140 FERC ¶ 61,019
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

FirstEnergy Solutions Corp. and
Allegheny Energy Supply Company, LLC
v.
PJM Interconnection, L.L.C.

Docket No. EL12-50-000

ORDER GRANTING COMPLAINT AND REQUIRING A COMPLIANCE FILING

(Issued July 11, 2012)

1. On March 26, 2012, FirstEnergy Solutions Corp. and Allegheny Energy Supply Company, LLC (FirstEnergy) submitted a complaint to modify provisions of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff) and Operating Agreement provisions governing the Auction Revenue Right (ARR) allocation process (Complaint). In this order, the Commission grants the complaint, effective as of the date of this order, and directs PJM to submit a compliance filing with the necessary changes within 60 days of the date of this order.

I. Background

2. PJM established Financial Transmission Rights (FTRs) as a mechanism to hedge congestion and operate as a financial replacement for physical firm transmission service.[1] FTRs are financially-settled instruments that entitle the holder to a stream of revenues based on the hourly congestion price differences across a specific transmission path in the

[1] ARRs and FTRs were created in PJM based on three primary principles: (1) to provide a financial replacement to firm transmission service based upon the load serving entities' (LSEs) historical positions; (2) to hedge congestion costs based upon LSEs' historical positions; and (3) to send price signals likely to encourage efficient building, location and dispatch of generation and transmission facilities. *See Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257, at 62,253-254 (1997).

PJM Day-ahead Energy Market. FTRs are awarded through a FTR auction, and ARR holders have the right to the revenues resulting from the annual FTR Auction.

3. PJM prioritizes the allocation of annual ARRs in a two-stage process, taking into account the total transmission capability. Stage 1 reflects the preference given to historical native load customers between the receipt and delivery points during the historical reference year, while Stage 2 allocates the remaining capability to qualifying network transmission customers and all other firm point-to-point transmission customers. PJM has established a ten-year ARR mechanism, which divides Stage 1 of PJM's annual ARR allocation process into two separate components: Stage 1A and Stage 1B. Stage 1A allocates the ten-year ARR product,[2] while Stage 1B allocates the remaining ARRs,[3] preserving the historical native load priority between the receipt and delivery points during the historical reference year.

4. Under PJM's current provisions, all ARRs and FTRs awarded must be simultaneously feasible, and PJM must make simultaneous feasibility determinations using power flow models of contingency-constrained dispatch. The modeling for the simultaneous feasibility determination requires that PJM make a determination as to whether transmission paths in the system will be available during the applicable planning year. If, as a result of the annual simultaneous feasibility test, the allocation of Stage 1A ARRs that were requested is infeasible, then PJM will increase the capability limits on the restricted facilities in order to allocate all Stage 1A ARRs. If the amount of Stage 1B ARRs that were requested is infeasible, then the amount of ARRs each market participant receives is pro-rated so that the simultaneous feasibility test is satisfied. PJM recognizes that, where ARRs have been pro-rated as a result of the application of the simultaneous feasibility test, this may result in an allocation of ARRs in an amount less than the party otherwise would have been entitled to had adequate capacity existed at the time of the annual ARR allocation.

5. In performing the annual allocation of ARRs, PJM determines which transmission facilities to model as being in-service and which facilities to model as being out of service for the entire planning year. When a transmission facility is modeled as out of service for the entire planning year, and the facility is subsequently made available for several months of the year (that is, return to service of existing transmission capability), PJM does not allocate the ARRs associated with the available capacity to the historical ARR holder according to the prioritization provisions of the Tariff. Instead, PJM sells

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[2] *See* PJM Tariff, Attachment K-Appendix § 7.4.2 (b).

[3] *Id.*

the additional FTRs in a monthly auction process, and the resulting auction revenues are distributed broadly among ARR and FTR holders.

6. PJM also has a mechanism for allocating certain ARRs on a monthly basis for transmission capability that becomes available during a planning period, after the annual ARR allocation, and therefore, not accounted for in the annual allocation (Residual ARRs).[4] PJM allocates Residual ARRs under the Stage 1 allocation priorities, including any pro-ration to participants under Stage 1B.

II. FirstEnergy's Complaint

7. FirstEnergy contends that,[5] where existing transmission capability that was not reflected in the annual model becomes available during the planning period, it is unjust and unreasonable for LSEs who have had their ARR requests pro-rated in the annual allocation to be denied the now available FTRs (or the corresponding ARRs).[6] In these situations, FirstEnergy states that PJM will create monthly FTRs for this available capability, and that instead of allocating these FTRs to the same LSEs that had their

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[4] *See* PJM Tariff, Attachment K-Appendix § 7.9. PJM's Tariff defines Residual ARRs as:

> … incremental stage 1 Auction Revenue Rights created within a Planning Period by an increase in transmission system capability or a change in any other relevant factor that was not modeled pursuant to section 7.5 of Schedule 1 of this Agreement in compliance with section 7.4.2 (h) of Schedule 1 of this Agreement, and, if modeled, would have increased the amount of stage 1 Auction Revenue Rights allocated pursuant to section 7.4.2 of Schedule 1 of this Agreement; … PJM Tariff, Attachment K-Appendix § 1.3.31.01.

[5] FirstEnergy attached the affidavits of Brian A. Farley and Robert B. Stoddard in support of its complaint.

[6] On December 28, 2011, FirstEnergy had submitted a complaint in Docket No. EL12-19-000 to modify provisions of Tariff related to the funding of FTRs (FTR Complaint). The Commission dismissed the complaint without prejudice in light of the absence of sufficient evidence as to the root cause of the FTR underfunding and PJM's commitment to develop a comprehensive report detailing the circumstances resulting in the FTR underfunding for stakeholder review and discussion. *See FirstEnergy Solutions Corp. and Allegheny Energy Supply Co., LLC v. PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,158 (2012), *reh'g pending*.

annual ARR requests pro-rated, PJM sells them in the monthly FTR auction, broadly distributing the value of such FTRs to all ARR/FTR holders. FirstEnergy argues that the result is a reduced ability of LSEs who have received pro-rated ARRs in the annual auction to hedge congestion costs, contrary to the original intent of PJM's FTR/ARR paradigm.

8. FirstEnergy notes that the PJM Tariff provides a mechanism for the distribution of ARRs on a monthly basis where transmission capability not modeled for the annual allocation becomes available during the planning year because of newly-constructed or upgraded transmission capability. FirstEnergy contends that Residual ARRs are available to Stage 1 ARR holders who had their ARRs pro-rated, and that there is no policy or economic basis for treating newly-constructed transmission capability that was not modeled for the annual ARR allocation differently than existing transmission capability that was not modeled as in service for the annual ARR allocation.

9. FirstEnergy concludes that the just and reasonable solution is to amend the PJM Tariff to provide a mechanism to allow for the monthly allocation of ARRs to LSEs whose annual ARR allocations were pro-rated as a result of an outage of a transmission facility, up to the original amount of ARRs requested, when such facilities are in-service and available during certain months of the year.

10. FirstEnergy requests fast track processing under Rule 206(h) of the Commission's Rules of Practice and Procedure,[7] so that a suitable replacement ARR allocation process would be in place before the first monthly auction is held for the 2012-2013 planning year (May 2012).

III. Notice and Responsive Pleadings

11. Notice of the Companies' submittal was published in the *Federal Register*, 77 Fed. Reg. 20019 (2012), with protests and interventions due on or before April 16, 2012.

12. Timely motions to intervene were submitted by Maryland Public Service Commission; Exelon Corporation (Exelon); Dayton Power and Light Company; Edison Mission Marketing & Trading, Inc.; PJM Industrial Customer Coalition; PPL Energy Plus, LLC (PPL Energy Plus); American Municipal Power; Monitoring Analytics, LLC as the PJM independent market monitor (PJM Market Monitor); DC Energy, LLC, (DC Energy); American Electric Power Service Corporation; Allegheny Electric Cooperative, Inc.; Duke Energy Corporation; Old Dominion Electric Cooperative; Borough of Chambersburg, Pennsylvania; North Carolina Electric Membership Corporation; and

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[7] 18 C.F.R. § 385.206(h) (2011).

NextERA Energy Generators.[8] Out of time motions to intervene were filed by New Jersey Board of Public Utilities (NJ BPU) and Dominion Resource Services, Inc. (Dominion).

13. PJM filed an answer to the complaint. Exelon filed a protest, and the PJM Market Monitor, DC Energy, and PPL Energy filed comments. FirstEnergy filed an answer and supplemental answer.[9]

A. PJM Answer

14. PJM answers that during the planning period, increased capacity can result from unexpected circumstances affecting the grid and transmission facilities that have been modeled as being out-of-service, and subsequently returning to service. PJM states that this increased capacity could be converted to additional monthly ARRs reflecting increased transfer capacity not modeled at the time of the annual simultaneous feasibility test, and that these additional monthly ARRs in turn could be allocated to parties whose ARR requests were prorated in the annual process. However, PJM notes that this increased allocation will divert congestion revenue that would otherwise be used to offset any current planning period underfunding of FTRs. PJM further contends that because FirstEnergy Companies' proposal seeking intra-planning period monthly ARR allocations will affect the funding of FTRs, PJM requests that the Commission dismiss the complaint without prejudice pending the issuance of the FTR Report and outcome of the stakeholder process to give PJM and its stakeholders some time to consider these issues.

B. Protest and Comments

15. Exelon protests the complaint and the request for fast track processing because FirstEnergy asks the Commission to direct PJM to change its ARR allocation rules in the

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[8] The NextERA Energy Generators are FPL Energy Marcus Hook, L.P., North Jersey Energy Associates, L.P., Backbone Mountain Windpower LLC, Mill Run Windpower LLC, Somerset Windpower LLC, Meyersdale Windpower LLC, Waymart Wind Farm, LP, and Pennsylvania Windfarms, Inc.

[9] FirstEnergy submitted the FTR Revenue Stakeholder Report (FTR Report) with its supplemental answer. As previously noted, PJM has committed to develop a comprehensive report detailing the circumstances resulting in the FTR underfunding for stakeholder review and discussion. The two primary reasons for FTR underfunding identified in the FTR Report are: (i) the gradual increase in congestion along the PJM borders over the past several years; and (ii) an increase in the number of transmission outages over the past few years, and in particular the number of emergency, summer and winter peak period outages.

midst of the 2012-2013 ARR allocation and FTR auction cycle. Exelon states that the current ARR process does not include any consideration for granting partial-year ARRs associated with transmission facilities coming in and out of service. Exelon argues that LSEs participating in the 2012-2013 ARR allocation process made their respective ARR nominations without the expectation that any incremental capacity would be entitled to new, monthly ARRs, and that substantially changing the rules governing the allocation of additional incremental transmission capability, as proposed by FirstEnergy, would change a participating LSE's expectation of available hedges and potentially undermine an LSE's committed ARR nomination strategy for the 2012-2013 ARR allocation and FTR auction cycle. Exelon also contends that PJM stakeholder deliberations did not meaningfully contemplate changes to the ARR allocation rules to address the priority of transmission hedge rights as suggested by FirstEnergy in its complaint, and that PJM and its stakeholders should first be afforded the opportunity to develop a workable consensus solution before the Commission takes action.

16. DC Energy states that FirstEnergy has raised a valid concern, but does not agree with FirstEnergy's proposed solution. DC Energy requests that the Commission order PJM to improve its modeling process to reflect, as accurately as possible, the actual projected system capability known to PJM prior to the annual ARR/FTR process. Specifically, DC Energy requests that PJM alter the structure of its annual ARR allocation and FTR auction to allow quarterly biddable periods, and model facility ratings consistent with this quarterly structure. Alternatively, DC Energy suggests that a technical conference may be the most efficient means for both market participants and the Commission to better understand these issues.

17. The PJM Market Monitor agrees that FirstEnergy raises an issue that should be addressed, but that FirstEnergy's proposed remedy is not developed enough to evaluate. In addition, the PJM Market Monitor contends that FirstEnergy has not explained in sufficient detail how the current rules do not already accommodate the requested relief at this time.[10] The PJM Market Monitor suggests that, because any change in ARR allocations has implications for the broader PJM market rules relating to FTRs and ARRs, if the Commission determines that action is needed, the Commission could direct PJM and its stakeholders to consider this issue, together with any and all related issues, and to submit a proposal or progress report within a defined timeframe.

18. PPL Energy Plus supports the request for changes to the ARR allocation process because it preserves the ARR allocation that would have occurred but for the line having been modeled as out of service for an entire year and is consistent with the underlying basis for ARR allocations.

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[10] Market Monitor Comments at 2, citing PJM Manual 6.

C. FirstEnergy Response

19. In response, FirstEnergy notes that no party disagrees that the issues raised in the complaint have merit and need to be resolved. FirstEnergy contends that this issue has been extensively debated by the stakeholders and that the PJM stakeholder process has concluded, without addressing its concerns with the existing Tariff provisions. FirstEnergy states that sending this issue back to the stakeholders for reconsideration will be unlikely to resolve the merits of the complaint and will delay the Commission's ultimate consideration of this issue. FirstEnergy also states that the FTR Report will not affect the merits of the complaint.

20. FirstEnergy argues that, contrary to Exelon's assertions, this is the right time for the Commission to act on the merits of the complaint. FirstEnergy contends that Exelon's argument inaccurately assumes that market participants can accurately predict what transmission paths will be prorated and at what level, what other market participants' behavior will be, and how PJM will use its modeling discretion prior to PJM's completion of the Simultaneous Feasibility Test and the allocation process. FirstEnergy contends that the Commission should reject Exelon's argument and require PJM to implement the relief requested in the complaint before the first monthly auction in the 2012-2013 planning year in May 2012.

IV. Discussion

A. Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[11] the notice of intervention and timely unopposed motions to intervene serve to make the entities filing them parties to the proceeding. Given the lack of undue prejudice or delay, the parties' interest, and the early stage of the proceeding, we find good cause to grant the unopposed, untimely motions to intervene of the NJ BPU and Dominion.

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,[12] prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept FirstEnergy's answer and supplemental answer because they have aided us in our decision-making process.

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[11] 18 C.F.R. § 385.214 (2011).

[12] 18 C.F.R. § 385.213(a)(2) (2011).

B. Complaint

23. We grant the complaint. We find PJM's existing tariff unjust and unreasonable, and unduly discriminatory, because it fails to allocate the ARRs or the revenue associated with the FTRs resulting from the return to service of existing transmission capability to parties with historic rights over these paths, and because it varies the allocation of ARRs or the revenue associated with the FTRs depending on whether they become available from the return to service of existing transmission capability or result from newly-constructed or upgraded transmission capability. The Commission finds that the Tariff prevents the allocation procedures from achieving their original objectives -- to allow LSEs to reasonably serve their load using transmission lines they historically relied upon. The Commission will require PJM to revise its Tariff so that the same procedures apply to return of service of existing transmission capability and newly-constructed or upgraded transmission capability, as of the date of this order.

24. As previously noted, PJM's Tariff includes a mechanism for the allocation of ARRs to those customers with historic transmission paths. This occurs in Stage 1 of PJM's allocation procedures. If PJM determines that certain paths will not be available for some portion of the year, these existing transmission paths may be modeled as being out of service for the annual auction. In that circumstance, customers that ordinarily would be eligible for those ARRs under Stage 1 are not allocated those ARRs/FTRs during the annual auction.

25. These transmission paths, however, may return to service during the year. But if they do, the FTRs are not allocated to the customers that would have been able to select these paths under Stage 1. Rather, the FTRs associated with these transmission paths are sold in monthly FTR auctions to the highest bidder.[13] As a result, customers with Stage 1 rights to the ARRs represented by these transmission paths do not receive the allocation to which they otherwise would be entitled. Therefore, the FTRs associated with the return to service of existing transmission capability are not able to serve as a financial replacement to firm transmission service, or as a hedge for the LSE against congestion costs over a given pathway.

26. In contrast, when the ARRs result from upgraded or newly-constructed transmission capability, PJM does not allocate them using the monthly auctions, but allocates them under its residual auction procedures to Stage 1 customers. PJM does not provide a reasoned basis for distinguishing the difference in allocation procedures and acknowledges that allocating ARR associated with the return to service of existing

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[13] *See* PJM Tariff, Attachment K-Appendix § 7.3, Auction Procedures and § 7.4, Allocation of Auction Revenues.

transmission capability could be allocated to the parties eligible for these paths under the same procedures used with respect to newly-constructed or upgraded transmission capability.

27. We conclude that PJM's tariff is unjust and unreasonable, and unduly discriminatory, in not allocating ARRs resulting from existing transmission facilities (modeled as being out of service) that return to service to the customers under the Stage 1 allocation procedures. Allocation of these ARRs to customers eligible under Stage 1 will be consistent with the goals of providing firm service to network and point-to-point transmission customers based on their historic transmission paths. We also find that such allocation will result in meeting the reasonable needs and expectations of LSEs. Under section 206, we direct PJM to apply the same procedures in section 7.9 that it uses for allocating the increase in transmission capability under this section as of the date of this order.[14] PJM is also required to make a compliance filing within 60 days of the date of this order to revise section 7.9 so that it covers existing transmission capacity that returns to service.

28. Parties, including the PJM Market Monitor, request that the Commission dismiss the complaint and defer to the PJM stakeholder process, as the Commission did in the FTR Complaint proceeding dealing with the mechanism by which PJM recovers real-time congestion costs from FTR holders.[15] PJM raises a concern that granting the complaint would exacerbate the planning period underfunding of FTRs and the PJM Market Monitor contends that any change in ARR allocations has implications for the broader PJM market rules relating to FTRs and ARRs. As a result, they contend that this complaint should be considered with issues raised by the FTR Complaint.

29. We find, however, that the circumstances here are not similar. In the FTR Complaint proceeding the Commission determined that the record was insufficient to support determination of the root cause of the real-time congestion that led to the underfunding of FTRs, and because PJM had committed to provide further information for stakeholder review and discussion, we found that instituting Commission procedures at the time were not warranted. The Commission determined that it would not be an efficient use of Commission or industry resources for the Commission to circumvent PJM's existing processes that were already evaluating the root cause of the problem. The Commission therefore dismissed the FTR Complaint without prejudice to its being refiled with sufficient data after the PJM process is completed.

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[14] *Id.* § 7.9, Residual Auction Revenue Rights.

[15] *See supra* note 6.

30. In contrast, in this case, there is no factual uncertainty. PJM has developed the FTR Report detailing the circumstances resulting in FTR underfunding for stakeholder review and discussion. In its answer, PJM explains that increased allocation will divert congestion revenue that would otherwise be used to offset any current planning period underfunding of FTRs. We find that issues related to the underfunding of FTRs do not support dismissal of the complaint addressing the allocation of ARRs or the revenues from the FTRs associated with the return to service of existing transmission capability that is modeled as out of service. Therefore, we have sufficient record to resolve this complaint, and find, as discussed above, that PJM's existing tariff is unjust, unreasonable and unduly discriminatory.

31. Exelon raises a concern that the complaint requests that the Commission direct PJM to change its ARR allocation rules in the midst of the 2012-2013 ARR allocation and FTR auction cycle. It maintains that it may have made different decisions in selecting its ARRs in the annual auction had it known the tariff would be changed.

32. We do not find a basis for delaying the implementation of a revised tariff. Implementing a revised tariff will ensure that ARRs resulting from transmission facilities returned to service will be allocated to the Stage 1 customers who have a right to such ARRs/FTRs. Such an allocation will not upset the expectations of existing parties since, under the existing tariff, no party had any vested rights in the ARRs from existing transmission that returns to service. Section 7.9 already contains protections to ensure that customers will not be awarded ARRs that exceed the amount to which they would have been entitled had these facilities been included in the annual allocation.[16] Even if customers might, perhaps, have made different decisions during the annual allocation, and it would be speculative to find definitively that they would have made different decisions, we find it more reasonable to allocate these ARRs to those customers with historic rights than to allocate them during the monthly auctions. Moreover, because we are adopting the same procedures that already apply to upgraded and new construction, we see no problem in applying the provision as of the date of this order.

33. DC Energy raises concerns with the outage modeling protocols and requests that the Commission order PJM to alter the structure of its ARR allocation and FTR auction process. DC Energy has not adequately supported its request. Moreover, concerns with the outage modeling protocols, and the structure of its ARR allocation and FTR auction process should be addressed within the PJM stakeholder processes as an initial matter, rather than through a Commission-lead technical conference.

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[16] PJM Tariff, Attachment K-Appendix § 7.9(c) (providing that the allocation cannot exceed the entity's peak load).

34. PJM is directed to submit a compliance filing within 60 days of the date of this order to reflect that the allocation of ARRs associated with existing transmission capacity that was not modeled as in service for the annual ARR allocation, but becomes available during the year, so that it is treated consistent with the allocation of ARRs for newly-constructed or upgraded transmission capability.

The Commission orders:

(A) The complaint of FirstEnergy is hereby granted, effective as of the date of this order, as discussed in the body of this order.

(B) PJM is hereby directed to submit a compliance filing, within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.