelerating an RTEP upgrade through the interconnection process is “the time value of advancing the required investment to the party(ies) designated in the Regional Transmission Expansion Plan as responsible for constructing, owning and/or financing such enhancement or expansion” and that this cost must be determined by the transmission owner designated with the obligation to build the upgrade to be accelerated, as PJM does not have access to the information necessary to make this cost estimate. PJM notes that it has contacted JCP&L seeking this information. However, PJM notes that because of the complexity of estimating the various cost components related to accelerating an RTEP project, JCP&L has not yet had time to provide PJM with this information. PJM also notes that this calculation is not trivial as many factors, including overtime scheduling, siting issues, and others affect the cost of accelerating a project. PJM also states that, absent the project cost estimate, it cannot provide Strategic with an Upgrade CSA. PJM contends that since Upgrade CSAs are tendered to the interconnection customer upon completion of the facilities study or the system impact study, if the facilities study is not required, it has not acted untimely by not yet providing Strategic with an executable Upgrade CSA.

22. Citing section 217.3 of the PJM tariff, FirstEnergy asserts that there is no definition or specification as to how the “time value of advancing the required investment” should be calculated, or what costs are to be included in that valuation. FirstEnergy further asserts that the determination of JCP&L’s incremental costs will involve complex factual issues and take time. FirstEnergy contends that before the project can be advanced, it must be assured that it (and its ratepayers) will be made whole and not have to bear costs beyond what would have been incurred had the project proceeded consistent with the RTEP and that Strategic must bear all of these costs. FirstEnergy asserts that Strategic wants to burden JCP&L and its ratepayers with the costs of advancing the Project so that Strategic can reap the financial rewards it believes will result from early completion of the Project.

23. The PSEG Companies contend that Strategic misstates the PJM Tariff’s requirements on cost responsibility for advancing transmission upgrades and that the cost responsibility is not limited to the time value of money or carrying charge costs incurred as part of the acceleration. Rather, Strategic is responsible for any and all costs above and beyond what would have otherwise been incurred and that is related to the expedited project schedule, including *inter alia* labor and contractor costs and siting and permitting costs.

IV. Discussion

A. Procedural Matters

24. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure (18 C.F.R. § 385.214 (2007)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting

late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to an answer or protest unless otherwise ordered by the decisional authority. In this case, we will accept all answers as they have provided information that has helped us in our decisionmaking process.

26. We deny FirstEnergy's request that Strategic's complaint be dismissed for Strategic's failure to serve FirstEnergy. PJM, as the transmission provider in question, was appropriately served. Moreover, FirstEnergy has been able to participate in all aspects of this proceeding and so has been afforded due process.

B. Commission Determination

27. In its complaint, Strategic requests fast track processing, asking the Commission to direct PJM to promptly identify the ICTRs for Project S16, together with the project cost, and to provide an Upgrade Construction Service Agreement. Strategic explains that its request for fast track processing for issuance of an order as close to June 1, 2007, as possible, is necessary for Project S16 to meet PJM's June 1, 2007 for the start of project development. We will dismiss the complaint because PJM already has provided the ICTR information to Strategic, and is not obligated to provide the project cost estimate until September 30, 2007, with the Upgrade Construction Service Agreement, not due until after November 1, 2007. We also will address some of the other issues raised in the complaint and answers.

1. Tariff Timetable

28. PJM's tariff does not provide for the provision of the requested information in the timeframe requested by Strategic, and we do not find that Strategic has provided sufficient justification to require a significantly expedited schedule. The PJM Tariff specifies that certain deadlines for acting on Interconnection Requests must be met through the completion of a series of studies, including the interconnection feasibility study, the system impact study, and, where necessary, the facilities study. We commend PJM for providing Strategic with the requested ICTR information far in advance of the date required by its tariff, particularly given that this involves a merchant transmission project seeking to accelerate an upgrade and increase import capability into Eastern MAAC. Where possible, and to the extent that other market participants would not be adversely affected, we would encourage PJM to respond to similar future requests as they have in this instance.

29. With respect to the cost estimates requested by Strategic, section 36.2 of PJM's tariff provides that such estimates are not due until September 30, 2007. Section 36.2 states, in relevant part, that preliminary cost estimates will be provided in the

Interconnection Feasibility Study. This provision further provides that: “For Interconnection Requests received during the six-month period ending July 31 [which includes the Strategic project] the Transmission Provider shall use due diligence to complete Interconnection Feasibility Studies by September 30.” More refined cost estimates are provided in the System Impact Study.⁹

30. With respect to the Upgrade CSA, the PJM Tariff provides that this agreement will be provided upon completion of the Facilities Study, or if no such study is necessary, upon completion of the System Impact Study. Since neither of these have been completed, PJM is not required to provide the Upgrade CSA at this time.

31. Strategic maintains that because its project is related to the PJM RPM process, PJM should be required to expedite its timelines to accommodate the request. While RPM is certainly an important initiative, we do not find that Strategic has justified its request under FPA section 206 for us to find that PJM’s existing timelines are unjust and unreasonable in this context and to require such an extreme modification of the study timelines to accommodate its project. The timelines were adopted because it takes time for PJM, and for transmission owners, to prepare and conduct studies; it is also important that PJM be able to consider the joint impact of a series of projects. As PJM points out, the Gilbert-Glen Gardner 230 kV Circuit Upgrade was included in the RTEP in June 2006, and Strategic could have requested that the upgrade be accelerated nine months before it actually made its Project S16 interconnection request in March 2007. Further, adherence to the guidelines will still enable Strategic to bid this project into subsequent RPM auctions.

2. Determination of ICTRs

32. As stated above, PJM has already provided Strategic with the requested ICTR estimates covering the two years for which Strategic is advancing the project. FirstEnergy, however, argues that Strategic is not entitled to an allocation of ICTRs for proposing that the construction of Project B0268 be advanced by two years. PJM, however, explains that under its tariff, ICTRs are appropriate for projects that advance the construction of upgrades:

PJM shall allocate ICTRs associated with merchant transmission facilities (which include projects to advance the construction of upgrades included in the RTEP such as

⁹ PJM Tariff §§ 205.2 and 205.3. Section 205.3 provides that for projects submitted between February 1 and July 31, the system impact study will commence on November 1, 2007.

Project S16) in the system impact study associated with the interconnection request requesting the acceleration.¹⁰

33. We agree with PJM that payment by a non-Transmission Owner to advance the construction of transmission owner facilities are merchant transmission facilities. Section 236.3 of the PJM Tariff specifically contemplates that a merchant transmission facility can consist solely of an expansion of a transmission owner facility and that such a project is entitled to ICTRs for the period the project is advanced. This provision states that “any Merchant Transmission Facilities interconnected pursuant to Part VI that solely involves advancing the construction of a transmission enhancement” qualifies for ICTRs from the inception of service over the transmission facility until “the time when the Regional Transmission Expansion Plan originally provided for the pertinent transmission enhancement or expansion to be completed.”

34. We do not find, as FirstEnergy asserts, that this constitutes “parasitic behavior.”¹¹ The PJM Tariff provides ICTRs solely for the time period of the construction advancement, a period during which the facilities would not have existed without the investment of the merchant transmission provider.

3. Preliminary Project Cost Determination

35. As discussed earlier, PJM is required to provide Strategic with a preliminary project cost estimate for advancing Project B0268 by September 30, 2007. FirstEnergy has already provided a capital cost estimate of \$6.275 million for completing the entire project. We agree with Strategic that PJM is required to provide an estimate not only of the final project cost, but also of the cost of the interconnection request itself – *i.e.*, the cost of advancing the project. Section 217.3 of the PJM Tariff provides that the cost responsibility for a transmission enhancement “shall be limited solely to the time value of advancing the required investment to the party(ies) designated in the Regional Transmission Expansion Plan as responsible for constructing, owning and/or financing such enhancement or expansion.” Further, Section 210 of the PJM Tariff states that Transmission Owners are required to supply information and data as reasonably required for PJM to perform its obligations.

36. Therefore, we find that PJM and FirstEnergy must provide, by September 30, 2007, a cost estimate that is “limited solely to the time value of advancing the required investment” as required by sections 217.3 and 36.2 of the PJM Tariff. We find that considering issues relating to specific costs, as raised by FirstEnergy and the PSEG Companies, is premature until such a good faith cost estimate is provided. In submitting

¹⁰ PJM Answer at 2 (citing PJM Tariff § 234.2).

¹¹ FirstEnergy Protest at 15.

its estimate, PJM must be prepared to justify that the methodology and costs it proposes to include are consistent with its tariff.¹²

The Commission orders:

Strategic's complaint is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.
Acting Deputy Secretary.

¹² Issues regarding the propriety of changing the tariff to include other cost elements go beyond the scope of this proceeding and need to be addressed through a section 205 or 206 filing in which all stakeholders can participate.