UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

PJM Interconnection, L.L.C. Docket Nos. ER06-1336-000
ER06-1336-001

ORDER ACCEPTING INTERCONNECTION AGREEMENT, SUBJECT TO OUTCOME OF RELATED PROCEEDINGS

(Issued November 6, 2006)

1. On August 4, 2006, as amended on September 7, 2006, PJM Interconnection, L.L.C. (PJM) filed an unexecuted three-party interconnection service agreement (Three-Party Agreement) among PJM as Transmission Provider, Indeck-Elwood, L.L.C. (Elwood) as Interconnection Customer, and Commonwealth Edison Company (ComEd) as Transmission Owner. The Three-Party Agreement is a nonconforming agreement that provides the terms under which Elwood's coal-fired power plant would be interconnected with the PJM transmission system as a Capacity Resource.[1] The Three-Party Agreement would supersede the existing interconnection agreement between ComEd and Elwood (Two-Party Agreement). In this order, we accept for filing the proposed Three-Party Agreement, subject to the outcome of related proceedings, and deny the protest of Elwood that the Three-Party Agreement is invalid in light of the existing Two-Party Agreement.

Background

A. Initial Two-Party Interconnection Agreement

2. On April 30, 2004, prior to the integration of ComEd into PJM,[2] ComEd filed an executed two-party nonconforming Interconnection Service Agreement[3] (Two-Party

[1] See section 36.1.1 of the PJM Tariff. Capacity Resource status is based on providing sufficient transmission capability to ensure deliverability of generator output to the aggregate PJM Network Load and to satisfy various contingency criteria established by the Applicable Regional Reliability Council in which the generator is located.

[2] ComEd became an integrated transmission-owning member of PJM effective May 1, 2004.

Agreement) between ComEd and Elwood under the PJM Open Access Transmission Tariff (OATT). The Two-Party Agreement is based on ComEd's standard Large Generator Interconnection Agreement (LGIA) with several modifications to accommodate the integration of ComEd with PJM. Both the process and the agreement itself indicate that the parties recognized the upcoming membership of ComEd in PJM and the applicability of the PJM tariff provisions. The Two-Party Agreement is filed under the PJM OATT, requests an effective date to coincide with the date ComEd joined PJM and cancelled its own OATT. It includes section 9.11 entitled RTO, which addresses the transfer of title or control of ComEd's transmission system to an RTO.

3. On June 18, 2004, in response to submission of the Two-Party Agreement, the Commission sent a deficiency letter questioning why the agreement was between two parties and not three, why the filing was made by ComEd, and why the LGIA was the basis for the agreement.[4] In response, ComEd explained that the Two-Party Agreement was negotiated prior to the effectiveness of Order No. 2003[5] while ComEd was an independent transmission provider, but executed after Order No. 2003 went into effect as ComEd transitioned into PJM's transmission system. ComEd further stated that the Two-Party Agreement fully met the underlying goals of Order No. 2003 in that it "fully defined the relationship among the parties" and protected the parties to the same extent as if PJM were included as a party. ComEd, quoting Order No. 2003-A, asserted that requiring the inclusion of PJM would defeat the idea of "one-stop shopping" by "raising the specter of future additional negotiations with PJM to secure its signature on the agreements." On September 16, 2004, the Commission accepted the filing by delegated letter order.[6]

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[3] Original Service Agreement No. C1036 under PJM Interconnection, L.L.C., FERC Electric Tariff, Sixth Revised Volume No. 1.

[4] *Commonwealth Edison Co.*, Docket Nos. ER04-801-000 and ER04-790-000 (June 18, 2004) (Deficiency Letter).

[5] *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, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005).

[6] *Commonwealth Edison Co.*, Docket Nos. ER04-801-000 and ER04-790-000 (September 16, 2004) (unpublished letter order). (September 16 Letter Order).

4. The Two-Party Agreement is nonconforming in part because of its inclusion of section 4.1, section 9.11, and section 11.4. These sections form the basis for the current dispute.

5. Section 4.1 of the Two-Party Agreement states in relevant part, "Interconnection Customer has selected the Energy Resource Interconnection Service. Notwithstanding Interconnection Customer's current selection, nothing in this Agreement shall prohibit Interconnection Customer from becoming a Network Resource, subject to satisfying the relevant requirements of the then applicable tariff."

6. Section 9.11 states in relevant part,

> Interconnection Customer will comply with all practices, methods, policies, procedures, guidelines, criteria, tariffs and other requirements of any [Regional Transmission Organization] RTO with respect to the construction, installation, maintenance and operation of the Generating Facility and the Interconnection Customer's Interconnection Facilities, delivery of Energy from the generating facility and access to and use of the Transmission Provider's System. If during the term of this Agreement Transmission Provider transfers title or control of its Transmission System (whether by lease, operating agreement, transfer of title or otherwise) to an RTO, the terms and conditions provided hereunder for interconnection with the Transmission Provider's Transmission System shall be superseded by interconnection provisions required by the RTO to the extent that any such provision required by the RTO deals with the same or similar subject matter as any term or condition of this Agreement. . . ."

7. Section 11.4 states in relevant part "Interconnection Customer shall be entitled to a cash repayment equal to the agreed upon amount paid to Transmission Provider and Affected System Operator, if any, for the Network Upgrades. . . to be paid to Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges. . . ."

8. The Two-Party Agreement also includes, in section 30.11, language which specifically gives both parties the right to make a unilateral filing to modify the agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation pursuant to sections 205 or 206 of the Federal Power Act.

B. Submission of the Three-Party Interconnection Agreement

9. On August 4, 2006, as amended on September 7, 2006, PJM filed an unexecuted three-party nonconforming interconnection service agreement among PJM, Elwood and

ComEd, explaining that the Three-Party Agreement is necessary to accommodate Elwood's request for the interconnection of its generating facility to the PJM transmission system to receive capacity interconnection rights. The Three-Party Agreement contains language indicating that it supersedes the Two-Party Agreement.

10. PJM states that, subsequent to ComEd's integration into PJM, it studied Elwood's application to determine its eligibility for capacity interconnection rights and found it undeliverable at 700 MW. According to PJM, this left Elwood with the alternative of completing the PJM interconnection process and executing a three-party agreement with PJM and ComEd. PJM states that Elwood chose to request 600 MW of capacity interconnection rights, which PJM determined to be deliverable given the agreed upon upgrades specified in the Two-Party Agreement. PJM states that it will grant 600 MW of capacity interconnection rights to Elwood upon execution of the Three-Party Agreement. PJM further states that Elwood has the option of remaining under the Two-Party Agreement without receiving capacity interconnection rights.

11. According to the Three-Party Agreement, Elwood will be charged $1,177,102 in network upgrade charges that PJM has determined to be necessary to facilitate Elwood's transmission service. The Three-Party Agreement differs significantly from the Two-Party Agreement in the following provisions: 1) it does not provide for transmission credits as the Two-Party Agreement did but instead provides auction revenue rights; and 2) it requires security for the entire project be provided on or before the effective date of the Interconnection Service Agreement as opposed to the Two-Party Agreement which requires security in discrete amounts thirty days prior to beginning construction on individual network upgrades.

12. PJM states that the Three-Party Agreement does not completely conform to the PJM OATT. It contains nonconforming language to allow for conveyance of ownership of Interconnection Facilities built by Elwood for ComEd to ComEd prior to the energization process.

13. On September 7, 2006, PJM amended its filing to include revisions to the PJM Tariff relating to small generator and wind generator interconnections that the Commission recently accepted on July 7, 2006, effective August 12, 2005, in Docket Nos. ER06-199-000, ER06-499-000, and ER06-499-001.[7]

14. PJM also requests a waiver of the Commission's 60-day notice requirement to allow the Three-Party Agreement to have an effective date of July 6, 2006.

15. Several other filings with the Commission are relevant to the one at hand. In Docket No. ER06-1177, PJM submitted proposed revisions to the option to build

[7] *PJM Interconnection, L.L.C.* 116 FERC ¶ 61,021 (2006).

provisions, and amounts of security required for upgrades and cost reimbursement in Part IV of its OATT. PJM is requiring that when an interconnection customer elects the option to build, the interconnection customer must either notify the transmission owner and PJM that the election is by mutual agreement or that it is electing the option to build as the result of a disagreement over specific terms and conditions of the Construction Service Agreement. PJM asserts that the proposed changes to its security obligations create greater parity among interconnection customers choosing the option to build. In Docket No. EL06-103, Elwood filed a complaint alleging that PJM's security requirements relating to the interconnection of new generation are unjust, unreasonable, and in violation of Commission policy. These filings are currently pending before the Commission.

Notice of Filing and Responsive Pleadings

16. Notice of PJM's August 4, 2006 filing was published in the *Federal Register* with comments, interventions, and protests due on or before August 25, 2006.[8] Notice of PJM's September 7, 2006 filing was published in the *Federal Register* with comments, interventions, and protests due on or before September 28, 2006.[9] Pursuant to Rule 214, 18 C.F.R § 385.214, all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. On August 25, 2006, Elwood filed a protest. PJM filed an answer to Elwood's protest on September 11, 2006. Elwood responded by filing an answer on September 26, 2006.

17. Elwood protests that the Commission should reject PJM's filing since Elwood has a valid agreement on file with the Commission which was accepted for filing as a service agreement under PJM's OATT and coordinated with PJM's outside counsel. Elwood states the Two-Party Agreement is part of PJM's Tariff and that the Commission should not allow it to be altered unless PJM specifically seeks to replace or modify it and meets the burden of proving that the new tariff is just and reasonable and in the public interest. Elwood asserts that PJM fails to meet this burden in that PJM fails to request that the Two-Party Agreement be amended or cancelled and fails to support the need for the Three-Party Agreement.

18. Elwood states that the primary basis of its protest is section 4.1 and section 9.11 of the Two-Party Agreement and asserts that the plain language of these two provisions whether read separately or together, obligates PJM to interconnect the Elwood facility under the terms of the Two-Party Agreement. Elwood argues that section 4.1 does not

[8] 71 Fed. Reg. 47,197 (August 16, 2006).

[9] 71 Fed. Reg. 54,643 (September 18, 2006).

condition network interconnection upon a new interconnection agreement and had the parties intended such a requirement, they would have specifically included that condition in the agreement. In regards to section 9.11, Elwood states that the agreement to follow any "practices, methods, policies, procedures, guidelines, criteria, tariffs and other requirements" is only in regard to the four specific categories listed in 9.11.[10] Elwood notes that not one of the four categories of provisions to be superseded deals with financial rights, repayment of network upgrade costs, or other standard contract terms found in the Two-Party Agreement; rather, they deal with operationally necessary interconnection provisions designed to ensure the safe and reliable operation of the PJM Transmission System. Thus, Elwood argues that PJM ignores the plain language of its existing rate schedule by seeking to require Elwood to accept a completely new and materially different interconnection agreement.

19. Elwood further argues that it has justifiably relied on the terms of its Two-Party Agreement to make many financial and other business decisions relating to the construction of its $1.2 billion generating facility. Importantly, Elwood argues, if it is not permitted to keep the terms of the Two-Party Agreement, it will likely be forced to drop out of the interconnection queue and begin the interconnection process for the third time. Elwood explains that it has already spent over $3.5 million on the early stages of project development and, since it has not financed the plant, it does not have the resources to immediately post another $10 million in cash or cash equivalent security as would be required by the new interconnection agreement.[11] By contrast, the Two-Party Agreement requires Elwood to provide security in discrete amounts 30 days prior to construction of individual Network Upgrades and provides that Elwood receive Transmission Credits for those Network Upgrade Costs.[12]

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[10] The four categories listed in Article 9.11 of the PJM Tariff are: 1) Construction, installation, maintenance and operation of the Generating Facility; 2) the construction, installation, maintenance and operation of the Interconnection Customer's Interconnection Facilities; 3) the delivery of energy from the Generating Facility; and 4) the access to and use of the PJM's Transmission System.

[11] Elwood states that it has requested to proceed under the option to build in order to reduce the security required by PJM to a more manageable level. Elwood states that even under the option to build, the new interconnection agreement would require security in the amount of $1.2 million.

[12] Elwood clarifies that the security and crediting provisions of the Two-Party Agreement are identical to those found in the *pro forma* LGIA. The new interconnection agreement, however, only provides Elwood with auction revenue rights instead of transmission credits and would subject Elwood to PJM's security requirements.

20. Lastly, Elwood states that PJM is essentially modifying the Two-Party Agreement when it seeks to replace it with a new interconnection agreement. Elwood argues that despite determining that Elwood's output at the 600 MW level is deliverable, PJM insists on treating the Elwood facility as if it were a new interconnection customer applying for interconnection for the first time. Elwood argues that the deliverability test for interconnection customers who already have executed interconnection agreements can serve as a high entry barrier for new market participants. Elwood explains that this practice deprives interconnection customers of any contract and regulatory certainty by creating a near endless loop of studies and restudies. Elwood states that PJM does not justify the Three-Party Agreement as necessary to ensure reliability or grid stability. Had PJM done so, Elwood states that it would not have objected to the filing. Elwood urges the Commission to require PJM to make an appropriate filing bearing the burden of proving that a new tariff is just and reasonable and in the public interest.

21. Elwood does not oppose PJM's request for waiver of the Commission's 60-day notice requirement to allow an effective date of July 6, 2006, should the Commission accept the Three-Party Agreement for filing.

22. In its answer, PJM states that it is not amending the prior agreement but rather that this filing is a new interconnection service agreement filed in order to facilitate Elwood's interconnection to the PJM network as a Capacity Resource.

23. PJM argues that Elwood's arguments are without merit and have no legal basis. Elwood's arguments, as understood by PJM, appear to assume that the designation of Elwood's Two-Party Agreement under the PJM Tariff indicates that PJM should be held liable for the negotiation, administration and enforcement of the agreement. PJM argues that the assumption is a mischaracterization of the Two-Party Agreement as a service agreement under the PJM Tariff and misapplies the filed rate doctrine. PJM explains that upon ComEd's integration with PJM, ComEd refiled the Two-Party Agreement under the PJM Tariff, so it would be correctly listed under PJM's Tariff in accordance with Order No. 614.[13]

24. PJM states that, contrary to Elwood's assertion, it did not agree to the provisions in Articles 4.1 or 9.11 or any other provisions of the Two-Party Agreement by allowing, without objection, the Two-Party Agreement to be filed as a service agreement under the PJM Tariff. Additionally, PJM asserts that designating an interconnection agreement as a service agreement under the PJM Tariff does not make PJM liable with regard to the agreement; nor does it alter the rights and responsibilities of ComEd and Elwood under the contract. PJM states it is not required to abide by the precise terms of the Two-Party

[13] *Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 Fed. Reg. 18,221 (April 7, 2000) FERC Stats. & Regs. Regulations Preambles ¶ 31,096 (2000).

Agreement, including repayment of funds advanced for construction of network upgrades, security provisions, and all other contractual provisions not specifically superseded pursuant to Article 4.1 and Article 9.11.

25. PJM states that it properly required Elwood to go through the PJM interconnection process to receive capacity interconnection rights based on a determination of deliverability. PJM states that because Elwood initially elected Energy Resource status and now wishes to change to Capacity Resource, the PJM Tariff requires that it go through the PJM interconnection process, be studied, and enter into a new interconnection service agreement that specifies its capacity interconnection rights. PJM states that once Elwood submitted an interconnection request specifying that it desired to connect as a 600 MW Capacity Resource, PJM studied the Elwood facility for deliverability based on 600 MW rather than the 700 MW initially requested and found the Elwood facility to be deliverable based on the network upgrades agreed to in the Two-Party Agreement.

26. PJM asserts that under the PJM Tariff, PJM has the authority to conduct deliverability tests and to condition the grant of capacity interconnection rights on a resource being deliverable. PJM concludes that the proposed Three-Party Agreement supports the Elwood facilities interconnection as a Capacity Resource under the terms and conditions of the PJM Tariff and should not be considered an amendment to the Two-Party Agreement.

27. Lastly, PJM contradicts Elwood's interpretation of the plain language of the Two-Party Agreement. PJM cites the language of Article 4.1, "subject to satisfying the relevant requirements of the then applicable tariff," and the language of Article 9.11, "the terms and conditions provided hereunder. . . shall be superseded by interconnection provisions required by the RTO to the extent that any such provisions required by the RTO deals with the same or similar subject matter as any term or condition of this Agreement." PJM argues that this language supports rather than negates the necessity to follow the PJM interconnection process and enter into a three-party interconnection service agreement to receive capacity interconnection rights. Article 4.1 therefore was superseded by PJM's interconnection procedures in its tariff, and thus a new interconnection service agreement that specifies the capacity interconnection rights of Elwood's proposed generating facility is necessary.

Procedural Matters

28. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[14] the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

[14] 18 C.F.R. § 385.214 (2006).

29. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[15] prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PJM's answer and Elwood's response because they have provided information that has assisted us in our decision making process.

Discussion

30. The Commission finds the proposed Three-Party Agreement to be in accordance with the expressed terms of the PJM OATT and necessary as a result of Elwood's request to become a Capacity Resource. Order No. 2003 specifies the Commission's requirement for RTO-related interconnection agreements to be three-party agreements between the transmission owner, transmission provider and the interconnection customer. We further find the nonconforming Three-Party Agreement to be just, reasonable, not unduly discriminatory or preferential, and not otherwise unlawful. Accordingly, the Commission will grant waiver of our prior notice requirements[16] and accept the filing effective July 6, 2006, as requested.

31. Elwood requests that the Commission reject PJM's filing since Elwood has a valid agreement on file with the Commission. Elwood argues that since the Commission accepted the Two-Party Agreement in the September 16 Letter Order, the filing was accepted under PJM's rate schedule and is part of the currently effective tariff.

32. The provisions of Order No. 2003 and the PJM OATT are applicable to any new interconnection request to a Transmission Provider's transmission system and includes those requests submitted after the effective date of the Final Rule.[17] This includes requests to increase the capacity of, or modifying the operating characteristics of, an existing Generating Facility that is interconnected with the Transmission Provider's transmission system.

33. We do not find, as urged by Elwood, that PJM is bound to adhere to the Two-Party Agreement with respect to Elwood's request to become a Capacity Resource. Section 4.1 of the Two-Party Agreement states that Elwood "has selected the Energy Resource Interconnection Service." It then states: "Notwithstanding Interconnection Customer's current selection, nothing in this Agreement shall prohibit Interconnection Customer from becoming a Network Resource, subject to satisfying the relevant requirements of the then applicable tariff." The Two-Party Agreement, therefore, did not establish a

[15] 18 C.F.R. § 385.213 (a)(2) (2006).

[16] See Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 64 FERC ¶ 61,139 at 61,984, *reh'g denied*, 65 FERC ¶ 61,081 (1993).

[17] Order No. 2003 at P 4.

contractual commitment from ComEd, or from PJM, to make Elwood a Capacity Resource. Elwood merely reserved its right to request such a status pursuant to "the relevant requirements of the then applicable tariff." Elwood sought status as a Capacity Resource after ComEd's integration into PJM, so that the "then applicable tariff" is PJM's tariff. The requirements to be a Capacity Resource are therefore established by PJM's tariff, including the requirement to comply with PJM's tariff and sign a three-party agreement.

34. Elwood argues that the term "relevant requirements" means only those necessary to ensure safe and reliable operation of the transmission system, based on the terms used in section 9.11 of the Two-Party Agreement: "Interconnection Customer will comply with all practices, methods, policies, procedures, guidelines, criteria, tariffs and other requirements of any RTO with respect to the construction, installation, maintenance and operation of the Generating Facility and the Interconnection Customer's Interconnection Facilities, delivery of Energy from the Generating Facility and access to and use of the Transmission Provider's System."

35. Section 4.1 of the Two-Party Agreement, however, does not limit the definition of the term "relevant requirements" to any particular elements, particularly to the provisions of section 9.11. Article 4 deals with the "Scope of Service."[18] Article 9 of the agreement, on the other hand, deals with "Operations,"[19] and applies in this contract to operations for interconnection as an Energy Resource, which is the service Elwood selected. Since Article 9 deals with a different subject matter than Article 4, any limitations on the definition of "relevant requirements" in Article 9 would not serve to limit the scope of "relevant requirements" in Article 4. In context, the term "relevant requirements of the then applicable tariff" in Article 4 refers to all the terms of the PJM tariff dealing with a request to become a Capacity Resource, including the need to execute a three-party agreement.

36. Moreover, the terms of section 9.11 are not limited to tariff provisions dealing with the safe and reliable operation of the transmission system, as Elwood alleges. The provision applies to "practices, methods, policies, procedures, guidelines, criteria, tariffs and other requirements of any RTO with respect to the … delivery of Energy from the

[18] PJM Interconnection, L.L.C., FERC Electric Tariff, Sixth Revised Volume No. 1, Original Service Agreement No. C1036, Original Sheet No. 14.

[19] PJM Interconnection, L.L.C., FERC Electric Tariff, Sixth Revised Volume No. 1, Original Service Agreement No. C1036, Original Sheet No. 38.

Generating Facility and access to and use of the Transmission Provider's System." As the Commission has previously found, this provision extends to the cost responsibility provisions of the Interconnection Agreement.[20]

37. In addition, at the time the parties negotiated the Two-Party Agreement, it was known to all the parties that ComEd would be integrating into PJM. Section 9.11, therefore, continued by stating that any interconnection provisions of the agreement would be superseded by those of the RTO:

> If during the term of this Agreement Transmission Provider transfers title or control of its Transmission System (whether by lease, operating agreement, transfer of title or otherwise) to an RTO, the terms and conditions provided hereunder for interconnection with the Transmission Provider's Transmission System shall be superseded by interconnection provisions required by the RTO to the extent that any such provision required by the RTO deals with the same or similar subject matter as any term or condition of this Agreement. (emphasis added).

The question of whether Elwood qualifies to interconnect as a Capacity Resource, and the terms applicable to such status, therefore, must be determined by reference to PJM's tariff.

38. Elwood's final argument was that it had a strong reliance interest in the Two-Party Agreement. However, the Two-Party Agreement in section 30.11 allows for modification of the agreement under the just and reasonable standard. Elwood asserts that in making an application to change the agreement, PJM must prove that the superseding Three-Party Agreement is just and reasonable. PJM maintains that this is a new agreement rather than a modification of the existing agreement.

39. As discussed above, the Commission finds that a new Three-Party Agreement is needed for Elwood's proposed generating facility to become a Capacity Resource. Elwood's request for its proposed generating facility to become a Capacity Resource is beyond the scope of the original Two-Party Agreement. However, even if the Commission were to consider the Three-Party Agreement to be a modification of the Two-Party Agreement, we find that such a modification is just and reasonable. The Commission found the language in the Three-Party Agreement to be just and reasonable at the time we accepted PJM's tariff filing. Therefore, modifications to the Two-Party Agreement to implement such provisions are just and reasonable. Elwood cannot base a reliance argument on a contract, when at the time it executed the agreement, it knew that

[20] *Commonwealth Edison Co.*, 107 FERC ¶ 61,084, at 61,267 (2004).

ComEd would likely be joining PJM. The contract provided in various places for the terms of the RTO tariff to apply, and the agreement permitted modification of the contract under the just and reasonable standard of review.

40. Under standard contract interpretation the contract must be read as a whole, with meaning given to every provision.[21] As a whole, the Two-Party Agreement embodies the conditions under which Elwood would interconnect with the PJM transmission system as an Energy Resource and it states in plain language that if Elwood should choose to become a Capacity Resource, it would become one, subject to PJM's then current tariff.

41. Some of Elwood's concerns, including its claim of priority with respect to the security requirements and crediting provisions are at issue in Elwood's complaint and protest in Docket Nos. EL06-103-000 and ER06-1177-000. Insofar as the proposed Three-Party Agreement reflects the provisions in PJM's OATT and *pro forma* LGIA, we will accept the agreement here, subject to the outcome of these dockets.

42. Accordingly, the Commission finds the nonconforming Three-Party Agreement[22] to be just, reasonable, not unduly discriminatory or preferential, and not otherwise unlawful. We will waive our prior notice requirements[23] and accept the filing effective July 6, 2006, as requested.[24]

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[21] *See Southern Co. Services v. FERC*, 353 F.3d 29 (D.C. Cir. 2003) (*citing KiSKA Construction Corp. v. Washington Metro. Area Transit Auth*., 355 U.S. App. D.C. 206, 321 F.3d 1151, 1163 (D.C. Cir. 2003), *cert. denied* 157 L.Ed. 2d 252, 124 S.Ct. 226 (2003)).

[22] The Three-Party Agreement contains a provision that is not found in PJM's *pro forma* agreement dealing with conveyance of ownership of Interconnection Facilities built by Elwood for ComEd to ComEd prior to the energization process. None of the parties object to this provision and the Commission finds it to be just and reasonable.

[23] See Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 64 FERC ¶ 61,139 at 61,984, *reh'g denied*, 65 FERC ¶ 61,081 (1993).

[24] Original Service Agreement No. 1531 under PJM Interconnection, L.L.C., FERC Electric Tariff, Sixth Revised Volume No. 1.

The Commission orders:

The proposed Three-Party Agreement is hereby accepted, as discussed in the body of this order, effective July 6, 2006, as requested, subject to the outcome of the proceedings in Docket Nos. EL06-103-000 and ER06-1177-000.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.