UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

FirstEnergy Solutions Corp.	:	
Allegheny Energy Supply Company, L.L.C.,	:	
Complainants	:	**Docket No. EL13-47-000**
v.	:	
PJM Interconnection, L.L.C.	:	
Respondent	:	

PROTEST OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pursuant to Rule 385.211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure,[1] the Pennsylvania Public Utility Commission (PAPUC)[2] hereby submits the following Protest to the Complaint and Request for Fast Track Processing filed by FirstEnergy Solutions Corp. and Allegheny Energy Supply Company, LLC (collectively, FirstEnergy) against PJM Interconnection, L.L.C. (PJM). FirstEnergy seeks to modify provisions of PJM's Open Access Transmission Tariff (Tariff) and Operating Agreement to ensure that entities holding Financial Transmission Rights (FTR) within the PJM footprint are adequately compensated. The PAPUC files this protest because it objects to FirstEnergy's request for fast track processing and instead requests that FERC refer the issue to an Administrative Law Judge (ALJ) for settlement discussions.

[1] 18 C.F.R. § 385.211 (2012).

[2] On February 19, 2013, FERC issued a Notice setting March 7, 2013 as the deadline for Comments. The PAPUC filed a doc-less motion to intervene in this matter on March 7, 2013. On the same date, FERC issued a Notice extending the deadline for Comments in this matter to March 18, 2013.

I. BACKGROUND

FTRs are financial rights that permit market participants to transmit electricity through the PJM operated transmission system and, if fully funded, will offset Transmission Congestion Charges imposed by PJM on that transmission service to reflect congestion in the portion of the transmission system through which the transmission occurs. Transmission Congestion Charges reflect differing Locational Marginal Prices at the initiation point (source) and the destination point (sink) of an electricity transmission movement, normally from generation to a distribution system in the locality where the electricity will be used.

For some time, FirstEnergy has taken the position that entities holding FTRs in the PJM territory are not receiving the compensation to which they are entitled. On December 28, 2011, FirstEnergy filed a complaint with FERC alleging as much at Docket No. EL12-19. FERC dismissed the complaint without prejudice because of the absence of sufficient evidence as to the root cause of the FTR underfunding.[3] FERC stated that given PJM's commitment to develop a comprehensive report detailing the circumstances resulting in the FTR underfunding for stakeholder review and discussion, it would be premature to rule on the issue.

In April 2012, PJM issued a report on FTR underfunding (2012 FTR Report) finding that the FTR revenue shortfall is caused by certain real-time events, including the increase in the amount of congestion along PJM borders and unexpected transmission

[3] *See First Energy Solutions Corp. and Allegheny Energy Supply Co. v. PJM Interconnection. LLC*, 138 FERC ¶ 61,158 (2012).

outages. On rehearing at FERC, FirstEnergy referenced the finding in the 2012 FTR Report that FTR holders themselves are not the root cause of the current FTR underfunding. However, FERC denied rehearing, finding that PJM stakeholders should first be given an opportunity to address and resolve the FTR underfunding issues.[4] Thereafter, PJM initiated a stakeholder process to address the findings in the 2012 FTR Report. Unfortunately, despite extensive debate and discussion, PJM stakeholders have been unable to reach a consensus on this issue.

II. COMPLAINT

FirstEnergy filed the above-referenced Complaint on February 15, 2013. In the Complaint, FirstEnergy argues that, since March 2010, PJM has reported that funds collected from market participants to fund FTRs have been insufficient to fully fund these instruments. The Complaint further alleges that this underfunding prevents FirstEnergy and other FTR holders from achieving their market objective of obtaining full compensation for PJM-assessed Transmission Congestion Charges.

Specifically, FirstEnergy alleges that for the 2010/2011 planning period, the FTR revenue inadequacy amounted to $254.3 million across the entire PJM system. In the 2011/2012 planning period, FirstEnergy calculated the FTR revenue inadequacy to be $192.0 million. For the first seven months of the 2013/2013 planning period, FirstEnergy calculated the FTR revenue deficiency as approximately $109 million. FirstEnergy

[4] *See First Energy Solutions Corp. and Allegheny Energy Supply Co. v. PJM Interconnection. LLC*,, 140 FERC ¶ 61,051 (2012).

contends that, unless the PJM Tariff is changed, FTR revenue inadequacy will continue into the future.[5]

FirstEnergy requests that FERC remedy this issue by requiring PJM to amend its Tariff so that FTR holders are no longer responsible for funding real-time, or balancing, congestion. FirstEnergy explains that because FTR holders neither cause nor benefit from real-time congestion, it is unjust, unreasonable and unduly discriminatory for FTR holders to be responsible for these costs. FirstEnergy contends that the recovery of transmission congestion charges from FTR holders should be restricted to those congestion charges modeled in the Day Ahead Market using PJM's Annual ARR/FTR Feasibility Analysis Model.

FirstEnergy alleges that this Tariff modification, if accepted, would largely eliminate FTR underfunding and thus resolve the concerns with uncertainty of transmission charges adversely affecting PJM supply markets.

With respect to the real-time congestion costs that PJM removes from the FTR funding process, FirstEnergy argues these costs should be imposed *pro rata* upon all transmission users. This would result in any prospective FTR revenue underfunding being paid by all retail customers of the PJM transmission system.[6] FirstEnergy requests that its modifications to how transmission congestion charges are calculated be in place for the next annual planning period, which begins June 1, 2013, and extends to May 31, 2014.

[5] FirstEnergy Complaint, at 10-11.
[6] FirstEnergy Complaint at 26.

On March 7, 2013, PJM filed an answer to FirstEnergy's Complaint. In its answer, PJM states that it shares FirstEnergy's concerns about the growing incidence of FTR underfunding. PJM further states that FirstEnergy's proposal seeking to exclude real-time congestion costs from the FTR revenue calculus represents a positive market design refinement that more logically and fairly addresses responsibility for costs caused by unforeseen, real-time balancing congestion charges. However, PJM has not filed to amend its Tariff accordingly because the PJM Board was hopeful that the stakeholder discussions would resolve the question.

III. PROTEST

Given the complexity of this matter and the potential magnitude of the market costs involved, the PAPUC opposes FirstEnergy's request for fast track processing of its Complaint and requests that this matter be handled either through an evidentiary proceeding or the FERC settlement process. The issue of FTR revenue underfunding is a complex problem with several potential causes and no clear solutions. The annual recurrence of significant FTR revenue deficiencies since 2010 highlights an issue that must be thoughtfully considered in a process where all interested parties can meaningfully participate, identify the potential causes, examine alternatives and arrive at a solution. Such a solution cannot be reached under FirstEnergy's requested "fast track" approach. The PAPUC is concerned that a quick review of this issue could result in a solution that resolves the immediate underfunding issue but does not address the root cause of the underfunding, which is real-time congestion.

Moreover, FirstEnergy's suggestion that future FTR revenue deficiencies be allocated to all transmission customers, including non-FTR holders, on a *pro rata* basis, creates the potential for PJM retail customers to be responsible for FTR revenue deficiencies when these customers had absolutely no role in the design and functioning of the FTR mechanism. This is especially troublesome given that PJM has not engaged in any attempt to resolve the underlying operational reason for the FTR underfunding. This, together with the fact that, according to PJM's 2012 State of the Market Report, approximately 60% of the FTRs in PJM are held by financial entities, as opposed to entities engaged in physical transactions, is cause for concern.[7]

The PAPUC asserts that the time is ripe for FERC to entertain FirstEnergy's Complaint and to thoughtfully examine this matter, preferably in the context of an ALJ-supervised settlement process. This procedural vehicle has several advantages over the PJM stakeholder process, including the opportunity for non-traditional parties to the FTR process (such as State commissions, consumer advocates, and FERC Staff) to participate in the analysis and resolution of the complex issues that gave rise to FTR revenue underfunding. This participation is especially critical insofar as FirstEnergy's suggested solution is to assess future FTR revenue deficiencies to all transmission customers in the PJM region on a *pro rata* basis.

[7] *See* IMM's 2012 *State of the Market Report*- January 1 to September 30 Quarterly Report at 238-239.

WHEREFORE, for all the foregoing reasons, the PAPUC respectfully requests that FERC consider its Protest in this proceeding, deny FirstEnergy's Request for fast track treatment of its Complaint and refer the issue to an ALJ for settlement discussions.

Respectfully submitted,

/s/ James P. Melia
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Dated: March 18, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list via electronic mail compiled by the Secretary in this proceeding.

Dated at Harrisburg PA this 18th day of March, 2013.

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