

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Commonwealth Edison Company

Docket Nos. ER04-595-000
ER04-595-001

ORDER ACCEPTING AMENDMENT

(Issued April 27, 2004)

1. On February 27, 2004, Commonwealth Edison Company (ComEd) filed an unexecuted amendment to an Interconnection Agreement (IA) between ComEd and Cordova Energy Company, LLC (Cordova). This amendment would substitute PJM Interconnection's (PJM) imbalance provision for the imbalance provision in the original IA when ComEd's integrates into PJM. In this order, the Commission accepts ComEd's proposed amendment. This order benefits customers by ensuring that the IA on file with the Commission accurately reflects the parties' practices.

I. Description

2. ComEd proposes to amend its IA with Cordova to make the existing section 9.3 generator imbalance provision inapplicable and PJM's OATT controlling when ComEd integrates into PJM. The existing imbalance provision details how Oversupply Imbalances and Undersupply Imbalances will be resolved. Among other things, it requires Cordova to use commercially reasonable efforts to avoid creating Oversupply or Undersupply Imbalances, and to pay ComEd for energy required to cover an Undersupply Imbalance at ComEd's energy imbalance costs (EIC) plus specified percentages of such costs ranging from 110% to 200% depending on the extent of the imbalance. It also provides for ComEd to pay Cordova at 90% of ComEd's EIC for Oversupply Imbalances. In contrast, PJM's OATT does not have generator imbalance provisions, but instead settles deviations at real-time locational marginal prices. Self-scheduled generators and generators not following PJM dispatch instructions also pay balancing operating reserves charges based on their deviations. ComEd requests an effective date of April 27, 2004, so the amendment will control on May 1, 2004, the planned integration date.

II. Notices and Pleadings

3. Notice of ComEd's filing was published in the Federal Register, 69 Fed. Reg. 11,613 (2004), with interventions or comments due on or before March 19, 2004. Cordova filed a timely motion to intervene and protest. On April 15, 2004 ComEd responded to the Commission's request for more information with a supplemental filing. Notice of ComEd's supplemental filing was published in the Federal Register, 69 Fed. Reg. 22,498 (2004), with interventions or comments due on or before April 20, 2004. Cordova responded with comments.

4. Cordova has a generating facility that is interconnected with the ComEd transmission system. It protests ComEd's attempt to unilaterally amend the IA. Cordova argues that the IA contains a clause limiting contract modifications to those that both parties agree to in writing.¹ Cordova argues that the Modification Provision unambiguously prohibits either party from seeking unilateral changes to the IA, so the Mobile-Sierra² public interest standard controls, and that ComEd has the burden of showing that the public interest requires this change, which ComEd has not done.

5. On April 15, 2004, Commission Staff issued a request to ComEd asking it to explain: (1) the necessity of changing the generator imbalance provision to integrate into PJM; (2) the difference between the existing provision and PJM's; (3) the effect of the Modification Provision on ComEd's right to propose this unilateral change; and (4) ComEd's legal authority under the contract to propose this unilateral change.

6. In its response, ComEd states that the purpose of the change is to ensure that the generator imbalance provision does not interfere with Cordova's ability to comply with PJM's market rules. ComEd asserts that the current provision is inconsistent with PJM's market rules, since PJM allows generators to self-schedule and permits imbalances, unlike the current provision in the IA, which requires Cordova to restrict its schedules. Furthermore, ComEd argues that under the current IA, Cordova is financially penalized under ComEd's OATT for undersupply imbalances and is compensated for oversupply imbalances. However, ComEd asserts upon integration into PJM, ComEd will no longer have an OATT. ComEd states that PJM's OATT does not provide a mechanism for calculating these penalties because PJM does not recognize the concept of energy imbalance penalties. PJM compensates for all exported power, regardless of whether it is balanced or imbalanced, using the applicable day-ahead or real time locational market price.

¹ Section 14.2, FERC Rate Schedule No. 54 (Modification Provision).

² *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (Mobile-Sierra).

7. Explaining why ComEd has legal authority to propose the amendment, ComEd cites section 5.17 of the IA, which states:

Customer will comply with all practices, methods, policies, procedures, guidelines, criteria, tariffs and other requirements of any ISO with respect to the construction, installation, maintenance, and operation of the Facility and Customer's Interconnection Facilities, delivery of Energy to the ComEd System and access to and use of the ComEd System.

ComEd says that this requires Cordova to accept this amendment, since the current generator imbalance provision is different from PJM's provision.

8. ComEd asserts that the Modification Provision only applies to substantive changes. ComEd argues that its proposal is not a substantive change, that it only clarifies the party's obligations once ComEd integrates into PJM. ComEd states that regardless of the proposed amendment, Cordova will be required to comply with PJM's market rules upon ComEd's integration.

9. In Cordova's response, it argues that section 5.17 does not provide for the parties to alter the cost responsibility provisions of the IA, and that this includes the generator imbalance charges. Cordova also asserts that section 5.17 does not create an exception to the Modification Provision allowing a party to the IA to unilaterally propose changes. Furthermore, Cordova asserts that ComEd has not shown how the elimination of ComEd's OATT would nullify ComEd's ability to calculate the ComEd EIC.

III. Discussion

10. Pursuant to Rule 214 of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding.

11. Contrary to Cordova's argument, section 5.17 does apply to the cost responsibility provisions of the IA, since it requires Cordova to comply with "all practices, methods, policies, procedures, guidelines, criteria, tariffs and other requirements" of PJM. This includes PJM's tariff provisions that address cost responsibility of generators delivering energy to the ComEd System. Further, because the current IA computes imbalance charges based on ComEd's EIC, and PJM has no similar provision, once ComEd integrates into PJM and ComEd's OATT is no longer effective, there will be no basis on which to calculate the EIC charge.

12. While the Modification Provision generally limits the parties' ability to unilaterally amend the contract based on the just and reasonable standard of section 205, the IA also contains section 5.17, which embodies the parties' agreement, states that the

generator's obligation will change if ComEd joins an ISO to track the requirements of that ISO. Under standard contract interpretation the contract must be read as a whole, with meaning given to every provision.³ As a whole, the IA embodies the parties' agreement that if ComEd joins an ISO certain provisions of the contract would be modified to meet the ISO's requirements. Therefore, the language of the contract itself binds Cordova to follow PJM's practices, methods, tariffs etc. upon ComEd's integration. As stated above, Cordova's IA does not treat generator imbalances in the same manner as does PJM.

13. Moreover, there will be no practical difference to Cordova whether or not we accept ComEd's proposed amendment. Even without ComEd's proposed amendment, Cordova would be required to abide by PJM's requirements upon ComEd's integration into PJM. However, if we rejected ComEd's proposed amendment, the IA on file with the Commission would not reflect the actual treatment of generator imbalances under PJM's OATT upon ComEd's integration. Therefore, since rejecting the amendment would not have any practical consequences and in order to ensure that the contract on file with the Commission accurately reflects the treatment of Cordova's imbalances under PJM's OATT, we will accept ComEd's amendment.

The Commission orders:

The proposed amendment is hereby accepted to be effective April 27, 2004.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

³ See *Southern Co. Services v. FERC*, 353 F.3d 29 (D.C.Cir. 2003) (citing *KiSKA Construction Corp. v. Washington Metro. Area Transit Auth.*, 355 U.S. App. D.C. 206, 321 F.3d 1151, 1163 (D.C. Cir. 2003), cert. denied, 157 L.Ed. 2d 252, 124 S.Ct. 226 (2003)).