

140 FERC ¶ 61,051  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony T. Clark.

FirstEnergy Solutions Corp. and  
Allegheny Energy Supply Company, LLC

Docket No. EL12-19-001

v.

PJM Interconnection, L.L.C.

ORDER DENYING REHEARING

(Issued July 19, 2012)

1. FirstEnergy Solutions Corp. and Allegheny Energy Supply Company, LLC (FirstEnergy) submitted a complaint to modify provisions of PJM Interconnection, L.L.C.'s (PJM's) Open Access Transmission Tariff (Tariff) and Operating Agreement as related to the funding of Financial Transmission Rights (FTRs) (Complaint). On March 2, 2012, the Commission dismissed the complaint without prejudice.<sup>1</sup> FirstEnergy and PPL EnergyPlus, LLC (PPL EnergyPlus) have sought rehearing. In this order, the Commission denies rehearing.

**I. Background**

2. FTRs allow market participants to hedge the costs of day-ahead transmission congestion. FTRs are valued based upon the difference between the day-ahead prices at two points on the transmission system. Under the current PJM rate schedules, if sufficient congestion charges are collected from the day-ahead and real-time energy markets to satisfy FTR Target Allocations calculated by PJM, then FTRs will be fully funded.<sup>2</sup> If insufficient congestion charges are collected from the day-ahead and real-

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<sup>1</sup> *FirstEnergy Solutions Corp. and Allegheny Energy Supply Co., LLC v. PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,158 (2012) (March 2, 2012 Order).

<sup>2</sup> Schedule 1 Section 5.2.5 (Calculation of Transmission Congestion Credits) of PJM's Operating Agreement and parallel provisions in Attachment K-Appendix of PJM's Tariff.

time energy markets to satisfy FTR Target Allocations, then FTR credits are prorated proportionately to FTR Target Allocations.<sup>3</sup>

3. To the extent that there are any remaining uncovered year-end FTR Target Allocation deficiencies thereafter, an uplift charge is assessed to all FTR holders on a *pro-rata* basis according to total Target Allocations for all FTRs held at any time during the planning period. If less transmission system capability is available in the real-time energy market than in the day-ahead energy market, then negative balancing (real-time) congestion can result.

## **II. FirstEnergy's Complaint**

4. On December 28, 2011, FirstEnergy submitted a complaint to modify provisions of the PJM Tariff and Operating Agreement as related to the funding of FTRs. FirstEnergy stated that FTR holders are experiencing severe shortfalls in FTR revenues. FirstEnergy contended that as a result of this revenue inadequacy, FTRs cannot be used to adequately hedge day-ahead congestion as originally intended, and argued that the PJM Tariff provisions have become unjust, unreasonable and unduly discriminatory and preferential.

5. In the March 2, 2012 Order, the Commission found it could not determine whether the PJM tariff was unjust and unreasonable because insufficient evidence existed as to the root cause of the FTR underfunding, and that it would not be an efficient use of Commission or industry resources for the Commission to circumvent PJM's processes by establishing our own proceedings to evaluate the complaint at this time. PJM had committed to develop a comprehensive report detailing the circumstances resulting in the FTR underfunding for stakeholder review and discussion.<sup>4</sup> Accordingly, the Commission exercised its discretion and denied the complaint without prejudice, finding that it would not be appropriate to initiate action at the time.

## **III. Rehearing Requests**

6. FirstEnergy contends that the Commission erred by finding the present record insufficient to resolve the Complaint and dismissing the Complaint without prejudice pending PJM's publication of a root cause analysis of FTR underfunding. FirstEnergy contends that the Commission's failure to act on the merits of the Complaint and explain why cost-causation principles should not apply in these circumstances is arbitrary and capricious, not based on substantial evidence, and not based on reasoned decision-

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<sup>3</sup> *Id.*

<sup>4</sup> PJM submitted the FTR Revenue Stakeholder Report (Report) with the Commission for informational purposes on April 30, 2012.

making. FirstEnergy argues that the Commission should have required PJM to file its report with the Commission in this proceeding so that the Commission may consider the Complaint in light of PJM's analysis. On May 9, 2012, FirstEnergy, contending that new evidence will allow the Commission to make a fully reasoned decision, submitted a motion to lodge the Report in this proceeding.

7. PPL EnergyPlus contends that the Commission erred in dismissing the Complaint based upon its conclusion that the root cause of FTR underfunding is unknown. PPL EnergyPlus further contends that the March 2, 2012 Order was arbitrary and capricious and that the Commission did not reach a reasoned decision. PPL EnergyPlus argues that the March 2, 2012 Order was in effect a summary disposition, and that if disputed material issues of fact remain unresolved, the Commission should have established hearing procedures.

#### **IV. Discussion**

##### **A. Commission Determination**

8. We deny the requests for rehearing. As discussed in the March 2, 2012 Order, the Commission had insufficient basis to determine whether the existing PJM tariff is unjust and unreasonable because the root cause of the FTR underfunding had not been identified. In fact, the PJM Market Monitor concluded that the current state of the record supported the current tariff's allocation of balancing congestion costs to FTR participants.<sup>5</sup> Given that PJM had committed to provide a report to stakeholders by May 1, 2012 and to continue its internal stakeholder processes, we found it would not be an efficient use of Commission or industry resources to pursue Commission processes at the same time as PJM was studying the issue.<sup>6</sup>

9. FirstEnergy maintains on rehearing that it is unlikely that the PJM stakeholders will resolve these issues even if PJM identifies the root cause of the underfunding. However, FirstEnergy provides no support for the contention that following the submittal

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<sup>5</sup> See March 2, 2012 Order, 138 FERC ¶ 61,158 at P 45. See also comments of the Independent Market Monitor (Market Monitor) for PJM, at 6-7 (January 17, 2012). As the PJM Market Monitor explained, if the PJM markets worked perfectly, and the PJM day-ahead models reflected real-time congestion accurately, there might be a basis for not including balancing congestion in the calculation of FTR revenues from congestion. But given the imperfection of PJM day-ahead models, the PJM Market Monitor found reasonable the capture of these imperfections in the FTR congestion revenue, as opposed to allocating these costs to a broad spectrum of customers.

<sup>6</sup> See *General Motors v. FERC*, 613 F. 2d 939 (D.C. Cir. 1979) (Commission not required to conduct a formal hearing every time a party files a complaint).

of additional analysis, it is unlikely that stakeholders would address and resolve the market design flaw that is the subject of its Complaint. At this point, the success of stakeholder discussion cannot be determined,<sup>7</sup> but should they prove unavailing, FirstEnergy may refile after the stakeholder process has had an opportunity to review PJM's Report and FirstEnergy has developed additional information bearing on the justness and reasonableness of the existing tariff provision.

10. Both FirstEnergy and PPL EnergyPlus contend that the March 2, 2012 Order violates the principles of cost causation, contending that it is undisputed that FTR holders (in their role as FTR holders) do not cause the increased real-time congestion leading to the underfunding of day-ahead FTRs. We do not agree that the just and reasonable allocation of the costs of FTR underfunding is undisputed. In the March 2, 2012 Order, the Commission recognized that complex factors cause the underfunding of FTRs, and therefore could not determine that the current allocation system for such underfunding was unjust and unreasonable.<sup>8</sup> Moreover, as noted above, the PJM Market Monitor found that the current state of the record did support the allocation of real-time congestion to FTR holders. In the March 2, 2012 Order we found the record insufficient to support such determinations, and because PJM had committed to provide further information and conduct stakeholder review and discussion, found that instituting Commission procedures at that time was not warranted.<sup>9</sup> The requests for rehearing do not support a different position.

11. PPL EnergyPlus contends that the March 2, 2012 Order was inappropriate under the Commission's Rules of Practice and Procedure. Rule 217 provides for summary dismissal where the proceeding is set for hearing.<sup>10</sup> But we did not summarily dismiss the complaint; rather, we recognized that complex factors cause the underfunding of FTRs and exercised our discretion under section 206 of the Federal Power Act not to establish conflicting hearing procedures when PJM had not concluded its own processes for examining the issue.<sup>11</sup> Because we found the record insufficient, and given PJM's

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<sup>7</sup> We note that these stakeholder discussions are ongoing:  
<http://www.pjm.com/~media/committees-groups/committees/mic/20120613/20120613-item-05-fttr-underfunding-proposal.ashx>.

<sup>8</sup> March 2, 2012 Order, 138 FERC ¶ 61,158 at P 45.

<sup>9</sup> *Id.* P 45.

<sup>10</sup> 18 C.F.R. § 385.217(a)(2) (2012).

<sup>11</sup> March 2, 2012 Order, 138 FERC ¶ 61,158 at P 45. *See International Transmission Company, Midwest Independent Transmission System Operator, Inc.* 116 FERC ¶ 61,036, at P 35 (2006) (The Commission has discretion in deciding whether to initiate investigations pursuant to section 206 of the FPA and whether to set the issue for a formal hearing).

commitment to develop a comprehensive report and continue its proceedings, we exercised our discretion not to initiate further investigation at the time, and dismissed the Complaint without prejudice to FirstEnergy or any other affected entity filing a complaint based on PJM's report if the stakeholder proceedings prove unavailing.<sup>12</sup>

**B. Motion to Lodge**

12. We deny the motion to lodge the Report. As discussed above, we dismissed the Complaint without prejudice to FirstEnergy or any other affected entity filing a complaint based on the Report if the stakeholder proceedings prove unavailing. FirstEnergy contends that the Report will allow the Commission to make a fully reasoned decision. But even assuming the Report did provide such a basis, PJM has not completed its stakeholder processes that may well resolve this issue. We therefore find no basis to consider the Report as a basis for granting rehearing and establishing Commission processes at this time.

The Commission orders:

The requests for rehearing of FirstEnergy and PPL EnergyPlus are denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>12</sup> *Id.* See *General Motors v. FERC*, 613 F. 2d 939 at 944.