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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.
American Transmission Systems, Inc.

Docket No. ER12-2399-003

INITIAL DECISION

(Issued July 15, 2014)

APPEARANCES

Richard P. Sparling, Esq., Ambrea N. Watts, Esq., and Anne M. Juterbock, Esq., on behalf of FirstEnergy Service Company

Adrienne E. Clair, Esq., John E. McCaffrey, Esq., and Jonathan P. Trotta, Esq., on behalf of Old Dominion Electric Cooperative

James A. Pepper, Esq., and Philip Mone, Esq., on behalf of Federal Energy Regulatory Commission Trial Staff

Gary J. Newell, Esq. on behalf of American Municipal Power, Inc.

Michael J. Haubner, Presiding Administrative Law Judge

I. Factual Background

1. PJM Interconnection, L.L.C. (PJM) is a regional transmission organization (RTO) that operates markets for energy, transmission, capacity, and other products within its region. PJM does not own any transmission facilities. Rather, PJM operates transmission facilities that have been turned over to it for operational control. PJM provides this Transmission service under its Open Access Transmission Tariff (the PJM Tariff or Tariff).¹

2. Old Dominion Electric Cooperative, Inc. (ODEC) is a Federal Energy Regulatory Commission (FERC)-jurisdictional electric generation and transmission cooperative which is owned by its eleven distribution cooperative members, including Rappahannock Electric Cooperative (Rappahannock or REC) and Shenandoah Valley Electric Cooperative (Shenandoah or SVEC), who are also ODEC's customers. ODEC is a

¹ Joint Statement of Facts ¶¶ 38-40.

wholesale Load Serving Entity, and it is a member of PJM.² REC is a member of ODEC. REC owns distribution facilities and provides service to retail customers in Virginia. SVEC is a member of ODEC. SVEC also owns distribution facilities and provides service to retail customers in Virginia.³ REC and SVEC are not members of PJM.⁴ REC and SVEC are each Electric Distribution Companies as defined by PJM.⁵

3. On June 1, 2010, Rappahannock and Shenandoah purchased the Virginia electric distribution facilities and service territory of the Potomac Edison Company (Potomac Edison). Potomac Edison did so by entering into Asset Purchase Agreements with REC and SVEC. In 2010, ODEC entered into Interconnection Agreements with Potomac Edison and Monongahela Power Company. On January 1, 2011, ODEC and Potomac Edison entered into the Amended and Restated Interconnection Agreement.⁶ Potomac Edison is a member of PJM.⁷

4. At the time of the asset purchase, Potomac Edison was a subsidiary of Allegheny Power. In 2011, a merger was consummated between Allegheny Power and FirstEnergy. The merger made Potomac Edison and Monongahela Power Company affiliates of FirstEnergy.⁸

5. On August 3, 2012, FirstEnergy submitted for filing (the August 3 Filing) revised Attachments M-1 and M-2 to the PJM Tariff.

6. The August 3 Filing applies to the APS Zone.⁹ “Zone” is defined in the PJM Tariff as “An area within the PJM Region, as set forth in Attachment J.”¹⁰ “Zone” is defined in

² *Id.* ¶¶ 42, 93, 96; FE-13 at 6.

³ Joint Statement of Facts ¶¶ 5-7, 34.

⁴ *Id.* ¶ 43.

⁵ *Id.* ¶ 49.

⁶ *Id.* ¶¶ 50, 55, 58-59.

⁷ *Id.* ¶ 97; Joint Statement of Contested Fact ¶ 71.

⁸ Joint Statement of Facts ¶¶ 50-53.

⁹ The APS Zone under the PJM Tariff encompasses parts of Maryland, Pennsylvania, Virginia, and West Virginia. *Id.* ¶ 54.

¹⁰ *Id.* ¶ 84.

the Glossary section of the PJM web site as “An area within the PJM Control Area, as set forth in the PJM Open Access Tariff and the Reliability Assurance Agreement (RAA).¹¹ Schedule 15 of the RAA defines the distinct zones that comprise the PJM Control Area.”¹² No PJM document uses the concept “APS load zone *in Virginia*.” Potomac Edison Company and ODEC are both in the APS Zone of PJM.¹³ PJM did not change the geographic boundaries of the PJM-defined APS Zone as a result of FirstEnergy’s purchase of APS.¹⁴

7. Attachment M-1 governs the Total Hourly Energy Obligation (THEO) for both wholesale and retail load serving entities (LSEs) operating in the service territories of the FirstEnergy Electric Distribution Companies (EDCs) in PJM.¹⁵ THEO is the amount of energy (measured in MWhs) that a wholesale or retail LSE is responsible for supplying in each hour of each day. PJM uses this information to calculate the monthly market energy interchange bill for each LSE.¹⁶

8. Attachment M-2 governs the determination of Peak Load Contribution (PLC) and Network Service Peak Load (NSPL) for each LSE in its respective FirstEnergy transmission pricing zone for the PJM planning year. To calculate the PLCs, PJM first uses system load data for the total PJM footprint to identify the five highest daily peaks for the summer period and then determines the weather normalized summer peak for each FirstEnergy transmission zone.¹⁷

9. FirstEnergy’s Electric Distribution Company affiliates (referred to as the “FirstEnergy EDCs”) are: Ohio Edison Company, The Toledo Edison Company, The Cleveland Electric Illuminating Company, Pennsylvania Power Company, Metropolitan Edison Company, Pennsylvania Electric Company, Jersey Central Power & Light

¹¹ *Id.* ¶ 85.

¹² *Id.* ¶ 88.

¹³ *Id.* ¶ 89.

¹⁴ *Id.* ¶ 102 (emphasis added).

¹⁵ ODEC is an LSE. *Id.* ¶ 46.

¹⁶ With the exception of FirstEnergy’s Attachment M-1, the terms “Total Hourly Energy Obligation” or “THEO” do not appear in the PJM Tariff. *Id.* ¶¶ 13, 61.

¹⁷ The FirstEnergy transmission zones in PJM are: Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; American Transmission Systems, Incorporated; and, Allegheny Power.

Company, Monongahela Power Company, West Penn Power Company, and The Potomac Edison Company. The Potomac Edison Company is a FirstEnergy EDC that has retail operations in Maryland and West Virginia. Potomac Edison owns transmission facilities in Virginia, Maryland, and West Virginia. Neither FirstEnergy nor any of the FirstEnergy EDCs currently own or lease any distribution facilities or serve retail customers in Virginia.¹⁸

10. Prior to the Allegheny-FirstEnergy merger, Allegheny calculated and reported THEO, PLC, and NSPL to PJM on behalf of the ODEC load.¹⁹ The wholesale LSEs to whom Attachments M-1 and M-2 apply include Allegheny Electric Cooperative, Buckeye Power, and American Municipal Power, Inc. (AMP).²⁰

11. Subsequent to the Allegheny-FirstEnergy merger, FirstEnergy calculated and reported THEO, PLC, and NSPL to PJM on behalf of the ODEC load. Currently, FirstEnergy continues to calculate and report THEO, PLC, and NSPL to PJM for the ODEC load. FirstEnergy has historically calculated and reported THEO, PLC, and NSPL to PJM for the Town of Front Royal. It continues to do so. FirstEnergy has never sought cost recovery from ODEC for the costs of calculating and reporting THEO, PLC, or NSPL to PJM on behalf of ODEC load.²¹

12. The PJM glossary definition of Electric Distribution Company is: "Electric distribution companies own or lease electric distribution facilities that deliver electricity to end-use customers. An electric utility could be an electric distribution company."²²

¹⁸ *Id.* ¶¶ 2-4.

¹⁹ ODEC load is defined in P 13, *infra*. Joint Statement of Facts ¶ 62

²⁰ *Id.* ¶ 63.

²¹ *Id.* ¶¶ 64-66, 73, 115.

²² *Id.* ¶ 48. In Ex. ODC-27, PJM acknowledges that, in addition to the definition *supra* P 12, there is an alternative definition of Electric Distribution Company in its glossary, which states: "An Electric Distribution Company (EDC) is a PJM Member that owns or leases with rights equivalent to ownership electric distribution facilities that are used to provide electric distribution service to electric load within the PJM Control Area." In that Exhibit, PJM notes that the glossary definitions may differ from Tariff definitions. There is some dispute between ODEC and FirstEnergy over which PJM definition should control as applied to Attachments M-1 and M-2. Joint Statement of Contested Facts ¶¶ 1,7. Nonetheless, I adopt the PJM definition of an Electric Distribution Company *supra* P 12 because it was stipulated to by both parties.

13. The ODEC Load, as used herein, means the REC load, the SVEC load, and the ODEC Legacy Load. The ODEC Legacy Load is the load behind the following meter points: (i) BARC McDowell, Brushy Fork, and Strait Creek; (ii) Hazel, Luray; and (iii) Wolfstown, Glen Allen in the REC service territory. This load was served by ODEC prior to the asset sale, and is subject to a grandfathered transmission rate.²³

14. The “jurisdictional meters” are identified and listed in Exhibit No. FE-11. FirstEnergy owns all of the jurisdictional meters, except for the meters at Fishers Hill and Edinburg Strasburg, which are owned by Dominion Virginia Power. The jurisdictional meters are located at or near the boundary of Potomac Edison’s former Virginia service territory. Since at least 2002, Allegheny Power/FirstEnergy measured the REC, SVEC, and ODEC legacy load from these jurisdictional meters. The jurisdictional meters are used today and have been used for calculating and reporting the Metrics for those same loads.²⁴

15. The 24 “interconnection meters” are identified and listed in Appendix I of the Interconnection Agreement. FirstEnergy owns all of the interconnection meters.²⁵ The interconnection point meters were installed pursuant to §7.15(c) of the Asset Purchase Agreements. Installation of the 24 interconnection point meters listed in the Interconnection Agreement was not completed at the time of closing of the transaction whereby SVEC and REC purchased the distribution assets of Potomac Edison in June 2010.²⁶ FirstEnergy has retained ownership of the interconnection meters, as well as the associated data they generate.²⁷

²³ Joint Statement of Facts ¶¶ 9-10.

²⁴ The jurisdictional meters owned by FirstEnergy are: Gordonsville – Pratts; four meters at Meadow Brook; two meters at North Shenandoah; two meters at Capon Bridge; two meters at Clearbrook; two meters at Frenchs Mill; two meters at Gaylord; two meters at Highview Millville; two meters at Ridgeley; four meters at Stonewall; a meter at Wardensville; and, a meter at Frank Monterey. Edinburg Strasburg and Fishers Hill are additional jurisdictional meters owned by Dominion Virginia Power. Additionally, there are four generator owned meters at Green Valley Hydro. *Id.* ¶¶ 11-12, 21, 107, 108; Ex. No. FE-11.

²⁵ Joint Statement of Facts ¶ 70.

²⁶ *Id.* ¶¶ 71-72.

²⁷ *Id.* ¶ 105. The interconnection meters are: Double Toll Gate; Kline Mill; Old Chapel; Redbud; Riverton; Stephenson; Greenwood; Viscose; Pratts; Sperryville; Redbud-Inwood; Old Chapel-Gaylord; Redbud-Gaylord; Bartonville; Gore; Strasburg; Page; West Winchester; North Shenandoah; Gore-Capon Bridge; Baker-Strasburg;

16. The Interconnection Agreement is an agreement between The Potomac Edison Company d/b/a Allegheny Power and ODEC dated June 1, 2010, as amended and designated as PJM Service Agreement No. 2524. The Interconnection Agreement sets forth the terms and conditions under which the distribution systems of SVEC and REC are interconnected with the transmission system of Potomac Edison at certain interconnection points. The interconnection points and related interconnection meters are specified and described in Appendix I of the Interconnection Agreement.²⁸

17. There is no provision in the Interconnection Agreement that expressly states the interconnection meters will be used for the calculation of THEO, PLC, and NSPL for the ODEC Load. § 3.2 of the Interconnection Agreement does not specify which party will determine and effect settlements. § 3.2 of the Interconnection Agreement states that meters at the interconnection points will be used for “determining load and effecting settlements,” with respect to the load served by ODEC. That section, however, makes no *specific* reference to THEO, PLC, or NSPL.²⁹

18. Allegheny Power owned and maintained the meters at the eight interconnection points between Allegheny Power and ODEC.³⁰ Allegheny Power used the meters at the eight interconnection points between Allegheny Power and ODEC to provide ODEC with monthly hourly loads after the end of each month. As a result of the merger, FirstEnergy assumed ownership of the former Allegheny Power operating affiliates. Two FirstEnergy affiliates, Potomac Edison and Monongahela Power Company, serve 22 of the 24 ODEC-FirstEnergy interconnection points.³¹

19. The FirstEnergy-owned network transmission facilities in Virginia are integrated with those of other PJM Transmission Owners. They include Dominion Virginia Power as well as other FirstEnergy-owned transmission facilities in Maryland and West Virginia. When electricity is conveyed across transmission facilities, which includes transmission lines and transformers, a portion of the total power is lost. This is

Bergton-Green Valley; Brushy Fork; and, Frank-Monterey. Ex. FE-7 at 20-42; Ex. FE-9 at 19-20.

²⁸ Joint Statement of Facts ¶¶ 17-18.

²⁹ *Id.* ¶ 26.

³⁰ Allegheny Power historically used the following meters for its interconnection with ODEC: Lost River; Baker; Moorefield; Hazel; Wolftown; McDowell; Brushy Fork; and, Strait Creek.

³¹ *Id.* ¶¶ 107-110.

attributable to, among other things, heat from resistance on the facilities and the energization of those facilities.³²

20. As part of the 2010 Asset Sale, ODEC accepted the power purchase agreements under which it would purchase power to serve its Virginia customers. The concepts associated with the determination of – and any differences between - Virginia jurisdictional load, Potomac Edison load, and ODEC Load “were not considered” during the negotiations of the 2010 Asset Sale. Additionally, THEO, PLC, and NSPL were never discussed in the 2010 Asset Sale negotiations.³³

21. Attachments M-1 and M-2 require that the calculations of THEO, PLC, and NSPL be based on hourly readings obtained from billing-quality meters located at or near the interconnection point between FirstEnergy and the wholesale LSE system.³⁴

22. Front Royal is a municipality that owns and operates its own retail distribution system and serves retail customers. FirstEnergy does not have any interconnection agreement or any other contract with Front Royal obligating FirstEnergy to calculate and report THEO, PLC, and NSPL for Front Royal.³⁵ Front Royal is not directly interconnected with FirstEnergy. Nonetheless, FirstEnergy calculated and reported to PJM THEO, PLC, and NSPL for the Front Royal load prior to FirstEnergy’s acquisition of Allegheny Power. FirstEnergy has continued to calculate and report to PJM the THEO, PLC, and NSPL for the Front Royal load after the sale of Allegheny Power to FirstEnergy.³⁶

23. Attachment M-1 defines Unaccounted for Energy (UFE) as: energy that is remaining after comparing: (a) the FirstEnergy Zone load determined by summing physical generation delivered to a FirstEnergy Zone plus net imports/exports of energy into/out of a FirstEnergy Zone to: (b) the sum of all wholesale and retail customer’s metered load, whether interval metered or estimated, including contractually or otherwise mutually determined losses in any given hour. Unaccounted for energy is not allocated to

³² *Id.* ¶¶ 74-75.

³³ *Id.* ¶¶ 23-25.

³⁴ *Id.* ¶ 119.

³⁵ *Id.* ¶¶ 30-31.

³⁶ *Id.* ¶¶ 114-116.

wholesale LSEs unless otherwise specified in their contracts/agreements with FirstEnergy.³⁷

24. There are no restrictions (legal, contractual, or regulatory) on the ability of FirstEnergy to make a filing under Section 205 of the Federal Power Act to seek the recovery of costs FirstEnergy incurs to calculate and report THEO, PLC, and NSPL.³⁸

II. Procedural History

25. In response to FirstEnergy's August 3 Filing, various parties filed motions to intervene, comments, protests, and answers between August 2012 and October 2012.

26. On October 2, 2012, the Commission accepted and nominally suspended the August 3 Filing, to become effective August 3, 2012, subject to refund, and established hearing and settlement judge procedures (the October 2 Order).³⁹

27. On July 30, 2013, the Chief Administrative Law Judge appointed Judge Steven A. Glazer as the Settlement Judge in this proceeding. A Partial Settlement was filed on June 24, 2013. ODEC argued that it was not bound by the Partial Settlement. On September 27, 2013, the Commission accepted the Partial Settlement, while setting the below issues for hearing.

28. The purpose of this proceeding is to determine whether attachments M-1 and M-2 apply to ODEC. I must also determine which party should calculate the Metrics required under M-1 and M-2. Additionally, I am to determine which set of meters will be used to perform the calculations required by Attachments M-1 and M-2. Since the "interconnection" meters are to be used as discussed under Issue 3, further determinations are required.

29. On July 1, 2014, FirstEnergy, on behalf of the active participants, filed a Motion to Receive Joint Statement of Stipulated Issues. It concurrently filed Joint Statement of Stipulated Facts (Joint Statement of Facts) and Joint Statement of Contested Facts Out of Time. As the Motion was unanimous and the underlying information is essential to building a complete record, I grant the Motion. Furthermore, I allow the filing into the

³⁷ *Id.* ¶ 32.

³⁸ *Id.* ¶ 91.

³⁹ *PJM Interconnection, L.L.C.*, 141 FERC ¶ 61,009 (2012).

record out of time pursuant to Rule 212 of the Commission's Rules of Practice and Procedure.⁴⁰

III. Summarized Testimony

A. FirstEnergy Direct Testimony

i. Mr. Edward Stein

30. Mr. Stein believes that Attachments M-1 and M-2 do not apply to the ODEC Load. He bases this belief on the fact the ODEC Load is not in the service territory of any FirstEnergy EDC. In early 2010, Potomac Edison's Virginia territory was a FirstEnergy EDC in Virginia serving retail customers. However, in June, 2010, Potomac Edison sold its retail service territory and distribution assets in Virginia to REC and SVEC. From this, Mr. Stein concludes that Potomac Edison is no longer a FirstEnergy EDC in Virginia. Therefore, its former service territory in Virginia is outside the scope of Attachments M-1 and M-2.⁴¹

31. The APS zonal load for an hour is determined from tie line and generation information located within the APS load zone that is submitted to PJM eMTR. PJM calculates and determines the APS zonal load. Mr. Stein explains that the next step is to determine the load obligations of end-use customers within a specific state jurisdiction. Jurisdictional metering was installed to explicitly determine, or directly assign, the system load obligations to each state jurisdiction. Once the MWh and hourly MWs are directly assigned to each jurisdiction, each FirstEnergy EDC determines wholesale customer contributions to the jurisdictional loads using interval meter data at specific interconnection points grossed up for losses. Subtracting the wholesale (municipal/cooperative) load from the total jurisdictional load leaves the residual amount of load attributable to, in this case, the FirstEnergy EDCs.⁴²

32. Mr. Stein states that FirstEnergy owns all of the jurisdictional meters, except for the meter being used at Fisher Hill.⁴³ FirstEnergy also owns all of the interconnection

⁴⁰ 18 C.F.R. § 385.212 (2012).

⁴¹ Ex. FE-1 at 11-12.

⁴² *Id.* at 29.

⁴³ But *cf.* P 14, *supra*.

meters, which it installed after the Asset Sales pursuant to the Asset Purchase Agreements.⁴⁴

33. He believes that the jurisdictional meters should continue to be used to properly assign load obligations to end-use customers in Virginia. The jurisdictional meters should be used because they are located at the boundary of the former-Potomac Edison's Virginia service territory. Therefore, they capture all loads in Virginia, which includes ODEC Legacy Load and Front Royal load.⁴⁵

34. Mr. Stein further asserts that the jurisdictional meters are more accurate than Old Dominion's proposal to use interconnection meters with a fixed loss factor. The interconnection meters are internal to the ODEC Load and therefore inferior because they do not measure the total ODEC Load in Virginia, nor do they include transmission losses.⁴⁶

35. Prior to the Asset Sale, the jurisdictional meters were used to determine the retail load served by Potomac Edison in Virginia. This was done by subtracting the ODEC Legacy Load and the Front Royal load, which were internal to Potomac Edison's Virginia service territory. These meters were used starting at least eight years before the Asset Sale.⁴⁷

36. After the Asset Sale, REC and SVEC assumed the obligation to serve Potomac Edison's former Virginia retail customers. Mr. Stein adds that today, the ODEC Load comprises the same customers that Potomac Edison served when it had authority to serve retail load in Virginia.⁴⁸

37. He also avers that there is no documentation instructing FirstEnergy to cease the practice of how the jurisdictions of the APS load zone are assigned, which would have required agreement from multiple parties.⁴⁹

⁴⁴ *Id.* at 32.

⁴⁵ *Id.* at 32-33.

⁴⁶ *Id.* at 33.

⁴⁷ *Id.*

⁴⁸ *Id.* at 34.

⁴⁹ *Id.* at 34-35.

38. Mr. Stein believes that Good Utility Practice requires the use of jurisdictional meters. Accordingly, Allegheny Power historically performed jurisdictional load separation studies for state ratemaking purposes. These studies established load responsibilities for each state jurisdiction to ensure that all customers consuming energy in a particular state were assigned the proper amount of cost. Consequently, the APS load zone was historically split to jurisdictions using explicit metering rather than equations.⁵⁰

39. He adds that jurisdictional meters are necessary to ensure that each state in the APS load zone “carves” to zero. In other words, to ensure that no residual load is left in the APS load zone.⁵¹

40. Mr. Stein states that the difference between the interconnection meters and the jurisdictional meters, assuming they are grossed-up for losses, is primarily the result of meter error.⁵²

41. If the Commission rules that the interconnection meters should be used to determine the Metrics, Mr. Stein argues that ODEC Load should be allocated the differences between the jurisdictional metering and interconnection metering when the interconnection meter readings are lower than the jurisdictional meter readings. If ODEC were not allocated this difference, then the losses would default to customers located in the services territories of the other EDCs in the APS load zone.⁵³

42. This occurs because the PJM settlements are performed on a zonal basis. As stated *supra*, the APS load zone must carve to zero. Therefore, if the losses are not attributed to ODEC Load in Virginia, the remaining customers must pay the difference.⁵⁴

43. The Asset Purchase Agreements do not provide guidance on how to allocate the difference between these meters. However, Mr. Stein presumes that because REC and SVEC assumed all of Potomac Edison’s Virginia retail service obligations, they also assumed the responsibility for all of the load in Potomac Edison’s Virginia service

⁵⁰ *Id.* at 35.

⁵¹ *Id.*

⁵² *Id.* at 38.

⁵³ *Id.* at 41.

⁵⁴ *Id.* at 41-42.

territory. Therefore, it is appropriate to allocate any differences between the interconnection meters and the jurisdictional meters to them.⁵⁵

ii. Ms. Cynthia Teamann

44. Ms. Teamann argues that Potomac Edison (and, therefore, FirstEnergy) is no longer an EDC in Virginia as a result of the Asset Sales. Ms. Teamann bases her rationale on the fact that Potomac Edison is no longer engaged in the retail distribution business in Virginia.⁵⁶

45. Instead, ODEC members REC and SVEC assumed the responsibility for the Potomac Edison's Virginia service territory after the sales under the Asset Purchase Agreements.⁵⁷

46. She adds that the jurisdictional meters are the meters installed at all state electrical line crossings so that the energy flows into and out of each state can be accurately measured. These meters were used historically for both PJM settlement purposes and energy and load allocations for state cost of service and retail ratemaking purposes and proceedings.⁵⁸

47. PJM requires that the APS zone as a whole carve to zero. But PJM does not require that individual state FirstEnergy operating company service territories carve to zero. Nonetheless, FirstEnergy attempts to use jurisdictional meters to prevent cross-subsidization between the states.⁵⁹

B. ODEC Direct Testimony

i. Mr. John Coffey

48. Mr. Coffey was SVEC's principal business representative in the negotiation, drafting, and preparation of the Asset Purchase Agreement and associated documents. These were multi-party negotiations that also include REC, ODEC, and Potomac Edison.⁶⁰

⁵⁵ *Id.* at 42-43.

⁵⁶ Ex. FE-13 at 5.

⁵⁷ *Id.* at 6.

⁵⁸ *Id.* at 7-8, 16.

⁵⁹ Tr. 76:3-16 (Teamann).

⁶⁰ Ex. ODC-13 at 10.

49. Mr. Coffey believes that Good Utility Practice requires that meters be placed at a point closest to the load that will be measured, or at the interconnection between the parties.⁶¹

50. At approximately the end of 2009, Potomac Edison stated that it was unable to complete the installation of all interconnection point meters prior to the close of the distribution asset transaction. REC, SVEC, and Potomac Edison therefore developed a transition plan that would use the jurisdictional meters until the installation of the interconnection meters was complete. Mr. Coffey represents that ODEC was not aware of the jurisdictional meters until this point.⁶²

51. Mr. Coffey states that revenue class interconnection point metering was the historical method for interconnection points between SVEC, REC, Potomac Edison, and Monongahela Power and distribution systems. This same method represents the normal course of interconnection for utilities that Mr. Coffey has observed in his 26-year career in the industry.⁶³

52. He adds that the parties had agreed to use the interconnection meters after Potomac Edison completed installing the interconnection meters at the end of the transition period.⁶⁴

ii. Mr. Mark Ringhausen

53. At the time of the closing of the Asset Sales, Mr. Ringhausen states that the parties did not intend to use the jurisdictional meters beyond the time when the interconnection point meters were all installed. Consequently, the jurisdictional meters are not listed in any agreement between FirstEnergy and ODEC, REC, or SVEC.⁶⁵

54. Mr. Ringhausen defines THEO as the hourly load obligation of an LSE. It represents the hourly load obligation an LSE has with PJM. THEO is necessary to

⁶¹ *Id.* at 17.

⁶² *Id.* at 20.

⁶³ *Id.* at 21.

⁶⁴ *Id.*

⁶⁵ Ex. ODC-1 at 14.

calculate an LSE's energy and capacity under the PJM Tariff. However, the specific term "THEO" (though not the concept) is used only by FirstEnergy.⁶⁶

55. Mr. Ringhausen's interpretation of § 3.2 of the two Interconnection Agreements is as follows. The locations where ODEC receives energy from the FirstEnergy's transmission and distribution systems are the 24 interconnection meters. They are analogous to the eight interconnection points prior to the Asset Purchase.

56. Mr. Ringhausen states that the interconnection meters were installed at locations where ODEC takes delivery of energy from FirstEnergy's systems. It was intended to be an arrangement consistent with how ODEC was billed in the past under its eight interconnection point meters. It's also consistent with how other wholesale LSEs served by FirstEnergy are metered, billed, and settled. Furthermore, it is consistent with attachments M-1 and M-2. The purpose was not to determine and separate the loads of REC and SVEC.⁶⁷

57. Mr. Ringhausen also discusses his supposition for the differences in flows measured by the jurisdictional meters and the interconnection meters. He believes that the jurisdictional meters are measuring power flows on FirstEnergy transmission and distribution systems that are not serving Old Dominion load. Rather, the jurisdictional meters serve either FirstEnergy loads to the east or Dominion Virginia Power loads. He also believes that Old Dominion is being unreasonably allocated losses for the Town of Front Royal.⁶⁸

iii. Mr. John Chiles

58. Mr. Chiles states that the FirstEnergy transmission system in Virginia has transmission ties with Maryland, West Virginia, Dominion Virginia Power, Delmarva Power, and American Electric Power. Consequently, the losses on FirstEnergy's Virginia transmission are not attributable exclusively to ODEC. Therefore, the jurisdictional meters measure an excessive amount of losses.⁶⁹

⁶⁶ *Id.* at 16.

⁶⁷ *Id.* at 22-23.

⁶⁸ *Id.* at 24.

⁶⁹ Ex. ODC-18 at 7-8.

C. Staff Answering Testimony**i. Mr. Edward Gross**

59. According to Staff Electrical Engineer Gross, the term “load zone” exclusively relates to service provided to end use customers. There are two forms of sub-zones in PJM. PJM has identified a sub-zone known as the MidAtlantic/Dominion Subzone. This subzone was created to operate the Synchronized Reserve Market. Synchronized Reserves are in a class of services known as Ancillary Services. The MidAtlantic/Dominion Subzone is not a pricing zone used for pricing transmission service such as Point-to-Point or Network Integration Transmission Service provided under the PJM Tariff.⁷⁰

60. Mr. Gross could find no other application in a single PJM-defined Zone, such as FirstEnergy is proposing. *I.e.*, two very different methodologies are proposed to report a PJM-recognized, commonly-used metric such as PLC and NSPL. Additionally, he could find no indication that a “significant portion of the electric utility industry” utilizes two sets of meters to report the Metrics (PLC and NSPL).⁷¹ Namely, the Jurisdictional Meters and Interconnection Meters, as proposed by FirstEnergy,

D. FirstEnergy Rebuttal Testimony**i. Mr. Edward Stein**

61. Mr. Stein does not believe that § 3.2 of the Interconnection Agreement requires the use of interconnection meters. This is because that section makes no specific reference to THEO, PLC, or NSPL.⁷²

62. He states that the jurisdictional meters are more accurate in measuring the entire load responsibility of Virginia customers. This contrasts with the interconnection meters which measure REC or SVEC loads independently.⁷³

63. Mr. Stein is opposed to using PJM de-rating factors to determine transmission line losses for three reasons. First, PJM de-rating factors are part of the second phase of settlements conducted by PJM; it relies on the initial phase of settlements where load is submitted that totals the transmission zone load target. Second, the use of these de-rating

⁷⁰ Ex. S-1 at 12-13.

⁷¹ *Id.* at 24.

⁷² Ex. FE-21 at 24.

⁷³ *Id.* at 23.

factors would produce serious timing issue for the submittal of data to PJM. And third, because the PJM de-ration factors must be converted to gross-up factors.⁷⁴

IV. Issues and Discussion

A. Issue 1: Do Attachments M-1 and M-2 apply to ODEC or the ODEC Load, or both?

i. Short Answer: Yes; M-1 and M-2 apply to both ODEC & the ODEC Load.

64. On August 3, 2012, FirstEnergy filed Attachments M-1 and M-2 to the PJM Open Access Transmission Tariff (PJM Tariff).⁷⁵ Those attachments set forth the methodologies that FirstEnergy will use to calculate certain measurements, or Metrics,

⁷⁴ *Id.* at 33.

⁷⁵ Ex. ODC-23. In Footnote 14 of its Initial Brief, ODEC stated the following. “Should Your Honor determine that the Partial Settlement versions of Attachments M-1 and M-2 [ODC-24] apply to ODEC, the operative provisions in Exhibits ODC-23 and ODC-24 are similar and both apply to ODEC by their express terms.” While the language is similar, I note some significant differences, discussed later in this decision. Nevertheless, ODEC’s footnote demonstrates that its challenge goes to whether *any* version of M-1 and M-2 applies to ODEC, and if so, how that version applies.

On June 24, 2013, some of the participants filed an uncontested Partial Settlement Agreement. That Settlement Agreement subsequently included revised 2013 versions of Attachments M-1 and M-2, which were filed on Oct. 15, 2013. Ex. ODC-24.

While ODEC was not a party to the Settlement Agreement, the 2013 versions of Attachments M-1 and M-2 of the Tariff apply here. In ODEC’s Comments to the Settlement Agreement, filed on July 15, 2013, it is clear that ODEC’s challenge was not to the language of the 2013 Tariff, but to *how* or even *if* the 2013 Tariff applied to ODEC. Initial Comments of Old Dominion Electric Cooperative on Settlement Agreement and Offer of Settlement, pp. 2-3.

Moreover, at page 3 of its Comments, ODEC requested that the “Commission clarify that ODEC is not bound by the Partial Settlement.” Despite ODEC’s request, the Commission declined to offer such clarification in its letter order approving the Partial Settlement Agreement. Instead, in footnote 4, the Commission said that ODEC’s issues are reserved for hearing. But those issues are the seven issues discussed herein, *not the contents of the 2013 Tariff*. Therefore, I find the 2013 revisions to Attachments M-1 and M-2 (ODC-24) are applicable here.

discussed in the following paragraph. Under M-1 and M-2, calculations are to be done by FirstEnergy on behalf of wholesale and retail load serving entities (LSEs) operating in FirstEnergy's Energy Distribution Company (EDC) zones or territories.

65. PJM requires calculation and reporting of the following Metrics, (1) Total Hourly Energy Obligation (THEO). (2) Peak Load Contribution (PLC).⁷⁶ And, (3) Network Service Peak Load (NSPL). Items 1 through 3 of this paragraph may be collectively referred to as: the Metrics. Recall that THEO is covered in M-1, while M-2 covers PLC and NSPL.

66. Attachment M-1 reads in relevant part as follows.

The purpose of this Attachment M-1 is to give PJM members serving load in a FirstEnergy Zone(s) the understanding of how each hour of an operating day's Total Hourly Energy Obligation ("THEO") is developed, . . . and submitted to PJM. Attachment M-1 pertains to both wholesale and retail Load Serving Entities ("LSEs") serving load in the following FirstEnergy Electric Distribution Companies ("EDC") Zones (the "FirstEnergy Zones"): . . . Monongahela Power Company ("Mon Power") . . . The Potomac Edison Company ("*Potomac Edison MD and "Potomac Edison WV"*").⁷⁷ Attachment M-1 is not intended to supersede or replace any contractual arrangement(s) between FirstEnergy (or its affiliated FirstEnergy EDC) and the applicable LSE that otherwise governs the calculations. Such contractual arrangement(s) shall prevail unless silent on a particular issue or calculation.⁷⁸

Ex. ODC-24 at 5 (emphasis added).

67. Attachment M-2 reads in relevant part as follows.

⁷⁶ Ex. ODC-24.

⁷⁷ Emphasis added. The 2012 version did not have the parenthetical: ("Potomac Edison MD" and "Potomac Edison WV")" after the words "The Potomac Edison Company." Ex. ODC-23 at 27. I suspect this parenthetical was added by FirstEnergy in anticipation of bolstering its position at this hearing. I do not find this parenthetical controlling for the reasons discussed below.

⁷⁸ Ex. ODC-23 at 27. This language was also absent from the 2012 version. I interpret the new language to mean that where the Interconnection Agreement or the Asset Purchase Agreements, or both, cover a particular issue, M-1 applies to that particular issue if the Interconnection Agreement or the Asset Purchase Agreements are not dispositive.

The purpose of this Attachment M-2 is to establish the procedures and methodologies under which FirstEnergy⁷⁹ will determine the PLC and NSPL, as defined/specified in the PJM [Tariff] . . . each PMJ Planning Year for each retail and wholesale Load Serving Entity (“LSE”) serving load in the following FirstEnergy [EDC] . . . Zones (the “FirstEnergy Zones”): Monongahela Power Company (“Mon Power”) . . . The Potomac Edison Company (“Potomac Edison MD” and “Potomac Edison WV”).⁸⁰ Attachment M-2 is not intended to supersede or replace any contractual arrangement(s) between FirstEnergy (or its affiliated FirstEnergy EDC) and the applicable LSE that otherwise governs the calculations. Such contractual arrangement(s) shall prevail unless silent on a particular issue or calculation.⁸¹

Ex. ODC-24 at 10.

68. FirstEnergy’s Edward Stein authored Attachments M-1 and M-2.⁸² He opined that M-1 and M-2 only apply in the service territory of a FirstEnergy EDC Zone. He contends there is no FirstEnergy EDC Zone in VA.⁸³ He argues the list of FirstEnergy EDCs in M-1 and M-2 excludes the retail distribution assets PE sold to ODEC members SVEC and REC. According to Mr. Stein, the reference to “Potomac Edison Company” in M-1 and M-2 was intended to be limited to Potomac Edison MD and Potomac Edison WV.⁸⁴

⁷⁹ In the original 2012 version it states the “FirstEnergy *regulated affiliates* will determine...” Ex. ODC-23 at 30 (emphasis added showing the old language).

⁸⁰ As with M-1, the 2012 version of M-2 did not have the parenthetical: (“Potomac Edison MD” and “Potomac Edison WV”)” after “The Potomac Edison Company.” Ex. ODC-23 at 30.

⁸¹ This language is also new to the 2013 version and will be interpreted consistently with footnote 78. Ex. ODC-24 at 10; *cf.*, the 2012 version: Ex. ODC-23 at 30.

⁸² Joint Statement of Facts ¶ 16.

⁸³ Ex. FE-1 at 11:235-237-12:238-241 (Direct Testimony of Mr. Stein).

⁸⁴ As noted in footnote 77 only “The Potomac Edison Company” was mentioned in the original, 2012 versions of M-1 an M-2. It did not contain the parenthetical: (“Potomac Edison MD” and “Potomac Edison WV”).” Ex. ODC-23.

69. During the Attachment-drafting process, Mr. Stein acknowledged requesting input from ODEC as one of FirstEnergy's "wholesale partners." He also admitted that he did not inform ODEC of his intention that M-1 and M-2 would not apply in Virginia or to ODEC (SVEC and REC).⁸⁵ This course of conduct during the drafting process could be viewed as indicating Mr. Stein intended Attachments M-1 and M-2 would apply to ODEC. At the very least, it would have given cause for ODEC members SVEC and REC to assume the attachments would apply.⁸⁶

70. Regardless of Mr. Stein's stated intent, the attachments cannot be limited to only the West Virginia and Maryland areas served by FirstEnergy (or affiliates). The 2013 versions of the attachments attempt to limit the definition of (*i.e.*, what entities are considered to be) FirstEnergy EDC Zone(s). That attempt is effectuated by enumerating "Potomac Edison MD" and "Potomac Edison WV" in the parenthetical, discussed in footnote 77. Per Stipulated Fact 100, however, no such corporate entities exist with the names "Potomac Edison MD" or "Potomac Edison WV" (or for that matter, "Potomac Edison VA"). Only the corporate entity Potomac Edison Company exists.

71. FirstEnergy argues that by purchasing Potomac Edison's *retail-distribution* assets in Virginia, ODEC members SVEC and REC "stepped into the shoes" of Potomac Edison as the EDC.⁸⁷ FirstEnergy contends the sale of those assets in Virginia leaves no "FirstEnergy EDC" in Virginia and thus M-1 and M-2 do not apply there.⁸⁸ FirstEnergy also argues that although its affiliate Potomac Edison has [retail] operations in Maryland and West Virginia, that fact

⁸⁵ Tr. at 101:5-8 (Stein).

⁸⁶ Moreover, the fact that Mr. Stein or FirstEnergy drafted the Attachments invokes the doctrine of *contra proferentem*. Consequently, any ambiguity should be read in favor of ODEC as the non-drafting party. *See KN Energy, Inc.*, 59 FERC ¶ 61,332 at p. 62,219 (1992) ("we shall apply the principle of 'contra proferentem' . . . and hold that even if the language were ambiguous, any ambiguity would be construed against [the party] who drafted the language in the first place."); *New York State Elec. & Gas Corp.*, 90 FERC ¶ 63,009, at p. 65,060 (2000) ("it is well-established contract law (*contra proferentem*), that when choosing among the reasonable meanings attached by the parties, the preferred meaning is that which operates against the party who drafts the language in question.").

⁸⁷ *See e.g.*, FirstEnergy Initial Br. 4, 12 (citing Testimony of its witness Cynthia Teamann, Ex. FE-13 at 5:97-6:107).

⁸⁸ FirstEnergy Initial Br. 8, 9 (citing Edward Stein's direct testimony, Ex. FE-1 at 11-14; also citing Mr. Stein's rebuttal testimony, FE-21 at 5-14).

does not provide it with [state] authority to maintain operations in Virginia.⁸⁹ While these arguments are seductive, one cannot lose sight of the fact that FirstEnergy, through Potomac Edison, still maintains *transmission* operations in Virginia.⁹⁰ Authority for maintaining wholesale-transmission operations comes from the Federal Energy Regulatory Commission, not Virginia. ODEC (SVEC and REC) never stepped into the shoes of Potomac Edison's wholesale-transmission operations in Virginia.

72. It is important to note that the "APS Zone" under the wholesale PJM Tariff encompasses parts of Maryland, Pennsylvania, West Virginia, *and* Virginia.⁹¹ FirstEnergy's parenthetical definition of the Potomac Edison EDC Zone includes only "Potomac Edison MD" and "Potomac Edison WV."⁹² This is clearly an attempt to divide PJM's fully-metered APS Zone into subzones bounded by state borders.

73. As noted by Staff expert witness Edward Gross, creating subzones within a PJM-recognized zone is generally impermissible. The only exception is where the PJM Region is expanded to accommodate a new transmission owner under the PJM Consolidated Transmission Owners' Agreement.⁹³ In any event, a fully-metered subzone can only be established if all parties involved agree to do so.⁹⁴ By cutting Virginia out of the APS Zone without the other parties' agreement, FirstEnergy is effectively treating Virginia as a separate sub-zone. In doing so FirstEnergy is thereby endeavoring to subvert the zonal structure set up by PJM in its Tariff. This is impermissible under the Tariff.

74. Albeit FirstEnergy's position that there is no FirstEnergy EDC in Virginia, I find that FirstEnergy *is* effectively the EDC in the PJM-defined APS Zone. This is supported by the following facts. PJM indicated, "The APS Zone is the First Energy Zone, which includes the Commonwealth of Virginia."⁹⁵ PJM also stated, "When [FirstEnergy acquisition] Allegheny integrated into PJM, Allegheny specified and modeled the single AETSAP account to be the

⁸⁹ FirstEnergy Initial Br. 16.

⁹⁰ Joint Stipulated Facts ¶¶ 60, 74.

⁹¹ *Id.* ¶ 54.

⁹² Discussed in footnote 77.

⁹³ Ex. S-1 at 11-12 (citing §7.4 of FERC Rate Schedule 42: Transmission Zone Sizes).

⁹⁴ *Id.* at 13.

⁹⁵ Ex. ODC-34 (d).

fully metered EDC for the APS Zone.”⁹⁶ FirstEnergy witness Edward Stein testified that the AETSEP account is “now FirstEnergy’s APS [Zone] EDC account.”⁹⁷

75. The fact that FirstEnergy affiliate Potomac Edison no longer owns *retail distribution* assets in Virginia does not affect its status as a *wholesale transmission* owner in PJM’s APS Zone. Nor does it relieve FirstEnergy of its obligations under the PJM Tariff for the APS Zone. ODEC is a transmission customer of PJM served over FirstEnergy (Potomac Edison)-owned *transmission* assets in Virginia within the APS Zone.⁹⁸ PJM Member ODEC is also a Load Serving Entity.⁹⁹ Both M-1 and M-2 expressly state they apply to wholesale Load Serving Entities. Thus, I find that despite FirstEnergy’s amendments to its wholesale transmission Tariff, the Tariff still applies to FirstEnergy’s transmission customers in Virginia, including ODEC and the ODEC load.

B. Issue 2: Who is required to calculate and report the Metrics for the ODEC Load?

i. Short Answer: FirstEnergy.

76. FirstEnergy calculated and reported the Metrics to PJM for the ODEC Load prior to the Potomac Edison distribution-asset sale and it continues to do so today.¹⁰⁰ As the proponent advocating a change in this practice, FirstEnergy admits it has the burden of proof to show the change is just and reasonable.¹⁰¹

77. FirstEnergy continues to calculate and report (perform) the Metrics partly because it is the entity with access to the necessary data.¹⁰² Therefore, it would not be just and

⁹⁶ Ex. ODC-34; ODEC-PJM request 1-2 (e).

⁹⁷ Tr. 151:11-14 (Stein).

⁹⁸ Joint Stipulated Fact ¶ 60.

⁹⁹ *Id.* ¶¶ 46, 93.

¹⁰⁰ *Id.* ¶¶ 63-66, 111-112, and 115-116.

¹⁰¹ FirstEnergy Initial Br. 11.

¹⁰² Staff Initial Br. 17-18 (citing testimony of ODEC Witness Mark Ringhausen, Ex. ODC-1 at 29:13-16; Tr. 42:18-43:3 (Teamann)). FirstEnergy owns all meters used to perform the Metrics, with the exception of two meters. Joint Statement of Fact ¶¶ 10, 11; *accord* Joint Statement of Fact ¶ 70 (“FirstEnergy owns all interconnection point meters”) and Joint Statement of Fact ¶ 105 (“FirstEnergy retained the interconnection meters, as well as the associated data they generate.”) *See also*, Direct Testimony of Mr.

reasonable to require ODEC to take over performance of the Metrics. FirstEnergy argues it is not under any contractual or PJM-Tariff obligation to perform the Metrics.¹⁰³ As explained in Paragraph 74, however, FirstEnergy *is* required to do so because it retains responsibility as the PJM-recognized fully metered EDC for the APS Zone. Additionally, I read the Attachments as requiring FirstEnergy EDCs to calculate and report the Metrics to PJM¹⁰⁴

78. I also find it telling to consider what would occur should FirstEnergy stop calculating and reporting the Metrics to PJM. Under the PJM Tariff (which designates the AETSEP account) FirstEnergy would still be responsible for the Metrics.¹⁰⁵ Furthermore, PJM would not hold ODEC responsible for those Metrics.¹⁰⁶ Additionally, FirstEnergy witness Mr. Stein admitted the following. There is no "express language anywhere in an agreement or contract that specifically requires ODEC, SVEC or REC to record the [M]etrics" ¹⁰⁷

79. FirstEnergy also implies that it is not required to calculate and report the Metrics to PJM because it has never received compensation for doing so.¹⁰⁸ The fact that

Ringhausen. Ex. ODC-1 at 29 (stating that ODEC lacks the necessary infrastructure to communicate with and read the meters and upload the data in a timely manner).

¹⁰³ FirstEnergy Initial Br. 15.

¹⁰⁴ M-1 "Section II: Wholesale," Ex. ODC-24 at 7 reads as follows. "The First Energy EDCs are required to determine the THEO for each wholesale LSE operating in their respective FirstEnergy Zones and submit this information to PJM per practices under the PJM Documents." Ex. ODC-24 at 11, under the M-2 heading "Section II: Wholesale," reads as follows. "Under the PJM Documents, the First Energy EDCs are required to determine the PLC and NSPL for each wholesale LSE operating in their respective First Energy Zones."

¹⁰⁵ See PJM's response to discovery requests, Ex. ODC-37 through ODC-39 that state the AETSEP account becomes responsible. See also, P 74, *supra*, which indicates FirstEnergy is responsible for AETSEP.

¹⁰⁶ Ex. ODC-40 (PJM response to an ODEC Discovery Request).

¹⁰⁷ Tr. 210:16-22 (Stein). As noted in ODEC's Initial Brief at 13, that includes the lack of any such language in the Asset Purchase Agreements. Ex. FE-3; Ex. FE-4. In fact, it was not until two years after the 2010 sale that FirstEnergy informed ODEC it wanted the latter to assume performing the Metrics. Tr. 229:14-17 (Stein).

¹⁰⁸ FirstEnergy Initial Br. 16 (citing Mr. Stein's testimony, Ex. FE-1 at 21:468-471).

FirstEnergy does not recover these costs is a consequence of its decision to organize its calculation and reporting scheme along state jurisdictional lines. FirstEnergy bills other LSEs (besides ODEC) in the APS Zone for calculating and reporting the Metrics through administrative charges levied via state-retail supplier tariffs of the EDC.¹⁰⁹ FirstEnergy cannot recover its costs for performing these functions for the ODEC Load through retail rates because it no longer owns a retail service territory in Virginia.¹¹⁰ It is apparent that FirstEnergy failed to foresee how the distribution-asset sale in Virginia would affect its ability to collect compensation for performing the Metrics there. That failure, however, does not provide FirstEnergy with a remedy that would force ODEC or its members to take over FirstEnergy's responsibilities under the PJM Tariff.¹¹¹

80. It would also be unduly discriminatory to require ODEC to perform the Metrics since FirstEnergy does so for all the other LSEs (*i.e.*, its own affiliates) in the APS Zone. Such a requirement would amount to disparate treatment of similarly-situated entities, and is unduly discriminatory.¹¹²

81. FirstEnergy contends its affiliates are not similarly situated because they are not wholesale LSEs, and they do not take service under M-1 and M-2. It also argues that the other LSEs in the APS Zone operate in the service territory of a FirstEnergy EDC.¹¹³ These are distinctions without a difference under the Tariff.

82. As shown, Attachments M-1 and M-2 do apply to ODEC and the ODEC load in this case.¹¹⁴ FirstEnergy claims that ODEC (SVEC and REC) customers are not embedded within a "FirstEnergy EDC" Zone. That point is irrelevant since it is the PJM APS Zone that controls under the Tariff.¹¹⁵ Therefore, FirstEnergy's attempt to treat

¹⁰⁹ Ex. S-3, FirstEnergy's response to "Trial Staff-FE 4-1 (a)"; Tr. 193:17-20 (Stein).

¹¹⁰ FirstEnergy response to ODEC Data Request, Ex. FE-29.

¹¹¹ FirstEnergy could remedy this situation by instituting a new Federal Power Act § 205 filing requesting compensation. It could alternatively file for a rate on these services that would apply throughout the APS Zone, supplanting the state-specific rates. Joint Statement of Facts ¶ 91; Staff Initial Br. 14.

¹¹² Federal Power Act, 16 U.S.C. § 824d (b) (2009); *see Calpine Oneta Power, L.P.*, 119 FERC ¶ 61,177, at P 16 (2007).

¹¹³ FirstEnergy Initial Br. 14; FirstEnergy Reply Br. 6.

¹¹⁴ *See supra* PP 70-75.

¹¹⁵ *See supra* PP 73-75.

ODEC differently under these circumstances constitutes undue discrimination. For all of the foregoing reasons, FirstEnergy must continue to calculate and report the Metrics to PJM.

C. Issue 3: Which meters should be used to calculate and report the Metrics for the ODEC Load: “Jurisdictional” or “Interconnection Point”?

i. Short Answer: Interconnection point meters.

83. FirstEnergy contends that meters located at the Virginia-jurisdictional boundaries, referred to as “jurisdictional meters,” should be used. Allegedly, these meters capture all energy entering Virginia as well as all load losses in the state. Additionally, the possibility of end-use customers in other states bearing any of the cost of Virginia’s load is avoided.¹¹⁶ ODEC argues that the most accurate measurement of its load derives from meters installed at its interconnection points with FirstEnergy. These are known as “interconnection point meters,” or “interconnection meters.” ODEC also points out that use of interconnection meters is standard industry practice for wholesale billing and settlements. It further contends that using interconnection meters averts the possibility that ODEC would be allocated charges for which it is not responsible.¹¹⁷ Trial Staff agrees with ODEC and asserts such meters are required under M-1 and M-2, as well as the Asset-Purchase Agreements.¹¹⁸

1. Historical Practice

84. I note there is disagreement over the extent to which (or more precisely, for what purpose) FirstEnergy employed jurisdictional meters prior to 2010. Not surprisingly, potential confusion comes from how the meters were used. FirstEnergy asserts that it has established a “historical practice” of using jurisdictional meters.¹¹⁹ Yet ODEC provides

¹¹⁶ FirstEnergy Initial Br. 1, 2, 13, 19, 20, and 25; Ex. FE-1 at 32-37.

¹¹⁷ ODEC Initial Br. 22-23 and ODEC Reply Br. 11-12 (citing testimony of Staff witness Edward Gross in support of this fact, Ex. S-1 at 24-25; Direct Testimony of ODEC witness John Coffey, Ex. ODC-13 at 21:7-13).

¹¹⁸ Staff Initial Br. 19-24.

¹¹⁹ FirstEnergy Initial Br. 7; Joint Statement of Fact ¶ 21 (“The jurisdictional meters are used today and have been used for calculating and reporting THEO, PLC and NSPL since at least 2002”). *See also* direct testimony of FirstEnergy witness Cynthia Teamann Ex. FE-13 at 7:145, 8:149, 16:347-19:418 (regarding *retail* billing practices before 2010). But *cf.* Joint Statement of Fact ¶ 108, which reads as follows: “Allegheny Power used the meters at the eight interconnection points between Allegheny Power and

evidence that the jurisdictional meters were not used for purposes of ODEC-load billing and settlement prior to the 2010 asset sale. ODEC witness, Mr. Ringhausen, noted that up until that juncture eight interconnection point meters were used for the ODEC load.¹²⁰ He also testified that FirstEnergy began using jurisdictional meters for purposes of calculating and reporting the Metrics for ODEC's load in June 2010.¹²¹ Thus, it is apparent that the jurisdictional meters have been used exclusively for *wholesale*-load purposes only since June 2010. Therefore, I find the purpose for which jurisdictional meters were previously used (combined retail/wholesale load measurement) does not establish historical practice relevant to choice of future meters.

2. Burden of Proof

85. FirstEnergy contends that use of jurisdictional meters is a change from the ongoing historical practice.¹²² It argues that as the proponents of change to such practice, ODEC and Trial Staff bear the burden of proof.¹²³ As shown in the preceding paragraph, however, I find jurisdictional meters were not used solely for performing the Metrics for relevant wholesale purposes before 2010. Therefore, I agree with Staff and ODEC that FirstEnergy bears the burden as the filing party under Federal Power Act §205.¹²⁴

3. Attachments M-1 and M-2

86. Attachment M-1's formula for determining a wholesale LSE's hourly energy consumption for THEO includes a reference specifically identifying meters. The term "meter" is defined in M-1 with the following language.

For purposes of this document, the term "*Meter*" refers to the billing quality metering devices and related equipment owned by First Energy and/or the wholesale LSE, *located at or near the interconnection point* (the "Interconnection") between the First

ODEC to provide ODEC with monthly hourly loads after the end of each month." As noted, Allegheny was acquired by FirstEnergy.

¹²⁰ Ex. ODC-1 at 21:23-25, 22:2; Joint Statement of Fact ¶ 108.

¹²¹ Ex. ODC-1 at 22:3-6. June 2010 was when the Potomac Edison/SVEC-REC asset sales closed. Ex. ODC-1 at 9:18-19.

¹²² FirstEnergy Initial Br. 7.

¹²³ *Id.*

¹²⁴ 16 U.S.C. § 824d (2012). Staff Reply Br. 2-4; ODEC Initial Br. 17-19.

Energy distribution or transmission system and the wholesale LSE system, and used to measure the wholesale LSE's THEO.

Ex. ODC-24 at 7 (emphasis added).

87. Attachment M-2 similarly references "Meters." It reads in relevant part as follows.

The PLC and NSPL values for each FirstEnergy Zone in which the wholesale LSE serves load will be calculated separately and will be based on the hourly reading obtained from billing quality metering and related equipment ("*Meters*") owned by FirstEnergy or the wholesale LSE located *at or near the interconnection point* between the First Energy distribution or transmission system, and the wholesale LSE system. Furthermore, all calculations in this Attachment M-2 will be done consistent with the requirements of the PJM Documents.

Ex. ODC-24 at 12 (emphasis added).

88. I find the italicized language to be dispositive. As discussed under Issue 1, Attachments M-1 and M-2 apply to ODEC and the ODEC load as a wholesale LSE in the APS Zone. Ongoing use of jurisdictional meters does not comply with the Attachments' mandates to be "at or near the interconnection point."¹²⁵

4. Asset Purchase Agreements

89. Under Amendment No. 1 of the Asset Purchase Agreements, FirstEnergy affiliate Potomac Edison bound itself to purchase, install, and use certain meters at the interconnection points as follows. § 7.15 reads in relevant part:

Seller shall. . . purchase, install and place in service in accordance with Good Utility Practice . . . in no event later than six (6) months after the Closing Date, revenue class metering at all wholesale delivery points and any other *interconnection point* between any Acquired Asset and Transmission Facilities of Seller and its Affiliates that is required to ascertain data associated with the wholesale billing process

¹²⁵ Furthermore, FirstEnergy witness Ms. Teamann testified that the meters at the interconnection points between Potomac Edison's transmission system and ODEC's system meet the M-1 definition for meters. Tr. 73:4-23 (Teamann); Ex. ODC-29 at 1, 43. *See also* Tr. 73:18-23, 114:6-25, and 115:1-23 (Stein) (regarding M-1 and M-2 "meter requirement" satisfaction).

Ex. FE-4 at 193 (emphasis added); *accord* Ex. FE-3 at 192.

90. SVEC's principal business representative for the 2010 asset sale was Mr. John Coffey.¹²⁶ He discussed the preceding paragraph's requirement for installation and use of the interconnection point meters. Specifically he talked about the language requiring such meters no "later than six (6) months after the Closing Date." Mr. Coffey noted that sometime in "late 2009 or early 2010" Potomac Edison informed him it would not be able to complete the installation on time.¹²⁷

91. Therefore, the parties agreed on a transition plan. Potomac Edison would still provide interconnection meters, but use jurisdictional meters as a temporary means for wholesale power settlement. The jurisdictional meters were to be so used only until the installation of the interconnection meters could be completed.¹²⁸

92. The parties also concurred that this transitional plan would end when the rest of the interconnection meters had been installed.¹²⁹ They agreed this use of jurisdictional meters would be "workable as a stopgap, which was expected to end by September 2010, just four months [approximately] after the closing."¹³⁰ Potomac Edison failed to deliver by September 2010. More important, it also did not utilize the interconnection-point meters within the contractual 6-month deadline set forth in § 7.15.¹³¹ Thus, FirstEnergy affiliate Potomac Edison failed to timely fulfill its contractual obligation to install and use interconnection-point meters.

5. Interconnection Agreements

93. The relevant portion of the Interconnection Agreement Section, 3.2, reads as follows.

Measurement of electric energy for the purposes of determining load and effecting settlements, and monitoring and telemetering of power flows under this Agreement shall be made by standard types of metering and data acquisition system ("DAS") equipment

¹²⁶ Ex. ODC-13 at 10:4-8.

¹²⁷ *Id.* at 20:1-6.

¹²⁸ *Id.* at 20:7-15.

¹²⁹ *Id.* at 20:15-18.

¹³⁰ *Id.* at 20:15-19.

¹³¹ *Supra* P 89. The 6-month period expired in December 2010. The asset sales closed in June 2010. Ex. ODC-1 at 9:18-19.

installed and maintained, as per the PJM Operating Agreement, by the owner *at the Interconnection Points* consistent with provisions and exhibits of Appendix II and III of the Agreement.

Ex. FE-7 (emphasis added); *accord* Ex. FE-9.

94. ODEC asserts the Interconnection Agreement between ODEC and Potomac Edison (and in particular § 3.2) requires the use of interconnection meters to calculate the Metrics.¹³² FirstEnergy contends, however, that there is no provision in that agreement specifying that interconnection meters will be used *for the Metrics* on the ODEC Load.¹³³ FirstEnergy argues that ODEC's reliance on § 3.2 is misplaced because that section lacks specific reference to THEO, PLC, or NSPL (the Metrics).¹³⁴

95. FirstEnergy further argues that had the parties intended that interconnection meters would be used for the Metrics, then they would have so specified in the Interconnection Agreement.¹³⁵ I do not find omission of specific reference to THEO, PLC, or NSPL (the Metrics) in the Interconnection Agreement a compelling argument under these circumstances. Witness Mark Ringhausen explained the meaning of the operative language as follows. "'Determining load' means measuring ODEC loads. 'Effectuating settlements,' in terms of electric energy, is the settlement of the ODEC load which includes THEO, PLC, and NSPL."¹³⁶ In other words, the language in § 3.2 effectively indicates the Metrics will be performed using the interconnection meters.

96. Furthermore, both FirstEnergy and ODEC agree the interconnection meters listed in the Interconnection Agreements¹³⁷ meet Attachment M-1 and M-2 definitions of "meters."¹³⁸ As

¹³² See ODEC Initial Br. 17; Ex. ODC-1 at 12-13.

¹³³ See FirstEnergy Initial Br. 21 (citing the Interconnection Agreement, Ex. FE-7).

¹³⁴ *Id.*

¹³⁵ *Id.* at 21-22; Ex. FE-21 at 24:3-6.

¹³⁶ Ex. ODC-1 at 12:21-26, 13:11-25.

¹³⁷ Ex. FE-7; Ex. FE-9.

¹³⁸ ODEC Initial Br. 20 (citing Ex. ODC-29 at 1, 43); Tr. 73:18-23 (Stein). I acknowledge some later equivocation from Mr. Stein on this point. Tr. 114:6-25 and 115:1-23 (Stein). Nevertheless, it is clear from FirstEnergy witness Cynthia Teamann's testimony that these meters meet the M-1 definition. Tr. 73:4-23 (Teamann).

indicated under Issue 1, I have determined M-1 and M-2 apply to ODEC and the ODEC load. Pursuant my findings in Paragraphs 86 through 88, the use of interconnection meters is mandated under M-1 and M-2. § 3.2 supports a finding that the interconnection meters are to be used.¹³⁹

6. Accuracy of Data

97. FirstEnergy also argues the continuing use of jurisdictional meters is more accurate. It states jurisdictional meters measure load at the Virginia service territory boundary, and thus capture all load in that territory. It contends jurisdictional meters measure the total amounts of energy consumed by Virginia customers including losses.¹⁴⁰ On the other hand, ODEC provides conflicting evidence. It showed that jurisdictional meters measure all energy flowing into and out of the Virginia portion of the APS Zone.¹⁴¹ It also submitted evidence that some of the jurisdictional meters measure power flows from *outside* the APS Zone that serve loads other than ODEC's.¹⁴²

98. FirstEnergy contends that "ODEC readily admits the concepts associated with the determination of and differences between Virginia jurisdictional load, Potomac Edison load, and ODEC Load 'were not considered'` during the negotiations of the 2010 asset sale."¹⁴³ Therefore, FirstEnergy reasons that if the parties intended to change the manner in which PJM settlements were conducted, at the very least they would have discussed it.¹⁴⁴ I do not find these arguments persuasive in light of my findings that interconnection meters are required under M-1, M-2, § 7.15 of the Asset Purchase Agreements, and § 3.2 of the Interconnection Agreement.¹⁴⁵

¹³⁹ FirstEnergy contends the Interconnection Agreement fails to list the meters associated with certain third-party owned generation in Virginia or with the town of Front Royal. FirstEnergy Initial Br. 23.

¹⁴⁰ Ex. FE-1 at 33; Ex. FE-21 at 2, 23.

¹⁴¹ Tr. 54:12-19 (Teamann). As I discuss *infra* in under Issue 4, "Virginia-load" does not equate to "ODEC-load." *See supra* P 58 .

¹⁴² Ex. ODC-41 (the public version of the FirstEnergy map made in response to a Staff discovery request); direct testimony of Mr. Ringhausen, Ex. ODC-1 at 24; direct testimony of Mr. Chiles, Ex. ODC-18 at 8.

¹⁴³ FirstEnergy Initial Br. 20-21.

¹⁴⁴ *Id.* at 21 (citing Ex. FE-23).

¹⁴⁵ *See rationale supra.*

7. Good Utility Practice

99. ODEC witness Mr. John Coffey testified about the industry standard, or Good Utility Practice. He stated, “Meters should always be placed at a point that is closest to the load that will be measured for purposes of billing and settlements, as well as operations, or the point of interconnection between the parties. This practice is consistent with that of other utilities, past practice for [Potomac Edison] and [Monongahela Power] with ODEC, and Good Utility Practice.”¹⁴⁶ He further noted the following about revenue-class interconnection point metering. It has been “the utility norm with all other interconnections with transmission owners that I have seen in the utility industry during my 26-year career.”¹⁴⁷

100. Indeed, Mr. Coffey stated that he has “never [before] seen anything other than the interconnection-point meters used for the purpose of settling *wholesale* power.”¹⁴⁸ He also testified that he has never witnessed jurisdictional meters used for purposes of settling wholesale power.¹⁴⁹

101. Staff expert witness Edward Gross concurred with Mr. Coffey’s sentiments. Mr. Gross characterized FirstEnergy’s use of jurisdictional and interconnection meters as “an atypical metering arrangement.”¹⁵⁰ For these reasons, and those adopted in Issue 3, Subsection 6,¹⁵¹ I find FirstEnergy’s proposed Tariff changes would be unjust, unreasonable, preferential, and unduly discriminatory without use of interconnection meters.¹⁵²

¹⁴⁶ Ex. ODC-13 at 17:11-14.

¹⁴⁷ *Id.* at 21:9-13.

¹⁴⁸ *Id.* (emphasis added).

¹⁴⁹ Tr. 289:16-20 (Coffey); Tr. 295:4-12 (Coffey). I acknowledge Mr. Stein’s varying viewpoint (*see supra* P 38). Nonetheless, I give greater weight to Mr. Coffey’s testimony as it is supported by that of Staff’s electrical engineer (*see infra* P 101).

¹⁵⁰ Tr. 350:17-351:9 (Gross).

¹⁵¹ “Accuracy of Data,” PP 97-98.

¹⁵² FirstEnergy again argues there is no undue discrimination since the two sets of customers are not similarly situated. First Energy Initial Br. 18-19. As previously indicated, however, that argument is given little weight. *See* PP 80-82 *supra*.

D. Issue 4: Since Interconnection Meters are to be used, to whom should the MW and MWhr difference between Jurisdictional and Interconnection Metering be allocated?

i. Short Answer: FirstEnergy

1. ODEC

102. FirstEnergy argues the ODEC Load in Virginia should be allocated any difference between jurisdictional and interconnection meter readings.¹⁵³ It notes charges to ODEC (*i.e.*, an increase for losses) should occur when interconnection-meter readings are lower than jurisdictional-meter readings.¹⁵⁴ It claims the reason “is simple; the differences as measured in MWhrs belong to Virginia.”¹⁵⁵ FirstEnergy’s Mr. Stein maintains that otherwise the difference would default to, or be subsidized by, customers located outside of Virginia.¹⁵⁶

103. Mr. Stein’s rationale rests on the fact that Potomac Edison no longer has a retail distribution service operation in Virginia. Therefore, it cannot allocate costs to end users under its retail-based cost recovery scheme.¹⁵⁷ As Mr. Ringhausen testified, the parties did not initially intend to use the jurisdictional meters once the interconnection meters were installed. FirstEnergy later changed its position when it recognized there are [*i.e.*, may be] differences between the interconnection point meter readings and the jurisdictional meter readings.¹⁵⁸ This appears to be another instance of FirstEnergy failing

¹⁵³ FirstEnergy Initial Br. 24. ODEC states that accepting this proposal would have the same effect as using the jurisdictional meters in the first place. ODEC notes that if ODEC prevails on Issue 3 (which it has), adopting a position leading to the same practical result would be senseless. ODEC Initial Br. 24. I agree; I also offer additional rationale in the following paragraphs, *i.e.*, PP 103, 107.

¹⁵⁴ Conversely, it acknowledges that when the interconnection meter readings are greater, the ODEC Load should be credited. FirstEnergy Initial Br. 25.

¹⁵⁵ FirstEnergy Initial Br. 24; Ex. FE-1 at 41:895-899 (Stein).

¹⁵⁶ Ex. FE-1 at 41:901-904; FirstEnergy Initial Br. 25.

¹⁵⁷ Ex. FE-1 at 41:908-43:937; *accord* Ex. ODC-1 at 15:1-3.

¹⁵⁸ Ex. ODC-1 at 14:22-15:1.

to foresee the consequences of the Virginia *retail*-distribution asset sale.¹⁵⁹ The fact that it now lacks means to allocate such charges cannot be attributed to other parties.¹⁶⁰

104. Mr. Stein admitted that there is no tariff, agreement, or contract under which FirstEnergy could allocate the difference between the two sets of meters to ODEC.¹⁶¹ Moreover, FirstEnergy has not demonstrated that these differences, if they exist, are ODEC's responsibility. As an initial matter, Staff notes that FirstEnergy has not demonstrated that there even is a difference between the readings. They also indicate FirstEnergy has not provided an analysis of the magnitude of any such alleged difference.¹⁶²

105. As a matter of fact, Mr. Stein testified that the only differences between the readings of the jurisdictional and the interconnection meters are losses and meter error.¹⁶³ As noted by Staff, this presents another potentially simple solution: investigate and remedy any such losses or errors.¹⁶⁴ Mr. Stein testified he does not know whether FirstEnergy has investigated or tried to resolve any meter errors.¹⁶⁵ Mr. Stein admitted he did not know whether FirstEnergy has quantified any difference between jurisdictional and interconnection meters due to such error.¹⁶⁶

106. An alternate solution was presented by Staff Witness Gross. He suggested that FirstEnergy could propose a schedule for recovery of the differences (or Unaccounted For Energy) in the APS Zone. He noted such a schedule could charge all transmission

¹⁵⁹ See P 79, *supra*.

¹⁶⁰ ODEC's Mr. Ringhausen acknowledged that some loss factor should be applied. Nonetheless, I cannot see that ODEC is responsible for it in light of Mr. Stein's statement discussed in P 104. Furthermore, as discussed in Section 2 under Issue 3, *supra*, FirstEnergy possesses the burden of proof. FirstEnergy has not met its burden to show that allocating any differences to other parties under these circumstances is just and reasonable.

¹⁶¹ Tr. 184:1-11 (Stein); Staff Initial Br. 27.

¹⁶² *Id.*

¹⁶³ Ex. FE-1 at 38:838-841.

¹⁶⁴ Staff Initial Br. 28.

¹⁶⁵ Tr. 183:19-21 (Stein).

¹⁶⁶ Tr. 183:22-184:21 (Stein).

customers in that Zone, including customers in Virginia, for the transmission level Unaccounted For Energy generated in the system.¹⁶⁷

107. Incidentally, I note the term “Unaccounted for Energy” is defined in M-1.¹⁶⁸ Notwithstanding the somewhat incomprehensible language of M-1’s definition for such energy,¹⁶⁹ it goes on to state the following. “*Unaccounted for Energy is not allocated to wholesale LSEs unless otherwise specified in their contracts/agreements with FirstEnergy.*” As shown in the Paragraph 78, *supra*, and Paragraph 131, *infra*, there is no such “*otherwise specified contract*” or “*agreement*” between FirstEnergy and ODEC. Since M-1 applies to ODEC,¹⁷⁰ FirstEnergy cannot allocate such charges to ODEC by the express terms of that Attachment

2. The Town of Front Royal

108. Some discussion regarding the Town of Front Royal (Front Royal), Virginia, is appropriate here. As noted in Paragraph 102, Mr. Stein claims “the [meter data] differences as measured in MWhrs belong to Virginia.”¹⁷¹ ODEC observes that in this statement FirstEnergy’s Mr. Stein incorrectly equates Virginia load with ODEC load.¹⁷² ODEC indicates that Front Royal is not its customer, and that Front Royal is not part of the ODEC load. ODEC thereby reasons it is not responsible for any differences attributable to Front Royal’s load.¹⁷³

¹⁶⁷ Tr. 368:16-370:15 (Gross).

¹⁶⁸ Ex. ODC-24; *see supra* P 23 which enumerates the language. Perhaps the fact that the defining sentence is 72 words long may be why it is difficult to comprehend. In any event, at page 16 of its Reply Brief, FirstEnergy stated the following. “To the extent the UFE [Unaccounted For Energy] is the differences [sic] between the jurisdictional meter loads and interconnection meter loads, this issue is indistinct from Issue 4, which concerns the allocation of the differences between the two sets of meters.” *See infra* n.181. That footnote discusses how *all* the parties in the *unopposed* motion treated “Unaccounted for Energy” as the difference between jurisdictional and interconnection-meter readings. Therefore, consistent with my order on that motion, I do the same.

¹⁶⁹ *See* the preceding footnote.

¹⁷⁰ *See* rationale under Issue 1, *supra*.

¹⁷¹ Ex. FE-1 at 41:895-899.

¹⁷² ODEC Reply Br. 12.

¹⁷³ *Id.*

109. FirstEnergy presents arguments that could be read as advocating the allocation of those costs to the ODEC load *and* Front Royal. Specifically, FirstEnergy contends the following. “ODEC, REC and SVEC *and ultimately their Virginia* customers should be responsible for the difference between the two sets of meters when the interconnection meter readings fail to capture all of the MWhrs of energy consumed in Virginia.”¹⁷⁴ Staff’s position may also be read to imply that due to its geographic location within the APS Zone in Virginia, Front Royal also should bear a portion of those costs.¹⁷⁵

110. Front Royal’s relationship with American Municipal Power, Inc. (AMP), a non-profit corporation, is relevant. AMP members are all political subdivisions of their respective domicile states that own and operate municipal electric utility systems. Some of those also operate electric generating and transmission facilities. AMP is a full or partial-requirements supplier for most of its 129 members; it is a full-requirements supplier for Front Royal.¹⁷⁶ AMP is also a wholesale LSE to whom Attachments M-1 and M-2 apply.¹⁷⁷

111. Front Royal is interconnected with Rappahannock Electric Cooperative (REC). In order to obtain delivery of its AMP-provided power supply, Front Royal purchases wholesale transmission service from REC under a contract that has not been filed with the Commission.¹⁷⁸ There is simply no filed-rate schedule or service agreement that could serve as the vehicle for the Commission to allocate a portion of those costs to Front Royal.

¹⁷⁴ FirstEnergy Initial Br. 25 (emphasis added).

¹⁷⁵ See Staff’s proposed Conclusion of Law #4 (Staff Initial Br. 32). It reads: “If the interconnection meters are used to calculate and report THEO, PLC, and NSPL for the ODEC Load, any MW or MWh difference between jurisdictional metering and the interconnection metering should not be the sole responsibility of ODEC.”

¹⁷⁶ American Municipal Power Motion to Strike Portions of the Direct Testimony of FirstEnergy Witness Edward Stein, or in the Alternative, to Clarify and Limit the Issues for Decision, (Motion to Strike/Alternative Motion to Clarify) filed November 12, 2013 at 1-2.

¹⁷⁷ Joint Statement of Fact ¶ 62.

¹⁷⁸ No Commission filing has occurred, presumably because the contract is not subject to Commission jurisdiction. *Id.* at 2; American Municipal Power Reply Br. 4.

112. Therefore, AMP correctly points to my Order on its Motion to Strike/Clarify, which I rendered on December 13, 2013.¹⁷⁹ I granted the clarification portion of that Motion, which incidentally was unopposed. I ruled that the issue of whether Front Royal is responsible for any Unaccounted for Energy was excluded as being outside the jurisdiction of the Commission.¹⁸⁰ Thus, I do not give weight to any arguments that suggest I hold Front Royal responsible for Unaccounted For Energy.¹⁸¹

E. Issue 5: How should the loss factors be derived for purposes of determining THEO for ODEC load?

i. Short Answer: By using PJM de-rationing factors.

113. ODEC makes the following acknowledgement where interconnection point meters are used to perform THEO under Attachment M-1. “There is no dispute that an Applicable Loss Factor . . . [Loss Factor] must be applied to gross up the interconnection point meter readings.”¹⁸² Attachment M-1 contemplates that Loss Factor will be a “contractually or otherwise mutually determined loss factors.”¹⁸³ Unfortunately, FirstEnergy and ODEC do not have such a Loss Factor agreement to apply to the interconnection point meter measurements for calculating THEO.¹⁸⁴ Thus, it is necessary to establish a Loss Factor in this proceeding since the interconnection point meters are to be used.¹⁸⁵

¹⁷⁹ Order Denying Motion To Strike, But Granting In The Alternative Motion To Clarify And Limit The Issues For Decision, December 13, 2013.

¹⁸⁰ *Id.* at 2.

¹⁸¹ Pursuant to the *unopposed* Alternative Motion to Clarify and my order thereon, “Unaccounted for Energy” was defined as the difference between interconnection and jurisdictional meters. *Id.* at 1.

¹⁸² ODEC Initial Br. 24.

¹⁸³ Ex. ODC-23 at 28. See also 2013 version of Attachment M-1, Ex. ODC-24 at 8. Attachments M-1 and M-2, as revised by the Partial Settlement, list the default Applicable Loss Factors for the Wholesale LSEs other than ODEC. Ex. ODC-24 at 6, 10-11.

¹⁸⁴ ODEC Initial Br. 25; Tr. 116:11-14 (Stein).

¹⁸⁵ See discussion of Issue 3, *supra*, regarding choice of meters.

114. FirstEnergy argues the transmission-line losses should be calculated using a variable-loss factor. It states such losses should be determined by the difference between interconnection and jurisdictional metering. FirstEnergy avers that such a loss factor would account for actual metered losses attributable to the Virginia service territory.¹⁸⁶ As revealed in P 97, however, the difference between interconnection and jurisdictional meter readings can also reflect amounts not attributable to ODEC.¹⁸⁷ Therefore, I do not find this suggestion viable.

115. In the alternative, FirstEnergy argues the record supports finding that a transmission line loss factor of 1.8% is just and reasonable. FirstEnergy's proposal would combine the transmission loss factor of 1.8% with the Extra High Voltage loss factor of approximately 1.6%. This results in a combined loss factor of 3.4% for transmission and allocated Extra High Voltage losses. FirstEnergy opines: "the evidence demonstrates that this factor is comparable to the PJM-calculated marginal losses respective to the 'state estimator' model representing the entire APS zone."¹⁸⁸

116. I find ODEC witness Mr. John Chiles's following observation persuasive. He argues that "if the de-ration factor figure can, in Mr. Stein's view, be used to validate the reasonableness of his proposed loss factor approach, this necessarily implies that the PJM de-ration factor is itself a reasonable measurement of transmission losses."¹⁸⁹

117. Consistent with Mr. Chiles's observation, ODEC proposes PJM de-ration factors as the most reasonable proxy for APS Zone transmission losses.¹⁹⁰ The PJM de-ration factors are measurements of the hourly losses on the transmission facilities serving each PJM transmission zone, including the APS Zone. PJM calculates the de-ration factors in connection with its implementation of locational-marginal pricing and marginal losses.¹⁹¹

¹⁸⁶ *E.g.*, FE-1 at 44:965-967.

¹⁸⁷ ODEC Reply Br. 13. *See supra* P 104 discussion on meter error in.

¹⁸⁸ FirstEnergy Initial Br. 26 (citing Ex. FE-1 at 43-47, FE-21 at 31-36).

¹⁸⁹ Ex. ODC-18 at 12-13.

¹⁹⁰ ODEC Reply Br. 15-16 (citing Ex. ODC-18 at 12-13). ODEC notes that the "PJM-calculated marginal losses" referenced in FirstEnergy's brief *are* the PJM de-ration factors.

¹⁹¹ *Id.* at 10; Ex. ODC-19 at 2-3; *see generally* *PJM Interconnection, L.L.C.*, 134 FERC ¶ 61,246 (2011), *reh'g granted* 138 FERC ¶ 61,038, *reh'g denied*, 139 FERC ¶ 61,028 (2012) (discussing PJM's use of marginal losses).

118. PJM uses the de-ration factors to *remove* losses from a measurement of load. ODEC proposes to do the opposite; *i.e.*, to apply the de-ration factors to *gross-up* interconnection point meter measurements to add in losses.¹⁹² ODEC notes that these de-ration factors already include Extra High Voltage losses. Using these factors thus avoids any complications or disputes concerning how such losses should be quantified.¹⁹³ Thus, I find this proposal just and reasonable and adopt it.

119. I acknowledge FirstEnergy has concerns it might not receive the de-ration factors from PJM in time to incorporate them into the daily THEO calculation.¹⁹⁴ Even so, FirstEnergy acknowledged the following in its Initial Brief. That any difference between the estimated and actual de-ration factors during the 60-day interim period prior to final true-up is likely to be *de minimus*.¹⁹⁵ Furthermore, as noted by ODEC, the final true-up measurements would be based on the actual PJM de-ration factors. It notes those are the most reasonable measure of the losses on the FirstEnergy facilities used to serve the ODEC Load.¹⁹⁶ Therefore, using PJM de-ration factors will not lead to unjust or unreasonable results.

F. Issue 6: Who is responsible for calculating and reporting the Metrics for non-ODEC affiliates in Virginia, including the Town of Front Royal?

i. Short Answer: FirstEnergy.

120. FirstEnergy opines ODEC, REC, or Front Royal, or a combination of the three, should be responsible for performing the Metrics for Front Royal and non-ODEC affiliates. FirstEnergy alleges it is under no obligation to perform these Metrics.¹⁹⁷ FirstEnergy provides the same rationale for these conclusions as it gave in its attempt to avoid performing the Metrics for ODEC. Specifically, FirstEnergy asserts it does not own distribution facilities in Virginia. FirstEnergy further argues it does not serve any retail

¹⁹² ODEC Initial Br. 25 (citing Ex. ODC-18 at 10).

¹⁹³ *Id.* at 26 (citing Ex. ODC-18 at 11); Ex. ODC-20.

¹⁹⁴ *See e.g.*, Ex. FE-21 at 33.

¹⁹⁵ FirstEnergy Initial Br. at 18; ODEC Reply Br. 15.

¹⁹⁶ ODEC Reply Br. 15.

¹⁹⁷ Staff points out FirstEnergy has not proven that ODEC, REC, or Front Royal has a legal obligation to perform the Metrics either. Staff Initial Br. 29.

customers or otherwise have EDC operations in Virginia.¹⁹⁸ Again, however, FirstEnergy's (its affiliate's) obligations in Virginia as a *wholesale*-transmission provider continue.¹⁹⁹ Furthermore, as indicated *supra* P 74, FirstEnergy effectively functions as the EDC in Virginia under PJM's APS Zone.

121. ODEC argues Front Royal is not part of the ODEC load. It further contends Front Royal is a wholesale LSE within the APS Zone, located behind ODEC's interconnection-point meters. It therefore reasons that as a wholesale LSE in the APS Zone, Attachment M-1 and M-2 should apply to Front Royal.²⁰⁰ On the other hand, FirstEnergy contests, stating that the "status of Front Royal as a wholesale LSE is unclear. Front Royal serves retail customers, not wholesale customers."²⁰¹ I agree that Front Royal serves retail customers,²⁰² but as discussed in the following paragraph, I find that contention of little import.

122. Front Royal is interconnected with REC to obtain the former's delivery of American Municipal Power (AMP)-provided power supply.²⁰³ That supply is purchased by Front Royal through transmission service from REC.²⁰⁴ While Front Royal may not be a wholesale LSE, it is a member of AMP. The parties agree that AMP (which provides Front Royal's power) is a wholesale LSE.²⁰⁵ As discussed under Issue 2, FirstEnergy is required to perform the Metrics for wholesale LSEs under the attachments within the APS Zone. Furthermore, the express language of M-1 and M-2 indicates they apply to "*retail* and wholesale Load Serving Entities ..." in the EDC zones.²⁰⁶ Thus, either way M-1 and M-2 apply requiring FirstEnergy's continued calculation and reporting of Front Royal's Metrics to PJM .

¹⁹⁸ FirstEnergy Initial Br. 27 (citing Stein Direct, FE-1 at 48).

¹⁹⁹ See rationale *supra* under Issue 1.

²⁰⁰ ODEC Initial Br. 29.

²⁰¹ Joint Contested Fact ¶ 49.

²⁰² Joint Statement of Fact ¶ 30.

²⁰³ Motion to Strike/Alternative Motion to Clarify at 2.

²⁰⁴ *Id.*

²⁰⁵ Joint Statement of Fact ¶ 62.

²⁰⁶ Ex. ODC-24 at 5 and 10 (emphasis added); Staff Br. 29.

123. FirstEnergy argues it has no direct line-of-sight (*i.e.*, communications) without “extensive compromise on security protocols” with the meters used to calculate Front Royal load. It states those meters are owned and operated by REC.²⁰⁷ FirstEnergy also alleges it does not perform the Metrics “for any other sub-zonal loads, such as Front Royal, for any other wholesale suppliers.”²⁰⁸ As Staff points out, however, it is unclear what FirstEnergy means by sub-zonal loads; PJM does not recognize or define such a term.²⁰⁹ Additionally, as ODEC notes, there is nothing in the record regarding security protocols.²¹⁰ Therefore, I am not inclined to give any weight to FirstEnergy’s unsupported arguments on these points.

124. Staff and ODEC argue that FirstEnergy expressly committed to continue performing the EDC functions for Front Royal.²¹¹ Days before the closing of the asset sale, Michelle Souder of PJM sent an email to Cynthia Teamann and Bob Reeping of Allegheny Power (now FirstEnergy). The purpose was to clarify that ODEC would not have any EDC responsibilities with respect to the Front Royal load. Ms. Souder asked: “I guess the question is, going forward, after 6/1/2010 [the date the asset sale closed], AP [Allegheny Power] will continue to do that. ODEC then will not have any EDC responsibilities for this particular load. Correct?”²¹² Ms. Teamann responded shortly thereafter, “Yes, AP will continue to do this for the Front Royal account.”²¹³

125. FirstEnergy asserts the Teamann email is not tantamount to a contract. It reasons that Front Royal was not a party to this communication nor did it provide any consideration in exchange for Ms. Teamann’s commitment. Furthermore, FirstEnergy and Front Royal never entered into a contract for this service and Front Royal never paid FirstEnergy for its performance [of the Metrics] subsequent to June 1, 2010.²¹⁴ Thus, FirstEnergy argues the email lacks nearly all of the elements necessary to create a binding

²⁰⁷ FirstEnergy Initial Br. 27-28 (citing Stein Direct, FE-1 at 48); Stein Rebuttal, FE-23 at 37.

²⁰⁸ FirstEnergy Initial Br. at 28.

²⁰⁹ Staff’s contest to FirstEnergy’s statement, Joint Contested Facts ¶ 80.

²¹⁰ ODEC’s contest to FirstEnergy’s statement, Joint Contested Facts ¶ 80.

²¹¹ Staff Initial Br. 29; ODEC Initial Br. 29.

²¹² PJM Response to Data Request ODEC-PJM 2-1 REVISED, Ex. ODC-12 at 4 (the Teamann email).

²¹³ *Id.*

²¹⁴ Ex. FE-1 at 48 (Stein Direct).

contract.²¹⁵ I agree; there is clearly no relevant contract between FirstEnergy and Front Royal.²¹⁶ Indeed, the parties stipulated to the fact that there is no such contract.²¹⁷

126. Albeit lack of express agreement between FirstEnergy and Front Royal, that does not relieve FirstEnergy of its obligations under the PJM Tariff. As shown under Issue 2, FirstEnergy must report the Metrics for the APS Zone, which includes loads in Virginia. Therefore, FirstEnergy is bound to report the Metrics for Front Royal and non-ODEC affiliates in Virginia, in any event.

127. Finally, I note that FirstEnergy has historically performed the Metrics for Front Royal, including the time preceding the 2010 Asset Sale.²¹⁸ It continues to do so today, as well.²¹⁹ Since FirstEnergy is the one advocating a change from existing practice, it has the burden to show that change is just and reasonable.²²⁰ It has not sustained that burden.

²¹⁵ FirstEnergy Reply Br. 15-16 (citing Restatement of Contracts (Second) (1981)).

²¹⁶ Incidentally, just because there is no express contract between FirstEnergy and Front Royal does not mean the Teamann email would have no effect under all circumstances. Had ODEC proffered evidence that it changed position in detrimental reliance on that email, an estoppel argument might have been sustainable. *UAH-Braendly Hydro Associates*, 47 FERC P 61,448, at p. 62,394 (1989).

²¹⁷ Joint Statement of Fact ¶ 31.

²¹⁸ Joint Statement of Fact ¶ 115. Recall that “historical practice” was in contention under Issue 3. There the parties disputed the purpose and longevity of the jurisdictional meters’ use. *See supra* P 84. Here, however, the parties are in clear agreement that FirstEnergy has historically performed and continues to perform the Metrics for Front Royal. Joint Statement of Facts ¶¶ 66 and 115. Thus, under Issue 6, historical practice is not in contention.

²¹⁹ Joint Statement of Fact ¶ 66; *accord*, Stein Direct Testimony, Ex. FE-1 at 48-49.

²²⁰ As noted in P 76, FirstEnergy acknowledge it had the burden of proof regarding the justness and reasonableness of ceasing to perform the Metrics for ODEC. I find FirstEnergy has that same burden here since it is the filing party under Federal Power Act § 205 and it is seeking a change. *Id.* at 28.

G. Issue 7: Can FirstEnergy allocate Unaccounted For Energy, as defined in Attachment M-1, to ODEC?

i. Short Answer: No.

128. FirstEnergy's arguments on this issue revert to positions that I have already rejected. Specifically, it asserts that M-1 does not apply to ODEC or the ODEC Load in Virginia.²²¹ For the reasons discussed under Issue 1, I again reject that argument. Its averment that jurisdictional meters should be used is similarly rejected.²²² FirstEnergy also contends that the differences between the jurisdictional meters and the interconnection meters should be allocated to the ODEC Load since they "belong to Virginia."²²³ For the reasons set forth in Issue 4, I dismiss that argument as well.²²⁴

129. ODEC points out that any attempt by FirstEnergy to assess Unaccounted For Energy upon ODEC on the basis of using jurisdictional meters would also violate FirstEnergy's filed rate. ODEC notes there is no basis upon which FirstEnergy would be permitted to do so. Thus, FirstEnergy is not permitted to shift any differences between jurisdictional meter loads and interconnection meter loads to ODEC in the form of Unaccounted For Energy.²²⁵

130. Attachment M-1 provides this definition of Unaccounted For Energy.

Unaccounted For Energy -- Energy that is remaining after comparing: (a) the FirstEnergy Zone load determined by summing physical generation delivered to a FirstEnergy Zone plus net

²²¹ FirstEnergy Initial Br. 29.

²²² See rationale under Issue 3, *supra*.

²²³ FirstEnergy Initial Br. 29.

²²⁴ As previously indicated, there is some variation regarding the meaning of Unaccounted For Energy as it is applied to different issues in this litigation. The parties identified Unaccounted For Energy in the *unopposed* Motion to Clarify as the difference between interconnection and jurisdictional metering. See discussion under Issue 4, *supra*, supporting my finding that FirstEnergy is responsible for any such difference. Under this issue, however, the participants themselves have restricted the definition of Unaccounted for Energy "as [that which is] defined in Attachment M-1...." Joint Statement of Stipulated Issues ¶ 7.

²²⁵ ODEC Initial Br. 30; see *Vineland Mun. Elec. Util. v. Atlantic City Elec. Co.*, 146 FERC ¶ 61,077 (2014) (granting complaint that wholesale municipal customer was improperly charged for Unaccounted For Energy without any basis for such a charge).

imports/exports of energy into/out of a FirstEnergy Zone to: (b) the sum of all wholesale and retail customers' metered load, whether interval metered or estimated, including contractual or otherwise mutually agreed upon losses, as specified herein or as otherwise filed with FERC in any given hour.

Ex. ODC-24 at 5-6.

131. I find the following language, which is contained in the very next sentence of Attachment M-1, to be controlling. “*Unaccounted for Energy is not allocated to wholesale LSEs unless otherwise specified in their contracts/agreements with FirstEnergy.*”²²⁶ Thus, by the very terms of M-1, FirstEnergy cannot allocate Unaccounted For Energy to ODEC. This is because there is no contract or agreement between them allowing it, as demonstrated in the next paragraph.

132. The parties stipulated to the following.

There is no contract or other agreement between FirstEnergy and ODEC whereby ODEC agreed to an allocation of Unaccounted for Energy as defined in Attachment M-1. (*FE [FirstEnergy] Contests: Statement implies that Attachment M-1 applies to ODEC. However, UFE [Unaccounted for Energy] is a retail concept.*²²⁷)

Joint Statement of Contested Facts-With Explanations ¶ 50 (emphasis in original).

133. FirstEnergy's contest on this point is not valid here in light of my finding that M-1 applies to ODEC.²²⁸ In any event, I must take the parties' non-italicized portion of the statement as true. Importantly, FirstEnergy did not contest the language that there is “no contract or other agreement” between them on this issue. It certainly has not provided documentation of any contract or agreement. FirstEnergy has therefore failed to meet its burden to present such evidence. As stipulated in Joint Statement of Fact ¶ 96, ODEC is a wholesale LSE. FirstEnergy is thereby expressly precluded from allocating Unaccounted For Energy to ODEC under the language of M-1 cited in P 131.

²²⁶ ODC-24 at 6 (emphasis added).

²²⁷ FirstEnergy's comment that “UFE” is a “retail concept” is gratuitous. The salient language of M-1 cited in *supra* P 131 expressly states what is relevant to Issue 7: “Unaccounted for Energy is not allocated to *wholesale* LSEs...” (emphasis added).

²²⁸ See Issue 1 rationale *supra*.

V. Order

134. This Initial Decision's failure to discuss any matter raised by the parties, or any portion of the record, does not indicate that it has not been considered. Rather, any such matter(s) or portion(s) of the record has/have been determined to be irrelevant, immaterial, or meritless. Arguments made on brief that were otherwise unsupported by record evidence or legal precedent have been accorded no weight.

135. IT IS ORDERED, subject to review by the Commission on exceptions or on its own motion, as provided by the Commission's Rules of Practice and Procedure, that within thirty (30) days of the issuance of the final Order of the Commission in this proceeding, all parties shall take appropriate action to implement all the rulings in this decision.

SO ORDERED.

Michael J. Haubner
Presiding Administrative Law Judge