

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

FirstEnergy Service Company
Pennsylvania Power Company
Metropolitan Edison Company
Pennsylvania Electric Company
Cleveland Electric Illuminating Company
Ohio Edison Company
The Toledo Electric Company

Docket Nos. ER06-1443-000
ER06-1443-001

ORDER ACCEPTING AMENDED MARKET-BASED RATE
TARIFFS AND GRANTING WAIVER OF AFFILIATE SALES PROHIBITION

(Issued October 20, 2006)

1. In this order the Commission accepts the proposal of FirstEnergy Service Company (FirstEnergy) to amend the current market-based rate tariff shared by Pennsylvania Power Company (Penn Power), The Cleveland Electric Illuminating Company (Cleveland Electric), Ohio Edison Company (Ohio Edison), and The Toledo Electric Company (Toledo Electric) (collectively, the FirstEnergy Operating Companies) by removing Penn Power from that tariff, and to amend the current market-based rate tariff of Metropolitan Edison Company (Met-Ed) and Pennsylvania Electric Company (Penelec) (collectively, together with Penn Power, the PA Applicants) by adding Penn Power to it and removing the current restrictions on sales between the PA Applicants.¹

Background

2. On August 31, 2006, as amended on September 20, 2006, FirstEnergy submitted, on behalf of Penn Power, Met-Ed, Penelec, Cleveland Electric, Ohio Edison, and Toledo Electric, two amended market-based rate tariffs for filing under section 205 of the Federal Power Act (FPA). FirstEnergy explains that the purpose of its filing is to move Penn

¹ FirstEnergy is also taking this opportunity to remove from these tariffs the Commission's Market Behavior Rules consistent with the Commission's February 16, 2006 Order Revising Market-Based Rate Tariffs and Authorizations, 114 FERC ¶ 61,165 (2006).

Power from its current market-based rate tariff to the market-based rate tariff of Met-Ed and Penelec and to make additional changes necessary to develop the single shared trading group involving the PA Applicants described below. FirstEnergy notes that the Commission recently reviewed the market-based rate authority of all FirstEnergy affiliates when it accepted the updated market power analysis filed by the FirstEnergy companies.²

3. FirstEnergy states that the PA Applicants are direct or indirect subsidiaries of FirstEnergy Corp., a public utility holding company, and are franchised utilities in the Commonwealth of Pennsylvania. With the exception of the 19 MW York Haven hydro facility owned by Penelec, each of the PA Applicants has divested its generation and neither owns nor operates any generation facilities. FirstEnergy states that the Midwest Independent Transmission System Operator, Inc. provides open access transmission service for Penn Power. PJM Interconnection, LLC provides open access transmission service for Met-Ed and Penelec.

4. Met-Ed and Penelec have a joint market-based rate tariff. That tariff includes a prohibition on certain affiliate sales without first receiving Commission authorization to make such sales pursuant to section 205 of the FPA. First Energy proposes that this tariff be amended to include Penn Power and to remove the current restrictions on sales between the PA Applicants. FirstEnergy also proposes that the joint tariff that Penn Power currently shares with Toledo Electric, Cleveland Electric and Ohio Edison be amended to delete Penn Power. FirstEnergy explains that the purpose of these tariff changes is to facilitate a new joint sales function of the PA Applicants which, among other things, contemplates market-based rate transactions between the PA Applicants.

5. FirstEnergy states that it is in the process of developing a single shared trading group for the regulated commodity supply of its Pennsylvania utilities that will allow the PA Applicants to realize economies of scale and share expertise and capabilities of the traders in their organizations. This group will perform power procurement activities, including competitive solicitations as needed to meet the retail Provider of Last Resort (POLR) obligations and other regulatory obligations of the PA Applicants. Each of the PA Applicants will maintain a separate portfolio or “book” of business to meet their POLR obligations, but they also expect to make limited balancing sales among themselves when it is economic to do so. FirstEnergy states that eliminating the prohibition against affiliate sales between the PA Applicants is necessary to implement their proposed new joint sales function.

² *FirstEnergy Operating Cos.*, 111 FERC ¶ 61,032 (2005) (accepting updated market power analysis filed by FirstEnergy Corporation and its subsidiaries, FirstEnergy Operating Companies (Toledo Electric, Cleveland Electric, Ohio Edison and Penn Power), FirstEnergy Solutions Corporation, FirstEnergy Generation Corporation, Jersey Central Power & Light Company, Met-Ed and Penelec).

Notice of Filing, Interventions, and Protests

6. Notice of FirstEnergy's August 31, 2006 filing was published in the *Federal Register*, 71 Fed Reg. 54,050 (2006), with interventions and protests due on or before September 21, 2006. Notice of FirstEnergy's September 20, 2006 filing was published in the *Federal Register*, 71 Fed Reg. 57,936 (2006), with interventions and protests due on or before October 2, 2006. None was filed.

Discussion

7. We accept FirstEnergy's proposal to remove Penn Power from the joint market-based tariff it shares with Toledo Electric, Cleveland Electric and Ohio Edison and to add Penn Power to the current market-based rate tariff of Met-Ed and Penelec.³ As discussed below, we also accept FirstEnergy's proposal to revise the market-based rate tariff of Met-Ed and Penelec to remove the restriction on affiliate sales among the PA Applicants.

8. The Commission has allowed sales between affiliates pursuant to a market-based rate tariff where there were no captive wholesale or retail customers or where captive customers were adequately protected from affiliate abuse.⁴ In support of its proposal, FirstEnergy states that safeguards of this type are in place for customers of the PA Applicants.

9. FirstEnergy states that retail ratepayers are deemed protected through retail choice, frozen rates, or both. It states that the PA Applicants serve retail customers only in

³ FirstEnergy has proposed that the changes to these tariffs be treated as a cancellation by Penn Power of its current market-based tariff and a filing of an initial tariff by Penn Power. However, FirstEnergy also has proposed that in the alternative the changes be treated as tariff amendments. The Commission's well-settled precedent is that an initial rate is one that provides for a new service to a new customer. *Chehalis Power Generating, L.P.*, 113 FERC ¶ 61,259, at P 10 (2005). That is not the case here, and FirstEnergy's filing therefore is being treated as a filing of two amended tariffs.

⁴ See, e.g., *Consumers Energy Co.*, 94 FERC ¶ 61,180 (2001) (finding there are adequate safeguards including Consumer Energy disallowing revenues for sales to CMS Marketing to be factored into any rate calculations for wholesale customers, existence of retail rate freeze, and phase in of retail choice); *FirstEnergy Corp.*, 94 FERC 61,182, at 61,630 (2001) (finding of adequate safeguards based on FirstEnergy's commitment to hold wholesale customers harmless from changes in cost, a retail rate freeze in Ohio, and caps on retail rates in Pennsylvania); *Exelon Generation Co., L.L.C.*, 93 FERC 61,140, at 61,425 (2000), *reh'g denied*, 95 FERC ¶ 61,309 (2001) (finding there are adequate safeguards including retail access, rate freezes, rate caps, and other mechanisms).

Pennsylvania, which is a retail choice state, and the Commission has found retail choice in Pennsylvania sufficient to protect retail ratepayers.⁵ FirstEnergy also states that wholesale ratepayers are deemed protected if they are served under market-based rates or fixed cost-based rates or are offered an open season.⁶ FirstEnergy states that all wholesale customers of the PA Applicants are served at market-based rates or fixed cost-based rates.

10. Because the PA Applicants do not have captive wholesale or retail customers, the Commission accepts the revisions to the market-based tariff of Met-Ed and Penelec -- which now will include Penn Power -- that remove the prohibition on affiliate sales between the PA Applicants without first receiving Commission authorization pursuant to section 205 of the FPA.

11. The Commission also accepts the FirstEnergy's request to waive the 60-day prior notice requirement and permit the amended tariffs to become effective as of September 1, 2006.⁷

The Commission orders:

The amended market-based rate tariffs submitted by FirstEnergy are hereby accepted for filing, as discussed in the body of this order, to become effective September 1, 2006, as requested.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁵ *Citing Sunbury and Duquesne Power, L.P.*, 108 FERC ¶ 61,160, at P 40 (2004).

⁶ *Citing The Cincinnati Gas & Electric Co.*, Docket No. ER04-288-000 (Jan. 28, 2004) (unpublished letter order).

⁷ The Commission takes no action on FirstEnergy's request that its notice of cancellation become effective as of September 1, 2006, as its filing involves two amended tariffs, not a cancellation of an existing tariff and the filing of an initial tariff.