

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket Nos. ER05-1010-000
ER05-1010-001

ORDER ON UNEXECUTED SERVICE AGREEMENTS

(Issued June 23, 2005)

1. In this order, the Commission accepts an unexecuted interconnection service agreement (Neptune ISA) and an unexecuted construction service agreement (Neptune CSA) among PJM Interconnection, L.L.C. (PJM), Neptune Regional Transmission System, L.L.C. (Neptune), and Jersey Central Power & Light Company, a FirstEnergy company (Jersey Central). Our decision benefits customers by allowing the construction of the Neptune project to proceed, thereby bringing new infrastructure and market opportunities to the Northeastern United States.

Background

2. On July 27, 2001, the Commission approved negotiated rates for the Neptune project, subject to certain conditions.¹ The Neptune project is a merchant transmission project which will provide for the delivery of 660 MW of capacity from New Jersey to Long Island via a high-voltage, direct-current (HVDC) underwater transmission cable. The project's expected commercial operation date is June 2007.

3. On December 21, 2004, Neptune filed a complaint against PJM with respect to PJM's interpretation of the interconnection provisions of its tariff, regarding PJM's right to restudy the impact on its system of the interconnection of the Neptune project in light of unexpected announced generation retirements on PJM's system. On February 10, 2005, the Commission issued an order finding that PJM's restudies were

¹ *Neptune Regional Transmission System, LLC*, 96 FERC ¶ 61,147 (2001).

not performed in accordance with PJM's tariff.² The Commission ordered PJM to provide an ISA to Neptune. In compliance with the Commission's directive, PJM provided Neptune with both an ISA and a CSA relating to the Neptune project.

Proposal

4. On May 23, 2005, as amended on May 25, 2005, PJM submitted for filing the Neptune ISA³ and the Neptune CSA⁴ among PJM, Neptune and Jersey Central. PJM states that except for provisions relating to a *pro forma* tax safe harbor agreement, which are pending Commission action in Docket Nos. ER05-605-002 and EL05-90-002, the Neptune ISA and the Neptune CSA conform to the forms of ISA and CSA set forth in PJM's tariff.

5. PJM states that the Neptune ISA facilitates the interconnection of Neptune's 790 MW monopole HVDC converter station in Sayreville, New Jersey. PJM elaborates that the Neptune ISA reflects an Attachment Facilities Charge of \$2,615,000, a Network Upgrade Charge of \$6,509,401, and a breakdown of these charges. The Neptune ISA also describes Jersey Central's construction responsibility, which is necessary to assist Neptune's interconnection.

6. PJM states that the Neptune CSA facilitates the construction of facilities that are necessary for the interconnection of the Neptune project. The Neptune CSA identifies the facilities to be constructed, the scope of the work to be performed, the construction schedule, and the applicable technical standards. The Neptune CSA further indicates that Jersey Central, as the Interconnected Transmission Owner, will construct the Transmission Owner Interconnection Facilities that are necessary to accommodate Neptune's merchant transmission facility.

7. PJM states that while both PJM and Neptune have executed both agreements, Jersey Central has declined to do so. PJM elaborates that, while all parties participated in negotiation of the terms of the agreements, Jersey Central disagrees

² *Neptune Regional Transmission System, LLC v. PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,098 (2005) (Neptune Order).

³ The Neptune ISA is designated as Original Service Agreement No. 1303. The amended Neptune ISA is designated as Substitute Original Service Agreement No. 1303. PJM states that the only difference between the two ISAs is that in the latter, the phrase "except as otherwise permitted in appended subpart E" is deleted from section 16.0.

⁴ The Neptune CSA is designated as Original Service Agreement No. 1304.

with section 2.6.2.2 of the Technical Specifications referenced in Schedules E and L of the Neptune ISA and Neptune CSA respectively.⁵ PJM states that Jersey Central's objection to this section is that it does not absolve Jersey Central from possible liability associated with future telephonic interference that could be attributable to the Neptune project. PJM has therefore filed these agreements as unexecuted, *i.e.*, without Jersey Central's signature, as permitted by its tariff.

8. PJM states that, at Neptune's request, it is requesting Commission action no later than June 24, 2005 in order for Neptune to close financing of the Neptune project by the end of June 2005; Commission action is necessary to facilitate the beginning of construction this summer. PJM further elaborates that the Long Island Power Authority is relying on the Neptune project to meet its summer 2007 peak season requirements, and two years is required for construction.

Notice of Filings and Responsive Pleadings

9. Notice of the filing in Docket No. ER05-1010-000 was published in the *Federal Register*, 70 Fed. Reg. 32,316 (2005), with protests or interventions due on or before June 3, 2005. Notice of the filing in Docket No. ER05-1010-001 was published in the *Federal Register*, 70 Fed. Reg. 32,768 (2005), with protests or interventions due on or before June 3, 2005.

10. On June 3, 2005, Neptune intervened in support of PJM's filing. Neptune urges the Commission to accept the Neptune ISA and the Neptune CSA for filing, making them effective as soon as possible in order to close on financing before the end of June 2005. Neptune explains that the agreements are the product of extensive negotiations among the parties and that close of financing is necessary in order to begin construction this summer.

11. Also on June 3, 2005, Jersey Central, Metropolitan Edison Company and Pennsylvania Electric Company (collective, FirstEnergy Companies) and Gerdau Ameristeel Corporation (Gerdau) filed motions to intervene and protests. On June 6, 2005, Public Service Electric and Gas Company (PSE&G) filed a motion to intervene out-of-time and protest. Protesters argue that the Commission should reject PJM's filing, or, in the alternative, set the filing for hearing or other procedures in order to provide the parties with an opportunity to address their concerns.

12. Protesters generally express concern over reliability, operating, cost allocation and liability issues associated the Neptune project. Protesters are particularly

⁵ PJM provided the Technical Specifications for informational purposes. It states that the specifications will be posted on its internet site. PJM did not file, and does not request that the Commission approve, the specifications.

concerned about who will be responsible for the network upgrade costs above those attributable to Neptune under the agreements. FirstEnergy Companies and PSE&G state that, in the Neptune Order, the Commission indicated that Neptune is responsible for only a small portion of the total costs of the network upgrades associated with the Neptune project.⁶ Protesters contend that, while the Neptune ISA and the Neptune CSA reflect the Commission's ruling, PJM has identified over \$26.3 million in network upgrades associated with the Neptune project. PSE&G argues that PJM seems to presume that Neptune is a firm transmission customer that has already requested firm transmission service, and, as such, Neptune will not be allocated any further network upgrade costs. Protesters therefore argue that the costs of such network upgrades should be allocated to Neptune since Neptune is responsible for them. Gerdau elaborates that any other holding would be contrary to Commission precedent that existing customers should not subsidize new merchant transmission facilities since New Jersey ratepayers would be "left holding the bag" for the costs associated with the Neptune project.

13. FirstEnergy Companies argue that future telephone interference as a result of the operation of the Neptune project is very likely to occur since the Neptune converter terminal is located in a highly populated area. FirstEnergy Companies contend that section 2.6.2.2 of the Technical Specifications appears to hold Neptune not liable yet holds Jersey Central solely liable for all future telephone interference mitigation costs. FirstEnergy Companies request that the Commission modify section 2.6.2.2.4 of the Technical Specifications to establish that Jersey Central would not be liable for such future costs as Jersey Central has no control over the cause of the interference.

14. Neptune and PJM filed answers in response to FirstEnergy Companies', Gerdau's and PSE&G's protests.

Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Given the early stage of this proceeding, the absence of any undue prejudice or delay, and its interest in this proceeding, we grant PSE&G's untimely, unopposed motion to intervene.

⁶ See Neptune Order at P 31.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 384.213(a)(2) (2004), prohibits an answer to protests unless otherwise ordered by the decisional authority. We are not persuaded to accept Neptune's and PJM's answers and will, therefore, reject them.

B. Commission Conclusion

17. Protestors raise concerns about the allocation of network upgrade costs. As these concerns are pending before the Commission on rehearing of the Neptune Order, we will not address them in this proceeding. Further, since PJM filed the agreements in compliance with our directives in the Neptune Order, the protests are an impermissible collateral attack on the Neptune Order.

18. In its protest, FirstEnergy Companies have requested that the Commission modify section 2.6.2.2.4 of the Technical Specifications to ensure that Jersey Central would not be liable for future costs, where Jersey Central has no control over the cause of the costs. It would, however, be premature to address the substance of the Technical Specifications as they have not been filed with the Commission.⁷ We will, therefore, dismiss FirstEnergy Companies' protest, without prejudice, with regard to the modification of the Technical Specifications. FirstEnergy Companies is free to reargue its contention when such a Federal Power Act section 205 filing has been made.

19. Finally, the Attachment Facilities Charge of \$2,615,000, and the Network Upgrades Charge of \$6,509,401 include a return of 9.75 percent. The filing does not explain the basis for the return. Further, since Neptune is responsible for costs associated with the Neptune ISA, and the costs must be paid *in advance*, based on quarterly estimates of scheduled expenditures, it is unclear why a return is necessary. Within 15 days of this order, Jersey Central may either file a compliance filing to explain the rationale for the return or PJM must file a compliance filing to delete such costs.

⁷ Although the Commission may require the filing of particular contracts or practices such as technical bulletins and manuals, that affect or relate to jurisdictional rates and services, it also may exercise its discretion to allow utilities to forego the filing of such contracts or practices. See, e.g., *Resale Power Group of Iowa, Inc. v. IES Utilities, Inc.*, 85 FERC ¶ 61,424 at 62,599 (1998); *Public Service Co. of Colorado*, 67 FERC ¶ 61,371 at 62,267 (1994). In this instance, the relevant portions of the Technical Specifications, including section 2.6.2.2.4, should therefore be filed with the Commission.

C. Waiver of Prior Notice Requirement

20. PJM requests waiver of the Commission's 60-day prior notice requirement⁸ to allow an effective date of May 20, 2005, the date the parties executed the Neptune ISA and the Neptune CSA. Because the agreements are being filed within thirty days of their requested effective date,⁹ we will grant waiver of the 60-day prior notice requirement to permit the Neptune ISA and the Neptune CSA to become effective on May 20, 2005, as requested.

The Commission orders:

(A) The amended Neptune ISA, designated as Substitute Original Service Agreement No. 1303, is hereby accepted for filing, subject to a compliance filing being made to justify the 9.75 percent return or to delete the costs, as discussed in the body of this order.

(B) The original Neptune ISA, designated as Original Service Agreement No. 1303, is hereby dismissed as moot.

(C) The Neptune CSA, designated as Original Service Agreement No. 1304, is hereby accepted for filing.

(D) Waiver of the 60-day prior notice requirement to permit the Neptune ISA and the Neptune CSA to become effective on May 20, 2005 is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

⁸ See 18 C.F.R. § 35.3 (2004).

⁹ *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,983-84, *order on reh'g*, 65 FERC ¶ 61,081 (1993).