143 FERC ¶ 61,209
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

FirstEnergy Solutions Corp. and Allegheny Energy Supply Company, LLC v. PJM Interconnection, L.L.C.	Docket No.	EL13-47-000

ORDER DISMISSING COMPLAINT

(Issued June 5, 2013)

1. On February 15, 2013, FirstEnergy Solutions Corp. and Allegheny Energy Supply Company, LLC (collectively, FirstEnergy) submitted a complaint to modify provisions of PJM Interconnection, L.L.C.'s (PJM's) Open Access Transmission Tariff (Tariff) and Operating Agreement as related to the funding of Financial Transmission Rights (FTR). In this order, the Commission dismisses the complaint.

I. Background

2. PJM introduced its competitive auction-based market for fixed transmission rights on May 1, 1999.[1] FTRs are a financial replacement for physical, firm transmission service that allow market participants to hedge the costs of day-ahead transmission congestion. In 2003, PJM created Auction Revenue Rights (ARR) in conjunction with modifying its FTR framework to include an annual FTR auction.[2] PJM awards FTRs in the auction process, with the quantity that can be auctioned limited by the actual physical

[1] *See Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257, at 62,241 (1997).

[2] *See PJM Interconnection, L.L.C.*, 102 FERC ¶ 61,276, at P 18 (2003). Auction Revenue Rights are defined in Section 1.3.1A of the PJM Operating Agreement as the right to receive revenue from the Financial Transmission Right auction.

capabilities of the transmission system.[3] The value of an FTR is based upon the difference between the day-ahead congestion price at specific source (sending end/generator) and sink (receiving end/load) points on the transmission system. ARRs are financial entitlements allocated to transmission customers and are the mechanism by which the proceeds from the annual FTR auction are allocated. ARRs, which may be converted to FTRs at the option of the participant, are awarded through a multi-stage allocation process based on participant request, and available transmission capability.

3. The PJM Tariff includes both day-ahead and real-time energy markets in the calculation of transmission congestion charges. Balancing congestion exists because system conditions in the real-time market are not the same as captured in the day-ahead market. If less transmission system capability is available in the real-time energy market than in the day-ahead energy market and there are constraints, then negative balancing (real-time) congestion occurs, reducing the congestion charges paid to FTR holders. If insufficient congestion charges are collected from the day-ahead and real-time energy markets to satisfy the FTR target allocations, then FTR credits are discounted on a *pro rata* basis, first from excess congestion charges from current and subsequent months, and to the extent that uncovered year-end FTR target allocations remain, an "uplift" charge is assessed to all FTR holders.

4. FirstEnergy had previously filed a complaint on FTR underfunding on December 28, 2011. The Commission denied that complaint, without prejudice, exercising its discretion to find that it was not appropriate to initiate action at that time, given the lack of record as to the causes of underfunding and an ongoing stakeholder process.[4] PJM provided a report to support the stakeholder process that identified: (1) congestion at PJM's borders caused by loop flow and market-to-market flowgate coordination; and (2) internal transmission constraints caused by unexpected transmission facility outages as the primary causes of the real-time congestion causing the FTR underfunding (PJM Stakeholder Report).

[3] PJM conducts a Simultaneous Feasibility Test (SFT) to ensure that the transmission system can support the subscribed set of FTRs and ARRs during normal system conditions. The SFT models planned system conditions, however, there can be differences between the expected system capability at the time of the auction, and the actual system capability at the time when congestion charges are incurred.

[4] *See FirstEnergy Solutions Corp. and Allegheny Energy Supply Co. v. PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,158, *order on reh'g*, 140 FERC ¶ 61,051 (2012).

II. PJM Stakeholder Report

5. The PJM Stakeholder Report identifies two primary reasons for the increased negative balancing congestion. PJM identifies an increase in congestion along PJM borders, which accounted for approximately 54 percent of FTR underfunding in 2011. PJM notes that while underfunding and negative balancing congestion has occurred on facilities near the PJM borders, sufficient system capability existed within PJM such that excess funding on constraints further away from the borders was sufficient to cover the inadequacies observed on constraints near the border. PJM states that the increase in congestion along the PJM borders is directly related to the increase in quantity of market-to-market flow gates on the system and more specifically the implications of flow gates being added mid-planning period that could not be modeled in the annual ARR and FTR feasibility analyses. PJM notes that congestion along the PJM borders is more likely to result in negative balancing congestion because of factors such as unpredictable external flow patterns, real-time wind resource output not being offered in the PJM day-ahead energy market, external control area transmission system topology changes for which PJM does not have forward information, and unforeseen external transmission outages.

6. PJM also identifies an increase in the number of transmission outages and facility deratings which result in a reduction in system capability. Reduced system capacity accounted for 46 percent of underfunding in 2011. PJM states an increase in transmission facility outages caused by emergency outages after it has completed the modeling for the day-ahead energy market, and an increase in unscheduled transmission outages are contributing to the downward trend of balancing congestion. PJM notes that the reduction in transmission system capability exacerbates the impacts of FTR underfunding from negative balancing congestion at the PJM borders.

III. FirstEnergy's Complaint

7. FirstEnergy states in its complaint that the PJM Tariff requires FTR holders to bear the risks of FTR underfunding associated with increased real-time congestion.[5] FirstEnergy contends that FTRs were intended to provide a hedge against day-ahead congestion and that FTR revenue inadequacies over the last three years demonstrate that FTRs are not funded to the levels that are necessary to provide the intended hedge against day-ahead congestion. FirstEnergy explains that FTR holders must pay additional costs, to make up for increased congestion in the real-time market. As a result, FirstEnergy

[5] In support of the complaint, the FirstEnergy Companies provided the affidavits of Mr. Brian A. Farley (Farley Affidavit) and Mr. Robert B. Stoddard (Stoddard Affidavit).

argues that the PJM Tariff provisions have become unjust, unreasonable and unduly discriminatory and preferential.

8. FirstEnergy asserts that the revenue shortfall for FTRs is caused by a variety of events in the real-time market (and not in the day-ahead market) that are the result of unexpected changes in transmission outage schedules, real-time changes in transmission system capability, unexpected system loop flows, and real-time modifications in neighboring balancing authority areas.[6] FirstEnergy states that PJM has explained that the recent significant revenue inadequacy is due to certain unexpected events occurring in real-time that PJM cannot model, which, in turn, alters the congestion on certain transmission paths in the PJM balancing authority area dramatically from the day-ahead market. FirstEnergy explains PJM has identified several factors that are leading to large disparities between the day-ahead and real-time market, and thus, the significant FTR revenue inadequacy. FirstEnergy argues that regardless of the exact cause or causes of the discrepancy, incremental real-time congestion is precluding adequate funding of FTRs. FirstEnergy notes that, since June 2010, they have lost nearly $55 million in revenues. This is a $45.9 million shortfall in revenues from their target allocations (this reflects an 86 percent payout ratio during the period), and another $9.1 million in the form of FTR uplift.[7]

9. FirstEnergy contends that the proper solution is to remove the effects of real-time operations from the calculation of transmission congestion charges. FirstEnergy explains that removing incremental real-time congestion costs from the calculation of transmission congestion charges will give FTR holders an opportunity to hedge congestion, better align costs with service taken under the PJM Tariff, and allow FTRs to be the financial equivalent of firm and network transmission service as originally intended.

10. FirstEnergy contends that the Commission should direct PJM to revise the PJM Tariff to eliminate references to real-time congestion charges in the calculation of the Transmission Congestion Charges in Attachment K – Appendix, sections 5.25(a) and (b)

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[6] FirstEnergy states that additional real-time operational uncertainties from new regulatory and other compliance obligations may further erode the level of funding of FTRs.

[7] In the 2010/2011 planning period, the FTR payout ratio was 85 percent, which resulted in revenue inadequacy of $254.3 million. In the 2011/2012 planning period, the FTR payout was 81 percent which resulted in revenue inadequacy of $192 million. For the first seven months of the current 2012/2013 planning period, the payout ratio is 76 percent, corresponding in a revenue inadequacy of $109 million. Farley Affidavit at 8.

and any other corresponding provisions. In addition, FirstEnergy argues that PJM should be directed to revise any other provisions of the Tariff and Operating Agreement that would require that FTRs be funded based on both day-ahead and real-time transmission congestion charges.

11. FirstEnergy recognizes that removing real-time congestion charges from the calculation of transmission congestion charges may create a funding shortfall. However, FirstEnergy argues that the costs for real-time congestion charges should be allocated to all transmission users broadly. Accordingly, FirstEnergy contends the just and reasonable replacement rate should be to allocate real-time congestion charges to all transmission customers on a *pro rata* basis.

12. FirstEnergy requests fast track processing under Rule 206(h) of the Commission's Rules of Practice and Procedure,[8] so that the Commission can act on this Complaint and direct PJM to provide a suitable replacement for the FTR funding mechanism before the 2013/2014 planning year commences. FirstEnergy has requested that the Commission act on the complaint by June 1, 2013.

IV. Notice of Filing and Responsive Pleadings

13. Notice of the FirstEnergy's complaint was published in the *Federal Register*, 78 Fed. Reg. 12,750 (2013), with protests and interventions due on or before March 7, 2013.[9]

14. Notices of intervention were filed by the Illinois Commerce Commission (Illinois Commission), North Carolina Utilities Commission (NC Commission); Public Utilities Commission of Ohio (Ohio Commission); Virginia State Corporation Commission (Virginia Commission); New Jersey Board of Public Utilities (New Jersey Board); Maryland Commission;[10] Pennsylvania Public Utility Commission (Pennsylvania Commission); Indiana Utility Regulatory Commission (Indiana Commission). Timely motions to intervene were filed by the Office of Ohio Consumers' Council; Monitoring

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[8] 18 C.F.R. § 385.206(h) (2012).

[9] The Commission granted a motion by the Maryland Public Service Commission (Maryland Commission) to extend the comment period to March 18, 2013.

[10] With a supporting affidavit of Mr. Craig R. Roach.

Analytics, LLC;[11] Joint Protestors;[12] Exelon Corporation (Exelon); PSEG Companies (PSEG);[13] Edison Mission Marketing & Trading, Inc. (Edison Mission); PJM Industrial Customer Coalition (PJM ICC); PPL Energy Plus, LLC (PPL); J. Aron & Company (J. Aron);[14] Financial Institutions Energy Group (Financial Institutions); DC Energy, LLC and Vitol Inc. (DC Energy);[15] Dominion Resource Services, Inc. (Dominion); American Electric Power Service Corporation; Great Bay Energy I, LLC (Great Bay); Solios Power Mid-Atlantic Trading LLC (Solios); Monterey MA, LLC (Monterey); Cobalt Capital Partners, LLC (Cobalt); American Municipal Power; Hess Corporation; Consolidated Edison Energy, Inc.; Calpine Corporation; Cargill Power Markets, LLC (Cargill); Duquesne Light Company; Direct Energy Business, LLC; Linden VFT, LLC (Linden); XO Energy MA, LP (XO Energy); Twin Cities Power Holdings, LLC (Twin Cities); DTE Energy Trading, LLC; Red Wolf Energy Trading, LLC (Red Wolf); National Rural Electric Cooperative; East Kentucky Power Cooperative; Retail Energy Supply Association. Out-of-time motions to intervene were filed by the Delaware Public Service Commission (Delaware Commission), PJM Power Providers Group (PJM Power Providers), Rockland Electric Company (Rockland), Pepco Holdings, Inc. (Pepco), and Dayton Power and Light Company (Dayton).

15. An answer was filed by PJM, and comments and protests were filed by Illinois Commission, NC Commission, Ohio Commission, Virginia Commission, New Jersey Board, Maryland Commission, Pennsylvania Commission, Indiana Commission, Delaware Commission, Exelon, PSEG, Edison Mission, Joint Protesters, Dominion, PPL, PSEG, J. Aron, Market Monitor, Financial Institutions, Financial Marketers,[16] DC Energy,[17] Indicated Financial Marketers,[18] and Linden.

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[11] As the PJM independent market monitor (Market Monitor).

[12] Old Dominion Electric Cooperative, North Carolina Electric Membership Corporation, Southern Maryland Electric Cooperative, and PJM Industrial Customer Coalition.

[13] Public Service Electric and Gas Company, PSEG Power LLC and PSEG Energy Resources & Trade LLC. PSEG included the supporting affidavit of Mr. Gary S. Sorenson.

[14] With a supporting affidavit of Mr. Harry Singh.

[15] With the supporting testimony of Mr. Roy J. Shanker.

[16] Great Bay, Solios, Monterey, BJ Energy, LLC, Franklin Power, LLC

[17] Together with Vitol Inc.

16. Motions to leave to answer and answers were filed by PJM, FirstEnergy,[19] Maryland Commission, Exelon, Cargill, Joint Protestors, and the Market Monitor, and FirstEnergy, Financial Institutions, Maryland Commission, and J. Aron filed motions to leave and supplemental answers.

V. Answer, Comments and Responsive Pleadings

A. PJM's Answer

17. PJM states that it is concerned about the degree of recent FTR underfunding and generally supports the complaint and FirstEnergy's proposal to allocate real-time congestion costs, positive or negative, to all transmission customers on a *pro-rata* basis. PJM agrees with FirstEnergy that FTR revenue inadequacy is not caused by FTR holders,[20] and it agrees with FirstEnergy that the FTR underfunding may affect the otherwise expected benefits of FTR markets. While supporting FirstEnergy's complaint, PJM notes that full funding of FTRs is a goal, not a guarantee, as evidenced by the Operating Agreement. PJM states that while it is pursuing solutions to the causes of the FTR underfunding, the process is time-consuming. In the interim, PJM contends that the costs associated with the FTR underfunding can be allocated more equitably.

18. PJM notes that if the Commission accepts FirstEnergy's proposed revisions, corollary funding provisions must be implemented to reallocate the real-time congestion costs. PJM supports FirstEnergy's proposal to allocate real-time congestion costs, positive or negative, to all transmission customers on a pro rata basis. As an alternative, PJM believes that combining the marginal loss surplus with real-time congestion costs would apply funds resulting from the over collection of marginal losses more logically and efficiently than the relatively arbitrary present dispersion of marginal loss surpluses. A third, broader cost allocation method proposed by PJM is to allocate real-time congestion costs to all participants in PJM's real-time market.

B. Market Monitor

19. The Market Monitor contends that revenue adequacy is misunderstood, and that FTR holders, with the creation of ARRs, do not have the right to financially firm

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[18] Cobalt, Twin Cities, Red Wolf, and XO Energy.

[19] With a supporting affidavit of Mr. Robert B. Stoddard (Stoddard Reply Affidavit).

[20] PJM does not agree that the current level of FTR underfunding is caused by either the design or implementation of it SFT modeling.

transmission service or revenue adequacy. The Market Monitor asserts that ARRs have the characteristics and rationale that were associated with FTRs. The Market Monitor states that there have been no issues of revenue adequacy for ARRs.

20. The Market Monitor also asserts that FTR holders appropriately receive revenues based on actual congestion in both day ahead and real time markets. The Market Monitor contends that differences between day-ahead congestion and real-time congestion are indicative of reporting issues, cross subsidization issues, issues with the level of FTRs sold, and modeling issues. Such differences, the Market Monitor contends, are not an indication that FTR holders are being under-allocated total congestion dollars.

21. The Market Monitor contends that the relief requested by FirstEnergy, “that real-time congestion costs be allocated broadly to all transmission users,” does not address the FTR revenue adequacy issue. The Market Monitor states that this approach instead would conceal the FTR revenue inadequacy problem in PJM by requiring an unjust, unreasonable and illogical transfer of funds from all transmission customers to FTR holders. The Market Monitor contends that FTRs are oversold, and that underfunding is a logical consequence of the overselling. The Market Monitor asserts that when FTRs are oversold, a decline in their value can be expected. Until the fundamental issues underlying FTR funding can be addressed, the level of revenue received will continue to be a correct market signal.

22. The Market Monitor contends that the FTR Task Force has made progress identifying causes of FTR underfunding, and proposing solutions. Accordingly, the Market Monitor states that the relief requested by FirstEnergy should be denied and the complaint should be dismissed with prejudice.

C. Comments in Support of the Complaint

23. The Financial Marketeers support the complaint and the proposed assignment of negative congestion balancing cost to transmission customers on a *pro rata* basis. The Indicated Financial Marketeers also support the complaint, and contend that PJM’s alternative allocation is *ultra vires* and unsupported. Further, the Indicated Financial Marketers contend that PJM’s alternative allocation does not solve the underlying problems that result in FTR underfunding, and, while supporting the complaint, that further improvements to the proposal to remove real-time congestion costs should be addressed after further stakeholder process. The Financial Institutions and J. Aron support the complaint and proposed remedy.

24. DC Energy supports the complaint and argues that balancing congestion should be removed from the FTR market settlements. DC Energy supports the *pro rata* allocation of these costs to transmission customers. Further, DC Energy requests that the Commission order PJM to implement a seasonal transmission outage and transmission

line rating modeling approach in order to more accurately include planned transmission outages and line ratings in its annual FTR model.

25. Exelon supports allocation of real-time congestion costs to market participants that cause congestion. Exelon supports allocation of any day-ahead congestion surplus on the same basis. Exelon requests that the proposed changes become effective June 1, 2014, to accommodate a more orderly market design transition.

26. PPL supports removing real-time congestion costs from the calculation of transmission congestion charges, and allocation of any real-time congestion charges (whether positive or negative) to all customers of the transmission system on a *pro rata* basis. PPL does not support the PJM alternative allocations without further review. Further, PPL states that the Commission should support further review of the increased costs and develop potential remedies. PSEG states that the Commission should investigate the underlying causes of the FTR underfunding, including the seams issues in both operations and planning, and issues related to virtual transactions. PSEG requests that the Commission set the matter for hearing and settlement judge procedures.

D. Comments in Opposition to the Complaint

27. The Maryland Commission notes the ongoing stakeholder process and opposes the fast track processing of the complaint. The Maryland Commission requests that the Commission dismiss the complaint or otherwise reject the requested relief. The Maryland Commission contends that underfunding-related costs are a market cost which should not be imposed by regulatory fiat, or alternatively, should be recovered under incentive mechanisms that assure recovery of the lowest reasonable level. As an alternative to dismissing the complaint, the Maryland Commission requests that the Commission set this matter for evidentiary hearing and settlement judge procedures. The North Carolina Commission and Virginia Commission filed comments supporting the Maryland Commission.

28. The Pennsylvania Commission opposes fast track processing of the complaint, and states that a solution should address the root cause of the underfunding. The Pennsylvania Commission also raises a concern with the allocation of FTR underfunding to all transmission customers. Accordingly, the Pennsylvania Commission supports evidentiary hearings and settlement procedures. The Delaware Commission filed comments in support of the Pennsylvania Commission.

29. The Ohio Commission disagrees with the proposal that shortfalls in the FTR markets should be shifted to retail transmission customers, and contends that the focus of the complaint should be to fix the FTR market so that underfunding is less likely to occur. The New Jersey Board requests that the Commission reject the complaint because it seeks recovery of costs for which FTR holders are not entitled. The New Jersey Board contends that entities that chose to self-schedule FTR transactions should bear the

responsibility of speculating in the FTR market, and that it is unjust and unreasonable to spread the risk across all load. Further, the New Jersey Board argues that the complaint fails to address the causes of FTR underfunding, and the Commission should order PJM to adopt reforms to address the sources of the problem.

30. Joint Protestors state that the Commission should dismiss the complaint and disregard PJM's proposed alternatives. Joint Protestors contend that the complaint ignores cost causation, and requiring allocation of real-time congestion costs to all transmission customers is unjust and unreasonable. Instead, Joint Protestors state that the Commission should direct PJM to work with stakeholders to further study interregional and other real-time congestion costs.

31. Dominion states that the Commission should dismiss the complaint and request for fast track processing. Dominion states that the PJM stakeholder process is actively addressing the issues associated with FTR underfunding. Dominion also opposes the relief sought in the complaint. Further, Dominion contends that the focus should be on solving the FTR underfunding root causes.

32. Linden states that there is no demonstration that the proposed allocation or PJM's alternatives are just and reasonable. Linden requests that, to the extent the Commission finds the current allocation unjust and unreasonable, the Commission should establish evidentiary process, and any changes should be applied prospectively.

E. <u>Responsive Pleadings</u>

33. In response to the comments and protests, FirstEnergy answers that multiple parties, including the Market Monitor, attempt to distort the purpose and intent of FTRs, contradicting Commission precedent that FTRs exist to serve as a hedge against the costs of transmission congestion. Parties also assert that the complaint is deficient because it does not address or pose solutions to the causes of real-time congestion. To the extent that further proceedings are necessary to resolve how real-time congestion costs should be allocated, FirstEnergy would support such a separate proceeding, so long as it does not delay the relief requested in the complaint. Both FirstEnergy and Cargill contend that additional stakeholder process should not delay implementation of the complaint's requested relief.

34. PJM answers that the complaint is limited to whether including real-time congestion in FTR funding is unjust and unreasonable and that the Commission determination should be limited to whether to remove balancing congestion from the FTR funding mechanism and instead allocate balancing congestion to all transmission customers. PJM requests that the Commission decline the invitation to reexamine the root causes of FTR underfunding or balancing congestion in the context of the complaint. PJM argues that the factors identified in the PJM Stakeholder Report are not the subject

of this proceeding. Accordingly, PJM answers that the Commission should resist calls to expand this proceeding beyond the scope of the complaint.

35. The Maryland Commission argues that FTRs are market instruments, and the Commission should focus on the proper incentives to achieve market service objectives and risk/reward relationships. The Maryland Commission contends that FTR underfunding should be allocated to ARR/FTR holders, who can best affect the incurrence of these costs, and assure that such costs are minimized. The Maryland Commission and Joint Protestors urge the Commission to fully examine the concerns raised by some parties that certain virtual transactions have contributed to the FTR underfunding and that PJM is overpaying for certain market-to-market transactions with the Midwest Independent System Operator, Inc. (MISO). Joint Protestors urge the Commission to maintain the status quo, or broaden the group of utilities to which the costs are allocated.

36. Exelon answers that the Commission should refrain from revisiting issues related to the root causes of FTR underfunding as part of this proceeding, and instead direct continued examination through the PJM/MISO joint and common market initiatives. Exelon further requests that the Commission reject PJM's alternative proposals.

37. The Market Monitor answers that the complaint should be dismissed because it is based on confusion about the causes of FTR underfunding, and defined solutions to the FTR funding issues should be implemented rather than broadly assigning the balancing congestion to load. In a supplemental answer, FirstEnergy contends that the Market Monitor ignores Commission precedent regarding the purpose of FTRs, mischaracterizes the purpose of the complaint, and confuses the cause of revenue inadequacies. Financial Institutions contend that statements of the Maryland Commission and Market Monitor mischaracterize the position advocated by the Financial Institutions regarding the allocation of balancing congestion costs.

VI. Commission Determination

A. Procedural Matters

38. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[21] the notices of intervention and timely, unopposed motions to intervene serve to make the parties that filed them parties to this proceeding. Given the early stage of this proceeding and the absence of undue prejudice or delay, we grant the unopposed out-of time motion to intervene submitted by the Delaware Commission, PJM Power Providers, Rockland, Pepco and Dayton.

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[21] 18 C.F.R. § 385.214 (2012).

39. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority.[22] We accept the answers of FirstEnergy, Maryland Commission, Cargill, Exelon, Joint Protestors, and the Market Monitor, and the supplemental answers of FirstEnergy, Financial Institutions, Maryland Commission, and J. Aron because they have aided us in our decision-making process.

B. Complaint

40. As discussed below, FirstEnergy has not demonstrated that the existing Tariff is unjust and unreasonable, and we dismiss the complaint.

41. FirstEnergy contends that FTR revenue inadequacies over the last three years demonstrate that FTRs are not funded to the levels that are necessary to provide the intended hedge against congestion, and because FTRs are not fully funded, the PJM Tariff provisions have become unjust, unreasonable and unduly discriminatory and preferential. The Commission has recognized that full funding of FTRs is a goal, but the PJM Tariff does not ensure full funding.[23] In PJM, the right to financially firm transmission service is provided through the allocation of ARRs, which are directly allocated to loads to offset congestion. FTRs, in PJM, are awarded to bidders in an FTR auction.

42. The PJM Stakeholder Report identified two main causes of the real-time congestion that has recently been associated with FTR underfunding: (1) congestion at PJM's borders caused by loop flow and market-to-market flowgate coordination; and (2) internal transmission constraints caused by unexpected transmission facility outages. These factors contribute to differences between the amount of FTRs sold by PJM in the auction and the actual transmission capacity that exists on the system in real time. The amount paid by FTR holders should reflect the expected value of a given FTR. Thus, if the value of FTRs is reduced by underfunding, then the FTR holders should pay less for these instruments, and will receive the value for which they have paid.

43. FirstEnergy further contends that allocating costs from real-time congestion to FTR holders is unjust and unreasonable because they do not cause real-time congestion. Neither FirstEnergy nor any of the commenters have identified the parties causing the underfunding. FirstEnergy also does not provide evidence demonstrating why all

[22] 18 C.F.R. § 385.213(a)(2) (2012).

[23] *See PPL EnergyPlus, LLC v. PJM Interconnection, L.L.C.*, 134 FERC ¶ 61,263, at P 46 (2011) (the Tariff contemplates the possibility of underfunding FTRs in a planning period). *See also* Tariff, Attachment K-Appendix § 5.2.5(c).

transmission customers, who already pay for access to the transmission system, should pay for the underfunding. As the Market Monitor argues, however, there is a rational basis for allocating real-time congestion costs to FTR holders. FTRs are based on PJM's modeling of the transmission system.[24] To the extent that PJM's modeling is inaccurate, it is not unreasonable to allocate the results of that inaccuracy to the holders of the FTRs, as they are arguably in the best position to value this product. FirstEnergy has not shown that allocating these costs to other parties will create any better incentive to address the underlying causes of FTR underfunding.

44. FirstEnergy essentially is arguing that the current allocation mechanism for real-time congestion costs be replaced with an equally, if not more, arbitrary mechanism. While some parties, like FirstEnergy, may benefit from such a reallocation, FirstEnergy has not shown that such a reallocation will benefit the overall market structure in PJM nor allocate costs to those that cause the costs to be incurred or have the incentive to reduce those costs.

45. The PJM Stakeholder Report identified several causes of FTR underfunding along with proposals to reduce underfunding,[25] and the FTR Task Force provided alternative proposals in the Proposal Alternative Report.[26] PJM and its stakeholders should consider whether adoption of these, or other proposals, would provide a better means of addressing the fundamental causes of underfunding. In addition, the PJM Stakeholder Report identified congestion at PJM's borders caused by loop flow and market-to-market flowgate coordination as a cause of real-time congestion. We encourage PJM to address loop flow issues in the appropriate venues, potentially including discussions with its neighboring regions.

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[24] Market Monitor Comments at 10 (It is appropriate to have the impacts of these imperfections in the application of the modeling process captured within the FTR revenues).

[25] PJM Stakeholder Report at 41-42.

[26] See PJM Presentation, Market Implementation Committee: Proposal Alternatives Report; FTR Revenue Inadequacy, (November 1, 2011), available at http://pjm.com/committees-and-groups/taskforces/~/media/committees-groups/task-forces/ftrtf/postings/ftrtf-proposal-alternatives-report.ashx.

<u>The Commission orders</u>:

FirstEnergy's complaint is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.