

127 FERC ¶ 61,228  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

June 8, 2009

In Reply Refer To:  
PJM Interconnection, L.L.C.  
Docket No. ER09-978-000

PJM Interconnection, L.L.C.  
Attention: Jennifer Tribulski, Esq.  
955 Jefferson Avenue  
Norristown, PA 19403

Reference: Interconnection Open Access Transmission Tariff Revisions

Dear Ms. Tribulski:

1. On April 9, 2009, PJM Interconnection, L.L.C. (PJM) filed, pursuant to section 205 of the Federal Power Act,<sup>1</sup> proposed revisions to its Open Access Transmission Tariff (OATT) (April 9 Filing) in accordance with the Commission's Order Approving Contested Settlement issued April 10, 2008 in Docket No. EL08-36.<sup>2</sup> PJM proposes to: 1) revise the deposit fees related to Facilities Studies for projects that are equal to or less than 20 megawatts (MW) in size and revise Facilities Study procedures; 2) ensure collection of past due invoices before an Interconnection Customer can proceed through the interconnection process; and 3) include an optional milestone in the Facilities Study Agreement to show site control for certain Attachment Facilities. PJM explains that the proposed tariff revisions are designed to provide significant improvement to its interconnection queue. PJM requests an effective date of June 8, 2009.

2. PJM states that its OATT requires Interconnection Customers to submit a deposit for each of the three study phases of the interconnection process. PJM explains that for Facilities Studies, the Interconnection Customer is required to pay a deposit that is "\$100,000 or the estimated amount of its Facilities Study cost responsibility for the first

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> *Dominion Resources Services, Inc. v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,025 (2008).

three months of work on the study, whichever is greater.”<sup>3</sup> PJM also explains that it believes that if a generation project of equal to or less than 20 MW in size requires a Facilities Study to be performed, it should require a lesser deposit. Therefore, PJM proposes the following deposits: i) \$50,000 for a Customer Facility that is equal to or less than 20 MW but greater than 2 MW and ii) \$15,000 for a Customer Facility that is less than 2 MW. PJM states that deposits for all projects are refundable and, any remaining deposit will be returned at the completion of the study or upon withdrawal of the Interconnection Request.

3. PJM explains that it will use Reasonable Efforts to complete the Facilities Study and issue it to an Interconnection Customer within 180 days after receipt of an executed Facilities Study Agreement. If PJM determines that it will not meet the 180-day time frame for completing the Facilities Study, PJM must notify the Interconnection Customer as to the scheduled status of the Facilities Study, provide an estimated completion date, and give an explanation of the reasons why additional time is required.<sup>4</sup>

4. In addition, PJM states that its OATT does not provide a means for PJM to enforce collection on invoices related to the Feasibility or System Impact Study phases of an Interconnection Request. Although PJM’s procedures provide that invoices must be paid within 20 days of receipt of the invoice, PJM contends that it has experienced Interconnection Customers who fail to pay invoices in a timely manner or even at all in some cases where a project is withdrawn. Thus, PJM proposes to require Interconnection Customers to make payments on all invoices in order to continue with the next phase of the interconnection process. PJM will implement this proposal on all projects currently in PJM’s interconnection queue and all subsequently queued projects.<sup>5</sup>

5. Further, PJM explains that under the Facilities Study Agreement, it may include milestones related to development of a generation or merchant transmission project to ensure that the project can move forward towards commercial operation. PJM asserts that evidence of site control is an important factor in ensuring a project will proceed and go into service. Thus, PJM states that, with input from its stakeholders, it developed an optional milestone that PJM may, at its discretion, include in the Facilities Study Agreement to ensure that a New Service Customer has site control on the high voltage side of generator step-up transformers or for Attachment Facilities. PJM states that evidence of site control shall be a deed, option agreement, lease, or other similar

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<sup>3</sup> April 9 Filing at 2-3 (citing PJM OATT at § 206.3).

<sup>4</sup> *Id.* at 5-6 (citing PJM OATT at § 207).

<sup>5</sup> *Id.* at 6-7 (citing PJM OATT at § 36.1.4).

document acceptable to PJM.<sup>6</sup> PJM states that it will implement this proposal on all projects currently in PJM's interconnection queue and all subsequently queued projects.

6. Notice of PJM's filing was published in the *Federal Register*, 74 Fed. Reg. 18,219 (2009), with interventions and comments due no later than April 30, 2009. NextEra Energy Generators, Old Dominion Electric Cooperative, and Exelon Corporation filed timely motions to intervene. American Municipal Power - Ohio, Inc. (AMP Ohio) filed a timely motion to intervene and comments. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>7</sup> the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

7. PJM filed an answer to AMP Ohio's comments. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,<sup>8</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PJM's answer because it has provided information that assisted us in our decision-making process.

8. AMP Ohio contends that the proposed language does not appear to address deposit fees required for projects that are equal to 2 MWs in size. Accordingly, AMP Ohio requests that PJM be directed to clarify the amount of deposit fees required for 2 MWs projects.<sup>9</sup>

9. In its answer, PJM responds that it inadvertently failed to include in its proposal projects that are exactly 2 MWs. PJM explains that elsewhere in its OATT, PJM groups facilities that are 2 MWs in size along with facilities that are less than 2 MWs in size.<sup>10</sup> Thus, PJM offers clarification that for projects that are equal to or less than 2 MWs, the Facilities Study deposit should be \$15,000.

10. PJM also explains that upon further examination of its proposed tariff changes, PJM discovered that minor clarifications to the language as proposed are needed to more accurately reflect PJM's intent as endorsed by its stakeholders. PJM states that it proposed revisions to its Facilities Study provision regarding deposits in the body of its OATT in section 206.3 but neglected to make a corresponding revision in the Facilities

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<sup>6</sup> *Id.* at 7.

<sup>7</sup> 18 C.F.R. § 385.214 (2008).

<sup>8</sup> 18 C.F.R. § 385.213(a)(2) (2008).

<sup>9</sup> AMP Ohio comments at 3-4.

<sup>10</sup> PJM Answer 3 (citing PJM OATT at Subpart G, preamble; § 112A).

Study Agreement in Attachment N-2 of its OATT.<sup>11</sup> In addition, PJM explains that the proposed language does not accurately reflect the distinction between small generator interconnection customers and all other customers needing a Facilities Study. Therefore, PJM requests that the Commission direct PJM to make a compliance filing within 10 days of this order in this proceeding to correct these oversights.

11. Regarding the optional milestone proposal, AMP Ohio states that the language should be expanded to afford the necessary flexibility to entities that are authorized to exercise their lawful right of eminent domain or condemnation. AMP Ohio asserts that if a New Service Customer is vested with eminent domain or condemnation authority pursuant to the relevant provisions of state or local law, the existence of such authority should be deemed to satisfy evidence of site control for purposes of meeting the proposed milestone, just as the existence of an option is deemed satisfactory. Therefore, AMP Ohio requests that the Commission direct PJM to modify the proposed tariff language to accomplish this result.<sup>12</sup>

12. PJM responds that the modification sought by AMP Ohio regarding site control is unnecessary and should be rejected. PJM explains that possessing the authority to exercise eminent domain or condemnation will not provide PJM with the assurances necessary that the New Service Customer is indeed exercising that authority to secure the land on which the facilities are to be constructed. PJM contends that the right to exercise eminent domain or condemnation does not guarantee acquisition of the land at issue and almost always presents political sensitivities. Therefore, PJM states that it cannot be put in a position to evaluate either the legal or political likelihood that a public utility can or will use eminent domain to acquire site control. However, PJM states that its proposed language is broad enough to allow a New Service Customer to present documentation showing that, under its authority to exercise eminent domain or condemnation, it has obtained site control. PJM asserts that such documentation will allow PJM to determine whether such documentation satisfies evidence of site control.

13. We agree with AMP Ohio that the proposed language does not address the amount of deposit for Facilities of 2 MWs in size. PJM clarifies that for projects that are equal to or less than 2MWs, the Facilities Study deposit should be \$15,000. Therefore, we direct PJM to submit a compliance filing revising its OATT within 30 days of the date of this order to make this change.

14. We accept PJM's proposal to include an optional milestone regarding site control in its Facilities Study Agreement, subject to condition. PJM's transmittal letter is unclear as to when and under what circumstances it will require this optional milestone. While

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<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* at 4.

PJM states that it has developed the milestone such that “PJM may, at its discretion, include [the milestone] in the Facilities Study Agreement,” it also states that if accepted by the Commission, PJM will implement the proposal “on all projects currently in PJM’s interconnection queue and all subsequently queued projects.”<sup>13</sup> Thus, PJM should explain in its compliance filing whether it intends to include the milestone in all future Facilities Study Agreements. If not, PJM must explain how it would apply the milestone on a non-discriminatory basis and how it would differentiate between the customers to which the requirement will apply and to those it will not. PJM should provide specific criteria in its OATT and Facilities Study Agreement that delineates when it would apply the milestone.

15. We will not, however, require that PJM modify its OATT to include a customer’s authority to exercise eminent domain or condemnation as evidence to satisfy the site control requirement under the optional milestone. We agree with PJM that the right to exercise eminent domain or condemnation may be subject to additional processes and does not guarantee acquisition of the subject property. The authority to exercise eminent domain or condemnation, therefore, does not necessarily constitute evidence of site control. PJM’s proposed language is broad enough to allow a New Service Customer to present documentation showing that it has taken sufficient steps under its eminent domain or condemnation authority to allow PJM to determine whether the New Service Customer has obtained the requisite site control. The proposed language will provide both parties flexibility in this regard.

16. Finally, we accept the filing conditioned on PJM proposing the minor tariff revisions provided in its answer in its compliance filing.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>13</sup> April 9 Filing at 7.