

123 FERC ¶ 61,103  
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.

PJM Interconnection, L.L.C.

Docket No. EL08-44-000

v.

Accord Energy, LLC  
BJ Energy, LLC  
Franklin Power, LLC  
GLE Trading, LLC  
Ocean Power, LLC  
Pillar Fund, LLC  
Power Edge, LLC  
Tower Research Capital, LLC  
Tower Research Capital  
Investments, LLC

ORDER ON COMPLAINT

(Issued April 30, 2008)

1. On March 7, 2008, PJM Interconnection, L.L.C. (PJM) filed a complaint against Accord Energy LLC, BJ Energy LLC, Franklin Power LLC, GLE Trading LLC, Ocean Power LLC, Pillar Fund LLC, Power Edge LLC (Power Edge), Tower Research Capital LLC, and Tower Research Capital Investments LLC (collectively Tower Companies). PJM contends that the Tower Companies manipulated PJM's Day-ahead energy and Financial Transmission Rights (FTR) markets. As discussed below, the Commission will hold PJM's complaint in abeyance pending completion of an ongoing investigation, pursuant to 18 C.F.R. § 1b.6 (2007), by the Office of Enforcement.

**I. Background**

2. Power Edge and six other affiliated companies within the Tower Companies, are members of PJM and trade in the PJM markets and are controlled by either Tower Research Capital or Tower Research Capital Investment, which acts as the managing

member of each company. One individual conducts all PJM marketing transactions for all seven affiliates.

3. According to PJM, companies that purchase and sell FTRs solely to arbitrage the price differences between the FTR auction and the Day-ahead energy market tend to be financial participants (i.e., speculators). Most financial participants maintain a balanced portfolio of concurrent flow and counterflow FTRs to manage their risk.<sup>1</sup> A net “short” FTR position, i.e., a net counterflow portfolio, is more risky than a balanced portfolio because it is exposed to the volatility of changing congestion without an offset from concurrent flow FTRs. While parties that choose to hold such positions serve a useful purpose by providing additional liquidity to the auction, they undertake above-average market risk. PJM states that, out of the four affiliates that trade in FTRs, Power Edge was the only affiliate with a significant net short position.

4. PJM notes that in a separate proceeding, it proposed changes to its Operating Agreement which would require certain of the Tower Companies’ current revenues associated with FTR positions to be used to offset Power Edge’s default.<sup>2</sup> The Commission rejected PJM’s proposal, noting that the appropriate context in which to examine whether rules had been violated by Power Edge and its affiliates was the non-public investigation of the Tower Companies that had already begun by the Commission’s Office of Enforcement in January 2008.<sup>3</sup>

## II. Complaint

5. PJM contends that Tower Companies has violated the Commission’s market manipulation regulations and manipulated the PJM FTR and Day-ahead markets to distort energy prices and payments to FTR holders. PJM further asserts that after experiencing substantial losses, Tower Companies fraudulently distributed monies out of Power Edge and intentionally withheld cash when Power Edge defaulted on its FTR obligations, thereby causing other PJM members to cover its losses. PJM contends that Tower Companies’ conduct falls into four categories of manipulation: (1) collusion among affiliates to purchase offsetting FTR positions for the gain of one or more affiliates (e.g., BJ Energy), while maintaining a large loss in another affiliate known to be unable to pay its obligations (i.e., Power Edge); (2) virtual bidding in the Day-ahead market to increase congestion to enhance the financial value of one affiliate’s FTRs,

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<sup>1</sup> FTRs are financial commitments that are settled based on prices in the Day-ahead market. A concurrent flow FTR occurs when the source price is lower than its sink price and counterflow FTRs occur when the source price is higher than the sink price.

<sup>2</sup> See PJM Filing, Docket No. ER08-455-000 (Jan. 18, 2008).

<sup>3</sup> *PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,279 P 4, 56 (2008).

while simultaneously enlarging the default of another affiliate's counterflow FTR position, which ultimately adversely impacted other PJM members; (3) distributing funds out of Power Edge when the company was unable to cover its losses from its counterflow FTR positions, which increased its default and the amount that other PJM members would have to pay; and (4) intentionally withholding payment on its counterflow FTR losses to PJM even though it had the cash to make at least part of the payments.

6. PJM requests that the Commission investigate Tower Companies, find that Tower Companies manipulated the FTR and Day-ahead energy markets, disgorge Tower Companies' profits, impose civil penalties, and prohibit Tower Companies from participating in the PJM markets. PJM also requests that the Commission hold a public hearing to provide interested parties an opportunity for discovery into Tower Companies' conduct.

### **III. Notice of Filings and Responsive Pleadings**

7. Notice of PJM's filing in Docket No. EL08-44-000 was published in the *Federal Register*, 73 Fed. Reg. 14,242 (2008), with interventions, comments and protests due on or before March 27, 2008. On March 27, 2008, Tower Companies filed an answer. The following parties filed motions to intervene: Morgan Stanley Capitol Group, Consolidated Edison Energy, Inc., ISO New England, Inc., Solios Power LLC, Old Dominion Electric Cooperative, American Electric Power Service Corporation, NRG Companies, American Municipal Power – Ohio, Inc., PHI Holdings, Inc., PSEG Companies, Reliant Energy, Inc., FPL Energy Generators, Praxair, Inc., Gerdau Ameristeel Corporation, Delaware Municipal Electric Corporation, Inc., Citigroup Energy, Inc., Epic Merchant Energy, LP, SESCO Enterprises, LLC, North Carolina Electric Membership Corporation, Borough of Chambersburg, Pennsylvania, BP Energy Company, Mirant Energy Trading, LLC, Dynegy Power Marketing, Inc., New England Power Pool Participants Committee, Pennsylvania Office of Consumer Advocate, DC Energy, LLC, Duke Energy Corporation, American Public Power Association, Dayton Power and Light Company, Constellation Energy Commodities Group, Inc., and Constellation NewEnergy, Inc. MidAmerican Energy Company (MidAmerican), PJM Industrial Customer Coalition, Dominion Resources Services, Inc., Wellsboro Electric Company (Wellsboro Electric), Allegheny Energy Supply Company, DTE Energy Trading, Inc. (DTE Energy), Exelon Corporation (Exelon), FirstEnergy Service Company (First Energy), PPL Parties and Tower Research Capital filed motions to intervene and comments. Illinois Commerce Commission filed a notice of intervention. Pennsylvania Public Utility Commission (Pennsylvania PUC), Allegheny Electric Cooperative (Allegheny), Fund I, LP filed late motions to intervene. FirstEnergy filed an answer.

**A. Tower Companies' Answer**

8. Tower Companies responds and argues that PJM's market manipulation complaint consists of unfounded and unsustainable claims. Tower Companies assert that while BJ Energy's trading was motivated by profit, it did not collude with Power Edge to manipulate PJM's FTR market. Tower Companies assert that the trades that PJM points to occurred after Power Edge defaulted and was no longer trading, therefore, BJ Energy could not have colluded with Power Edge in its trading. Tower Companies also argues that contrary to PJM's claim, BJ Energy's virtual bidding did not constitute market manipulation.

9. Tower Companies contend that PJM's actions and the deficiency of its own credit policies directly contributed to Power Edge's default. Tower Companies argue that PJM violated its own credit policies by allowing Power Edge to acquire Exel's portfolio knowing that it placed Power Edge in a net short position. Power Edge states that PJM then waived additional tariff provisions and allowed Power Edge to pay its FTR invoices from its collateral. Tower Companies assert that PJM also waived its working capital requirements for Power Edge. Power Edge argues that if PJM had followed its own tariff, then Power Edge would have had a clear understanding of the capital requirements necessary in the FTR market and would have liquidated its portfolio prior to defaulting. Power Edge claims that "PJM's complaint is not about manipulation; it is a transparent effort to blame a financial market participant who, while trying to work with PJM, was allowed by PJM to participate in the FTR market without sufficient capital and ultimately was overwhelmed by unanticipated events and forced to default."<sup>4</sup>

10. Tower Companies also argue that PJM has inappropriately seized revenue and collateral from six Tower Companies, two of which do not trade in PJM's FTR market. Tower Companies assert that PJM has publicly stated that it intends to continue holding these funds even though, according to Tower Companies, the Commission has rejected PJM's request to hold Power Edge's affiliates responsible for Power Edge's default.<sup>5</sup>

**B. Comments**

11. Several commenters argue the unfairness of having to be financially responsible for Power Edge's default and request that the Commission fully investigate Tower Companies' participation in PJM's FTR markets. Commenters also request that if the Commission substantiates PJM's claims then the Commission should require Tower Companies to disgorge any unjustly obtained revenues, impose civil penalties, and order

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<sup>4</sup> Tower Companies answer at 9.

<sup>5</sup> In this regard, Tower Companies has filed a complaint against PJM in Docket No. EL08-49-000, which is currently pending before the Commission.

refunds to PJM members. MidAmerican requests that the Commission give priority to any disgorgement remedy over any other penalties to ensure that the PJM market participants are made whole as much as possible. First Energy requests that the Commission set the complaint for hearing so that other PJM market participants, who could be financially responsible for covering Power Edge's losses have, through discovery, an opportunity to participate in fully developing a public record. DTE Energy requests that the Commission direct Tower Companies to pay all outstanding amounts owed PJM for all counterflow FTR positions held by any of its affiliates.

12. Wellsboro Electric argues that there is a strong correlation between the alleged manipulation and sustained congestion charges at the Wellsboro Aggregate in December 2007 and January 2008. As such, Wellsboro Electric requests that the Commission specifically examine the bidding activity of Tower Companies in the East Towanda area and requests compensation for all unreasonable congestion charges incurred by Wellsboro Electric.

13. Finally, Exelon argues that PJM's market manipulation allegations are serious enough to warrant its withholding affiliate's revenues. Exelon requests that the Commission issue an order authorizing PJM to continue withholding congestion revenue payments due to Power Edge's affiliates until the ongoing investigation into Tower Companies' market activities is completed.

#### **IV. Discussion**

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the notice of intervention and timely, unopposed motions to intervene serve to make the parties that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.214(d) (2007), the Commission will grant Pennsylvania PUC, Allegheny, and Fund I's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept FirstEnergy's answer and will, therefore, reject it.

15. Based on the pleadings alone, the Commission does not have sufficient information to grant or deny the complaint. As we noted above, the Commission's Office of Enforcement already instituted an investigation, pursuant to 18 C.F.R. § 1b.6 (2007), in January 2008 of the Tower Companies' activities in PJM's markets.<sup>6</sup>

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<sup>6</sup> See *supra* note 3 and accompanying text.

16. Pending completion of the investigation, the Commission will hold PJM's complaint in abeyance. At the conclusion of the investigation, the Office of Enforcement is directed to report its findings to the Commission. Following that report, the Commission expects to issue a further order on the complaint.

The Commission orders:

PJM's complaint is hereby held in abeyance pending completion of an ongoing investigation conducted by the Office of Enforcement into the allegations raised by PJM.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.