

153 FERC ¶ 61,216
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

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

Docket No. ER12-2399-003

OPINION NO. 543

ORDER ON INITIAL DECISION

(Issued November 19, 2015)

1. This order addresses briefs on and opposing exceptions to the July 15, 2014 Initial Decision issued in the captioned proceeding¹ and largely affirms the Initial Decision.

2. On August 3, 2012, PJM Interconnection, L.L.C. (PJM) filed, on behalf of FirstEnergy Service Company (FirstEnergy) and FirstEnergy's affiliated Electric Distribution Companies (EDCs),² pursuant to section 205 of the Federal Power Act (FPA)³ revisions to Attachments M-1 and M-2 of PJM's Open Access Transmission

¹ *PJM Interconnection, L.L.C and American Transmission Systems, Inc.*, 148 FERC ¶ 63,003 (2014) (Initial Decision).

² The FirstEnergy Electric Distribution Companies are: Ohio Edison Company, Toledo Edison Company, Cleveland Electric Illuminating Company, Pennsylvania Power Company, Metropolitan Edison Company, Pennsylvania Electric Company, Jersey Central Power & Light Company, Monongahela Power Company (Monongahela Power), West Penn Power Company (West Penn), and Potomac Edison Company (Potomac Edison). Potomac Edison, Monongahela Power, and West Penn became affiliates of FirstEnergy upon the acquisition by FirstEnergy of their parent, Allegheny Energy, in 2011.

³ 16 U.S.C. §824(d) (2012).

Tariff (PJM OATT or Tariff) (August 3, 2012 Filing). On October 2, 2012, the Commission accepted and suspended FirstEnergy's proposed revisions to Attachments M-1 and M-2, to be effective August 3, 2012, subject to refund and to the outcome of hearing and settlement judge procedures.⁴ The hearing in this proceeding addressed certain issues raised by Old Dominion Electric Cooperative (ODEC)⁵ that pertain to the application of the proposed revisions to Attachments M-1 and M-2 as they relate to ODEC and certain ODEC load.⁶ In this order, we affirm, as just and reasonable, the determination of the Initial Decision that an Attachment M-1 and an Attachment M-2 should apply to ODEC and ODEC load and should contain provisions for a loss factor. The Commission accepts the August 3, 2012 filing in Docket No. ER12-2399-000, subject to condition, as discussed below.⁷

I. Background and Procedural History

A. Background

3. This proceeding concerns whether FirstEnergy or ODEC is responsible for calculating and reporting to PJM certain data for portions of the ODEC load located in the Commonwealth of Virginia. PJM requires this data in order to process certain billing requirements and to calculate capacity and transmission charges for Load Serving Entities (LSEs) under the PJM Tariff.⁸ The methodologies for calculating the data for

⁴ *PJM Interconnection, L.L.C.*, 141 FERC ¶ 61,009 (2012) (October 2, 2012 Order).

⁵ ODEC is a generation and transmission cooperative which is owned by its eleven distribution cooperative members. Initial Decision, 148 FERC ¶ 63,003 at P 2. ODEC is a wholesale Load Serving Entity and a member of PJM. Initial Decision, 148 FERC ¶ 63,003 at P 2; Stipulated Facts 42, 44-46, and 93.

⁶ ODEC was the only non-settling party to a partial settlement accepted by the Commission on September 27, 2013. *PJM Interconnection, L.L.C and American Transmission Systems, Inc.*, 144 FERC ¶ 61,240 (2013) (Settlement Order).

⁷ The Commission can revise a proposal filed under section 205 of the Federal Power Act as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). A utility is free to indicate that it is unwilling to accede to the Commission's conditions in this order by withdrawing its filing.

⁸ Initial Decision, 148 FERC ¶ 63,003 at P 65; Stipulated Facts 13 and 14.

entities in FirstEnergy's PJM Zones are set forth in FirstEnergy's Attachments M-1 and M-2 to the PJM Tariff.

4. Attachment M-1 governs what FirstEnergy terms Total Hourly Energy Obligation (THEO)⁹ for both wholesale and retail LSEs including municipal and electric cooperatives serving load in what FirstEnergy terms the FirstEnergy Electric Distribution Companies (EDCs) "Zones" in PJM. THEO is the amount of energy (measured in megawatt-hours) 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. The stated formula also provides for the accounting of losses through contractually or mutually-determined loss factors added to the interconnection point meter readings. Attachment M-1 as proposed by FirstEnergy also provides that Unaccounted for Energy is not allocated to wholesale LSEs unless otherwise specified in their contracts/agreements with FirstEnergy.¹⁰

5. Attachment M-2 governs the determination of Peak Load Contribution (PLC)¹¹ and Network Service Peak Load (NSPL)¹² for each retail and wholesale LSE in its respective FirstEnergy transmission pricing zone for the PJM planning year. PJM uses this data to calculate system load data for the total PJM footprint to identify the

⁹ With the exception of FirstEnergy's Attachment M-1, the specific terms "Total Hourly Energy Obligation" or "THEO" do not appear in the PJM Tariff. Stipulated Facts 61; Initial Decision, 148 FERC ¶ 63,003 at P 7; Ex. ODC-5; Ex. S-1 at 8.

¹⁰ Unaccounted for Energy is defined in Attachment M-1 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 customers' metered load, whether interval metered or estimated, including contractual or otherwise mutually agreed upon losses in any given hour. Unaccounted for [E]nergy is not allocated to wholesale LSEs unless otherwise specified in their contracts/agreements with FirstEnergy" August 3, 2012 Filing at Attachment B, Attachment M-1, Section 1: Terms.

¹¹ PLC is defined in the PJM Tariff as "A customer's contribution to a zone's normalized summer peak load, as estimated by the zone's Electric Distribution Company used in determining a Load Serving Entity's obligation Peak Load." Stipulated Facts 117.

¹² NSPL is defined in the PJM Tariff as: "Used to determine network transmission charges and/or allocate network service FTRs or ARRs." Stipulated Facts 118.

five highest daily peaks for the summer period, and then determines the weather normalized summer peak for each FirstEnergy transmission zone.

6. Attachments M-1 and M-2 require that the calculation of THEO, PLC, and NSPL (collectively, Metrics)¹³ be based on hourly readings obtained from billing-quality meters located at or near the interconnection point between FirstEnergy and the wholesale LSE system.¹⁴

7. In 2010, two ODEC member cooperatives, Rappahannock Electric Cooperative (Rappahannock) and Shenandoah Valley Electric Cooperative (Shenandoah),¹⁵ purchased the Virginia electric distribution facilities and service territory of FirstEnergy's affiliate Potomac Edison, herein after referred to as the Asset Sales.¹⁶ ODEC then entered into Interconnection Agreements with Potomac Edison and Monongahela Power.¹⁷ Potomac Edison is a member of PJM.¹⁸

8. Rappahannock and Shenandoah did not, however, purchase the transmission facilities of Potomac Edison located in Virginia. Potomac Edison continues to own those

¹³ The Initial Decision uses the term "Metrics" to collectively describe THEO, PLC, and NSPL. For ease of reference, this Opinion also uses the term Metrics.

¹⁴ Stipulated Facts 119.

¹⁵ Rappahannock and Shenandoah are not members of PJM. Rappahannock and Shenandoah are not Electric Distribution Companies as defined by PJM. Initial Decision, 148 FERC ¶ 63,003 at P 2; Stipulated Facts 5-7, 34, 43, 49.

¹⁶ Initial Decision, 148 FERC ¶ 63,003 at P 3. *See* Asset Purchase Agreement By and Among The Potomac Edison Company, and Rappahannock Electric Cooperative, dated May 4, 2009, Ex. FE-3 and Asset Purchase Agreement By and Among The Potomac Edison Company, and Shenandoah Valley Electric Cooperative, dated May 4, 2009, Ex. FE-4 (Asset Purchase Agreements).

¹⁷ Initial Decision, 148 FERC ¶ 63,003 at P 3; Stipulated Facts 59. *See* Amended and Restated Interconnection Agreement between Old Dominion Electric Cooperative and The Potomac Edison Company, d/b/a Allegheny Power, dated January 1, 2011, Ex. FE-7 and Interconnection Agreement between Old Dominion Electric Cooperative and Monongahela Power Company, dated June 1, 2010, Ex. FE-9 (Interconnection Agreements).

¹⁸ Initial Decision, 148 FERC ¶ 63,003 at P 3; Stipulated Facts 99.

FERC-jurisdictional Virginia transmission facilities as well as facilities in the States of 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.¹⁹

9. Prior to the Asset Sales, Potomac Edison calculated and reported the Metrics to PJM for its Virginia load. Subsequent to the Asset Sales, Potomac Edison continued to calculate and report the Metrics to PJM on behalf of the ODEC load, and it continues to do so today.²⁰

10. All of the jurisdictional and interconnection meters used for ODEC's Virginia load at issue here are located within the PJM-defined Allegheny Power System (APS) Zone (APS Zone),²¹ which encompasses parts of Maryland, Pennsylvania, West Virginia, and Virginia.²² Potomac Edison and portions of ODEC's load are both located in the APS Zone of PJM.²³ Following the Asset Sales, all LSEs in the APS Zone, excluding the grandfathered ODEC Legacy Load, are affiliates of FirstEnergy.²⁴

11. The dispute between FirstEnergy and ODEC is over which entity must calculate and report the Metrics to PJM subsequent to the Asset Sales and whether Attachments M-1 and M-2 apply to ODEC and ODEC load.²⁵ FirstEnergy and ODEC

¹⁹ Initial Decision, 148 FERC ¶ 63,003 at P 9; Stipulated Facts 4. Potomac Edison has retail operations in Maryland and West Virginia. Stipulated Facts 3.

²⁰ Stipulated Facts 111 and 112. *See also* Answer of FirstEnergy filed on September 10, 2012 in Docket No. ER12-2399-000 at 9.

²¹ Ex. Staff-1 at 14:9-12 (Gross); Ex. ODC-1 at 7:19-24 (Ringhausen). A map of the PJM Zones is set forth on Attachment J to the PJM OATT. Ex. ODC-3.

²² Initial Decision, 148 FERC ¶ 63,003 at P 6; Stipulated Facts 54.

²³ Initial Decision, 148 FERC ¶ 63,003 at P 6; Stipulated Facts 89.

²⁴ FirstEnergy performs the Metrics for all other LSEs (i.e., its own affiliates), except ODEC, in the APS Zone. Initial Decision, 148 FERC ¶ 63,003 at P 80.

²⁵ ODEC Load, as defined by the parties in the Stipulated Facts, means the Rappahannock load, the Shenandoah load, and ODEC Legacy Load. ODEC Legacy Load is the load served by ODEC prior to the Asset Sales that is physically located within the service territory of Rappahannock and is subject to a grandfathered transmission rate. Initial Decision at P 13; Stipulated Facts 9-10.

also disagree on which meters should be used. FirstEnergy believes that jurisdictional meters, which are located at or near the boundary of Potomac Edison's former Virginia service territory,²⁶ should be used to collect the data. ODEC, supported by Trial Staff, argues for the use of interconnection meters which are located at ODEC's interconnection points with FirstEnergy. FirstEnergy owns all of the jurisdictional meters (with two exceptions)²⁷ and all of the interconnection meters.²⁸

B. Procedural History

12. On August 3, 2012, FirstEnergy filed revisions to Attachment M-1 and Attachment M-2. According to FirstEnergy, the revisions were intended to reflect additional FirstEnergy EDCs due to FirstEnergy's mergers with GPU, Inc. and Allegheny Energy (which included Potomac Edison) and to revise formulas and terms. The August 3, 2012 Filing identified Potomac Edison as a FirstEnergy EDC. Several parties, including ODEC, raised various issues with regard to the FirstEnergy filing. As relevant here, FirstEnergy argued in response that, as a result of ODEC's acquisition of Potomac Edison's Virginia distribution assets, Rappahannock and Shenandoah "stepped into the shoes" of Potomac Edison with respect to the obligations associated with the Metrics.²⁹ FirstEnergy further argued that with respect to Attachments M-1 and M-2: provisions concerning wholesale LSEs apply to Rappahannock and Shenandoah to the extent asset transfer agreements and interconnection agreements are silent; ODEC members will not be subject to an allocation for unaccounted for energy because Rappahannock and Shenandoah will be treated as a separate load zone within the APS Zone that must "carve" to zero megawatts; the metering points specified in the Interconnection Agreements will not be used as metering points for purposes of Attachment M-1, and FirstEnergy does not need to calculate an applicable loss factor for ODEC service territories because the meters at the jurisdictional boundaries will measure load, including losses.³⁰

²⁶ Stipulated Facts 67.

²⁷ Initial Decision, 148 FERC ¶ 63,003 at P 14; Ex. FE-11.

²⁸ Initial Decision, 148 FERC ¶ 63,003 at P 15; Ex. FE-7 at 20-42; Ex. FE-9 at 19-20.

²⁹ Answer of FirstEnergy dated September 10, 2012 filed in Docket No. ER12-2399-000 at 8.

³⁰ October 2, 2012 Order, 141 FERC ¶ 61,009 at P 19.

13. In the October 2, 2012 Order, the Commission accepted and nominally suspended FirstEnergy's proposed revisions to Attachments M-1 and M-2, effective August 3, 2012, subject to refund and to the outcome of hearing and settlement judge procedures.

14. Following settlement negotiations, FirstEnergy and all of the parties, except for ODEC, reached a settlement of all issues among them. On June 24, 2013, FirstEnergy filed a Partial Settlement and revised versions of Attachments M-1 and M-2. The unopposed Partial Settlement did not address or resolve the issues raised by ODEC including: (1) whether Attachments M-1 and M-2 apply to ODEC³¹ as a wholesale LSE taking transmission service under the PJM Tariff over facilities owned by a FirstEnergy affiliate and operating in such FirstEnergy EDC zone; (2) for purposes of the calculations and reporting specified in Attachments M-1 and M-2, which meters are required to be used with respect to ODEC's load; (3) whether FirstEnergy can allocate Unaccounted for Energy to ODEC under Attachment M-1; (4) whether an Applicable Loss Factor is required to determine ODEC's THEO under Attachment M-1; and (5) which entity is required to determine and provide to PJM ODEC's Metrics under Attachments M-1 and M-2.³² In the Settlement Order, the Commission approved the Partial Settlement and

³¹ Attachment M-1 as filed on August 3, 2012 by FirstEnergy states in relevant part:

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,...and Potomac Edison Company.

Similarly, Attachment M-2 states:

The purpose of this Attachment M-2 is to establish the procedures and methodologies under which the FirstEnergy regulated affiliates will determine the PLC and NSPL, as defined/specified in ..."PJM Documents"...for each Load Serving Entity ("LSE") serving load in the following FirstEnergy Electric Distribution Companies ("EDC") Zones (the "FirstEnergy Zones"):...Monongahela Power Company,...and Potomac Edison Company.

³² Initial Comments of ODEC on Settlement Agreement and Offer of Partial Settlement filed July 15, 2013 in Docket No. ER12-2399-000. ODEC identified several

(continued...)

reserved the issues raised by ODEC for hearing in the ongoing proceeding established by the October 2, 2012 Order.

15. A hearing on the ODEC issues was held in March 2014. Testimony was filed by FirstEnergy, ODEC, and Commission Trial Staff. Initial and Reply Briefs were filed April 15, 2014 and May 6, 2014, respectively. On July 1, 2014, FirstEnergy, on behalf of the active participants, filed a Motion to Receive Joint Statement of Stipulated Issues and concurrently filed the Stipulated Facts and a Joint Statement of Contested Facts Out of Time. The Presiding Judge granted the Motion and allowed the filing into the record out of time pursuant to Rule 212 of the Commission's Rules of Practice and Procedure.³³

16. The Initial Decision was issued July 15, 2014. A Brief on Exceptions was filed by FirstEnergy and Briefs Opposing Exceptions were filed by ODEC and Trial Staff. On September 17, 2014, FirstEnergy filed a Motion for Leave to Reply and a Reply to the Briefs Opposing Exceptions. FirstEnergy stated that its Reply was intended to correct numerous factual and legal errors in the ODEC and Trial Staff briefs. ODEC and Trial Staff filed Answers to the Motion on October 2, 2014 and responded to FirstEnergy's arguments. We find that in their later pleadings participants have simply reargued points already made in their testimony and briefs. Consequently, we deny FirstEnergy's Motion and reject its Reply. We will also reject the answers of ODEC and Trial Staff to FirstEnergy's motion.

II. Discussion

17. As further detailed below, we affirm the Initial Decision's finding that Attachments M-1 and M-2 should apply to ODEC and ODEC load, including Rappahannock and Shenandoah. Further, we affirm the Initial Decision's determination that FirstEnergy is responsible for calculating and reporting the Metrics to PJM using data from the interconnection meters including those for the Town of Front Royal, Virginia (Front Royal). We find it would be unjust, unreasonable and unduly discriminatory not to apply Attachments M-1 and M-2 to these entities because doing so would legitimize FirstEnergy's attempt to subdivide the PJM APS Zone and treat similarly situated customers differently. Consistent with our decision, we also find that the interconnection meter readings should be grossed up by the appropriate PJM loss

issues in its Initial Comments on the Partial Settlement, all of which have been addressed in the Initial Decision. ODEC also reserved the right to change its position on the Partial Settlement in the event the Commission's acceptance of the Partial Settlement included any conditions or modifications and the right to raise additional issues.

³³ 18 C.F.R. § 385.212 (2015).

factor to account for losses in the APS Zone to ensure that Attachments M-1 and M-2 are just and reasonable and not unduly discriminatory with respect to FirstEnergy customers in Virginia that are similarly situated with FirstEnergy affiliates in the remainder of the PJM APS Zone. Accordingly, the Commission directs FirstEnergy to revise Attachments M-1 and M-2 to add the loss factor provisions that relate to ODEC and ODEC load.

18. The Commission recognizes that the August 3, 2012 Attachments M-1 and M-2 were filed in Docket No. ER12-2399-000 but that the settlement versions filed on June 24, 2013 in Docket No. ER12-2399-002 are the active versions that now appear in the PJM OATT in the Commission's eTariff system. The Presiding Judge also referenced the settlement versions in his Initial Decision. However, we find that the settlement versions of Attachments M-1 and M-2 cannot apply to ODEC and ODEC load because ODEC was not a party to the Settlement.³⁴ Rather, it is FirstEnergy's proposed versions of Attachments M-1 and M-2 filed on August 3, 2012 that are in dispute between FirstEnergy and ODEC in this proceeding under section 205 of the FPA.³⁵ For the reasons discussed below, we direct FirstEnergy to refile Attachments M-1 and M-2 as filed on August 3, 2012 as applicable to ODEC and ODEC load, in a compliance filing, with revisions that comply with the determinations discussed in this opinion.

19. We address the issues set for hearing as presented in the Initial Decision as follows.

³⁴ The Attachments M-1 and M-2 that are currently on file reflect a partial settlement among FirstEnergy and certain parties, but not ODEC, in Docket No. ER12-2399-002. Consequently, the settlement and the settlement versions of Attachments M-1 and M-2 do not apply to ODEC. However, it is apparent from the record that FirstEnergy appears to be using the settlement version of Attachments M-1 and M-2 as the benchmark for making its case, particularly the provision adding the terms *Potomac Edison WV* and *Potomac Edison MD* as we discuss later. We note that the Partial Settlement also revised both Attachments M-1 and M-2 to contain the following language: “[The Attachment] 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.”

³⁵ We find that the burden of proof rests with FirstEnergy as to whether the Attachments M-1 and M-2 filed on August 3, 2012, are just and reasonable.

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

1. Initial Decision

20. The Initial Decision held that Attachments M-1 and M-2 apply to both ODEC and the ODEC load.³⁶ The Initial Decision cited to the settlement versions of Attachments M-1 and M-2 as filed on June 24, 2013 as the Presiding Judge determined that it is these versions in the PJM Tariff that are to be litigated.³⁷

21. The Presiding Judge rejected FirstEnergy's argument that Attachments M-1 and M-2 apply only in the service territory of a FirstEnergy EDC zone and that, since there is no such zone in Virginia, ODEC must therefore calculate the Metrics. He addressed FirstEnergy's 2013 amendments to Attachments M-1 and M-2 which defined, for the first time, FirstEnergy's EDC Potomac Edison as two entities, Potomac Edison MD and Potomac Edison WV.³⁸ The Presiding Judge found that Attachments M-1 and M-2 cannot be limited to only the West Virginia and Maryland areas served by FirstEnergy or affiliates.³⁹ He determined that the 2013 versions of the attachments attempt to limit the definition of what entities are considered to be FirstEnergy EDC Zone(s). The Presiding Judge noted that the parties stipulated that 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.⁴⁰

³⁶ Initial Decision, 148 FERC ¶ 63,003 at PP 64-75.

³⁷ See Initial Decision, 148 FERC ¶ 63,003 at n.75.

³⁸ The revised Attachments M-1 and M-2 listed FirstEnergy's EDC Potomac Edison as two entities: Potomac Edison (Maryland), and Potomac Edison (West Virginia). FirstEnergy apparently made this change on its own initiative, as no party requested such a redefinition in comments nor is the change addressed in the Partial Settlement's Stipulation and Agreement or Explanatory Statement.

³⁹ Initial Decision, 148 FERC ¶ 63,003 at P 70.

⁴⁰ Initial Decision, 148 FERC ¶ 63,003 at P 70, citing Stipulated Facts 100. The Initial Decision further rejected FirstEnergy's argument that its witness Stein, who drafted the Attachments, did not intend that they apply to ODEC. However, Attachments M-1 and M-2 do not specifically exclude ODEC and its members Rappahannock and Shenandoah, and any ambiguities must be construed against FirstEnergy. Initial Decision, 148 FERC ¶ 63,003 at P 69, n.86. We note that neither

(continued...)

22. The Presiding Judge found that FirstEnergy's revised definition of the Potomac Edison EDC was an attempt to divide PJM's fully metered APS zone into subzones bounded by state borders.⁴¹ The Presiding Judge cited Trial Staff's testimony that creating subzones within a PJM-recognized zone is generally impermissible.⁴² By cutting Virginia out of the APS Zone without the other parties' agreement, the Initial Decision found that FirstEnergy is effectively treating Virginia as a separate sub-zone, and by doing so, endeavoring to subvert the zonal structure set up by PJM in its Tariff. The Presiding Judge found this to be impermissible under the PJM Tariff.⁴³

23. The Presiding Judge concluded that FirstEnergy is effectively the EDC in the PJM-defined APS Zone. He cited information provided by PJM where PJM indicated that the APS Zone is the FirstEnergy Zone, which includes portions of Virginia.⁴⁴ He further cited a PJM data response which stated that, when [FirstEnergy acquisition] Allegheny integrated into PJM, Allegheny specified and modeled the single AETSAP account to be the fully metered EDC for the APS Zone.⁴⁵ The Presiding Judge cited FirstEnergy witness Stein's testimony that the AETSEP account is now FirstEnergy's APS [Zone] EDC account.⁴⁶

24. The Presiding Judge emphasized the fact that, although FirstEnergy's affiliate Potomac Edison no longer owns *retail distribution* assets in Virginia, this lack of retail ownership does not affect its status as a *wholesale transmission* owner in PJM's APS

version of Attachments M-1 and M-2 specifically excludes ODEC, Rappahannock or Shenandoah.

⁴¹ Initial Decision, 148 FERC ¶ 63,003 at P 72.

⁴² The only exception is if the PJM region is expanded to accommodate a new transmission owner under the PJM Consolidated Transmission Owners' Agreement. In any event, a fully-metered subzone can only be established if all parties involved agree to do so. Ex. S-1 at 11-13 (citing § 7.4 of FERC Rate Schedule 42: Transmission Zone Sizes).

⁴³ Initial Decision, 148 FERC ¶ 63,003 at P 73.

⁴⁴ Ex. ODC-34 (d).

⁴⁵ Ex. ODC-34; ODEC-PJM request 1-2 (e). AETSEP is the designation given to FirstEnergy's fully-metered EDC account for the entire APS Zone. Tr. 151:11-14.

⁴⁶ Initial Decision, 148 FERC ¶ 63,003 at P 74; Tr. 151:11-14 (Stein).

Zone.⁴⁷ Hence, FirstEnergy, through Potomac Edison, still maintains *transmission* operations in Virginia and is not relieved of its obligations under the PJM Tariff for the APS Zone.⁴⁸ He further found that ODEC is a transmission customer of PJM served over FirstEnergy (Potomac Edison)-owned *transmission* assets in Virginia within the APS Zone.⁴⁹ The Presiding Judge noted that both Attachments M-1 and M-2 expressly state they apply to wholesale Load Serving Entities, and there is no disagreement that PJM member ODEC is also a Load Serving Entity.⁵⁰ The Presiding Judge concluded that, despite FirstEnergy's amendments to its wholesale transmission tariff, the PJM Tariff still applies to FirstEnergy's transmission customers in Virginia, including ODEC and ODEC load.

2. Brief on Exceptions

25. FirstEnergy argues that Attachments M-1 and M-2 unambiguously specify the obligations of the ten FirstEnergy EDCs with respect to the LSEs serving load in their respective territories and do not apply to ODEC or ODEC load. FirstEnergy states that an EDC is an entity that owns distribution facilities and serves retail load in a particular state-certified service territory as defined by PJM⁵¹ and that following the asset sale in 2010, there is no FirstEnergy EDC and no FirstEnergy Zone in Virginia because no FirstEnergy affiliate owns distribution facilities or serves retail load in Virginia. Further, FirstEnergy states Rappahannock and Shenandoah assumed all of the obligations of Potomac Edison with regard to the Virginia retail distribution business. FirstEnergy

⁴⁷ Initial Decision, 148 FERC ¶ 63,003 at P 75 (emphasis in original).

⁴⁸ Initial Decision, 148 FERC ¶ 63,003 at PP 71, 75 (emphasis in original).

⁴⁹ Initial Decision, 148 FERC ¶ 63,003 at P 75; Stipulated Facts 60.

⁵⁰ Initial Decision, 148 FERC ¶ 63,003 at P 75; Stipulated Facts 46, 93.

⁵¹ Citing Ex. ODC-27, response of PJM to an ODEC interrogatory regarding the definition of Electric Distribution Company contained in the *PJM Glossary*. However, we note that the response to the interrogatory contained in Ex. ODC-27 to which FirstEnergy refers contains two definitions of EDC from the *PJM Glossary*, neither of which refer to serving "retail load" or to "particular state-certified service territory." PJM also clarifies this glossary definition is from the *PJM Learning Center* contained on its website from which PJM quotes: "The Learning Center exists to provide a clear understanding of the concepts and terms used by PJM...is for informational and educational purposes only. It is expressly understood that the [OATT], [PJM Operating Agreement]...schedules and service agreements may contain different definitions...."

argues that there is no tariff provision that imposes the obligation that FirstEnergy be the EDC for all LSEs in the APS Zone. FirstEnergy further argues that its intent in drafting Attachments M-1 and M-2 prior to filing was known by ODEC, that FirstEnergy's continuation of performing the Metrics should not be a basis for shifting obligations and was only a stopgap to fill the void created by the unwillingness of ODEC, Rappahannock and SVEC to fulfill their responsibilities, and to ensure that energy and transmission costs incurred for service to the ODEC load were not allocated to customers in West Virginia, Pennsylvania, and Maryland.

3. Briefs Opposing Exceptions

a. ODEC

26. ODEC agrees that the Presiding Judge properly found that Attachments M-1 and M-2 apply to ODEC and the ODEC load. ODEC rejects FirstEnergy's argument that the Attachments do not apply because the Tariff provisions only apply to LSEs serving load in "FirstEnergy Zones."⁵² ODEC disputes FirstEnergy's definition of an EDC as an entity that owns distribution facilities and serves retail load in a particular state-certified service territory.⁵³ According to ODEC, FirstEnergy has formulated a definition of "FirstEnergy Zones" that is limited to FirstEnergy distribution companies. ODEC opposes FirstEnergy's attempt to use this definition of EDC to argue that, because it no longer has retail load in Virginia due to the Asset Sales, there is no FirstEnergy EDC in Virginia; and therefore, Attachments M-1 and M-2 cannot apply to ODEC and ODEC Load.⁵⁴

27. ODEC argues that, under the definition of EDC given by FirstEnergy, only FirstEnergy can be the EDC for the ODEC load in Virginia. ODEC states that, by FirstEnergy's definition, Potomac Edison is the EDC for ODEC load in Virginia because Potomac Edison owns distribution facilities used to provide service to electric load within the PJM Control Area and is a PJM Member. According to ODEC, neither ODEC, nor Rappahannock or Shenandoah is an EDC by this definition because ODEC is a PJM Member but does not own distribution facilities⁵⁵ and Rappahannock and Shenandoah

⁵² ODEC Brief Opposing Exceptions at 11-12.

⁵³ FirstEnergy Brief On Exceptions at 15.

⁵⁴ ODEC Brief Opposing Exceptions at 11-12.

⁵⁵ *Id.* at 15, citing Ex. FE-21 at 5:17-18.

own distribution facilities but neither is a PJM Member.⁵⁶ ODEC submits that based on FirstEnergy witness Stein's definition of EDC when he authored Attachments M-1 and M-2, FirstEnergy is the EDC for the ODEC Load and none of the ODEC entities qualify.⁵⁷

28. ODEC also argues the Presiding Judge properly rejected FirstEnergy's attempt to limit the application of Attachments M-1 and M-2 so as to exclude Potomac Edison's service territory in Virginia. ODEC submits that Potomac Edison is the only corporate entity that still has FERC-jurisdictional transmission facilities and service in Virginia. According to ODEC, this demonstrates that FirstEnergy still provides service in Virginia and cannot carve ODEC and ODEC load out of FirstEnergy's Metrics reporting obligations by creating separate FirstEnergy Zones to exclude Virginia.⁵⁸

29. ODEC states that the Initial Decision properly determined that ODEC is similarly situated with other wholesale LSEs on whose behalf FirstEnergy calculates and reports the Metrics and that the Initial Decision correctly determined that the notion of a "FirstEnergy EDC Zone is fiction." ODEC states that the entire APS Zone for which FirstEnergy serves as the responsible EDC is the zone for purposes of Attachments M-1 and M-2 and that ODEC is a wholesale LSE within the APS Zone.⁵⁹

b. Trial Staff

30. Trial Staff argues that the sale of Potomac Edison's retail assets and service territory has no effect on FirstEnergy's obligations under a FERC-regulated transmission tariff. Trial Staff states that FirstEnergy is still the EDC for the APS Zone and, therefore, it is required under the PJM Tariff to calculate and report the Metrics for the entire transmission zone, including Virginia.⁶⁰

31. Trial Staff supports the Initial Decision's finding that FirstEnergy's 2013 amendments to Attachments M-1 and M-2 to redefine Potomac Edison do not allow FirstEnergy to shift the responsibility for the Metrics to ODEC. Trial Staff states that

⁵⁶ Stipulated Facts 43.

⁵⁷ ODEC Brief Opposing Exceptions at 15.

⁵⁸ *Id.* at 12.

⁵⁹ *Id.* at 17.

⁶⁰ Trial Staff Brief Opposing Exceptions at 6.

there is not and never has been any entity with any of these designations (i.e., Potomac Edison MD and Potomac Edison WV) and cites FirstEnergy's testimony that Potomac Edison VA is not a stand-alone corporation.⁶¹ The parties stipulated that no corporate entities with these names exist.⁶²

32. Trial Staff acknowledged that Attachments M-1 and M-2 state that they apply only in the service territory of a FirstEnergy EDC and that following the sale, no FirstEnergy affiliate owns distribution facilities or serves retail load in Virginia.⁶³ However, Trial Staff states that by defining "FirstEnergy energy zones" as the boundaries of the territory served by its affiliated distribution companies, FirstEnergy has equated the retail service territory of an EDC with the transmission service territory of the PJM defined APS Zone.⁶⁴ Trial Staff argues that defining the FirstEnergy Zones as being commensurate with state boundaries blurs jurisdictional lines and attempts to place retail service considerations above those of wholesale markets in a FERC-jurisdictional tariff. Although FirstEnergy has no retail presence in Virginia, this does not relieve it of its responsibility under the PJM tariff.

33. Trial Staff rejects FirstEnergy's contention that its witness, as the author of Attachments M-1 and M-2 is uniquely qualified to interpret those Attachments. Trial Staff supports the Initial Decision's finding that, as the author of Attachments M-1 and M-2, any ambiguity must be construed against FirstEnergy.

4. Commission Determination

34. We affirm the Initial Decision's findings that an Attachment M-1 and an Attachment M-2, a part of the PJM OATT, should apply to ODEC in the same manner as they apply to other wholesale LSEs in the PJM APS Zone.⁶⁵ The Initial Decision

⁶¹ *Id.* at 13, n.5.

⁶² Stipulated Facts 100.

⁶³ Trial Staff theorizes that the fact that Attachments M-1 and M-2 by their terms do not apply to LSEs in Virginia results from FirstEnergy's decision to exclude ODEC from FirstEnergy's reporting responsibilities. Trial Staff Brief Opposing Exceptions at 6.

⁶⁴ Trial Staff Brief Opposing Exceptions at 15.

⁶⁵ However, we disagree with the Presiding Judge's determination that the settlement-filed versions of Attachments M-1 and M-2, currently in the PJM Tariff, should apply to ODEC, as ODEC was not a party to the partial settlement. Therefore, the settlement-filed versions do not apply to ODEC and contain terms and conditions that do

(continued...)

correctly found that an Attachment M-1 and an Attachment M-2 should apply to wholesale and retail LSEs in the PJM APS Zone, and correctly determined the responsible party for performing the Metrics which PJM needs to administer certain tariff requirements. The Metrics are a wholesale obligation under the PJM Tariff that is required by PJM for entities taking service under the PJM OATT. The FirstEnergy EDCs, including Potomac Edison, listed in the Attachments are such entities and these entities must perform the Metrics.

35. FirstEnergy attempts to argue that the determination and reporting of the Metrics is a retail obligation that falls upon ODEC. FirstEnergy asserts that, because FirstEnergy's affiliate, Potomac Edison, is not an EDC in Virginia,⁶⁶ due to the Asset Sales, and has no retail distribution facilities nor serves retail load in Virginia, Attachments M-1 and M-2 to the PJM OATT no longer apply to that retail load.⁶⁷ However, the fact that FirstEnergy's affiliate Potomac Edison no longer owns retail distribution assets in Virginia does not affect its status as a wholesale transmission owner under the PJM OATT in the APS Zone, a portion of which covers Virginia. Nor did the Asset Sales eliminate FirstEnergy's overarching obligations under the wholesale PJM OATT. We note that the parties in this proceeding agreed that Potomac Edison owns transmission facilities in Virginia which are used to provide Network Integration Transmission Service under the PJM OATT to ODEC and others as further evidenced by the Interconnection Agreements.⁶⁸ As the Presiding Judge observed, one cannot lose sight of the fact that FirstEnergy, through its affiliate Potomac Edison, still maintains transmission operations in Virginia and that ODEC, and its members Rappahannock and Shenandoah, never, to borrow FirstEnergy's phrase, "stepped into the shoes" of Potomac Edison's wholesale transmission operations in Virginia.⁶⁹

not apply to ODEC. Rather, Attachments M-1 and M-2 filed originally on August 3, 2012 in this proceeding, as modified consistent with this Opinion, are applicable to ODEC and ODEC's load in certain portions of Virginia as discussed further below.

⁶⁶ This contention is based solely on FirstEnergy's unilateral re-definition of Potomac Edison as Potomac Edison - MD and Potomac Edison - WV filed as part of the Settlement.

⁶⁷ Ex. FE-1 at 11-15.

⁶⁸ Initial Decision, 148 FERC ¶ 63,003 at 24; Stipulated Fact 60.

⁶⁹ Initial Decision, 148 FERC ¶ 63,003 at P 71. *See also* Stipulated Facts 3, 60. FirstEnergy's argument that, pursuant to the Asset Purchase Agreements, ODEC assumed

(continued...)

36. We affirm the Initial Decision’s findings that FirstEnergy cannot unilaterally modify the zonal structure of the PJM OATT by attempting to divide PJM’s fully-metered APS Zone into subzones bounded by state borders.⁷⁰ Under the PJM OATT, ODEC interconnects and takes service for Rappahannock and Shenandoah over FirstEnergy’s affiliate Potomac Edison’s transmission facilities in the PJM APS Zone.⁷¹ The record shows that when Allegheny Power (FirstEnergy’s predecessor) integrated into PJM, Allegheny Power specifically modeled one fully metered EDC for the APS Zone—known as the AETSAP account.⁷² In this regard, we find that FirstEnergy’s efforts to restrict the application of Attachments M-1 and M-2 to a discrete portion of the APS Zone are contrary to the PJM OATT.⁷³ As the Initial Decision found, FirstEnergy was and is effectively the EDC in the PJM-defined APS Zone.⁷⁴

all obligations of Potomac Edison’s distribution business has no bearing on the wholesale transmission operations for which Potomac Edison remains responsible.

⁷⁰ Initial Decision, 148 FERC ¶ 63,003 at P 72-75. We note the observation of the Presiding Judge that the terms “Potomac Edison MD” and “Potomac Edison WV” did not appear in the August 3, 2012 Filing and were likely added in the Settlement version in an attempt to bolster FirstEnergy’s position at hearing. Initial Decision, 148 FERC ¶ 63,003 at P 66, n.77.

⁷¹ FirstEnergy’s use of terminology such as “FirstEnergy EDCs Zones” conflates retail and wholesale functions among FirstEnergy affiliates. Under the PJM OATT, the only relevant zone is the APS Zone. “FirstEnergy Electric Distribution Companies (“EDC”) Zones” appears to refer to the retail functions of FirstEnergy’s vertically integrated affiliates that are both transmission owners providing service under the PJM OATT and also act as load-serving entities and electric distribution companies throughout the PJM zones in which FirstEnergy operates. However, the term Electric Distributor is defined in several related, but differing, definitions, all of which pertain specifically to the ownership and provision of distribution facilities. *See, e.g.,* PJM Operating Agreement, *Definitions E-F*, section 1.8, *Electric Distributor*; PJM Consolidated Transmission Owners Agreement, FERC Rate Schedule 42, section 1.8, *Electric Distributor*; and Reliability Assurance Agreement – RAA Article 1–Definitions, section 1.18, *Electric Distributor*.

⁷² Ex. ODC-34.

⁷³ Initial Decision, 148 FERC ¶ 63,003 at P 73; Ex. S-1 at 29. PJM Zones are specified in Attachment J to the PJM OATT and thus would require an FPA section 205 filing by PJM to change. The APS Zone is not based on retail jurisdictional boundaries, and thus could not be altered by the Asset Sales. Nor can FirstEnergy alter the APS Zone

(continued...)

37. FirstEnergy also argues that it did not intend that ODEC be covered by Attachments M-1 and M-2. However, as the drafter of the Attachments,⁷⁵ any inconsistencies or ambiguities must be construed against FirstEnergy.⁷⁶ There is no dispute among the parties that ODEC is a wholesale LSE,⁷⁷ and we have found that ODEC interconnects and takes service from Potomac Edison in the PJM APS Zone. The language of both versions of Attachment M-1 plainly states that it pertains to both wholesale and retail Load Serving Entities servicing load in the listed FirstEnergy EDC Zones.⁷⁸

38. Based upon the foregoing, we therefore find it is unjust and unreasonable not to apply Attachments M-1 and M-2, as filed on August 3, 2012, as revised and as discussed below, to ODEC and ODEC load. Further, we find it is contrary to the proposed tariff and also would be unduly discriminatory for FirstEnergy to apply the terms of Attachments M-1 and M-2 to FirstEnergy's LSE affiliates and other wholesale and retail

by unilaterally amending Attachments M-1 and M-2 to denominate its affiliate Potomac Edison as two entities, Potomac Edison MD and Potomac Edison WV. Stipulated Facts 100. We agree with the finding of the Initial Decision in this regard, and the references in the revised Attachments M-1 and M-2 to "Potomac Edison MD" and "Potomac Edison WV" thus have no meaning in implementing the terms of the PJM OATT.

⁷⁴ Initial Decision, 148 FERC ¶ 63,003 at P 74.

⁷⁵ *Id.* P 68; Stipulated Facts 16.

⁷⁶ Initial Decision, 148 FERC ¶ 63,003 at P 68, citing *KN Energy, Inc.*, 59 FERC ¶ 61,332, at 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 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.").

⁷⁷ *See* Stipulated Facts 44, 45, 46, 96; Ex. ODC-1 at 4-5 (ODEC makes wholesale sales for resale to its member distribution cooperatives and is a wholesale load-serving entity).

⁷⁸ As noted, the PJM APS Zone takes precedence over FirstEnergy's exclusionary definition of zone for the purposes of performing the Metrics.

LSEs taking transmission service in the PJM APS Zone but to exclude ODEC. Accordingly, FirstEnergy is directed to refile Attachments M-1 and M-2 as specifically applicable to ODEC and ODEC load within 30 days, consistent with our findings in this order.

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

1. Initial Decision

39. The Initial Decision determined that FirstEnergy is required to calculate and report the Metrics for the ODEC load.⁷⁹ The Presiding Judge found it would not be just and reasonable to require ODEC to take over the Metrics since FirstEnergy owns all but two of the meters that are used to calculate the Metrics.⁸⁰ He rejected FirstEnergy's arguments that it is not under any contractual or PJM Tariff obligation to perform the Metrics.⁸¹ The Presiding Judge stated that FirstEnergy is required to do so because it retains this responsibility as the PJM-recognized fully metered EDC for the APS Zone.⁸² The Presiding Judge found that under the terms of the PJM Tariff, FirstEnergy is

⁷⁹ Initial Decision, 148 FERC ¶ 63,003 at PP 76-82. FirstEnergy (and its predecessor, Allegheny Power) calculated and reported the Metrics to PJM for the ODEC Load prior to the Asset Sales and it continues to do so today. Stipulated Facts 63-66, 111-112, and 115-116.

⁸⁰ Initial Decision, 148 FERC ¶ 63,003 at P 77, n.102.

⁸¹ Conversely, the Presiding Judge noted that FirstEnergy's witness testified that no express language exists in any agreement or contract which specifically requires ODEC, SVEC, or REC to calculate the Metrics. Tr. 210:16-22 (Stein). The Asset Purchase Agreements do not contain such language. Initial Decision, 148 FERC ¶ 63,003 at P 78, n.107; Ex. FE-3; Ex FE-4.

⁸² Initial Decision, 148 FERC ¶ 63,003 at 77. In a response to a data request, PJM stated that when Allegheny Power (FirstEnergy's predecessor) integrated into PJM, Allegheny Power specified and modeled the single AETSAP account to be the fully metered EDC for the APS Zone. (AETSAP is the account name for the APS Zone in PJM's relevant software programs.) Ex. ODC-34. PJM further stated that there were no changes to PJM operations and administrative procedures with respect to the APS Zone that were necessitated by FirstEnergy's purchase of Allegheny Power. Ex. S-6. FirstEnergy, having acquired Allegheny Power, has become the fully metered EDC for the APS Zone under the AETSAP account.

responsible for the Metrics and ODEC is not, since the AETSAP account becomes responsible.⁸³

40. The Presiding Judge dismissed what he termed FirstEnergy's implication, that because it has never received compensation for preparing the Metrics, it is not required to do so.⁸⁴ Instead, he found that the reason FirstEnergy is currently not compensated is due to its own procedures for collecting such costs. FirstEnergy bills the other LSEs in the APS Zone for calculating and reporting the Metrics through administrative charges levied via the state-retail supplier tariffs of the applicable EDC.⁸⁵ The Presiding Judge noted, however, that FirstEnergy cannot recover its costs through retail rates for performing these functions for the ODEC Load because it no longer owns a retail service territory in Virginia. The Presiding Judge stated that it is apparent that FirstEnergy simply failed to foresee how the distribution-asset sale by Potomac Edison in Virginia would affect its ability to collect compensation for performing the Metrics there. The Presiding Judge suggested that FirstEnergy could make a filing to recover these costs under section 205 of the Federal Power Act. He found that this failure, however, did not provide FirstEnergy with a remedy that would force ODEC or its members to take over FirstEnergy's responsibilities under the PJM Tariff.⁸⁶

41. The Initial Decision also found that requiring ODEC to perform the Metrics would be unduly discriminatory, since FirstEnergy performs the Metrics for all other LSEs (i.e., its own affiliates) in the APS Zone. The Presiding Judge noted that imposing such a requirement on ODEC would amount to disparate treatment of similarly-situated entities, and would be unduly discriminatory.⁸⁷ He rejected FirstEnergy's arguments that its

⁸³ Initial Decision, 148 FERC ¶ 63,003 at P 78; Exs. ODC-37, 38, and 39. PJM explained in data responses that if FirstEnergy stopped performing the various Metrics, AETSAP would be the Load Serving Entity responsible for the ODEC load. As explained in footnote 81, *supra*, FirstEnergy is the successor to Allegheny Power under the AETSAP account.

⁸⁴ Initial Decision, 148 FERC ¶ 63,003 at P 79.

⁸⁵ Ex. S-3, FirstEnergy's response to Trial Staff-FE 4-1 (a); Tr. 193:17-20 (Stein).

⁸⁶ Initial Decision, 148 FERC ¶ 63,003 at P 79. Alternatively, the Presiding Judge suggested that FirstEnergy could file for a rate for these services that would apply throughout the APS Zone, supplanting the state-specific rates. Initial Decision, 148 FERC ¶ 63,003 at P 79, n.111; Stipulated Facts 91.

⁸⁷ Initial Decision, 148 FERC ¶ 63,003, at P 80 citing 16 U.S.C. § 824d(b) (2012) and *Calpine Oneta Power, L.P.*, 119 FERC ¶ 61,177, at P 16 (2007).

affiliates are not similarly situated because they are not wholesale LSEs, do not take service under Attachments M-1 and M-2, or operate in the service territory of a FirstEnergy EDC.⁸⁸ In addition to citing his previous finding that Attachments M-1 and M-2 apply to ODEC and ODEC load, the Presiding Judge determined that it is PJM's APS Zone, not the FirstEnergy EDC Zones, which controls under the Tariff. Thus, he found FirstEnergy's attempt to treat ODEC differently constitutes undue discrimination.⁸⁹

2. Brief on Exceptions

42. FirstEnergy argues that the Initial Decision points to no provision in the Consolidated Transmission Owners Agreement or the PJM OATT that obligates Potomac Edison or any other transmission owner in PJM to calculate Metrics for the LSEs in their transmission zones. FirstEnergy argues that Attachments M-1 and M-2 specify that the Metrics are calculated by the EDCs, not the FirstEnergy companies that own the transmission facilities, and that PJM defines an "electric distributor" and specifies that electric distributors shall provide PJM with all accounting and customer tracking data.⁹⁰ FirstEnergy argues that the Initial Decision would relieve ODEC, Rappahannock, and Shenandoah from the responsibility of calculating their Metrics; and, being the only EDCs in the APS Zone with that exemption would create undue preference. FirstEnergy further attempts to make the distinction that its affiliates are not wholesale LSEs like ODEC, but electric distribution companies that do not take service under Attachments M-1 and M-2 and that FirstEnergy affiliates only perform the Metrics for wholesale LSEs that take service in the territory of a FirstEnergy EDC.

3. Briefs Opposing Exceptions

a. ODEC

43. ODEC states that the Initial Decision correctly determined that ODEC is a wholesale LSE within the APS Zone, which is the applicable zone for purposes of

⁸⁸ FirstEnergy further argued that ODEC (*i.e.*, Rappahannock and Shenandoah) customers are not embedded within a FirstEnergy EDC Zone. FirstEnergy's argument only makes sense, however, in the context of FirstEnergy's revision in the settlement versions of Attachments M-1 and M-2 to redefine Potomac Edison as two separate entities.

⁸⁹ Initial Decision, 148 FERC ¶ 63,003 at PP 81-82.

⁹⁰ FirstEnergy Brief on Exceptions at 24, citing section 11.3.3 of the PJM Operating Agreement.

Attachments M-1 and M-2 and that FirstEnergy serves as the responsible EDC for the entire APS Zone. ODEC must be treated consistently with the other wholesale LSEs, in the APS Zone, none of which are required to calculate the Metrics. FirstEnergy's argument that ODEC is not similarly situated with other wholesale LSEs is unfounded. ODEC believes it would be unduly discriminatory to require ODEC to perform the Metrics for its load in the APS Zone.

b. Trial Staff

44. Trial Staff states the Initial Decision correctly found that FirstEnergy is required to continue to calculate and report the Metrics for ODEC and the ODEC load. Trial Staff points out that, while FirstEnergy implies that ODEC, Rappahannock, and Shenandoah have responsibilities and obligations with respect to calculating and reporting the Metrics, it never identifies the source of these duties. Trial Staff argues that PJM confirmed that FirstEnergy is the EDC for the APS Zone and it is the EDC's responsibility to perform the Metrics. Trial Staff notes that FirstEnergy has the infrastructure and personnel to continue to perform the Metrics and that it would require much time and money for ODEC, Rappahannock or Shenandoah to be able to perform these duties.⁹¹ Trial Staff agrees with the Initial Decision's finding that it would be unduly discriminatory to require ODEC to perform the Metrics when FirstEnergy does so for all other LSEs in the APS Zone.

45. Trial Staff states that FirstEnergy's claim that "without an EDC in Virginia, FirstEnergy does not have any of the retail service obligations that are the linchpin for the obligation to calculate and report the Metrics" is without merit, and rests on the unfounded supposition that a change in the retail characteristics of a utility can alter its obligations under a wholesale transmission tariff.⁹² Trial Staff notes that PJM confirmed that, if FirstEnergy were to cease performing the Metrics, AETSAP would become the entity responsible for calculating and reporting the Metrics.⁹³ Trial Staff further pointed out that PJM does not require that an EDC be designated in each state, and that, in fact, the APS Zone is modeled as one fully metered EDC.⁹⁴ Trial Staff states that PJM does

⁹¹ Trial Staff Brief Opposing Exceptions at 6-7, 24-25.

⁹² Trial Staff Brief Opposing Exceptions at 28, citing FirstEnergy Brief on Exceptions at 26.

⁹³ Trial Staff Brief Opposing Exceptions at 20. *See also* footnote 82, *supra*.

⁹⁴ Trial Staff Brief Opposing Exceptions at 22, citing Ex. ODC-34(d).

not require the EDC for a zone to have retail obligations, only that it have access to the metered data.⁹⁵

4. Commission Determination

46. FirstEnergy currently calculates and reports the Metrics to PJM.⁹⁶ It proposes, however, that ODEC calculate and report the Metrics for ODEC's load in Virginia, claiming that it is not under any contractual or PJM OATT obligation to do so because, among other things, its affiliate Potomac Edison no longer serves retail obligations in Virginia.⁹⁷ We find that FirstEnergy has not met its burden of justifying its proposal that ODEC instead be required to perform the Metrics. Since we have determined that an Attachment M-1 and an Attachment M-2 should apply to ODEC, it follows that FirstEnergy must also calculate and report the Metrics to PJM. Consequently, we affirm the Initial Decision's finding that FirstEnergy must continue to report the Metrics to PJM. FirstEnergy retains the responsibility to do so as the PJM-recognized responsible party for the APS Zone⁹⁸ and because it is further required to do so by the express language of Attachments M-1 and M-2 (as filed August 3, 2012), which apply to ODEC.

47. Attachment M-1 states:

The FirstEnergy EDCs are required to determine the THEO for each wholesale LSE in the FirstEnergy Zones and submit this information to PJM... Wholesale LSE's THEO is determined in accordance with current and approved contractual obligations between FirstEnergy EDCs and the respective wholesale LSE. Should the current and approved agreements be silent on procedural matters regarding the

⁹⁵ Trial Staff Brief Opposing Exceptions at 28, citing Ex. ODC-34 (b).

⁹⁶ The parties stipulated that Potomac Edison, FirstEnergy's affiliate, prepared the Metrics before and after the Asset Sales. *See* Stipulated Facts 111-112. As such, FirstEnergy has the burden of proof to show that FirstEnergy should no longer be performing the Metrics and that instead ODEC should be performing the Metrics is just and reasonable. We note that this burden of proof to justify the proposed change (from the preexisting obligation that FirstEnergy determine and report the Metrics) reflected in the August 3, 2012 filing as compared to the preexisting version of the PJM OATT. *See* August 3, 2012 Filing at Attachment B.

⁹⁷ We have rejected FirstEnergy's retail-based arguments.

⁹⁸ Initial Decision, 148 FERC ¶ 63,003 at n.105.

determination and submittal of wholesale LSE's THEO, the PJM Documents shall be used to establish such procedures.⁹⁹

Similarly, Attachment M-2 states:

[T]he FirstEnergy regulated affiliates are required to determine the PLC and NSPL each PJM Planning Year for each wholesale LSE operating in their respective FirstEnergy Zones... This Attachment M-2 supplements and clarifies the procedures and methodologies under which the FirstEnergy regulated affiliates will determine the PLC and NSPL for all wholesale LSEs with load located in one or more FirstEnergy Zone. Unless specified otherwise, this Attachment M-2 does not amend or replace any existing contracts or agreements between FirstEnergy and any wholesale LSE.¹⁰⁰

48. Under the language of the Attachments, it is FirstEnergy's obligation to determine and report the Metrics for ODEC as it does for other LSEs in the FirstEnergy Zones—which as relevant here collectively makes up the APS Zone identified in the PJM OATT.¹⁰¹ Furthermore, as FirstEnergy's witness testified, there is no express language anywhere in an agreement or contract which specifically requires ODEC, Shenandoah, or Rappahannock to record the Metrics.¹⁰² As the Initial Decision found, requiring ODEC to perform the Metrics would result in unduly discriminatory treatment of ODEC when compared to other wholesale LSEs in the APS zone. Further, our review of the record shows there are no other contractual arrangements or obligations, e.g., the Interconnection Agreement or Asset Purchase Agreement, between Potomac Edison (the

⁹⁹ Attachment M-1, Section II: Wholesale. August 3, 2012 Filing at Attachment B.

¹⁰⁰ Attachment M-2, Section II: Wholesale. August 3, 2012 Filing at Attachment B.

¹⁰¹ The record shows that FirstEnergy is the responsible party that PJM identifies for performing the Metrics for the APS Zone (*i.e.*, the FirstEnergy fully-metered AETSAP account). *See* Ex. ODC-37, 37, 38, 39, and 40.

¹⁰² Initial Decision, 148 FERC ¶ 63,003 at P 78, note 107. We note that since Shenandoah and Rappahannock are not PJM members and thus are not EDCs (Stipulated Facts 43), they could not undertake the role of performing the Metrics. Similarly, ODEC has no distribution facilities and thus does not meet the definition of an EDC.

FirstEnergy EDC) and ODEC (the wholesale LSE) that provide that ODEC shall prepare the Metrics.¹⁰³

49. FirstEnergy, moreover, owns all of the metering equipment that would be used for billing purposes related to the distribution territory transferred to ODEC,¹⁰⁴ and thus, FirstEnergy is the entity with access to the necessary data.¹⁰⁵ We note that it was not until two years after the Asset Sales that FirstEnergy discussed with ODEC the assumption of responsibilities for the Metrics.¹⁰⁶ Furthermore, FirstEnergy itself states that, in order for ODEC or its members to assume the responsibilities for the Metrics, it would require agreement from PJM to create a “Fully Metered EDC” within the APS Zone by which Rappahannock and Shenandoah would become “official” EDCs within a newly-created metered PJM load zone.¹⁰⁷

50. Accordingly, we find that FirstEnergy and/or its affiliates who are the responsible transmission owners are responsible for calculating and reporting the Metrics to PJM. Not to do so for ODEC would result in unduly discriminatory treatment in favor of other wholesale LSEs including FirstEnergy’s load-serving affiliates in the APS Zone; therefore, we affirm the Initial Decision.¹⁰⁸

¹⁰³ See also Initial Decision, 148 FERC ¶ 63,003 at P 78, citing Tr. 210:16-22 (Stein).

¹⁰⁴ Rappahannock Asset Purchase Agreement, section 7.15(c) and 7.15(d), Ex. FE-3 at 192-193 and Shenandoah Asset Purchase Agreement, section 7.15(c) and 7.15(d), Ex. FE-4 at 193-194. See also Appendix II of the Interconnection Agreements, Ex. FE-7 at 42 and Ex. FE-9 at 21.

¹⁰⁵ Initial Decision, 148 FERC ¶ 63,003 at P 77.

¹⁰⁶ See Tr. 229:14-17. The time lapse tends to support the Presiding Judge’s comment that FirstEnergy’s primary concern is its inability to recover the costs associated with preparing the Metrics. Initial Decision, 148 FERC ¶ 63,003 at P 78, note 107.

¹⁰⁷ Ex. FE-1 at 22-23. Such admitted speculation on the part of FirstEnergy would require a section 205 filing - a filing that has not been made with to the Commission.

¹⁰⁸ Initial Decision, 148 FERC ¶ 63,003 at P 80.

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

1. **Initial Decision**

51. The Initial Decision found that interconnection meters should be used to calculate and report the Metrics for the ODEC load.¹⁰⁹ It held that FirstEnergy’s tariff changes, i.e., Attachments M-1 and M-2, would be unjust and unreasonable, and unduly discriminatory and preferential without the use of interconnection meters.

52. The Presiding Judge examined the language referring to meters in Attachments M-1 and M-2, the Asset Purchase Agreements, and the Interconnection Agreement citing to the term “meter” in Attachment M-1:

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 [applicable] First Energy [EDC] and wholesale LSE system[s] and used to measure the wholesale LSE’s THEO.

He similarly cited to Attachment M-2:

The PLC 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 and wholesale LSE system[s]. Furthermore, all calculations in this Attachment M-2 will be done consistent with the requirements of the PJM Documents.¹¹⁰

¹⁰⁹ *Id.* PP 83-101.

¹¹⁰ Initial Decision, 148 FERC ¶ 63,003 at P 93 (emphasis added). We quote the proposed August 3, 2012 Filing here as we previously determined that those are the versions that are at issue. We do so here as the terms relied upon by the Presiding Judge in rendering his decision appear in both versions.

The Presiding Judge also cited section 3.2 of the Interconnection Agreement where it refers to interconnection meters 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 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 this Agreement.¹¹¹

53. The Presiding Judge cited particularly the language in Attachment M-1, which states that “the term “*Meter*” refers to the billing quality metering devices and related equipment owned by FirstEnergy and/or the wholesale LSE, *located at or near the interconnection point* between the FirstEnergy [EDC] and wholesale LSE system[s] and used to measure the wholesale LSE’s THEO.”¹¹² The Presiding Judge also found the language in the Asset Purchase Agreements which references 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 require to ascertain data associated with the *wholesale billing process*.¹¹³

54. The Initial Decision rejected FirstEnergy’s argument that the Interconnection Agreement does not specify that interconnection meters will be used for the Metrics for the ODEC load, and, if the parties had so intended, there would be such specific references. The Presiding Judge cited ODEC’s witness’ testimony that “determining load” means measuring ODEC loads and that “effectuating settlements,” in terms of electric energy, is the settlement of the ODEC load which includes THEO, PLC, and NSPL.¹¹⁴ The Presiding Judge reasoned that the language in section 3.2 of the

¹¹¹ Initial Decision, 148 FERC ¶ 63,003 at PP 86, 87, 93, citing Ex. FE-7 (emphasis added); *accord* Ex. FE-9. Both FirstEnergy and ODEC agree the interconnection meters listed in the Interconnection Agreements meet Attachments M-1 and M-2’s definitions of “meters.” Initial Decision at P 96.

¹¹² Initial Decision, 148 FERC ¶ 63,003 at PP 86 (emphasis added), 88. The comparable language in Attachment M-2 is identical, except for the reference to THEO. *Id.* P 87.

¹¹³ Initial Decision, 148 FERC ¶ 63,003 at P 89.

¹¹⁴ Initial Decision, 148 FERC ¶ 63,003 at P 95 citing Ex. ODC-1 at 12:21-26, 13:11-25.

Interconnection Agreement effectively indicates the Metrics will be performed using the interconnection meters.¹¹⁵

55. The Initial Decision also rejected FirstEnergy's argument that the use of jurisdictional meters would be more accurate. The Presiding Judge countered with ODEC's evidence that the jurisdictional meters measure all energy flowing in and out of the Virginia portion of the APS Zone and that some of the jurisdictional meters measure power flows from outside the APS Zone that serve non-ODEC loads.¹¹⁶ The Presiding Judge also found FirstEnergy's arguments were not persuasive in the light of his finding that the pertinent documents he reviewed require interconnection meters.¹¹⁷

56. The Initial Decision rejected FirstEnergy's claim that it had established a historical practice for using jurisdictional meters since they had been used for calculating the Metrics since 2002. Instead, he accepted ODEC's evidence that jurisdictional meters were not used for ODEC load billing and settlement purposes prior to the 2010 Asset Sales. According to ODEC's witness, up until the time of the asset sale, eight interconnection point meters were used for the ODEC load,¹¹⁸ and FirstEnergy began using the jurisdictional meters for the Metrics in June 2010. The Presiding Judge thus concluded that jurisdictional meters have been used exclusively for wholesale purposes only since June 2010.¹¹⁹ Given his finding that use of jurisdictional meters was not a

¹¹⁵ Initial Decision, 148 FERC ¶ 63,003 at P 95.

¹¹⁶ Initial Decision, 148 FERC ¶ 63,003 at 97. ODEC submitted evidence that some of the jurisdictional meters measure power flows from outside the APS Zone that serve loads other than ODEC's. Ex. ODC-41 (the public version of the FirstEnergy map made in response to a Staff discovery request); Ex. ODC-1 at 24; Ex. ODC-18 at 8.

¹¹⁷ Initial Decision, 148 FERC ¶ 63,003 at P 98.

¹¹⁸ Ex. ODC-1 at 21:23-25, 22:2; Stipulated Facts 108.

¹¹⁹ The Presiding Judge also noted that Potomac Edison had failed to install interconnection meters in a timely fashion. Initial Decision, 148 FERC ¶ 63,003 at P 92. The Asset Purchase Agreement required the Seller, i.e., Potomac Edison, to install meters at the interconnection points within six months after the closing date of the sale. When Potomac Edison was not able to meet this deadline, the parties agreed that jurisdictional meters could be used but only until the interconnection meter installation was completed. Ex. ODC-13 at 10:4-8.

historical practice, the Presiding Judge determined that FirstEnergy retained the burden of proof as the filing party.¹²⁰

57. Finally, the Presiding Judge concurred with ODEC and Trial Staff that good utility practice favors the use of interconnection meters. ODEC's witness stated that meters should 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. He further testified that this practice is consistent with that of other utilities, and past practice for Potomac Edison and Monongahela Power with ODEC.¹²¹

2. Brief on Exceptions

58. FirstEnergy argues that the Initial Decision erred when it placed the burden of proof on FirstEnergy to change the existing practice of using jurisdictional meters and that the decision to use interconnection meters requires other customers to subsidize the ODEC load. FirstEnergy argues that it used jurisdictional meters to measure ODEC load being served by Potomac Edison prior to the asset sale and continues to use the jurisdictional meters for this purpose as Rappahannock and Shenandoah now serve the entire Virginia territory historically measured with jurisdictional meters. Therefore, FirstEnergy argues that the burden of proof is on ODEC and Trial Staff to show that the existing practice is unjust and unreasonable and that the Initial Decision erred in finding that use of jurisdictional meters since the 2010 asset sale was not the historic practice.¹²²

59. FirstEnergy argues that ODEC and Trial Staff failed to meet their burden of proof that basing the Metrics on data from the jurisdictional meters produces unjust or unreasonable rates. FirstEnergy states that this case presents "unusual circumstances"¹²³ in that Rappahannock and Shenandoah purchased the entire service territory in the state of Virginia and assumed all obligations and responsibilities associated with serving the Virginia customers formerly served by Potomac Edison. FirstEnergy believes that under these unusual circumstances, it is not unreasonable to continue to measure the Virginia load using the jurisdictional meters. FirstEnergy states it is customary and reasonable to measure an entire retail distribution service territory to ensure that energy consumed in

¹²⁰ Initial Decision, 148 FERC ¶ 63,003 at P 85.

¹²¹ Initial Decision, 148 FERC ¶ 63,003 at P 99, citing Ex. ODC-13 at 17:11-14, 21:9-13.

¹²² FirstEnergy Brief on Exceptions at 28-29.

¹²³ *Id.* at 30.

that service territory is allocated to the customers in that territory. FirstEnergy argues that the adverse impact ODEC claims results from use of the jurisdictional meters is actually a portion of the PJM charges allocated to LSEs that ODEC would prefer be allocated to others and that if ODEC intended to change existing practices, they would have discussed such matters during the negotiations of the 2010 asset sale.¹²⁴

60. FirstEnergy also argues that ODEC's arguments are undermined by its acknowledgement that the interconnection meter readings must be adjusted for transmission losses to accurately measure ODEC load. FirstEnergy further questions why parties would shift an existing measurement approach to one that requires adjustment, recognizing that losses are the largest part of the difference between meter readings.¹²⁵

3. Briefs Opposing Exceptions

a. ODEC

61. ODEC supports the Initial Decision. ODEC argues that use of the interconnection meters is most accurate, avoids allocating charges to ODEC for which it is not responsible, and represents good industry practice.

62. ODEC asserts that, if the Commission upholds the Initial Decision on the issue of whether Attachments M-1 and M-2 should apply to ODEC and ODEC Load, this issue and the issue of whether ODEC can be allocated a share of Unaccounted for Energy will be rendered moot.¹²⁶ ODEC also states that the parties agree that the interconnection meters listed in interconnection agreements meet the definition of Meters for purposes of Attachments M-1 and M-2.¹²⁷

¹²⁴ *Id.* at 30-31.

¹²⁵ FirstEnergy Brief on Exceptions at 34-35, citing Initial Decision, 148 FERC ¶ 63,003 at PP 102-107, arguing that the Initial Decision disregarded ODEC's recognition that meter readings should be adjusted for losses and is inconsistent in finding FirstEnergy responsible for differences between jurisdictional and interconnection meters while approving an adjustment factor.

¹²⁶ Unaccounted for Energy is discussed *infra*.

¹²⁷ ODEC Brief Opposing Exceptions at 18-19.

63. ODEC believes the Initial Decision correctly determined that the use of jurisdictional meters is not a settled practice (and thus, FirstEnergy bears the burden of proving that its proposed use of the jurisdictional meters is just and reasonable). ODEC explains that FirstEnergy has never calculated the Metrics for ODEC using the jurisdictional meters in any Commission proceeding. ODEC further states that, prior to the Asset Sales, Allegheny (now FirstEnergy) billed ODEC based on eight specific interconnection point meters.¹²⁸ ODEC notes that FirstEnergy cannot point to any Commission order which approved or acknowledged the use of jurisdictional meters to perform the Metrics for PJM, nor does FirstEnergy address the fact that Allegheny used the interconnection meters.

64. ODEC challenges FirstEnergy's assertion that the use of jurisdictional meters is just and reasonable in the unusual circumstances of this case, i.e., the Asset Sales. To the contrary, ODEC notes that the asset transfer itself established the requirement for the use of interconnection meters and required FirstEnergy to own and install revenue quality meters at the interconnection points.¹²⁹

65. ODEC adds that FirstEnergy fails to rebut ODEC's evidence that the jurisdictional meters reflect power flows unrelated to the ODEC load. ODEC notes FirstEnergy's contention that cost causation dictates the use of jurisdictional meters, but states that such an allocation of cost to ODEC and ODEC load could result in a greater allocation than is properly attributable to ODEC which itself would violate principles of cost causation.¹³⁰

b. Trial Staff

66. Trial Staff supports the Initial Decision agreeing that the use of jurisdictional meters for calculating the Metrics for ODEC and the ODEC Load is not historical practice. It points out that no FirstEnergy witness attempted to refute ODEC's witness Ringhausen's assertion that the historical, interconnection meters, i.e., the meters existing before the Asset Sales, were used by Allegheny to submit ODEC's THEO. Trial Staff also noted that FirstEnergy Witness Teaman's references to interconnection meters were to the new interconnection meters installed by FirstEnergy after the Asset Sales as required by the Asset Purchase Agreements.¹³¹ Trial Staff points out that the Teaman

¹²⁸ ODEC Brief Opposing Exceptions at 20-21, citing Ex. ODC-1 at 12.

¹²⁹ ODEC Brief Opposing Exceptions at 23.

¹³⁰ ODEC Brief Opposing Exceptions at 24.

¹³¹ Trial Staff Brief Opposing Exceptions at 32.

testimony cited by FirstEnergy refers to the use of the jurisdictional meters for retail, not wholesale, purposes.¹³² Trial Staff further cites the Teaman testimony that state line, jurisdictional meters have been traditionally used to determine the energy and load allocations and obligations for state retail purposes in each state in which Potomac Edison operated.¹³³ Trial Staff reiterates that the jurisdictional meters were stopgap measure pending installation of the new interconnection meters.¹³⁴

67. Trial Staff states that FirstEnergy's use of jurisdictional meters for wholesale billing and settlement is highly unusual within the electric utility industry. It notes that FirstEnergy has not rebutted the Initial Decision's citation of ODEC and Trial Staff witnesses on this point. Further, FirstEnergy has not identified any other utility that uses jurisdictional meters to conduct wholesale billing and settlements. Trial Staff notes that Witness Teaman admitted that, if Attachment M-1 applied to ODEC as a wholesale LSE, the meters at the interconnection point between Potomac Edison's system and ODEC's would meet the Attachment M-1 definition. Since the Presiding Judge determined that Attachments M-1 and M-2 do apply to ODEC, permitting the use of the jurisdictional meters, rather than the interconnection meters prescribed by those Attachments, would be unduly discriminatory.¹³⁵

4. Commission Determination

68. The Commission affirms the Initial Decision's determination that interconnection meters should be used by FirstEnergy to determine and report the Metrics for ODEC load. We find that Attachments M-1 and M-2, which we have found should apply to ODEC, are clear in their intent that interconnection meters are to be used.¹³⁶ FirstEnergy is also bound contractually by the Asset Purchase Agreements and the Interconnection Agreements to use interconnection point meters for the wholesale billing process of which the Metrics constitutes a part, as discussed below.

¹³² *Id.* at 33.

¹³³ Trial Staff Brief Opposing Exceptions at 33-34; Ex. FE-13 at 15/331-335 through 16/341-344.

¹³⁴ Trial Staff Brief Opposing Exceptions at 34.

¹³⁵ Trial Staff Brief Opposing Exceptions at 37-38.

¹³⁶ This finding holds true for both versions of Attachments M-1 and M-2.

69. We agree with the Presiding Judge that the Attachments specify the use of meters at the interconnection points. Specifically, Attachment M-1, setting forth the calculation of the THEO Metric, defines “meter” as “billing quality metering devices...located at or near the interconnection point (the “Interconnection”) between the FirstEnergy EDC and wholesale LSE systems and used to measure the wholesale LSE’s THEO.”¹³⁷ Attachment M-2 contains substantially similar specifications for the determination of the PLC and NSPL Metrics.¹³⁸ Attachments M-1 and M-2 do not refer to jurisdictional meters in any respect. The record further shows that the meters at the interconnection points between Potomac Edison and ODEC at issue meet the Attachments M-1 and M-2 definitions of meters.¹³⁹ Accordingly, we agree with the Presiding Judge and find that Attachments M-1 and M-2 are dispositive in their specification that interconnection meters are to be used for determining and reporting the Metrics.

70. We further find that FirstEnergy is bound by arrangements that further confirm the intent to use interconnection meters. The Asset Purchase Agreements provide that Potomac Edison (the seller) shall design, purchase, install, and place in-service “revenue class metering at all wholesale delivery points and any other *interconnection point* between any Acquired Asset and any Transmission Facilities of Seller and its Affiliates that is required to ascertain data associated with the wholesale billing process” (emphasis added) prior to closing of the Asset Sales or no later than six months after the closing date.¹⁴⁰ Further, according to the record, the jurisdictional meters were to be used only as a temporary measure until the installation of the interconnection meters.¹⁴¹ As the Presiding Judge explained, the use of jurisdictional meters was expected to end by September 2010, but Potomac Edison failed to meet this deadline.¹⁴²

¹³⁷ Attachment M-1, Section II: Wholesale. August 3, 2012 Filing at Attachment B. *See also* Initial Decision at P 86.

¹³⁸ Attachment M-2, Section II: Wholesale. August 3, 2012 Filing at Attachment B. *See also* Initial Decision, 148 FERC ¶ 63,003 at P 87.

¹³⁹ Initial Decision, 148 FERC ¶ 63,003 at P 88 n. 125, P 96.

¹⁴⁰ Asset Purchase Agreements, Ex. FE-3 at 192, section 7.15(c) and Ex. FE-4 at 193, section 7.15(c). *See also* Initial Decision, 148 FERC ¶ 63,003 at P 89.

¹⁴¹ Initial Decision, 148 FERC ¶ 63,003 at PP 91- 92. Accordingly, FirstEnergy’s reliance on this temporary use does not constitute historical practice. *See also* Ex. ODC-1 at 12.

¹⁴² Initial Decision, 148 FERC ¶ 63,003 at P 92, citing Ex. ODC-1 at 9:18-19.

71. The Interconnection Agreements also contemplate and specify the use of interconnection meters for purposes of determining load and effecting settlements.¹⁴³ Although FirstEnergy argues that the Interconnection Agreements are silent as to specifics regarding the Metrics, we agree with the Presiding Judge that the fact that the Interconnection Agreements specify that the interconnection meters are to be used for determining load and effectuating settlements “effectively indicates” that the interconnection meters would be used for the Metrics as well.¹⁴⁴ Even more telling, we note that the Interconnection Agreements state that “[a]ll metering quantities shall be measured at the Interconnection Point.”¹⁴⁵ Accordingly, we find that it is the intent of the Interconnection Agreements that the interconnection meters are to be used for all of the purposes requiring metering under Attachments M-1 and M-2.

72. We also agree with the Presiding Judge’s findings that the use of jurisdictional meters may measure power flows outside of energy consumed by ODEC load,¹⁴⁶ that metering should be placed at the point closest to the load, i.e. the point of interconnection,¹⁴⁷ and that using jurisdictional meters in light of these facts could lead to an unjust and unreasonable result. However, we need not expound further on these issues because we have already found that the terms of the PJM OATT, the Asset Purchase Agreements, and the Interconnection Agreements require the use of the interconnection meters in determining the Metrics.

¹⁴³ Initial Decision, 148 FERC ¶ 63,003 at P 93.

¹⁴⁴ Initial Decision, 148 FERC ¶ 63,003 at P 95. We disagree with FirstEnergy’s contention that the terms for settlements in the interconnection agreements pertain to settlements between FirstEnergy and ODEC and not with regard to PJM Settlements that use the Metrics (Ex. FE-1 at 21). The Interconnection Agreements, as well as Attachments M-1 and M-2, address Commission-jurisdictional services taken under the PJM OATT to which Attachments M-1 and M-2 are appended. We find that FirstEnergy has not demonstrated that it is just and reasonable to use a different set of meter readings for reporting data to PJM compared with that used for settling transactions and energy use between FirstEnergy and ODEC for PJM transactions.

¹⁴⁵ Interconnection Agreements, Appendix II, section 1.2.1. Exs. FE-7 at 44 and FE-9 at 21.

¹⁴⁶ Initial Decision, 148 FERC ¶ 63,003 at PP 97-98.

¹⁴⁷ *Id.* PP 99-101.

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

1. Initial Decision

73. The Initial Decision found that FirstEnergy should be allocated the difference between the jurisdictional and interconnection meter readings. FirstEnergy argued that the megawatt-hour differences belong to Virginia, and ODEC should be allocated the difference, otherwise the difference would default to, or be subsidized by, customers located outside of Virginia.¹⁴⁸ The Presiding Judge cited to ODEC's witness Ringhausen's testimony that the parties did not intend to use the jurisdictional meters once the interconnection meters were installed, and that FirstEnergy changed its position when it recognized there are differences between the two sets of meter readings.¹⁴⁹ The Initial Decision states that FirstEnergy's change in position appears to be another instance of FirstEnergy's failing to foresee the consequences of the Asset Sales. The Presiding Judge stated that, while ODEC acknowledged that some loss factor should be applied, FirstEnergy has not met its burden of proof to allocate the difference to other parties. Nor, he found, can ODEC be held responsible given there is no tariff, agreement, or contract under which FirstEnergy could allocate the difference between the two sets of meters to ODEC.¹⁵⁰

2. Brief on Exceptions

74. FirstEnergy argues the Initial Decision disregarded ODEC's admission on the record that interconnection meter readings must be adjusted for losses as recognition that losses represent the largest part of the difference between the readings of the interconnection and jurisdictional meters and erroneously found that FirstEnergy, rather

¹⁴⁸ The Presiding Judge recognized that, since he had determined that interconnection meters are to be used, adopting FirstEnergy's position here would be "senseless" as it would produce the same result as using the jurisdictional meters. Initial Decision, 148 FERC ¶ 63,003 at n.153. The Initial Decision also addressed issues regarding the Town of Front Royal, Virginia which we discuss in more detail later in this opinion. For our purposes at this point, the Presiding Judge observes that in equating Virginia load with ODEC load, FirstEnergy ignores the load of the Town of Front Royal, which is not a part of ODEC, yet is located in Virginia.

¹⁴⁹ Initial Decision, 148 FERC ¶ 63,003 at P 103; Ex. ODC-1 at 14:22-15:1.

¹⁵⁰ Initial Decision at, 148 FERC ¶ 63,003 n.160, P 104; Tr. 184:1-11 (Stein).

than Rappahannock and Shenandoah, bears responsibility for the differences. FirstEnergy argues that whether or not an agreement is in place between the parties has no bearing on how to calculate ODEC load correctly based on the meter readings. FirstEnergy states that the finding that the difference between the meter readings should be allocated to FirstEnergy is consistent neither with ODEC's admission nor with the Initial Decision's approval of an adjustment factor. FirstEnergy contends it is also legally erroneous because it fails to allocate the costs of serving the ODEC load to the entities responsible for doing so, in violation of the cost causation principle.¹⁵¹

3. Briefs Opposing Exceptions

a. ODEC

75. ODEC states that the Commission should uphold the Initial Decision and that it would be unreasonable to allocate to ODEC the difference between the jurisdictional and interconnection meters because it would allocate to ODEC amounts that are not attributable to service being provided to ODEC and ODEC load.¹⁵²

b. Trial Staff

76. Trial Staff states that ODEC submitted evidence that some of the jurisdictional meters measure power flows from outside of the APS Zone that serve loads other than ODEC, and that FirstEnergy has never clarified whether the "Virginia load" is equivalent to the ODEC load. Trial Staff argues that the record indicates that the load measured by the jurisdictional meters, in fact, includes more than the ODEC load, plus losses.¹⁵³

4. Commission Determination

77. The Commission affirms the Initial Decision's findings that the MW and MWh differences between the interconnection meter readings and the jurisdictional meter readings should be allocated to FirstEnergy. We find that FirstEnergy has not met its burden of proof to show that an allocation of this Unaccounted for Energy to ODEC and ODEC load would be just and reasonable.¹⁵⁴

¹⁵¹ FirstEnergy Brief on Exceptions at 34-35.

¹⁵² ODEC Brief Opposing Exceptions at 25.

¹⁵³ Trial Staff Brief Opposing Exceptions at 42.

¹⁵⁴ See *supra* n.10.

78. Having previously found that an Attachment M-1 and an Attachment M-2 should apply to ODEC and ODEC load, the provisions for Unaccounted for Energy in the Attachments apply. Attachment M-1 states that “Unaccounted for [E]nergy is not allocated to wholesale LSEs unless otherwise specified in their contracts/agreements with FirstEnergy.”¹⁵⁵ We find no provisions in Attachments M-1 or M-2, the Asset Purchase Agreements, or the Interconnection Agreements that allocate Unaccounted for Energy to ODEC or ODEC load, and thus, there is no basis by which FirstEnergy is currently able to allocate Unaccounted for Energy or any portion thereof to ODEC.¹⁵⁶ Additionally, there is no other contract or agreement between FirstEnergy and ODEC that provides for allocating Unaccounted for Energy to ODEC.¹⁵⁷

79. Arguing on brief, FirstEnergy attempts to allocate this difference in meter readings to its Virginia wholesale transmission customer—ODEC.¹⁵⁸ However, we have found that FirstEnergy’s attempted delineation of Potomac Edison’s transmission territory has no effect on the PJM OATT. Furthermore, the record indicates that Unaccounted for Energy may include more than just line losses and meter error and that FirstEnergy has not demonstrated such amounts belong solely to ODEC and ODEC load.¹⁵⁹ It follows, and we find, that any such differences in meter readings belong to the entire APS Zone, and not a discrete subdivision of that zone. Accordingly, and on this basis, it would be unjust and unreasonable and unduly discriminatory to allocate such metering differences only to ODEC and ODEC load.

¹⁵⁵ See August 3, 2012 Filing at Attachment B, Attachment M-1, Section I: Terms.

¹⁵⁶ See Initial Decision, 148 FERC ¶ 63,003 at P 104.

¹⁵⁷ See Trial Staff Brief Opposing Exceptions at 10 and 47, stating that FirstEnergy has not otherwise provided documentation of such a contract or agreement, and that ODEC is a wholesale LSE.

¹⁵⁸ FirstEnergy Brief on Exceptions at 35.

¹⁵⁹ See, e.g., Initial Decision, 148 FERC ¶ 63,003 at PP 108-112, regarding the fact that other entities such as Front Royal load are relevant to this discussion.

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

1. Initial Decision

80. The Presiding Judge, noting that ODEC acknowledged that an applicable loss factor should be applied to gross up interconnection point meter readings, determined that it is necessary to establish a loss factor as contemplated in Attachment M-1.¹⁶⁰ FirstEnergy advocated the use of a variable loss factor determined by the difference between the interconnection and jurisdictional metering to account for metered losses in the Virginia service territory.¹⁶¹ ODEC advocated the use of PJM de-ration factors, which are measurements of the hourly losses on transmission service in each PJM transmission zone, as a proxy for the APS Zone transmission losses.¹⁶² The Presiding Judge found FirstEnergy's variable loss factor proposal was not viable because using the difference between the interconnection and jurisdictional metering could reflect amounts not attributable to ODEC. Instead, the Presiding Judge adopted ODEC's approach noting that the de-ration factors already include extra high voltage losses and would avoid complications or disputes concerning how such losses should be quantified.¹⁶³

2. Brief on Exceptions

81. FirstEnergy argues that the transmission line losses should be calculated using a variable loss factor as determined by the meter difference between the interconnection meters and the jurisdictional meters. FirstEnergy asserts that the loss factor would account for actual metered losses attributable to the Virginia service territory.¹⁶⁴ FirstEnergy argues that the record also supports a finding that a fixed transmission line loss factor of 3.4 percent (comprising a line loss factor of 1.8 percent and an extra high

¹⁶⁰ Initial Decision, 148 FERC ¶ 63,003 at P 113.

¹⁶¹ *Id.* P 114.

¹⁶² *Id.* PP 117-118.

¹⁶³ The Presiding Judge acknowledged the concerns of FirstEnergy that it might not receive de-ration factors from PJM in a timely fashion, stating that the final true-up measurements would be based on actual PJM de-ration factors. Therefore, use of de-ration factors would not lead to unjust or unreasonable results. Initial Decision, 148 FERC ¶ 63,003 at P 119.

¹⁶⁴ Ex. FE-1 at 44; Tr. 965-967 (Stein).

voltage loss factor of 1.6 percent) is just and reasonable.¹⁶⁵ FirstEnergy asserts that this loss factor is comparable to the “PJM-calculated marginal losses using the state estimator model representing the entire APS Zone, and thus is just and reasonable.”¹⁶⁶ FirstEnergy states that no party introduced evidence refuting this demonstration and that the Presiding Judge implicitly acknowledged the reasonableness of this approach to validate ODEC’s proposal. FirstEnergy argues that the Presiding Judge applied the wrong legal standard because he was obligated to find FirstEnergy’s proposal unjust and unreasonable prior to considering ODEC’s proposal and that “preference” for ODEC’s competing proposal is insufficient legal basis to reject FirstEnergy’s proposed fixed loss factor.¹⁶⁷

82. FirstEnergy argues that the Initial Decision ignored unrebutted evidence showing that the use of the PJM de-rating factors would result in incorrect load values without prior adjustment or would otherwise understate ODEC load.¹⁶⁸ Further, FirstEnergy argues that because the PJM de-rating factors are developed too late in the day to be incorporated into the Metrics for PJM reporting purposes, ODEC’s proposal would require the use of true up for the estimated de-rating factors. FirstEnergy argues that the cost of these initial differences would be absorbed by the FirstEnergy EDCs until they are resettled after 60 days.¹⁶⁹ FirstEnergy also argues that the Initial Decision’s claim that FirstEnergy admitted such differences to be *de minimis* is untrue.¹⁷⁰

¹⁶⁵ FirstEnergy Brief on Exceptions at 38-39; Ex. FE-1 at 43-47; Ex. FE-21 at 31-36.

¹⁶⁶ *Id.*

¹⁶⁷ FirstEnergy Brief on Exceptions at 39-41, citing *Cities of Bethany v. FERC*, et al.; Ex. ODC-18 at 9 (ODEC admits a fixed loss factor is a “reasonable methodology”)

¹⁶⁸ FirstEnergy Brief on Exceptions at 43, citing Ex. FE-21 at 34.

¹⁶⁹ *Id.* at 44, citing Ex. FE-21 at 33-36.

¹⁷⁰ *Id.* at 45, citing FirstEnergy Initial Brief at 18 that. Witness Stein was referring to the total cumulative difference between jurisdictional and interconnection meter readings as *de minimis*, not to de-rating factors.

3. Briefs Opposing Exceptions

a. ODEC

83. ODEC argues that the Presiding Judge correctly adopted ODEC's proposal to use the PJM APS Zonal de-ration factors as transmission loss factors because he found that the interconnection meters should be used to report the Metrics making it necessary to gross up the meter readings to account for transmission losses. ODEC states, citing to the record, that the PJM de-ration factors reflect hourly variations in system demand, and generation and system line outages would not be captured in a fixed loss factor for the APS Zone as a whole. ODEC further argues that use of de-ration factors is appropriate because transmission losses associated with the ODEC load are directly influenced by energy flows out of and across the APS zone.¹⁷¹

84. ODEC argues that FirstEnergy's arguments should be rejected because FirstEnergy neither proposed nor supported a fixed loss factor in its evidentiary submissions in this case, and because the Initial Decision implicitly found that FirstEnergy's alleged fixed loss factor proposal was not just and reasonable. ODEC states that, while FirstEnergy argues that it presented substantial evidence supporting the use of a fixed transmission line loss factor, FirstEnergy earlier disavowed the use of a fixed loss factor and advocated the use of a variable loss factor using an overall 3.4 percent in support of its arguments for allocating the difference between the jurisdictional and interconnection meters to ODEC.¹⁷² ODEC argues that the Presiding Judge correctly found that a loss factor based on the difference between the two sets of meters was not viable.

85. ODEC also states that the Commission should reject FirstEnergy's allegations that implementation problems render the use of the PJM de-ration factors unjust and unreasonable. ODEC argues that FirstEnergy never asserted that it would be unable to perform the necessary mathematical conversions. ODEC notes that the issue of using estimated de-ration factors subject to true-up was addressed on the record where FirstEnergy itself contended that the cumulative difference was likely to be *de minimis*. By this logic, the difference between estimated and actual de-ration factors is therefore not a reason to reject the use of the PJM de-ration factors.

¹⁷¹ ODEC Brief Opposing Exceptions at 26-27.

¹⁷² *Id.* at 28-29, citing Ex. FE-1 at 40, 45-47 and Ex. FE-21 at 32.

b. Trial Staff

86. Trial Staff states the Initial Decision found that, because FirstEnergy and ODEC have not arrived at a mutually-agreed loss factor, it is necessary to establish one in this proceeding to adjust the interconnection meter readings for the energy lost between the jurisdictional and interconnection meters. Trial Staff argues that, in finding FirstEnergy's variable loss factor approach as "not viable," the Initial Decision implicitly finds that it is not just and reasonable. Trial Staff argues that the Initial Decision also reasonably refused to endorse FirstEnergy's alternative fixed transmission line loss factor proposal because it incorporates as a fixed factor the same 1.8 percent loss number and preserves the adding back of the difference between the meters to the interconnection meters. Trial Staff also states that the Initial Decision found that FirstEnergy's alternative proposal leads to a similar result as ODEC's suggested calculation; however, Trial Staff states that the Initial Decision reasonably found that ODEC's proposal does a better job of charging an appropriate level of losses to ODEC for its load.

4. Commission Determination

87. The Commission affirms the Initial Decision that a loss factor must be established for purposes of determining ODEC's THEO metric in accordance with Attachment M-1. The Presiding Judge correctly observed that Attachment M-1 contemplates that loss factors be contractually or mutually determined; however, with respect to ODEC no such agreement exists. Thus, he stated that "it is necessary to establish a loss factor in this proceeding since the interconnection point meters are to be used."¹⁷³ We find that it is just and reasonable to apply such a factor to the interconnection meter readings for ODEC and ODEC load, and direct FirstEnergy to incorporate a revision into Attachment M-1 in a compliance filing. Otherwise, Attachment M-1 would not account for losses while other wholesale and retail LSEs taking service from FirstEnergy and its named affiliates must pay for losses.

88. FirstEnergy argued that a variable loss factor be used¹⁷⁴ and ODEC argued that the PJM de-rating factor be used.¹⁷⁵ The Initial Decision found that ODEC's proposal to use

¹⁷³ Initial Decision, 148 FERC ¶ 63,003 at P 113. ODEC acknowledged that if interconnection meters are to be used, an Applicable Loss Factor must be applied to gross up interconnection point meter readings. *See* ODEC Initial Brief at 24.

¹⁷⁴ Specifically, FirstEnergy argued that the variable loss factor should be based on the difference between the jurisdictional and interconnection meters. *See* Ex. FE-1 at 43-47, FE-21 at 31-36. FirstEnergy did not propose a loss factor in the August 3, 2012 Filing.

estimated PJM de-rating factors to gross up interconnection meter readings to account for losses in the APS Zone was just and reasonable. We agree. Use of estimated PJM de-rating factors to gross up interconnection meter readings will result in an accurate measurement of ODEC's actual energy consumption, including losses, for any given hour. While we acknowledge the increased complexities of implementing this loss factor compared to the use of a fixed loss factor, we disagree that this renders ODEC's proposal unjust and unreasonable. Furthermore, while an additional true-up may be required to account for differences between estimated and actual de-rating factors, this process will ensure that ODEC's THEO matches ODEC's actual energy use, including losses. As FirstEnergy already conducts a true-up process under the PJM Tariff, there should be minimal cost or administrative impacts from this requirement. Finally, we reject FirstEnergy's argument that the de-rating factor should not be used because it must be converted to a gross-up factor. Indeed, FirstEnergy witness Stein's attempt to demonstrate why this is a problem shows that this conversion is simple, straightforward, and consistent with uncontroversial principles of mathematics.¹⁷⁶

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

1. Initial Decision

89. FirstEnergy has calculated and reported the Metrics to PJM for the Town of Front Royal, Virginia and continues to do so.¹⁷⁷ FirstEnergy argued that it is under no obligation to perform the Metrics for Front Royal for the same reasons it argued it does

¹⁷⁵ See Ex. ODC-18 at 12-13.

¹⁷⁶ See Ex. FE-21 at 34-35.

¹⁷⁷ The Town of Front Royal, Virginia (Front Royal), is a municipality that owns and operates its own retail distribution system and serves retail customers. Front Royal, which is not directly interconnected with FirstEnergy, is interconnected with, and obtains transmission service from Rappahannock for its power that is supplied by American Municipal Power, of which Front Royal is a member. FirstEnergy does not have an interconnection agreement or any other contract with Front Royal obligating FirstEnergy to calculate and report the Metrics for Front Royal. FirstEnergy calculated and reported the Metrics to PJM for the Front Royal load prior to FirstEnergy's acquisition of Allegheny Power and FirstEnergy has continued to calculate and report the Metrics for the Front Royal load after the sale of Allegheny Power to FirstEnergy. Initial Decision, , 148 FERC ¶ 63,003 at P 122; Stipulated Facts 114-116.

not have to do so for Rappahannock and Shenandoah. However, the Initial Decision held that FirstEnergy is responsible for performing the Metrics for Front Royal and non-ODEC affiliates. The Presiding Judge found that American Municipal Power, which supplies Front Royal, is a wholesale LSE within the APS Zone,¹⁷⁸ and therefore, the express language of Attachments M-1 and M-2 requires that FirstEnergy continue to perform the Metrics for Front Royal's Metrics.¹⁷⁹ The Presiding Judge also found that because FirstEnergy historically performed the Metrics for Front Royal both prior to and subsequent to the 2010 Asset Sales, First Energy has not met the burden of proof that a change is just and reasonable.¹⁸⁰

2. **Brief on Exceptions**

90. FirstEnergy states that the Initial Decision's finding that FirstEnergy must perform the Metrics for Front Royal is unsupported by the evidence. FirstEnergy states that there is no FirstEnergy zone or EDC in Virginia and thus Attachments M-1 and M-2 do not apply to Front Royal. FirstEnergy further argues that it does not have an interconnection agreement or any other contract with Front Royal obligating FirstEnergy to perform the Metrics and that it is unjust and unreasonable to require FirstEnergy to calculate and report the Metrics for a load that is neither served off of nor interconnected with the FirstEnergy transmission system. FirstEnergy states that the Initial Decision's notion that transmission owners are required to calculate the Metrics does not apply.

3. **Briefs Opposing Exceptions**

a. **ODEC and Trial Staff**

91. ODEC states that, because FirstEnergy has historically performed the Metrics for Front Royal both prior to and after the Asset Sales without being directly interconnected, FirstEnergy's argument has no merit. Trial Staff states that FirstEnergy is bound by Attachments M-1 and M-2 to perform the Metrics for wholesale and retail LSEs in the APS Zone, that it has historically done so, and has not sustained its burden to show changing that arrangement is just and reasonable. Trial Staff also argues that FirstEnergy is obligated to calculate and report the Metrics for Front Royal because it is an EDC for

¹⁷⁸ Joint Statement of Facts 62.

¹⁷⁹ Initial Decision, 148 FERC ¶ 63,003 at P 122.

¹⁸⁰ *Id.* P 127.

PJM reporting purposes and that because Rappahannock is neither an EDC, nor a member of PJM, it is not able to do so.¹⁸¹

b. American Municipal Power

92. American Municipal Power, on reply, states that it does not support FirstEnergy's exception that FirstEnergy is not required to report the Metrics for the Town of Front Royal.

4. Commission Determination

93. The Commission affirms the Initial Decision's finding that FirstEnergy must perform the Metrics with regard to Front Royal.¹⁸² The Town of Front Royal operates its own municipal retail distribution system located within the Rappahannock service territory behind the interconnection meters between Rappahannock and FirstEnergy and obtains its energy from AMP, of which it is a member.¹⁸³ According to the record, FirstEnergy currently calculates and reports the Metrics for Front Royal and did so prior to, and after, the Asset Sales.¹⁸⁴

94. While FirstEnergy continues to report the Metrics for the Front Royal load, it contends that it is not responsible for performing the Metrics for Front Royal for the same reasons it is not responsible for performing the Metrics for ODEC, and because it states it has no direct connection to Front Royal meters, has no contractual arrangement to do so, and because Front Royal is subzonal load.¹⁸⁵ ODEC claims that Front Royal is a wholesale LSE within the APS Zone and not ODEC load, and therefore, Attachments M-1 and M-2 should apply to Front Royal.

¹⁸¹ Trial Staff Brief Opposing Exceptions at 46.

¹⁸² Initial Decision, 148 FERC ¶ 63,003 at PP 120-127.

¹⁸³ Initial Decision, 148 FERC ¶ 63,003 at P 122; Stipulated Facts 30, 113, 114.

¹⁸⁴ Initial Decision, 148 FERC ¶ 63,003 at n.218; Stipulated Facts 31, 66, 115, 116.

¹⁸⁵ FirstEnergy Brief on Exceptions at 46. We will not delve into the issues, which the Presiding Judge properly dismissed as a distraction, raised by FirstEnergy including whether an entity is a wholesale LSE, retail LSE or whether the entity serves subzonal load as these terms are not defined in the PJM OATT and are addressed earlier in this order.

95. According to the record, American Municipal Party is a wholesale LSE to which Attachments M-1 and M-2 apply.¹⁸⁶ Front Royal receives its energy from American Municipal Party in the APS Zone just as Shenandoah and Rappahannock receive energy from ODEC in the APS Zone. Thus, Front Royal, Rappahannock, and Shenandoah, appear to be similarly situated. That determination being made, FirstEnergy has the same obligation to apply Attachments M-1 and M-2 to American Municipal Party member Front Royal as it does for ODEC members Rappahannock and Shenandoah because it is the EDC for the APS Zone. Thus, we confirm the Presiding Judge's determination and further find that, while FirstEnergy advocates a change in practice with regard to Front Royal, it did not propose such a change in its August 3, 2012 Filing nor did it show in this proceeding that such a change is just and reasonable.¹⁸⁷

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

1. Initial Decision

96. The Initial Decision held that FirstEnergy cannot allocate Unaccounted for Energy to ODEC. The Presiding Judge rejected the arguments of FirstEnergy for the same reasons that he rejected the arguments in Issue 1 and Issue 4 discussed above, and because Attachment M-1 applies to ODEC.¹⁸⁸ Citing to the definition of Unaccounted for Energy contained in Attachment M-1, the Presiding Judge found that by the very terms of that definition, FirstEnergy cannot allocate Unaccounted for Energy to ODEC because there is no contract or agreement between the parties.¹⁸⁹

97. No party filed a brief on exceptions on this issue.

¹⁸⁶ Initial Decision, 148 FERC ¶ 63,003 at P 122; Stipulated Issues 62.

¹⁸⁷ Initial Decision, 148 FERC ¶ 63,003 at P 127.

¹⁸⁸ *Id.* P 128.

¹⁸⁹ Initial Decision, 148 FERC ¶ 63,003 at P 131, citing Attachment M-1, that "Unaccounted for Energy is not allocated to wholesale LSEs unless otherwise specified in their contracts/agreements with FirstEnergy." The Presiding Judge noted that FirstEnergy did not provide evidence that such a contract or agreement exists. Initial Decision, 148 FERC ¶ 63,003 at P 133.

2. Commission Determination

98. The Commission affirms the Initial Decision's determination that FirstEnergy cannot allocate Unaccounted for Energy to ODEC pursuant to Attachment M-1. While FirstEnergy has argued that the differences between the jurisdictional meters and interconnection meters should be allocated to ODEC. FirstEnergy has provided no evidence of a contract or agreement that provides for such an allocation. We have addressed the concept of Unaccounted for Energy previously in this order. Attachment M-1 specifically provides that "Unaccounted for Energy is not allocated to wholesale LSEs unless otherwise specified in their contracts/agreements with FirstEnergy" and, as we have determined in addressing Issue 4, there is no such contract/agreement.¹⁹⁰ We further find that there are no provisions in the Interconnection Agreements or the Asset Purchase Agreements that provide for the allocation of Unaccounted for Energy to ODEC. Accordingly, we find that, absent a section 205 filing to propose such a change to the PJM OATT or to provide a contractual arrangement, FirstEnergy has no basis to allocate Unaccounted for Energy to ODEC.¹⁹¹

The Commission orders:

(A) The Initial Decision is hereby affirmed, in part, as discussed in the body of this order.

(B) Attachments M-1 and M-2, as filed on August 3, 2012, are hereby accepted as applicable to ODEC, ODEC load, and Front Royal, subject to condition, as discussed in the body of this order.

¹⁹⁰ Initial Decision, 148 FERC ¶ 63,003 at PP 131-132.

¹⁹¹ We need not address other issues raised by parties as to whether it is just and reasonable to allocate such APS Zonal costs to Virginia load, *e.g.*, ODEC. Such issues are not properly before the Commission.

(C) FirstEnergy is hereby directed to file revised versions of Attachments M-1 and M-2 that are specifically applicable to ODEC, ODEC load, and Front Royal and to incorporate provisions for the ODEC loss factors and that conform to other guidance as discussed in the body of this order, and to file these revisions within 30 days from the date of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.