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114 FERC ¶ 61,191
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. Docket Nos. ER06-407-000
ER06-408-000

ORDER REJECTING FILINGS

(Issued February 22, 2006)

1. On December 28, 2005, PJM Interconnection, L.L.C. (PJM) filed two unexecuted Interconnection Service Agreements (ISAs) among PJM, GSG, LLC (GSG) and Commonwealth Edison (ComEd). These agreements concern the interconnection of GSG's wind generating plants to ComEd's local distribution system. The Commission finds that it lacks jurisdiction over the interconnections proposed in these types of ISAs and, therefore, rejects the ISAs.

Background

2. The ISAs facilitate the interconnection of GSG wind generating plants, which are to be located in Lee County, Illinois, to ComEd's local distribution facilities. These ISAs also provide that GSG is to pay an annual Wholesale Distribution Charge (WDC) for its use of the ComEd local distribution system to deliver power from the wind plants into the PJM transmission system.[1]

[1] Section 52.4 of PJM's Open Access Transmission Tariff (OATT) provides: "To the extent that a Generation Interconnection Customer uses distribution facilities for the purpose of delivering energy to the Transmission System, Interconnection Service under this Tariff shall include the construction and/or use of such distribution facilities. In such cases, to such extent as Transmission Provider determines to be reasonably necessary to accommodate such circumstances, the Interconnection Service Agreement may include non-standard terms and conditions mutually agreed upon by all Interconnection Parties as needed to conform with Applicable Laws and Regulations and Applicable Standards relating to such distribution facilities."

3. PJM states that the ISAs do not completely conform to the pro forma ISA set forth in Attachment O to the PJM OATT because they contain non-conforming language to accommodate the interconnections. The non-conforming language states that: 1) the generating facilities will be Energy Resources to the extent they are not Capacity Resources with capacity interconnection rights;[2] 2) GSG's generating facilities will be interconnected to ComEd's local distribution system and WDCs will be charged;[3] and 3) non-standard terms and conditions will apply with respect to the required power factor and the satisfaction of the insurance provisions set forth in section 63 of the PJM Tariff.

4. PJM also states that because GSG disputes the WDC included in these ISAs,[4] they have been filed in unexecuted form. PJM states that it does not take a position with respect to these charges.[5]

5. PJM seeks waiver of the 60-day notice requirement required by section 205 of the FPA and section 35.3 of the Commission's regulations to permit the ISAs to become effective as of December 23, 2005. It asserts that waiver is appropriate because the agreements are being filed within thirty days of its requested effective date. PJM also requests that the Commission act on the filings by January 27, 2006 to accommodate GSG's proposed schedule for construction of the interconnection facilities and the overall project.

Notice of Filing and Responsive Pleadings

6. Notice of PJM's filing in Docket No. ER06-407-000 was published in the *Federal Register*, 71 Fed. Reg. 4359 (2006). Notice of PJM's filing in Docket No. ER06-408-000 was published in the *Federal Register*, 71 Fed. Reg. 2035 (2006), with comments, interventions, and protests due on or before January 9, 2006. Exelon Corporation[6] (Exelon) filed timely motions to intervene and comments. GSG filed timely motions to intervene and protests. On January 17, 2006, Exelon filed answers to GSG's protests, and on January 23, 2006, GSG filed a reply to Exelon's answer.

[2] Section 2.1 of the ISA Specifications.

[3] Schedule F of the ISA.

[4] Original Service Agreements Nos. 1406 and 1407.

[5] Also, no party to this proceeding has challenged the jurisdiction of the Commission in these filings.

[6] Exelon is a registered holding company that owns ComEd of Chicago, Illinois and PECO Energy Company (PECO) of Philadelphia, Pennsylvania.

7. On January 9, 2006, Exelon filed a motion to intervene and comments in support of ComEd recovering a WDC. In this filing, Exelon argues that ComEd is entitled to charge transmission customers for use of its local distribution system, pursuant to Order No. 888-A,[7] and that Order No. 2003[8] does not require a separate wholesale distribution rate as part of the PJM OATT.[9] Further, Exelon contends that the PJM market structure does not preclude ComEd from imposing a WDC.

8. Also on January 9, 2006, GSG filed a motion to intervene and protest. GSG contends that the PJM market design for interconnection is based upon interconnection charges that reflect incremental costs and benefits. GSG argues that the proposed WDC contained in the ISAs is, therefore, inconsistent with PJM's market structure and, moreover, is contrary to Order 2003's separation of interconnection service from delivery service. GSG additionally argues that Order No. 2003 requires a WDC to be included in an OATT and, finally, GSG insists that PJM's tariff does not provide for a WDC.

9. Exelon filed an Answer to the protest of GSG in which it states as follows:

> The ComEd distribution facilities at issue in this proceeding have never been subject to the PJM OATT or its predecessor ComEd OATT. These distribution facilities have up until now been used by ComEd to deliver electricity to retail customers under a state-

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[7] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997); *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

[8] *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 (2004), *order on reh'g*, Order No. 2003-C, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005); *see also Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004).

[9] Exelon Answer at 7. *See also,* Exelon Answer at 9 (Exelon claims that in Order No. 2003, the Commission "… was not purporting to mandate a particular mechanism for collection of the wholesale distribution charge it has expressly recognized a utility [having] a right to in Order No. 888-A").

> jurisdictional tariff and to purchase the total output of QFs, also under state jurisdiction. Thus, under Order No. 2003, the Commission has not asserted jurisdiction over these facilities at all and ComEd need not permit GSG . . . to interconnect with the facility.[10]

10. Exelon also states in its Answer that while ComEd could deny GSG interconnection on this basis, ComEd has chosen not to do so.

11. With respect to the WDC, Exelon argues that ComEd is entitled to compensation for the use of its "distribution facilities" since they are not under the control of PJM, and are not reflected in ComEd's transmission revenue requirement. Exelon also states that while it believes that Order No. 2003 does not require ComEd to file the WDCs as part of the PJM OATT, it will do so if directed by the Commission.

12. In its Reply to Exelon's Answer, GSG again argues that the proposed WDC should not be charged by ComEd because it is inconsistent with both PJM's tariff and market structure, and is contrary to the Commission's interconnection policies. GSG also argues that the Commission has jurisdiction over ComEd's local distribution facilities and, by extension, the proposed WDC, because ComEd's local distribution facilities are already being used for sale for resale of energy from a Qualifying Facility (QF) and, further, that these sales are being conducted under Commission approved market based rate authority. This sale takes place between Mendota Hills, LLC (Mendota), a tax-exempt QF, and ComEd, which buys all of Mendota's output. Moreover, GSG insists that these interconnections are governed by the terms and conditions of the PJM OATT, which were approved by the Commission.

Discussion

Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), those filing timely, unopposed motions to intervene filed prior to the date of this order are made parties to these proceedings**.** The timely, unopposed motions to intervene of GSG and Exelon make them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise permitted by the decisional authority. Waiver is appropriate when the response will assist the Commission in the decision-making process, and helps to ensure a complete and accurate record in the case. We

[10] Exelon Answer at 8.

conclude that Exelon's Answer and GSG's Reply will assist in the disposition of these cases. Therefore, we will grant the requests by Exelon and GSG[11] for waiver of Rule 213.

Commission Determination

14. The Commission rejects these filings because the Commission lacks jurisdiction over these ISAs. In Order No. 2003, the Commission found that it does not have jurisdiction over an interconnection where the interconnection customer seeks to interconnect to a "local distribution" facility that is unavailable for jurisdictional transmission service under a Commission-approved OATT at the time an interconnection request is made.[12] Thus, under Order No. 2003, in order for the Commission to assert jurisdiction over interconnections to local distribution facilities, there must be a preexisting interconnection and a wholesale transaction over these local distribution facilities prior to the new interconnection request being made.[13] In the absence of these requirements being met, and as discussed below, we find that the Commission lacks jurisdiction under Order No. 2003 over interconnections to these local distribution facilities.

15. Although, as GSG points out, there is a preexisting interconnection to ComEd's local distribution facilities between Mendota and ComEd, this interconnection does not meet the conditions of Order No. 2003 for establishing jurisdiction over interconnection to the local distribution facilities for GSG's interconnections. The local distribution facilities to which GSG seeks to interconnect are not being used by Mendota for sales for resale and, thus, we cannot conclude that GSG's interconnections fall under the Commission's jurisdiction. As discussed above, Mendota sells all of its output to ComEd, and ComEd takes title to the output at the point of interconnection to its local distribution system.[14] As the Commission determined in *Western Massachusetts Electric Co.*,[15] when a QF sells its total electric output to the host utility and the host utility takes title to the electric output at the point of interconnection to its local distribution system, as

[11] GSG requests that the Commission reject Exelon's Answer. Alternatively, if the Commission accepts Exelon's Answer, it should also accept GSG's Reply.

[12] *See* Order No. 2003 at P 804; Order No. 2003-C at P 53. No party contends that the lines to which GSG seeks to interconnect are not local distribution facilities.

[13] *See* Order No. 2003 at P 804.

[14] *See Mendota Hills LLC*, 110 FERC ¶ 61,222 at P 2 (2005).

[15] *Western Massachussetts Electric Co.*, 61 FERC 61,182 at 61,662 (1992), *aff'd*, *Western Massachusetts Electric Co. v. FERC*, 165 F.3d 922, 925-27 (D.C. Cir. 1999).

is the case here,[16] there is no Commission-jurisdictional delivery service associated with the QF's sales. Therefore, we conclude that jurisdictional transmission service is not being provided over the local distribution facilities, and GSG's interconnections to these local distribution facilities are not subject to Commission jurisdiction under Order No. 2003.

16. We also disagree with GSG's claim that ComEd's local distribution facilities became subject to the jurisdiction of the Commission when the Commission granted Mendota's request to sell its total output under market-based rate authority. As discussed above, the local distribution facilities to which GSG proposes to interconnect are not being used for sales for resale and are therefore not subject to the Commission's jurisdiction. The Commission's lack of jurisdiction over ComEd's local distribution facilities is separate and apart from the Commission's authority to grant market-based rates to Mendota. Thus, the Commission's granting of market-based rates to Mendota does not confer Commission jurisdiction over ComEd's local distribution facilities and, as a consequence, does not convey jurisdiction over the ISAs.

17. Finally, we disagree that the Commission has jurisdiction over this interconnection because it is governed by PJM's OATT. GSG cites to section 52.4 of PJM's OATT which states: "to the extent that a Generation Interconnection Customer uses distribution facilities for the purpose of delivering energy to the Transmission System, Interconnection Service under this Tariff shall include the construction and/or use of such distribution facilities." Under Order No. 2003, Commission jurisdiction arises when a facility is used to provide jurisdictional transmission service or deliver wholesale sales in interstate commerce.[17] The PJM OATT cannot determine Commission jurisdiction, nor can it confer jurisdiction where the Commission otherwise lacks jurisdiction. We, therefore, will interpret the PJM OATT consistent with our jurisdiction under Order No. 2003 such that it applies to interconnections to local distribution facilities where there is a preexisting interconnection and a wholesale transaction over the local distribution facilities prior to the new interconnection request being made.[18]

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[16] In Order No. 2003, the Commission found that the "network begins at the point where the Interconnection Customer connects to the Transmission System [in this case, ComEd's distribution system], not somewhere beyond that point." Thus, in this instance, Mendota delivers its entire output to ComEd up to the Point of Interconnection and ComEd takes title to the output at the Point of Interconnection. Order No. 2003 at P 65.

[17] Order No. 2003 at P 804.

[18] *Id.*

18. Since we are not accepting the ISAs, we will not address the issue raised by GSG in its protest of whether a wholesale distribution charge is appropriate here.[19] This ruling is without prejudice to ComEd filing for a wholesale distribution charge as part of a separate delivery service, rather than generator interconnection service, as proposed by the company, if ComEd's distribution system is used subsequently to provide wholesale delivery service.[20]

The Commission orders:

The filings are hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

[19] GSG Protest at 2.

[20] *Cf. American Electric Power Serv. Corp.*, 110 FERC 61,187 at P 19, 32-33 (2005) (AEP) (AEP directed to file service agreement under PJM's OATT to address, among other things, rates, terms, and conditions associated with delivery service over non-PJM facilities).