

170 FERC ¶ 61,088  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

February 7, 2020

In Reply Refer To:  
PJM Interconnection, L.L.C.  
Docket No. ER20-549-000

Wright & Talisman, P.C.  
1200 G Street, NW  
Suite 600  
Washington, DC 20005

Attention: David S. Berman, Esq.

Dear Mr. Berman:

1. On December 9, 2019, PJM Interconnection, L.L.C. (PJM) filed both an unexecuted Interconnection Service Agreement (ISA) among PJM, Enel Green Power HillTopper Wind, LLC (HillTopper), and Commonwealth Edison Inc. (ComEd), for PJM Queue Nos. W2-048/X2-022, designated as Original Service Agreement No. 5220 (Hilltopper ISA) and an executed ISA among PJM, Whitney Hill Wind Power, LLC (Whitney Hill), and ComEd, also for PJM Queue Nos. W2-048/X2-022, designated as Original Service Agreement No. 5345 (Whitney Hill ISA).<sup>1</sup> PJM also submitted an executed consent to assignment agreement (CAA) among PJM, HillTopper, Whitney Hill, and ComEd (HillTopper/Whitney CAA) to assign certain of HillTopper's rights and duties under the HillTopper ISA to Whitney Hill, for informational purposes and to demonstrate the parties' consent to the changes contained in the revised HillTopper ISA.<sup>2</sup>

---

<sup>1</sup> PJM Interconnection, L.L.C., PJM Service Agreements Tariff, [PJM SA No. 5220, PJM SA No. 5220 among PJM, HillTopper and ComEd, 0.0.0](#) and [PJM SA No. 5345, PJM SA No. 5345 among PJM, Whitney Hill and ComEd, 0.0.0 \(together, the ISAs\)](#).

<sup>2</sup> PJM Transmittal at 1-2. Appendix A of the HillTopper/Whitney CAA provides that HillTopper shall assign to Whitney Hill a portion of the customer facility associated with PJM Queue Nos. W2-048 and X2-022 and a proportionate share of the rights and obligations related thereto, including the rights to build the unconstructed portion of the customer facility, which will have a maximum facility output of 65 MW. CCA at Appendix A.

2. PJM states that it is filing the ISAs because they contain terms and conditions that do not conform to the form of ISA set forth in the PJM Open Access Transmission Tariff, Attachment O. PJM states that the non-conforming language relates to the assignment of certain of HillTopper's rights and duties to Whitney Hill and to the fact that there are two interconnection customers behind the same point of interconnection. PJM requests waiver of the 60-day prior notice requirement to permit an effective date of November 21, 2019 for the Whitney Hill ISA and September 27, 2018 for the HillTopper ISA.

3. Notice of PJM's filing was published in the *Federal Register*, 84 Fed. Reg. 68,932 (2019), with interventions and protests due on or before December 30, 2019. Exelon Corporation (Exelon) filed a timely motion to intervene and comments on December 10, 2019 and December 30, 2019, respectively. On January 15, 2020, PJM filed an answer. On January 28, 2020, Exelon filed an answer to PJM's answer. On January 31, 2020, PPL Electric Utilities Corporation (PPL), Dominion Energy Services, Inc. (Dominion), American Electric Power Service Corporation (AEP), Duquesne Light Company (Duquesne), and Public Service Electric and Gas Company (PSEG) filed motions to intervene out-of-time. The Indicated Transmission Owners<sup>3</sup> filed a motion to intervene out-of-time and comments. On February 4, 2020, PJM filed a second answer.

4. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), Exelon's timely, unopposed motion to intervene serves to make it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept PJM's and Exelon's answers because they have provided information that assisted us in our decision-making process. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), the Commission will grant PPL's, Dominion's, AEP's, Duquesne's, PSEG's, and Indicated Transmission Owners' late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

---

<sup>3</sup> Indicated Transmission Owners are AEP, on behalf of its affiliates Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, Inc., AEP Indiana Michigan Transmission Company, Inc., AEP Kentucky Transmission Company, Inc., AEP Ohio Transmission Company, Inc., and AEP West Virginia Transmission Company, Inc. (collectively AEP); Dominion on behalf of Virginia Electric and Power Company d/b/a Dominion Energy Virginia; Duquesne Light Company; PPL; and PSEG.

5. In its comments, Exelon states that it is not protesting PJM's filing and its comments are not intended to delay the interconnection of the parties who are signatories to the ISAs.<sup>4</sup> However, Exelon believes PJM should not be permitted to unilaterally impose material non-conforming ISA changes on contracting parties through a CAA, stating that it is beyond the intended use of the CAA and makes protesting the filing the only recourse for parties to object, which could potentially delay the interconnection.<sup>5</sup> Exelon states that PJM should create a standard, non-conforming agreement to apply in such situations.<sup>6</sup> Exelon submits its comments to bring the concerns to the Commission's attention and suggests that the Commission provide guidance, perhaps in a separate proceeding such as a technical conference.<sup>7</sup>

6. In its answer, PJM states that Exelon does not object to or allege that any specific provision of the ISAs is not just and reasonable and also makes clear that its comments are not intended to interfere with the developer's ability to move forward with its projects. Accordingly, PJM argues that the Commission should accept the ISAs as filed without modification. Further, PJM states that in response to factual inaccuracies included in Exelon's comments, its answer corrects these inaccuracies and clarifies the record. Finally, PJM asserts that the Commission should not develop a standard non-conforming agreement or establish a technical conference to discuss the CAA process, which has been used numerous times with virtually no protests or adverse comments.<sup>8</sup>

7. In its answer, Exelon agrees with PJM that the Commission can approve the documents submitted in the interest of the developer's need for timely assignment. Exelon states that where provisions of an existing agreement are modified such that the parties' rights and responsibilities under the agreement will be changed as a result, those parties should have a meaningful opportunity to negotiate such non-conforming provisions, but PJM's answer indicates that it will continue to use the CAA process to

---

<sup>4</sup> Exelon notes that prior to PJM filing the ISAs with the Commission, Exelon offered alternative language in effort to negotiate changes to the non-conforming ISA provisions. Exelon does not describe its specific issues with the non-conforming ISA provisions. Exelon clarifies that it executed the HillTopper/Whitney CAA and did not protest the filing in order to not delay interconnection under the ISAs. Exelon Comments at 2 n.3, 5, 11 n.31.

<sup>5</sup> *See id.* at 9-16.

<sup>6</sup> *Id.* at 14.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> PJM Answer at 6-12.

substantively amend contracts without establishing any means of meaningful review by all interested parties.<sup>9</sup>

8. Indicated Transmission Owners concur with Exelon, stating that they have shared their similar concerns with PJM, as PJM frequently does not provide transmission owners with revised agreements prior to filing. Indicated Transmission Owners request that the Commission support a formal discussion between PJM and the PJM transmission owners to consider the issues of general applicability regarding PJM's existing agreement processes raised by the filings submitted in this proceeding.<sup>10</sup>

9. The Commission accepts the Whitney Hill ISA and HillTopper ISA, effective November 21, 2019 and September 27, 2018, respectively, as requested. In taking this action, we note that no parties, including Exelon, contest acceptance of these agreements.

10. Given Exelon's consent to the agreements filed in this proceeding, including the agreements' non-conforming terms, we understand Exelon's comments as pertaining to PJM's future use of CAAs and non-conforming provisions, which we find is beyond the scope of this proceeding.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

---

<sup>9</sup> Exelon Answer at 1-2.

<sup>10</sup> Indicated Transmission Owners Comments at 1-3.