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2004 MAY 26 P 4: 23

FEDERAL ENERGY  
REGULATORY COMMISSION

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May 26, 2004

The Honorable Magalie R. Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

Re: Docket Nos. ER04-156-000, 001, 002, 003 and 004  
EL04-41-000, 001 and 002  
RT01-98-000 and RT01-10-000

Dear Ms. Salas:

Pursuant to Rule 602 of the Commission's rules of practice and procedure, 18 CFR §385.602, the PJM Transmission Owners submit this executed Settlement Agreement for filing with the Commission. A copy of this Settlement Agreement has been delivered (electronically and by mail) to the Honorable Isaac D. Benkin, the Presiding Judge in Docket No. ER04-156-001. This filing consists of an executed Settlement Agreement with one attachment, an Explanatory Statement, and a proposed Letter Order approving the settlement.

In accordance with Rule 602(f), comments on this Settlement, if any, shall be filed on or before June 16, 2004, which is twenty days after the submission of the Settlement. The final day for filing reply comments is June 28, 2004, which is the first business day following 30 days following the filing of the Settlement. Pursuant to the Commission's regulations, failure to file comments will be deemed a waiver of all objections to the Settlement.

This filing is being served in accordance with the Commission's regulations. A copy of this settlement filing is being served on all parties designated on the Official Service List in the above-

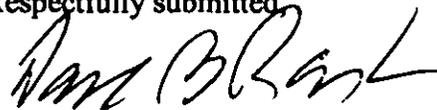
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STEPTOE & JOHNSON LLP

The Honorable Magalie R. Salas  
May 26, 2004  
Page 2

listed proceedings, which includes the State Commissions in each of the States where the PJM Transmission Owners own and/or operate transmission facilities.

Respectfully submitted



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On behalf of the PJM Transmission Owners

cc: The Honorable Isaac D. Benkin  
Official Service List in above-named Dockets

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Allegheny Power System Operating ) Docket Nos. ER04-156-000, 001,  
 ) 002, 003 and 004  
Companies, *et al.* ) EL04-41-000, 001 and 002  
 ) RT01-98-000 and RT01-10-000

**Settlement Agreement**

This Settlement Agreement is entered into on May 26, 2004, between and among the active parties in FERC Docket No. ER04-156 (“Parties”), in order to resolve all of the outstanding issues in the above-captioned proceedings.

*WHEREAS*, certain PJM Transmission Owners (“PJM TOs”)<sup>1</sup> filed in Docket No. ER04-156-000 a proposed Schedule 12A to the PJM Open Access Transmission Tariff (“PJM OATT”) in order to provide a proposed mechanism for the recovery of the costs of new transmission facilities constructed by the PJM TOs in accordance with the PJM Regional Transmission Expansion Plan (“RTEP”) and Schedule 12 of the PJM OATT; and

*WHEREAS*, a number of parties intervened and protested the PJM TOs’ filing; and

*WHEREAS*, the Federal Energy Regulatory Commission (“FERC” or “Commission”), by order dated January 2, 2004, set for hearing the PJM TOs’ filing, and also initiated an investigation in Docket No. EL04-41-000 into certain rates of the PJM TOs pursuant to Section 206 of the FPA; and

*WHEREAS*, a number of parties to this proceeding filed requests for rehearing of the Commission’s January 2, 2004 Order; and

*WHEREAS*, the Commission issued an order dated January 16, 2004, in which it terminated the Section 206 investigation in Docket No. EL04-41-000; and

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<sup>1</sup> The PJM TOs are: The Allegheny Power System Operating Companies: Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, all doing business as Allegheny Power; The PHI Operating Companies: Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; PECO Energy Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric Company; and UGI Utilities, Inc. Parties other than the PJM TOs are referred to herein as “Stakeholder Parties.”

**WHEREAS**, certain parties requested rehearing of the Commission's January 16, 2004 Order terminating the Section 206 investigation in Docket No. EL04-41-000; and

**WHEREAS**, the procedural schedule in the above-captioned proceeding has been suspended temporarily by order of the Presiding Judge in order to give the Parties time to negotiate a settlement agreement; and

**WHEREAS**, the Commission in its July 12, 2001 Order (96 FERC ¶ 61,060) required PJM RTO to "provide justification for its recommendation to continue or discontinue the use of license plate rates, or otherwise change the method for fixed cost recovery under the PJM OATT." 96 FERC ¶ 61,060 at p. 61,220 (footnote omitted); and

**WHEREAS**, the Commission in its August 30, 2002 Order (100 FERC ¶ 61,230) found as follows: "...PJM's filing to amend Sections 5.1 and 5.1.4 of the Transmission Owners Agreement to specify that the license plate rates will be effective in the PJM control area until December 31, 2004 ...[is] just and reasonable and [the Commission] accepts the revised tariff sheet to be effective August 31, 2002." [Footnote omitted], 100 FERC ¶61,817 at Par. 12; and

**WHEREAS**, the Commission in its January 16, 2004 Order in this proceeding (106 FERC ¶ 61,016), citing its Order at 100 FERC ¶61,230 (2002), noted that the PJM TOs "existing transmission rates are only effective through December 31, 2004, and ... the PJM Transmission Owners are already under an obligation to review their existing transmission rates." 106 FERC ¶61,016 at Par. 4.

**WHEREAS**, the Parties have agreed that committing extensive resources to litigation in this proceeding would not be the most productive use of their resources and further have reached agreement on the terms and conditions under which the above-captioned proceedings may be terminated and all issues raised on rehearing of the Commission Orders described above may be resolved or deferred.

**NOW, THEREFORE**, the Parties agree as set forth below, and further request Commission approval of the following:

**Section 1. Cancellation of Schedule 12A and Termination of Dockets**

(A) Through the execution and filing of this Settlement Agreement, the PJM TOs request that the Commission approve the cancellation of Schedule 12A of the PJM OATT as filed by the PJM TOs in this proceeding. Such cancellation shall be without prejudice to the right of the PJM TOs to refile Schedule 12A, or a substitute therefor, in accordance with Section 3 of this Settlement Agreement. The cancellation of Schedule 12A shall be effective as of the date that Schedule 12A was permitted by the Commission to take effect subject to refund (January 5, 2004), provided that the Commission accepts this Settlement Agreement without modification or condition.

(B) Through the execution and filing of this Settlement Agreement, the PJM TOs request that the Commission terminate Docket Nos. ER04-156 and EL04-41 as of the date the Commission accepts this Settlement Agreement without modification or condition.

**Section 2. Forbearance from Application of Schedule 12A**

Pending Commission review and approval of this Settlement Agreement, the PJM TOs shall not seek to apply Schedule 12A to any transmission facilities; provided however, that this forbearance from application of Schedule 12A shall not prejudice the PJM TOs' right to seek recovery of the costs of transmission facilities that otherwise would have been eligible for the application of Schedule 12A in the event that this Settlement Agreement is not accepted by the Commission without modification or condition, or the right of any Stakeholder Party to object to such recovery. The cancellation of Schedule 12A as provided in Section 1 above is not intended to affect, in any way, the effectiveness or implementation of Schedule 12 of the PJM OATT.

**Section 3. Filing in Compliance with Commission Orders**

(A) On or before January 31, 2005, the PJM TOs shall make a filing with the Commission under FPA Section 205 for the purpose of complying with the Commission's July 12, 2001 (96 FERC ¶ 61,060), August 30, 2002 (100 FERC ¶ 61,230) and January 16, 2004 (106 FERC ¶ 61,016) orders ("January 2005 filing"). With respect to the date for such filing specified in these orders, Commission approval of this Settlement Agreement shall constitute a modification of the orders such that the PJM TO filing contemplated by such orders may be made on or before January 31, 2005. Assuming that the PJM TOs' January 2005 filing is made in accordance with the terms and conditions of this Settlement Agreement, and that such filing is not rejected by the Commission for failure to comply with the Commission's applicable filing requirements, the January 2005 filing shall become effective, subject to a nominal suspension and refund, if so ordered by the Commission, on June 1, 2005.

(B) The PJM TOs may (but shall not be required to) propose in their January 2005 filing to treat new and existing transmission facilities differently for ratemaking purposes; provided that, if they propose to treat new and existing transmission facilities differently, they shall harmonize the rate treatment of new and existing facilities in accordance with footnote 11 of the Commission's January 16, 2004 Order in the above-captioned proceedings; and provided further, that all Parties shall retain their rights to present to the Commission their positions concerning what specific requirements will be sufficient to satisfy the harmonization requirement and to comment on or protest all aspects of the January 2005 filing (except to the extent such rights are expressly limited by Section 4(C) below).

(C) Until October 1, 2004, the PJM TOs shall provide monthly progress reports regarding the development of the January 2005 filing to all interested Parties (including non-PJM members that execute this Settlement Agreement) through the PJM stakeholder processes and by posting such progress reports to the ListServ established for Docket No. ER04-156, or such other ListServ as may be created among all of the parties to this proceeding. Beginning October 1, 2004, the PJM TOs shall meet with all such interested Parties through the PJM stakeholder processes at least monthly regarding development of the January 2005 filing.

**Section 4. Treatment of Attachment A Facilities in Future Filing**

(A) Attachment A to this Settlement Agreement lists the PJM TO transmission facilities that, pursuant to the filing in Docket No. ER04-156, would have been eligible for the

application of Schedule 12A prior to June 1, 2005. Attachment A sets forth the PJM TOs' statement of the actual or estimated costs for the specified facilities as known at this time.

(B) Neither the cancellation of Schedule 12A as currently on file with the Commission, the termination of Docket No. ER04-156, the temporary forbearance of application of Schedule 12A in anticipation of the January 2005 filing, the consensual establishment of a June 1, 2005 effective date for the January 2005 filing, nor any other aspect of this Settlement Agreement shall, in and of itself, prejudice the PJM TOs' rights to seek recovery of the costs of the facilities listed in Attachment A, except as provided in Section 4(C) below.

(C) For any facility listed in Attachment A that was in service prior to June 1, 2005, the PJM TOs shall be entitled to treat that facility as having been placed in service on June 1, 2005 for cost recovery purposes. The purpose of this treatment is to resolve any cost recovery timing concerns with respect to such facility that may arise due to the cancellation of Schedule 12A and the deferral of the initiation of cost recovery until June 1, 2005. By its approval of this Settlement Agreement, the Commission accedes to this treatment for cost recovery purposes notwithstanding any Commission rule or regulation that might be deemed to require a different treatment. The PJM TOs shall not accrue for jurisdictional rate purposes, or seek recovery of, carrying costs for any facility listed in Attachment A for any period from the date such facility was physically placed in service through June 1, 2005 or until it is placed into rates, whichever is later.

(D) Except with regard to the in-service date treatment specified in Section 4(C) above, the Stakeholder Parties shall retain their rights under the Federal Power Act to object to the recovery of costs associated with any facility or facilities for which cost recovery is proposed in the January 2005 filing, without regard to the date those facilities were placed in service.

(E) This Settlement Agreement shall not limit or otherwise affect, in any way, the unilateral right of any PJM TO to make an individual Section 205 filing with respect to any of its facilities or costs, or the right of any other Party or non-party to protest such filing in accordance with the Federal Power Act and the Commission's regulations. This Settlement Agreement is not intended to address the allocation of cost responsibility for any facility or facilities listed in Attachment A.

#### Section 5. Effect of Settlement Agreement on Pending Rehearing Requests and Petitions for Review

If the Commission issues an order approving this Settlement Agreement without condition or modification, then: (i) any rehearing request filed in Docket Nos. ER04-156-000 and EL04-41-000 that is pending on the date such Commission approval order was issued shall be deemed withdrawn; and (ii) within three (3) business days after issuance of such approval order, any pending petitions for appellate review of Commission Orders in or arising from Docket Nos. ER04-156 and EL04-41 shall be withdrawn by the appellant. Any such withdrawals shall be without prejudice to assertion or reassertion of the issues raised in such rehearing requests or petitions for review at a later date; provided however, that this Section 5 is not intended to supersede paragraph 14 of the Going-Forward Principles and Procedures in Docket Nos. EL02-111-004 and EL03-212-002, which the Commission accepted by order dated March 19, 2004.

**Section 6. Miscellaneous Provisions**

(A) The PJM TOs shall have responsibility for filing this Settlement Agreement and associated documents required by Commission Rule 602 with the Presiding Judge in the above-captioned proceeding promptly after the execution of this Settlement Agreement by the Parties.

(B) This Settlement Agreement is expressly conditioned upon the acceptance of all provisions hereof by the Commission in accordance with Rule 602, without modification or condition. If the Commission fails to accept the Settlement Agreement in its entirety without modification or condition, the Settlement Agreement shall not become effective and shall be null and void, unless all of the Parties hereto set forth in writing that they accept such modifications or conditions.

(C) The discussions among the Parties that have produced this Settlement Agreement have been conducted with the understanding, pursuant to Rule 602(e), that all interim offers of settlement and any discussions relating thereto are and shall be privileged and shall be without prejudice to the position of any of the Parties and are not to be used in any manner in connection with this or any other proceeding. Additionally, if the Commission does not approve this Settlement Agreement or if the Commission approves the Settlement Agreement with modifications or conditions (unless all of the Parties accept such modifications or conditions in writing as set forth in Section 6(B)), then this Settlement Agreement and any discussions relating thereto are and shall be privileged and shall be without prejudice to the position of the Parties, and are not to be used in any manner in connection with the above-captioned or any other proceedings.

(D) Except to the extent set forth in this Settlement Agreement, this Settlement Agreement shall not be deemed to resolve any issue or principle in this or any other proceeding. This Settlement Agreement shall not be cited or relied upon as precedent or as establishing any issue or principle, except to the extent of enforcing the terms and conditions of the Settlement Agreement itself.

(E) During the period that this Settlement Agreement is pending before the Commission for its approval pursuant to Rule 602, no Party shall take any action that is contrary to the terms of this Settlement Agreement, and all Parties shall provide reasonable cooperation, as may be requested, for the purpose of obtaining Commission approval of this Settlement Agreement without modification or condition. The foregoing commitment shall not affect any Party's right to assert positions in any other proceeding before the Commission (including, but not limited to, generic rulemaking proceedings) that would, if adopted, establish precedent binding on the Commission in future determinations relating to Schedule 12A (or any substitute therefor).

(F) This Settlement Agreement may be executed in any number of counterparts and by the different Parties hereto in separate counterparts, each of which, when so executed and delivered, shall be deemed to be an original, but all such counterparts shall together constitute one and the same Settlement Agreement.

(G) The headings of the sections in this Settlement Agreement are provided solely for ease of reference, and shall not be deemed to modify or interpret in any respect the substantive provisions hereof.

Agreed to this 26th day of May, 2004:

David B. Raskin  
Public Service Electric and Gas Company  
By: David B. Raskin

Gary E. Guy  
Baltimore Gas & Electric Company  
By: Gary E. Guy

Paul B. Mohler  
PECO Energy Company  
By: Paul B. Mohler

Richard P. Sparling  
Jersey Central Power & Light Company,  
Metropolitan Edison Company and Pennsylvania Electric Company  
By: Richard P. Sparling

Leonard Belter  
The Allegheny Power System Operating Companies  
By: Leonard Belter

David E. Goroff  
The PHI Operating Companies  
By: David E. Goroff

Donald A. Kaplan  
PPL Electric Utilities Corporation  
By: Donald A. Kaplan

Steven Pincuss /by OBR  
Rockland Electric Company  
By: Steven Pincuss

Joseph Racho /by OBR  
UGI Utilities, Inc.  
By: Joseph Racho

Janice L. Lower /by OBR  
Delaware Municipal Electric Corporation, Inc.  
By: Janice L. Lower

Janice L. Lower /by OBR  
The City of Hagerstown, Maryland  
The Town of Thurmont, Maryland  
The Town of Williamsport, Maryland  
The Town of Front Royal Virginia  
By: Janice L. Lower

Jill M. Barker /by OBR  
Public Power Association of New Jersey  
By: Jill M. Barker

John A. Levin /by OBR  
The Pennsylvania Public Utility Commission  
By: John A. Levin, Assistant Counsel

John Michael Adragna /by OBR  
The Borough of Chambersburg, Pennsylvania  
By: John Michael Adragna

William H. Chambliss /by OBR  
The Virginia State Corporation Commission  
By: William H. Chambliss

Robert A. Weishaar, Jr / by DBR  
PJM Industrial Customer Coalition  
By: Robert A. Weishaar, Jr.

Robert Weinberg / by DBR  
Allegheny Electric Cooperative  
By: Robert Weinberg

Gary J. Newell / by DBR  
Easton Utilities of Easton Maryland  
By: Gary J. Newell

David E. Pomper / by DBR  
Eastern Consumer-Owned Systems  
By: David E. Pomper

Denise C. Goulet / by DBR  
Pennsylvania Office of Consumer Advocate  
By: Denise C. Goulet, Senior Assistant Consumer Advocate

William F. Fields / by DBR  
Maryland Office of People's Counsel  
By: William F. Fields

Sandra L. Hall / by DBR  
Public Service Commission of Maryland  
By: Sandra L. Hall, Assistant General Counsel

Nancy Brockway / by DBR  
Delaware Public Service Commission  
By: Nancy Brockway

## ATTACHMENT A

## RTEP Investments 2003 and 2004

Below is a list of PJM Transmission Owner RTEP facilities with actual in-service dates in 2003 and scheduled in-service dates in 2004. For 2003, the costs are actuals. For 2004, the costs are estimates.

## 2003

<u>Company</u>	<u>Project Description</u>	<u>Cost</u>	<u>RTEP</u>
ACE/DPL DE	Claymont/Naamans 69kV (6834) Rebuild	\$285,391	Addendum to the 2002 Baseline RTEP, 5/2/03, revised 6/2/03
ACE/DPL NJ	Install 3 <sup>rd</sup> Lewis 138/69kV Transformer	\$3,895,250	2000 RTEP and 1 <sup>st</sup> Add
ACE/DPL NJ	Replace both Corson 138/69kV Transformers	\$3,617,614	2000 RTEP and 1 <sup>st</sup> Add
ACE/DPL NJ	Cardiff SVC and 230kV Ring Bus	\$14,897,051	2000 RTEP and 1 <sup>st</sup> Add
ACE/DPL NJ	Reconductor #2 Motts Farm/Cedar 69kV circuit	\$908,095	2000 RTEP and 1 <sup>st</sup> Add
APS	Aqueduct SS - Install 34.5kV caps	\$173,907	2001 RTEP Baseline
APS	W. Waynesboro SS - Install 34.5kV caps	\$28,146	2001 RTEP Baseline
APS	Lime Kiln SS - Install 34.5kV caps	\$26,345	2001 RTEP Baseline
APS	Chamber's No. 5 - Install 34.5kV caps	\$17,873	2001 RTEP Baseline

## 2004

<u>Company</u>	<u>Project Description</u>	<u>Estimated Cost</u>	<u>RTEP</u>
ACE/DPL DE	Install 2 <sup>nd</sup> 230/138kV Auto at Indian River	\$4,708,000	2001 RTEP Baseline
ACE/DPL DE	Upgrade Indian River-Bethany 138 kV line	\$1,124,000	Addendum to the 2002 Baseline RTEP, 5/2/03, revised 6/2/03
ACE/DPL DE	Upgrade Bethany 69kV SS Bus	\$72,000	2003 RTEP Baseline
ACE/DPL MD	Rebuild Mt Hermon-N.Salisbury 69kV (6726) line	\$1,271,000	2002 RTEP, 1 <sup>st</sup> Add
ACE/DPL MD	Establish a 230kV Ring Bus at Colora SS	\$2,411,000	2002 RTEP, 1 <sup>st</sup> Add
ACE/DPL MD	Rebuild Todd-Cambridge 69kV (6715) line	\$886,000	2002 RTEP, 1 <sup>st</sup> Add
ACE/DPL MD	Upgrade Grasonville-Wye Mills 69kV (6755) line	\$204,000	2002 RTEP, 1 <sup>st</sup> Add
ACE/DPL MD	2 <sup>nd</sup> 69kV line to Stevensville	\$5,704,000	2002 RTEP, 1 <sup>st</sup> Add
ACE/DPL MD	Upgrade N.Salisbury 69kV SS Bus	\$150,000	2002 RTEP, 1 <sup>st</sup> Add
ACE/DPL NJ	Oyster Creek-Cedar 230kV line	\$10,000,000	2000 RTEP Baseline
ACE/DPL NJ	Oyster Creek 230kV SS Terminal	\$1,000,000	2000 RTEP Baseline
ACE/DPL NJ	Cedar 230kV SS	\$13,600,000	2000 RTEP Baseline
ACE/DPL NJ	Reconductor Stafford-Patco-Lindenwold 69kV	\$1,356,000	2000 RTEP Baseline
ACE/DPL VA	Upgrade Oak Hall-Hallwood 69kV (6790-1) line	\$59,000	2002 RTEP, 3 <sup>rd</sup> Add
ACE/DPL VA	Byaview SS Capacitor	\$473,000	2002 RTEP, 3 <sup>rd</sup> Add
BGE	Conastone Breaker Replacement	\$500,000	2001 RTEP Baseline
PEPCO MD	Install MVAr capacitors Quince Orchard, Bells Mill, Norbeck	\$1,912,000	2002 RTEP, 3 <sup>rd</sup> Add
APS	Canaan Valley/Williams 138kV - Modify structures	\$760,000	2001 RTEP Baseline

## 2004, continued

<u>Company</u>	<u>Project Description</u>	<u>Estimated Cost</u>	<u>RTEP</u>
APS	Boonesboro SS - Install 34.5kV caps	\$155,000	2001 RTEP Baseline
APS	Mt. Airy SS - Install 34.5kV caps	\$155,000	2001 RTEP Baseline
APS	Antietam SS - Install 34.5kV caps	\$155,000	2001 RTEP Baseline
APS	Davis Mills SS - Install 34.5kV caps	\$310,000	2001 RTEP Baseline
FE	S-JC-001220-East Windsor 500kV SS	\$6,557,000	1999 RTEP Baseline
FE	Increase line tension (977/978 Line)	\$1,107,000	2002 RTEP Baseline
PECO	Woodbourne capacitor bank	\$1,650,000	2002 RTEP, 2 <sup>nd</sup> Add
PPL	Yorkana-Otter Creek 230kV line and Otter Creek 230kV SS	\$22,000,000	2000 RTEP Baseline
PSEG	Replace 4 Roseland 230kV breakers #BS3-4, #BS4-5, #BS5-6, #BS1-7	\$1,400,000	2000 RTEP
PSEG	Provide additional cooling for Hudson 230/138kV 2 Transformer	\$100,000	2000 RTEP
PSEG	Replace 2 Athenia 230/138kV Transformers	\$6,000,000	2002 RTEP, 2 <sup>nd</sup> Add

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Allegheny Power System Operating  
Companies, et al.

Docket Nos. ER04-156-000, 001, 002, 003 and 004  
EL04-41-000, 001 and 002  
RT01-98-000 and RT01-10-000

**Explanatory Statement**

**I. Procedural Background**

On November 4, 2003, certain PJM Transmission Owners ("PJM TOs")<sup>1</sup> made a Section 205 rate filing, which was designated by the Secretary as Docket No. ER04-156-000. On November 5, 2003, the PJM TOs made an amended filing, which was designated as Docket No. ER04-156-001. The purpose of the filing was to provide a proposed mechanism for the recovery of the costs of new transmission facilities constructed pursuant to the PJM Regional Transmission Expansion Plan ("RTEP"), and accordingly to complete the implementation of Schedule 12 of the PJM Open Access Transmission Tariff ("PJM OATT"). The Commission published a Notice of Filing in the Federal Register, which required the filing of protests and interventions by no later than November 25, 2003. Timely protests and/or motions to intervene were filed by a large number of parties. Several additional parties filed protests and/or motions to intervene out of time.

By order dated January 2, 2004, the Commission granted all of the motions to intervene. The Commission accepted for filing the PJM TOs' proposed Schedule 12A to the PJM OATT, subject to a nominal suspension and refund, with an effective date of January 5, 2004. The Commission resolved certain issues based on the pleadings, set for hearing the justness and reasonableness of proposed Schedule 12A to the extent issues were not summarily resolved, and ordered the designation of an Administrative Law Judge to preside over such hearings.

In that same order, the Commission also initiated an investigation pursuant to Section 206 of the Federal Power Act into the existing transmission service rates of the PJM TOs, and established a refund effective date 60 days after publication of notice of the investigation in the

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<sup>1</sup> The filing PJM TOs are: The Allegheny Power System Operating Companies: Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, all doing business as Allegheny Power; The PHI Operating Companies: Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; PECO Energy Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric Company; and UGI Utilities, Inc.

Federal Register. The Section 206 investigation was designated as Docket No. EL04-41-000. The Commission consolidated Docket Nos. ER04-156-000 and EL04-41-000 for purposes of hearing and decision.

On January 12, 2004, the PJM TOs filed an expedited request for rehearing of the January 2, 2004 Order, seeking termination of the Section 206 investigation, maintaining in part that prior Commission orders had directed the PJM TOs to make a filing addressing their zonal rate design before the end of 2004.

On January 16, 2004, the Commission granted the PJM TOs' request for rehearing and terminated the Section 206 investigation. The January 16, 2004 Order reaffirmed the fact that the PJM TOs would be making a rate-related filing prior to the end of 2004. This order also clarified that the Commission intended the parties to address the issue of "harmonizing the proposed rates with existing rates" in the hearings in Docket No. ER04-156-000.

On January 30 and February 2, 2004, the Delaware Municipal Electric Corporation, Inc., and the Joint Consumer Advocates and Eastern Consumer-Owned Systems, respectively, filed requests for rehearing of various aspects of the Commission's January 2, 2004 Order. On February 17, 2004, Public Power Association of New Jersey and the Delaware Municipal Electric Corporation, Inc., et al., each filed a request for rehearing of the Commission's January 16 Order terminating the Section 206 investigation. These requests for rehearing remain pending before the Commission, following the issuance of tolling orders.

On February 2, 2004, the PJM TOs made a compliance filing in Docket No. ER04-156-003, to comply with the January 2, 2004 Order. That compliance filing remains pending before the Commission.

The Chief Administrative Law Judge designated the Honorable Isaac D. Benkin as the Presiding Administrative Law Judge in this proceeding. At an initial prehearing conference, Judge Benkin adopted a procedural schedule for this proceeding. Shortly after that prehearing conference, the active parties began discussing the possibility of settlement, based on the notion that it might be more efficient to review Schedule 12A (or a successor thereto) together with the transmission rate-related filing that the PJM TOs had been ordered to make before the end of 2004.

Following settlement discussions among the parties, the Presiding Judge issued a series of Orders suspending the procedural schedule. The last such order, dated April 9, 2004, directed the PJM Transmission Owners to file a status report by May 7, 2004, if a settlement had not been filed by that date. The Chief Judge also issued an Order on April 9, 2004, suspending Track 2 scheduling procedures for this proceeding, subject to the filing of a status report with the Chief Judge by May 28, 2004 if a settlement was not filed by that date. On May 7, the PJM TOs submitted a status report to the Presiding Judge stating that they anticipated a settlement would be filed resolving all issues in this proceeding by May 28, 2004.

The negotiation of a final settlement agreement and related Rule 602 documents was completed successfully and the Settlement Agreement submitted with this Rule 602 filing was

executed by the active parties. The procedural schedule remained suspended as of the date of execution and filing of this settlement.

## **II. Summary of Settlement Agreement<sup>2</sup>**

The Settlement Agreement provides that the proposed Schedule 12A filed in the above-captioned proceeding will be cancelled, and that Docket Nos. ER04-156-000 and EL04-41-000 (and all related subdockets) will be terminated, as of the date of Commission approval of the Settlement Agreement without modification or condition. The PJM TOs have not billed any amounts under Schedule 12A to date and will not seek to apply Schedule 12A to any facilities during the period that the Settlement Agreement is pending approval before the Commission. This temporary forbearance, however, is without prejudice to the rights of the PJM TOs to seek recovery under Schedule 12A for any facilities in the event that the Settlement Agreement is not accepted as filed.

Under the Settlement Agreement, the filing relating to transmission rates that the PJM TOs have been directed to make pursuant to earlier Commission orders would be made by no later than January 31, 2005 ("January 2005 Filing"). The Commission's acceptance of the Settlement Agreement would constitute approval of this deferral of the current filing deadline. In the January 2005 filing the PJM TOs will have the option, but not the obligation, to propose separate rate treatments for new and existing transmission facilities. If they choose separate rate treatments, they will be required to harmonize the way in which they treat the new and existing facilities for ratemaking purposes as discussed in the January 16 Order. The non-PJM TO parties to the Settlement Agreement have preserved all of their Federal Power Act rights to intervene and protest the January 2005 filing, including challenging the proposal by the PJM TOs to harmonize rates for existing and new facilities if applicable. By agreement among the parties, the January 2005 filing will have an effective date, subject to suspension and refund if ordered by the Commission, of June 1, 2005, unless the filing is rejected by the Commission for failure to comport with the Settlement Agreement or with the Commission's filing requirements.

The Settlement Agreement includes provisions specifying the manner in which the PJM TOs will provide monthly status reports on the development of the January 2005 filing to the other parties until October 1, 2004. After October 1, 2004, the PJM TOs will hold monthly meetings with the other parties and other stakeholders through the PJM stakeholder process to review and discuss the proposed filing.

The Settlement Agreement also includes agreed upon procedures for the recovery of the cost of 2003 and 2004 RTEP facilities beginning on June 1, 2005. Attachment A to the Settlement Agreement includes a list of such facilities, and the Settlement Agreement provides that the PJM TOs may treat such facilities, for cost recovery purposes, as having entered into service on June 1, 2005, with no right to earn a return on the investment in such facilities between their actual, physical in-service dates and June 1, 2005. Approval of the Settlement

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<sup>2</sup> This summary is not intended to vary the terms of the Settlement Agreement. To the extent of any alleged variation between the terms of the Settlement Agreement and the language used in this summary, the terms of the Settlement Agreement will govern.

Agreement will be deemed approval of this cost recovery methodology. Except for the timing issues described above, other parties have retained their rights to contest the right of the PJM TOs to recover such costs. The Settlement Agreement preserves all of the PJM TOs' other Section 205 filing rights with respect to the rates for their transmission facilities and the rights of the other parties to comment on or protest such filings.

Finally, the Settlement Agreement provides that, upon Commission acceptance of the Settlement Agreement without modification or condition, all pending rehearings in Docket Nos. ER04-156 and EL04-41 will be deemed withdrawn, and if there are any pending appeals arising out of these dockets, such appeals will be promptly withdrawn. Such withdrawals are without prejudice to the right of the parties to raise the same issues in any other proceeding in which the same issues may arise. The PJM TOs' pending compliance filing in Docket No. ER04-156-003 is rendered moot by this Settlement Agreement.

### **III. Policy Issues**

The Commission has directed all parties submitting Section 602 settlements to address certain policy issues in their settlement filings. Those issues are addressed in this section.

#### **A. What are the issues underlying the settlement and what are the major implications?**

The settlement primarily involves a determination by the settling parties that it would be preferable to address rate issues involving new and existing facilities in one proceeding, rather than attempting to address such issues in a piecemeal manner. This will facilitate the Commission's review of the PJM TOs' rate structure.

#### **B. Whether any of the issues raise policy implications?**

The settlement does not raise any significant policy issues. One aspect of the settlement involves a deviation from common ratemaking practice. The parties have agreed that, for ratemaking purposes, certain transmission facilities of the PJM TOs placed into service in 2003 and 2004 pursuant to the RTEP would be treated as if they went into service on June 1, 2005, but with no accrual of AFUDC or other return on investment between the actual in-service date and the June 1, 2005 date for the commencement of rate recovery. This agreement will allow for the potential consideration of new and existing facilities in one later proceeding while providing for fair cost recovery of new facilities that went into service in the interim period for which the PJM TOs have agreed to forbear immediate cost recovery.

#### **C. Whether other pending cases may be affected?**

This settlement will not affect any other pending cases.

**D. Whether the settlement involves issues of first impression or if there are any previous reversals on the issues involved?**

The settlement does not involve any substantive issues of first impression and does not involve a reversal of any previously decided issues. The settlement primarily promotes administrative convenience for all parties involved.

**E. Applicable standard of review?**

The settlement does not entail the filing of any new rate schedule or any change to an existing rate schedule, except that it calls for the cancellation of a filing that has been accepted for filing subject to refund and set for hearing. However, it is the parties' intention that the settlement will only be effective if it is approved by the Commission in its entirety without modification or condition.

**FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426**

\_\_\_\_\_, 2004

In Reply Refer to:  
Docket Nos. ER04-156-000  
ER04-156-001  
ER04-156-002  
ER04-156-003  
ER04-156-004  
EL04-41-000  
EL04-41-001  
EL04-41-002  
RT01-98-000  
RT01-10-000

**Steptoe & Johnson LLP  
ATTN: David B. Raskin  
On behalf of the PJM Transmission Owners  
1330 Connecticut Avenue, NW  
Washington, DC 20036**

Dear Mr. Raskin:

On May 26, 2004, you filed a settlement agreement among the PJM Transmission Owners<sup>1</sup> and the active parties to this proceeding.<sup>2</sup> The settlement provides for the withdrawal of the currently effective Schedule 12A under the PJM Open Access Transmission Tariff (OATT), and would resolve all issues in the instant proceeding.

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<sup>1</sup> The PJM Transmission Owners are: The Allegheny Power System Operating Companies: Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, all doing business as Allegheny Power; the PHI Operating Companies: Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; PECO Energy Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric Company; and UGI Utilities, Inc.

<sup>2</sup> The active parties to this proceeding who signed the Settlement Agreement are: Allegheny Electric Cooperative; The Delaware Municipal Electric Corporation, Inc.; The City of Hagerstown, Maryland; The Towns of Thurmont and Williamsport, Maryland; The Town of Front Royal, Virginia; Public Power Association of New Jersey; The Pennsylvania Public Utility Commission; The Borough of Chambersburg, Pennsylvania; The Virginia State Corporation Commission; PJM Industrial Customer Coalition; Easton Utilities of Easton, Maryland; Eastern Consumer-Owned Systems

On \_\_\_\_\_, Staff, \_\_\_\_\_ and \_\_\_\_\_ submitted comments in support of the settlement. No other comments were received. On \_\_\_\_\_, 2004, the presiding Administrative Law Judge certified the uncontested settlement to the Commission.

The subject settlement is in the public interest and is hereby approved. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

Consistent with the terms of the settlement, Schedule 12A of the PJM OATT is deemed withdrawn, effective January 5, 2004, and the PJM Transmission Owners' February 2, 2004 compliance filing that is currently pending before the Commission in Docket No. ER04-156-003 is moot. The settlement Explanatory Statement indicates that no amounts have been collected under Schedule 12A. Accordingly, no refunds are required, and Docket Nos. ER04-156-000, ER04-156-001, ER04-156-003 and EL04-41-000 are terminated.

Requests for rehearing of the Commission's January 2, 2004, and January 16, 2004, orders in the instant proceeding were filed and are currently pending before the Commission in Docket Nos. ER04-156-002 and EL04-41-001, and in Docket Nos. ER04-156-004 and EL04-41-002, respectively. Consistent with Section 9 of the Settlement Agreement, all such pending rehearing requests are deemed withdrawn and the associated dockets are terminated.

By direction of the Commission.

Secretary

cc: All Parties

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day caused the foregoing documents to be served via 1<sup>st</sup> class mail, postage prepaid, upon each party designated on the official service list in these proceedings.

Dated at Washington, D.C. this 26th day of May, 2004.



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David B. Raskin  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20036  
(202) 429-6254