

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C. and the  
PJM Transmission Owners

Docket No. ER06-487-000

PJM Interconnection, L.L.C., and  
Virginia Electric and Power Company  
(PJM South)

Docket No. ER06-488-000

PJM Interconnection, L.L.C., and  
Monongahela Power Company, The  
Potomac Edison Company and West Penn  
Power Company, all doing business as  
Allegheny Power, American Electric  
Power Service Corporation on behalf of its  
Operating Companies: Appalachian Power  
Company, Columbus Southern Power  
Company, Indiana Michigan Power Company  
Kentucky Power Company, Kingsport Power  
Company, Ohio Power Company, and  
Wheeling Power Company; Commonwealth  
Edison Company, Commonwealth Edison  
Company of Indiana, and Dayton Power and  
Light Company (PJM West)

Docket No. ER06-489-000

Public Service Electric and Gas Company,  
PECO Energy Company, PPL Electric  
Utilities Corporation, Baltimore Gas and  
Electric Company, Jersey Central Power &  
Light Company, Metropolitan Edison  
Company, Pennsylvania Electric Company,  
Potomac Electric Power Company, Atlantic  
City Electric Company, Delmarva Power &  
Light Company, UGI Utilities, Inc.,  
Allegheny Electric Cooperative, Inc., CED  
Rock Springs, LLC, Old Dominion Electric  
Cooperative, Rockland Electric Company, and  
Duquesne Light Company

Docket No. ER06-490-000

ORDER ACCEPTING PROPOSED TARRIF REVISIONS  
FOR FILING, SUBJECT TO REVISION

(Issued March 17, 2006)

1. On January 17, 2006, PJM Interconnection, L.L.C. (PJM) and its transmission owning members<sup>1</sup> (Transmission Owners) (collectively, Applicants) submitted a filing, pursuant to section 205 of the Federal Power Act (FPA),<sup>2</sup> seeking authorization to: (i) cancel their existing agreements governing PJM's authorizations to operate the Transmission Owners' transmission facilities (collectively, the Canceled TO Agreements),<sup>3</sup> and (ii) establish, in their place, a Consolidated Transmission Owners Agreement (Consolidated TO Agreement). For the reasons discussed below, we will accept Applicants' submittals, subject to revision, to become effective March 19, 2006, as requested.

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<sup>1</sup> Monongahela Power Company, The Potomac Edison Company and West Penn Power Company, all doing business as Allegheny Power; American Electric Power Service Corporation on behalf of its operating companies: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company (AEP); Atlantic City Electric Company; Baltimore Gas and Electric Company; CED Rock Springs, LLC (Rock Springs); Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (ComEd); Dayton Power and Light Company (DPL); Delmarva Power & Light Company; Duquesne Light Company; Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company (collectively, FirstEnergy Companies); Old Dominion Electric Cooperative (Old Dominion); PECO Energy Company; Potomac Electric Power Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company (PSE&G); Rockland Electric Company (Rockland); UGI Utilities, Inc.; and Virginia Electric and Power Company

<sup>2</sup> 16 U.S.C. § 824d (2000).

<sup>3</sup> The Canceled TO Agreements are: (i) the PJM Transmission Owners Agreement, dated June 2, 1997, as amended, PJM First Revised Rate Schedule FERC No. 29; (ii) the West Transmission Owners Agreement, dated March 13, 2001, as amended, PJM Rate Schedule FERC No. 33; and (iii) PJM South Transmission Owners Agreement, dated May 11, 2004, PJM Rate Schedule FERC No. 39.

## **Background**

2. Following PJM's initial establishment as an independent system operator (ISO), in 1998, PJM's borders have been expanded on three separate occasions by the addition of new transmission owning members and their transmission facilities: first, by the July 12, 2001 addition of Allegheny Power, whose facilities now comprise part of the region known as PJM West; second, by the April 1, 2003 addition to PJM West of AEP, ComEd, DPL and their respective transmission facilities; and third, by the October 5, 2004 addition of Virginia Electric and Power Company, whose transmission facilities now comprise the region known as PJM South. With each of these expansions, a new agreement (or in the case of AEP, ComEd, and DPL, an amended PJM West agreement) has been filed with the Commission.<sup>4</sup>

3. In the *PJM South Order*, however, the Commission recognized that the PJM South Transmission Owner Agreement was generally modeled after the corresponding agreement pertaining to PJM West and that separate agreements appeared to be neither necessary nor appropriate.<sup>5</sup> The Commission also expressed concern that the proliferation of these agreements could result in confusion. As such, the Commission encouraged Applicants to develop a consolidated agreement.

4. Applicants state that the instant filing addresses these concerns by consolidating into a single agreement the provisions currently set forth in each of the three Canceled TO Agreements. Applicants state that extensive negotiations were required in order to accomplish this objective, but that the Consolidated TO Agreement is substantially similar to the provisions included in the Canceled TO Agreements. Applicants request that their filing be made effective March 19, 2006.

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<sup>4</sup> See *PJM Interconnection, L.L.C. and Allegheny Power*, 95 FERC ¶ 61,060 (2001) (accepting the PJM West Transmission Owners Agreement); *American Electric Power Service Corporation, et al.*, 103 FERC ¶ 61,008 (2003) (accepting the revised PJM West Transmission Owners Agreement); and *PJM Interconnection, L.L.C. and Virginia Electric and Power Company*, 109 FERC ¶ 61,012 (2004) (*PJM South Order*) (accepting the PJM South Transmission Owner Agreement).

<sup>5</sup> *PJM South Order*, 109 FERC ¶ 61,012 at P 24. The Commission also expressed the same concerns regarding PJM's reliance on three separate reliability agreements. PJM filed to consolidate the reliability agreements into a single agreement in August 2005, in Docket Nos. EL05-148-000 and ER05-1410-000.

**Notice of Filing and Responsive Pleadings**

5. Notice of Applicants' filing was published in the *Federal Register*<sup>6</sup> with interventions and protests due on or before February 7, 2006. Motions to intervene were timely filed by FirstEnergy Companies, Old Dominion, Rock Springs, Allegheny Electric Cooperative, Inc. (Allegheny Coop), PSE&G and PSEG Energy Resources & Trade LLC (collectively, PSEG Companies), AEP, Rockland, Pepco Holdings, Inc., Exelon Corporation, and H-P Energy Resources LLC (Energy Resources). In addition, comments in support of Applicants' filing were submitted by Allegheny Coop and Energy Resources filed a protest.

6. In its protest, Energy Resources requests that section 5.2 of the Consolidated TO Agreement be rejected to the extent it addresses the option of an interconnection customer to design, procure, construct and install all or any portion its interconnection facilities and/or any merchant network upgrades.<sup>7</sup> Energy Resources argues that this

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<sup>6</sup> 71 Fed. Reg. 4,908 (2006).

<sup>7</sup> Section 5.2 of the Consolidated TO Agreement is set forth below, with the relevant language addressing the option to build provided in italics:

Each Party shall have the right to build, finance, own, acquire, sell, dispose, retire, merge or otherwise transfer or convey all or any part of its assets, including any Transmission Facilities, such right to include, but not be limited to the right, individually or collectively, to terminate the relationship with PJM in accordance with [s]ection 3.2 or in connection with the transfer to or creation of another entity (including a joint venture or an [Independent Transmission Company] pursuant to [a]ttachment U to the PJM [OATT]) of the right to own and/or operate its Transmission Facilities. PJM shall not challenge any such sale, disposition, retirement, merger, or other action under this [s]ection 5.2 on the basis that they are a signatory to this Agreement. *If, pursuant to applicable law, the PJM [OATT] or the Operating Agreement, including the Regional Transmission Expansion Plan, a person or entity exercises an option to build or has the right to build any addition, expansion, upgrade or enhancement to a Party's Transmission Facilities that is designated for operational, economic or interconnection reasons, such Party shall have to the extent not inconsistent with the PJM [OATT] or Operating Agreement the rights to: (i) establish reasonable standards and specifications for; (ii) reasonably supervise, including the right to direct reasonable changes to; and (iii) reasonably approve, including the approval of contractors, equipment manufactures and vendors, the design, procurement, construction and installation of such addition, expansion, upgrade or enhancement (emphasis added).*

entitlement, *i.e.*, an interconnection customer's option to build, should not be addressed in the Consolidated TO Agreement because it is already addressed by the PJM open access transmission tariff (PJM OATT).<sup>8</sup> Energy Resources further asserts that this OATT provision was mandated by Order No. 2003,<sup>9</sup> and that it was accepted by the Commission as part of a stakeholder proposal presented in PJM's Order No. 2003 compliance proceeding.<sup>10</sup> Energy Resources concludes that, as such, section 5.2 is an attempted end-run to this OATT provision, to the stakeholder process that developed and supported it, and to Order No. 2003 itself. Energy Resources also disputes Applicants' contention that section 5.2 largely tracks the corresponding provisions from the Canceled TO Agreements, *i.e.*, that section 5.2 largely tracks section 2.2.3 of those agreements.<sup>11</sup> Finally, Energy Resources argues that any acceptance of the Consolidated TO Agreement should be conditioned on a general savings provision preserving all extant Commission precedent and the continued applicability of the PJM OATT.

7. On February 21, 2006, Applicants filed an answer to Energy Resources' protest. In its answer, Applicants assert that Energy Resources misconstrues section 5.2 as superseding the Option to Build provisions of the PJM OATT. Applicants assert that, in fact, section 5.2 plainly states that the Transmission Owners' enumerated rights when another party exercises the option to build only exist to the extent not inconsistent with the PJM OATT or PJM Operating Agreement. Applicants add that section 5.2 merely affirms the Transmission Owners' rights already set forth in the PJM OATT, *i.e.*, that

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<sup>8</sup> See PJM OATT, section 83.2.3 ("Option to Build").

<sup>9</sup> See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2005), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005); *see also* Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 (2004).

<sup>10</sup> See *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025 at PP 14-16 (2004).

<sup>11</sup> Section 2.2.3 of the Canceled TO Agreements states, in its entirety, as follows:

Each Party shall have the right to build, acquire, sell, dispose, retire, merge or otherwise transfer or convey all or any part of its assets, including any Transmission Facilities, such right to include, but not be limited to the right, individually or collectively, to terminate the relationship with PJM Interconnection, L.L.C. in connection with the creation of a transmission company to own and/or operate its Transmission Facilities.

section 5.2 neither adds nor detracts from the Transmission Owners' rights and obligations under the PJM OATT. Specifically, Applicants assert that the PJM OATT gives a Transmission Owner the right to approve contractors, the right to site control, the right to approve equipment manufacturers or vendors, the right to stop work to protect reliability, health and safety, and the right to request corrective measures during the construction of network upgrades.

8. On February 23, 2006, Energy Resources filed an answer to Applicants' answer in which it argues that the proposed right of the Transmission Owner to "establish reasonable standards and specifications" relating to the option to build has no corollary provision in the PJM OATT. Similarly, Energy Resources argues that there is no PJM OATT allowance regarding the section 5.2 proposed right permitting the Transmission Owner to "reasonably supervise, including the right to direct reasonable changes" to facilities being built by third parties, and to "reasonably approve . . . the design, procurement, construction and installation of each addition, expansion, upgrade or enhancement."

## **Discussion**

### **A. Procedural Matters**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>12</sup> the timely, unopposed motions to intervene submitted by the entities noted above serve to make them parties to this proceeding. Rule 213(a) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest or an answer to an answer unless otherwise permitted by the decisional authority. We will accept the answers submitted by Applicants and Energy Resources because they have provided information that assisted us in our decision-making process.

### **B. Analysis**

10. We will accept Applicants' proposed Consolidated TO Agreement and request to terminate the Canceled TO Agreements, subject to the revisions discussed below. As a general matter, we agree that the Consolidated TO Agreement largely tracks the Canceled TO Agreements and will be beneficial to all market participants to the extent it provides a single articulation of the parties' respective rights and obligations. In this respect, the Consolidated TO Agreement complies with the guidance we provided in the *PJM South Order*.<sup>13</sup>

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<sup>12</sup> 18 C.F.R. § 385.214 (2005)

<sup>13</sup> 109 FERC ¶ 61,012 at P 24.

11. However, we reject that portion of section 5.2 addressing an interconnection customer's option to build. Applicants suggest that this provision is only intended to clarify the transmission owner's rights, neither adding nor detracting from the transmission owners' rights and obligations under the PJM OATT, and is specifically conditioned on compliance with the OATT. Since under Order No. 2003, the OATT governs interconnections, we find this provision unnecessary and potentially confusing. We agree with Energy Resources that, under Order No. 2003, PJM's interconnection rules should be spelled out only in one place, in the PJM OATT.

12. We further find that section 7.3.5 of the Consolidated TO Agreement should be amended to correct several references to sections of the PJM OATT that because of modifications are no longer located at the referenced points indicated in section 7.3.5. Specifically, section 7.3.5 (iii) attachment M (FirstEnergy), should read attachment M-1 (FirstEnergy) and section 7.3.5 (iv) attachment N (FirstEnergy) should read attachment M-2 (FirstEnergy).

13. Finally, we reject Energy Resources' request that we condition our acceptance of the Consolidated TO Agreement on a general savings provision preserving all "extant Commission precedent" and the continued applicability of the PJM OATT. In fact, the Commission's policies and precedents and its authorizations, including both the PJM OATT and the Consolidated TO Agreement, will continue to apply subject to their own terms and conditions, unless otherwise modified by the Commission.

The Commission orders:

(A) The Consolidated TO Agreement is hereby accepted for filing, effective March 19, 2006, subject to revision and a compliance filing to be made within 30 days of the date of this order, for the reasons discussed in the body of this order.

(B) The notices of cancellation of PJM First Revised Rate Schedule FERC No. 29, PJM Rate Schedule FERC No. 33, and PJM Rate Schedule FERC No. 39 are hereby accepted, effective March 19, 2006, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.