1. On January 10, 2003, PJM Interconnection, L.L.C. (PJM) submitted for filing proposed changes to its Open Access Transmission Tariff (PJM Tariff) to create procedures and standardized terms and conditions for interconnection to the PJM transmission system of new and expanded merchant transmission facilities. PJM's filing applies to three types of merchant transmission projects: merchant direct current (DC) transmission facilities; stand-alone merchant alternating current (AC) transmission facilities; and merchant network upgrades of existing AC facilities. The proposed tariff sheets apply to merchant transmission facilities the same standard procedures and terms and conditions for interconnection that already apply to interconnection of generation facilities in the PJM region, except where physical differences between transmission and generation facilities dictate otherwise. The proposed tariff sheets also include provisions that define the rights to transmission capability that developers of merchant transmission facilities will receive and the obligations that such developers will incur as owners of interconnected transmission facilities in the PJM region.

2. PJM requests waiver of the Commission's regulations to allow an effective date of January 13, 2003. As discussed below, the Commission accepts the tariff sheets, subject to the conditions set forth herein, to be effective March 12, 2003. This order is in the public interest because it establishes uniform, standardized procedures and terms and conditions for the interconnection of merchant transmission facilities to the PJM system.

PJM's Filing

3. PJM contends that the principal objective of its proposal is to provide for developers of merchant transmission facilities the same timely and efficient interconnections and the same assurances of evenhanded treatment throughout the
interconnection process that PJM's existing tariff provides for generators in the PJM region. PJM submits that the proposed tariff sheets accomplish this goal in several ways. First, PJM asserts that, like generators, merchant transmission developers will be subject, to the greatest feasible extent, to standardized terms and conditions for construction of transmission upgrades and attachment facilities needed to accommodate their projects and for other aspects of interconnection service on the PJM transmission system.

Second, PJM contends that, as the RTO and the independent operator of the transmission system, it will be a party to each of the proposed tripartite service agreements under which transmission interconnections (like generation interconnections) will be effected. It will oversee the entire interconnection process, will facilitate resolution of disputes if and when they arise, and, in certain important instances, will be empowered to make decisions. Further, PJM submits that the proposal complements and relies upon existing tariff terms regarding interconnection studies and cost responsibility for interconnection-related facilities, as well as existing market structures and operational rules and policies established under other portions of the PJM Tariff or the PJM Operating Agreement, including the provisions of the Market Monitoring Plan. Finally, PJM contends that the proposed tariff provisions identify and provide for allocation and, where appropriate, market-based transfers, of the transmission-related rights that will be associated with merchant transmission facilities and related system upgrades.

4. PJM asserts that the procedures applicable to new transmission interconnections generally parallel those applicable to generation interconnections. That is, an interconnection customer will submit a formal interconnection request with a feasibility study agreement and PJM then will undertake a feasibility study. With the customer's consent and continuing qualification in accordance with project development milestones stated in the tariff, the feasibility study will be followed by a system impact study, then a facilities study and, finally, by execution of an Interconnection Service Agreement, and, if applicable, a Construction Service Agreement.

5. PJM submits that "merchant transmission facilities" may consist of merchant direct current (DC) transmission facilities or merchant alternating current (AC) transmission facilities. Merchant AC transmission facilities may include not only free-standing transmission facilities that are interconnected with the PJM transmission system, but also Merchant Network Upgrades. Merchant Network Upgrades are additions or upgrades to, or replacements of, existing transmission system facilities by or on behalf of a merchant developer. These may include, for example, a new line on an existing transmission tower or a new or upgraded transformer installed in an existing substation. Merchant Network Upgrades that are built by an interconnection customer must be conveyed to the PJM Transmission Owner to whose facilities the upgrades are attached at no cost to the recipient transmission owner. These facilities are not rate based
facilities; the merchant transmission owner will be compensated only via the relevant transmission-related rights associated with the project. The recipient transmission owner will operate and maintain the facilities at the expense of the merchant. The customer will receive all interconnection-related rights that are created by the Merchant Network Upgrades that it builds or causes to be built.

6. PJM contends that the proposed tariff revisions also address other important issues regarding the status and obligations of merchant owners. Proposed Section 49A.1 of the PJM Tariff provides that, prior to the commencement of interconnection service, the owner of interconnected Merchant Transmission Facilities must become and remain a signatory to the PJM Transmission Owners Agreement (TOA) or the West Transmission Owners Agreement (West TOA).¹

7. PJM asserts that proposed Section 49A.2 addresses the critical question of the obligation of owners of merchant transmission facilities to upgrade their facilities in order to maintain compliance with reliability criteria or meet demand for future transmission service or for new interconnection of facilities. This section provides that, if PJM determines that an expansion or upgrade of Merchant AC Transmission Facilities is necessary, the merchant transmission owner of such facilities must complete the expansion or upgrade and must operate and maintain the new facility. This obligation is not applied to owners of Merchant DC Transmission Facilities.²

8. PJM submits that Section 49A.2 provides that the costs of future upgrades or expansions of merchant transmission facilities that are necessary to accommodate future transmission service requests or new interconnections will be the responsibility of the pertinent transmission or interconnection customer. Cost responsibility for such expansions or upgrades of merchant transmission facilities to maintain compliance with

¹PJM asserts that the PJM Transmission Owners and interested stakeholders have discussed making certain changes to the TOA to accommodate merchant transmission owners, and that it expects such amendments to be filed in the near future.

²On November 26, 2002, the Commission requested comment in the standard market design rulemaking proceeding on whether a merchant transmission provider should have an obligation to expand its facilities. Notice Requesting Comments on Merchant Transmission Providers' Obligation to Expand, Docket No. RM01-12-000 (November 26, 2002). PJM's proposed treatment of expansion obligations, therefore, may be subject to revision.
reliability criteria will be determined in accordance with Schedule 6 of the PJM Operating Agreement.\footnote{PJM submits that Schedule 6 provides that, in the absence of agreement among transmission owners regarding cost responsibility for a particular upgrade or expansion of the transmission system, costs are allocated among transmission owners in proportion to the load in each zone of the PJM Control Area or PJM West Region, as appropriate.}

9. PJM states that the proposed new Subpart D of Part IV of the PJM Tariff establishes the transmission-related rights to which merchant transmission developers may be entitled. In addition to existing rights, PJM has established two new rights in this filing for merchant transmission developers, Incremental Available Transfer Capability Rights (ATCs) and Incremental Deliverability Rights (IDRs). ATCs are the rights to revenues derived from incremental available transfer capability. ATCs will be provided to projects that increase the available transfer capability of the transmission system. When the ATC rights are utilized to accommodate a subsequent interconnection request, the holder of the ATC rights is entitled to compensation to the extent its rights are utilized. IDRs are the rights to the incremental ability, resulting from the merchant transmission facility, to inject energy and capacity at a point on the transmission system such that the injection satisfies the requirements of a capacity resource. IDRs will be provided to projects that create additional deliverability margin that new generation or other transmission users may utilize. IDRs may be transferred to a generator or other interconnection customer to satisfy, in whole or in part, its responsibility for system upgrades that otherwise would be necessary to accommodate interconnection of the buyer's new generation or merchant transmission facility.

10. PJM asserts that under Subpart F of the revised Part IV of the PJM Tariff, transmission interconnection customers will have the same rights as generation customers to accomplish construction of Transmission Owner Interconnection Facilities pursuant to a Standard Option, a Negotiated Contract Option, or an Option to Build. The Option to Build authorizes any interconnection customer, if the interconnection transmission owner and the interconnection customer cannot agree upon the terms of a Construction Service Agreement, to contract with a third party contractor and/or vendors of equipment acceptable to the transmission owner for procurement and/or construction of any or all of the Transmission Owner Interconnection Facilities.
Notice of Filing, Protests, Comments and Answer

11. Notice of PJM's filing was published in the Federal Register, 68 Fed. Reg. 3022 (2003), with comments, protests, or interventions due on or before January 31, 2003. PSEG Companies (PSEG), TXU Portfolio Management Company LP (TXU), Old Dominion Electric Cooperative (Old Dominion), National Grid USA Service Co., Inc. (National Grid), and FirstEnergy Corp. (FirstEnergy) protested the filing. Comments were filed by Southern California Edison Company (SCE), American Transmission Company LLC (ATCLLC), Edison Electric Institute (EEI), TransEnergie U.S. Ltd. (TEUS), Rockland Electric Company (Rockland), Delaware Municipal Electric Corporation, Inc. (DMEC) and Reliant Energy Northeast Generation, Inc. (Reliant). On February 19, 2003, PJM filed an answer. On February 27, 2002, TEUS filed additional comments. On March 6, 2002, Old Dominion filed an answer to PJM's answer.

Discussion

Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), all timely, unopposed motions to intervene and any motions to intervene out of time filed before the issuance of this order are granted. Granting late interventions at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. The Commission's Rules of Practice and Procedure do not permit answers to protests (18 C.F.R. § 385.213(a)(2)(2002)). However, the Commission finds good cause to admit PJM's and Old Dominion's answers since they will not delay the proceeding, will assist the Commission in understanding the issues raised, and will insure a complete record upon which the Commission may act.

Analysis

13. PJM's proposal applies to merchant transmission interconnections the same study procedures and, except where physical differences between transmission and generation facilities dictate otherwise, the same standard terms and conditions of interconnection and related construction agreements that apply under the PJM Tariff to interconnection of new and expanded generation resources. The Commission accepts the proposed merchant interconnection procedures for filing, subject to the conditions set forth herein.
A. Issues Relating to Merchant AC Transmission Facilities

14. Most of the opposition to PJM's filing revolves around PJM's tariff changes regarding merchant AC transmission facilities, particularly the proposed provisions for merchant-sponsored upgrades (Merchant Network Upgrades) to existing facilities of the PJM transmission owners.

1. General Concerns

15. National Grid argues that PJM's proposal would allow merchant transmission projects to conscript the property of regulated transmission owners and could impede the Commission's efforts to promote the necessary upgrades to the nation's transmission grid to allow that network to support regional competitive markets. It further contends that the proposed system of Merchant Network Upgrades would severely hamper the development of ITCs in PJM by eviscerating their ability to plan for the expansion of their transmission facility. FirstEnergy asserts that permitting merchant transmission developers to undertake upgrades to a transmission owner's existing network, subject only to market considerations and their own economic interests, may cause severe disruption to the transmission owner's network and planning process, and impair service to the transmission owner's customers. It, PSEG and EEI submit that at the very least, the owner of the transmission facilities must have a right of first refusal to be able to perform upgrades on its system before any rights inure to a merchant transmission developer. FirstEnergy further contends that providing a merchant transmission developer with an option to build any network upgrade in PJM that it wishes to build will result in developers "cherry-picking" the most profitable upgrade projects, and leaving the remainder to the regulated transmission owners and their captive customers.

16. PJM submits in its answer that its proposal does not purport to provide a merchant developer with any rights to use property of a transmission owner or of any other third party. PJM contends that in order for a merchant developer to proceed with a system impact study, it must demonstrate that it has obtained any rights (or an option to acquire such rights) to use or modify any existing transmission facility that it requires for completion of its project. Thus, a developer can acquire the necessary rights only by reaching an agreement with the transmission owner for use of the pertinent existing facilities.

17. The general concerns regarding reliability, competition, the possibility for "cherry-picking" and the need for a right of first refusal raised by the protestors arise from their interpretation of the proposed tariff as providing merchant developers a "right" to undertake Merchant Network Upgrades without the consent of the transmission owner.
Since PJM states that its filing is not intended to establish such a "right," the Commission need not decide whether PJM could do so nor address the intervenor's arguments based on the premise that PJM was establishing such a "right." When this premise is removed, the protestors concerns are unjustified. The Commission therefore finds PJM's proposal for Merchant Network Upgrades to be just and reasonable. Below, the Commission addresses specific concerns raised by the opposing parties.

2. State Jurisdiction and Constitutional Taking Issues

18. The opposing parties submit that Merchant Network Upgrades pose significant and troubling legal and public policy concerns, the ramifications of which have not yet been fully considered either by PJM or by the Commission. Specifically, PSEG, EEI and Rockland contend that the proposed tariff fails to take into account the fact that there may be a constitutional "taking" associated with projects constructed on existing transmission assets. Additionally, they assert that the tariff fails to address the states' concurrent jurisdiction over merchant transmission construction on existing transmission assets.

19. In its answer, PJM contends that the proposed tariff revisions do not presage any taking of transmission owners' property rights. PJM submits that the tariff does not purport to provide merchant developers with any rights to use property of a transmission owner or of any other third party. It asserts that the proposed tariff changes do not (and probably could not) provide developers of Merchant Network Upgrades a right to undertake upgrades on transmission facilities owned by others. Instead, PJM contends, it is up to the developer itself to obtain such rights outside of PJM's interconnection process, similar to the process PJM describes for interconnection of generation.

20. PJM further submits that the proposed tariff revisions do not need to address state jurisdiction regarding merchant facilities. PJM contends that the tariff merely provides a process for the interconnection of merchant transmission facilities; it does not and cannot authorize construction of merchant transmission facilities and it does not purport in any way to preempt any state's siting or other jurisdiction with respect to any proposed merchant transmission facilities. According to PJM, under its tariff, a developer of a Merchant Network Upgrade can acquire the necessary rights only by reaching an agreement with the transmission owner for use of the pertinent facilities.

21. The Commission finds that PJM's proposed tariff provisions do not provide developers of Merchant Network Upgrade a right to undertake upgrades on transmission facilities owned by others. Moreover, they do not purport in any way to preempt any state's siting or other jurisdiction with respect to any proposed merchant transmission
facilities. The Commission therefore does not find any state jurisdiction or constitutional taking issues with regard to PJM's filing.


22. PSEG, FirstEnergy, ATCLLC, National Grid and TXU argue that the proposed tariff is premature, and should instead be considered within the context of other, related regulatory developments, such as the Commission-ordered revised PJM planning process, the Commission's Standard Market Design (SMD) proceeding, and the Commission's recently-issued "Proposed Pricing Policy for Efficient Operation and Expansion of Transmission Grid." FirstEnergy argues that the Commission should not consider PJM's proposal until after the PJM transmission owners have filed changes to the TOA or West TOA to allow owners of merchant facilities to become parties to those agreements.

23. In its answer, PJM asserts that its provisions regarding merchant AC transmission facilities are timely. It contends that the suggestion that the Commission should complete deliberations regarding SMD, generation interconnection rules and/or its recently proposed transmission pricing policy simply invite pursuing process in lieu of advancing the fundamental objectives of establishing and nurturing functional RTOs. PJM submits that it developed these provisions to respond to the Commission's directive, in a July 12, 2001 order in Docket No. RT01-2-000,\(^3\) to PJM to modify the Regional Transmission Expansion Planning Protocol of the PJM Operating Agreement to "allow for third-party participation as well as...merchant [transmission] projects outside the plan." PJM contends that rejecting or otherwise delaying action on the proposed tariff while the uncertain timetables of the SMD, generation interconnection and/or transmission pricing policy proceedings run their course would necessarily delay PJM's ongoing compliance with the RTO order, would inhibit RTOs from taking initiatives to further their intended role in the restructured electric industry and equally important, could significantly retard the development of merchant transmission as a competitive alternative to generation and other options for resolving transmission congestion and meeting increases in demand for electric service.

24. PJM further contends that to the extent that amendments to the TOAs are necessary to accommodate owners of merchant transmission facilities, those amendments need not be completed until a developer is in fact ready to place such facilities into service in the PJM region. In the meantime, however, the proposed tariff changes need

\(^3\)PJM Interconnection, L.L.C., 96 FERC ¶ 61,061 (2001)(July 12 RTO Order).
to become effective in order to provide for interconnection studies and the design of any upgrades or expansions of the PJM transmission system that may be necessary to accommodate proposed merchant transmission facilities.

25. The Commission agrees with PJM for the reasons set forth above. Accordingly, the Commission finds PJM's proposal not to be premature.

4. Compensation Issues

26. Several parties argue that the tariff changes do not address how merchant transmission developers will compensate transmission owners for the rights that the developer will need to access and use the owner's transmission facilities in performing Merchant Network Upgrades.

27. In its answer, PJM contends that there is no reason to prescribe in PJM's tariff the precise terms on which merchant developers would acquire rights to use or modify a transmission owner's existing facilities. It asserts that the tariff similarly does not dictate or otherwise describe the terms on which developers of generation facilities obtain the property rights that they need for their proposed facilities. PJM submits that all that matters for purposes of the interconnection service that PJM offers is that the interconnection customer must show at an appropriate stage of the interconnection study process that it has acquired the property rights that are essential for completion of its project.

28. The Commission agrees with PJM. In accepting PJM's generation interconnection procedures, the Commission did not require the tariff to describe the terms by which developers of generation facilities obtained the property rights that they needed for their proposed facilities. The parties have offered no justification, and the Commission does not find any, that would require the Commission to treat developers of merchant transmission facilities differently.


29. Pursuant to PJM's proposal, Merchant Network Upgrades that are built by an interconnection customer must be conveyed to the PJM Transmission Owner to whose facilities the upgrades are attached at no cost to the recipient transmission owner. The recipient transmission owner will operate and maintain the facilities at the expense of the
merchant. Incremental operation and maintenance (O&M) expenses related to the upgrade will be charged to the merchant developer.

30. The proposal further provides that the costs of subsequent upgrades or expansions of merchant transmission facilities that are necessary to accommodate future transmission service requests or new interconnections will be the responsibility of the pertinent transmission or interconnection customer. However, cost responsibility for such subsequent expansions or upgrades of merchant transmission facilities to maintain compliance with reliability criteria will be allocated among transmission owners in proportion to the load in each zone of the PJM Control Area or PJM West Region, as appropriate, in accordance with Schedule 6 of the PJM Operating Agreement.

31. DMEC argues that there should be an assurance that the transmission service charges to the merchant transmission owner will not include any costs other than the incremental O&M expenses associated with the Merchant Network Upgrade transferred to the PJM Transmission Owner. DMEC further requests that the tariff require PJM to provide an estimate of O&M expenses and support for such estimates. PJM answers that it agrees that these provisions contemplate that merchant developers will be liable only for incremental O&M expenses. The Commission finds the proposed language to be clear; no further assurance is required. With regard to DMEC's request for an estimate of O&M expenses and support for such estimate, the Commission does not find it necessary to be included in the general tariff language.

32. FirstEnergy argues that under the proposed tariff changes, transmission owners would be obligated to fund the construction and ongoing O&M of subsequent upgrades to AC facilities owned by a merchant transmission developer. Specifically, under the proposal, transmission owners would be allocated costs in accordance with Schedule 6 of the PJM Operating Agreement which, according to PJM's filing, allocates the costs of upgrades among transmission owners in proportion to the load in each zone of the PJM Control Area. FirstEnergy contends that this would result in an illicit subsidization of merchant developers by regulated transmission owners and their captive customers. Moreover, FirstEnergy cites several Commission orders\(^4\) approving merchant transmission projects that required merchant developers to assume full market risk and financial risk for their projects.

\(^4\) TransEnergie Ltd., 91 FERC ¶ 61,230 (2000); Neptune Regional Transmission System, LLC, 96 FERC ¶ 61,147 (2001), order on reh'g, 96 FERC ¶ 61,326 (2001); TransEnergie Ltd., 98 FERC ¶ 61,144 (2002); TransEnergie Ltd. And Hydro One Delivery Services Inc., 98 FERC ¶ 61,147 (2002); Northeast Utilities Service Co., 98 FERC ¶ 61,310 (2002).
33. In its answer, PJM asserts that the orders cited by FirstEnergy do not address either a merchant's obligation to build reliability upgrades or how cost responsibility for such upgrades should be allocated. Moreover, it contends that the Commission has offered no controlling guidance on whether future reliability upgrades are part of a merchant developer's "project" and therefore should be collected from the merchant customers. PJM asserts that its proposal strikes a reasonable balance of the interests of affected parties and provides no subsidies of merchant transmission developers.

34. The Commission finds PJM's proposal to allocate the costs of future upgrades among transmission owners in proportion to the load in each zone of the PJM Control Area to be just and reasonable. As discussed above, PJM appropriately is charging the merchant transmission developer the O&M costs associated with the development. However, it is reasonable that the cost and O&M expenses associated with future upgrades to the transmission system made necessary for reliability concerns or the provision of future transmission service should be allocated in the same way as all other transmission upgrades. The Commission finds that such an allocation does not constitute a subsidy to the merchant developer because a system upgrade provides benefits to the entire system and was not a part of the cost when the project was originally contemplated.

35. Old Dominion argues that the Commission should condition its acceptance of PJM's proposal on merchant AC transmission facilities on the creation of an exception in PJM's pricing treatment for a subset of merchant AC transmission facilities that are constructed by a Load Serving Entity (LSE) with load residing within a PJM-recognized load pocket, which has demonstrated that it has no other recourse to mitigate congestion costs resulting from locational marginal pricing (LMP) but to construct transmission to alleviate or reduce the level of congestion costs to it. In such circumstances, the cost responsibility for the merchant AC transmission facilities constructed by the LSE should be spread to all load within the zone in which the particular load is located through the PJM Transmission Owner Zonal rather than 100% directly assigned to the merchant AC transmission facility constructor.

36. PJM, in its answer, asserts that Old Dominion's proposed exception necessarily raises questions of fact and other issues that are not relevant to PJM's proposed, generally applicable tariff revisions for interconnections of merchant transmission facilities. PJM submits that Old Dominion's proposal would be more appropriately raised in a petition for a declaratory order or in a proceeding regarding a specific interconnection request related to a situation of the type that Old Dominion describes. Old Dominion, in its answer to PJM's answer, submits that the instant proceeding is the place for the
Commission to address the need to adopt an exception to PJM's direct assignment of costs related to merchant transmission facilities in order to recognize the unique circumstances of LSEs in load pocket areas.

37. The Commission directed PJM in the December 20 RTO Order to explain how its transmission planning process will identify within its planning process "expansions that are needed to support competition as well as reliability needs." PJM's filing to comply with the December 20 RTO Order must address the method of compensation for projects that relieve congestion. Thus, PJM's compliance filing is the appropriate place to address cost responsibility for projects that are part of the PJM planning process. The Commission will not address it here.

B. Minimum Power Factor

38. Section 54.7.1 of the PJM Tariff was amended to require merchant DC transmission facilities to provide reactive power support at a prescribed level. It requires that DC transmission facilities be designed in such a fashion so that over the entire megawatt operating range, the facility must be capable of maintaining a power factor of at least 0.95 leading and 0.95 lagging at the points of interconnection.

39. DMEC argues that the minimum power factor requirement in Section 54.7.1 should not be more stringent than that required for PJM Transmission Owners. TEUS, in supplemental comments, contends that the proposed power factor requirement will require significant additional infrastructure on DC facilities, at significant additional cost. It asserts that this requirement is unnecessary, overly broad, discriminatory, and will impede additional merchant DC transmission development. PJM answers that it is necessary to protect existing transmission customers with respect to the reactive performance of the transmission system. PJM submits that, should it determine, through the development of the Regional Transmission Expansion Plan, that a DC transmission facility is the most appropriate solution to the needs of the region, then PJM would require the same standard of reactive performance in the design and implementation of that facility. TEUS asserts that PJM has not supported this assertion and has not provided any reasons for why this power factor requirement is necessary. The Commission agrees with TEUS. Accordingly, in a compliance filing made within 30 days of the date this order issues, PJM is directed to provide support for why the power factor requirement is necessary.

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6Id. at P. 24.
C. Other Issues

40. TEUS contends that under the TOA, a merchant transmission owner with no tariff-based revenue requirement would not receive any of the incremental PTP revenue made possible by the incremental ATC that it funded, thus contradicting PJM's proposal that incremental revenue would be shared among transmission owners under the provisions of the TOA. TEUS therefore requests that the Commission require the PJM transmission owners to amend their TOAs to provide the benefits of additional transmission capacity to the entities that fund such capacity. PJM notes in its filing that the PJM Transmission Owners and interested stakeholder have discussed making certain changes to the TOA to accommodate merchant transmission owners, and that it expects such amendments to be filed in the near future. The Commission does not find it necessary to require a change in the general tariff language to address TEUS's concern. TEUS, can address such a concern with respect to a specific project when appropriate to that project.

41. DMEC suggests that PJM should modify its tariff further to provide for superior priority for transmission interconnections proposed for congested areas. PJM answers that DMEC raised the same issue in Docket No. RT01-2 and the Commission addressed it in its December 20, 2002 order in that proceeding. PJM states that it will submit its filing to comply with that order, as required, on or before March 19, 2003. As the Commission will be addressing the superior priority issue in the Docket No. RT01-2 proceeding, it need not do so here.

42. DMEC suggests that PJM’s tariff revisions should provide third parties or merchant transmission developers with the right and flexibility to plan, design and construct upgrades and interconnections, rather than leave those matters to the RTO. PJM answers that this suggestion is contrary to established Commission policy regarding RTOs’ planning function. The Commission agrees with PJM. The Commission has concluded that efficient decision-making on investments in transmission facilities requires that the entire interconnection process must be under the decisional control of the RTO.7 DMEC’s request is denied.

7Old Dominion Electric Cooperative v. PJM Interconnection, L.L.C., 99 FERC at 61,773.
Docket No. ER03-405-000

43. DMEC contends that PJM's proposal of a three-party interconnection agreement should be rejected based on prior Commission precedent.\(^8\) PJM answers that the Commission subsequently accepted (subject to conditions) the three-party interconnection and construction agreements with respect to generation interconnection under the PJM Tariff in Docket No. ER02-1333.\(^9\) Since this provision is consistent with the PJM Tariff, the Commission will accept it. To the extent that the Commission changes the provisions relating to third-party agreements with respect to generation interconnection, DMEC can raise that issue with respect to merchant transmission interconnections.

44. DMEC contends that the definition of "Merchant Transmission Facilities" should include network upgrades built to accommodate transmission interconnections. PJM answers that interconnection of Merchant Transmission Facilities may require system upgrades to maintain reliability, avoid overloads, and for other reasons, and that such upgrades are the consequence of the merchant transmission developer’s proposal, not a part of that proposal. PJM submits that this is similar to the situation when upgrades are necessary for the interconnection of new generation projects, and that system upgrades likewise are not part of a generator’s project. The Commission agrees with PJM and denies DMEC's request.

45. DMEC states that it is opposed to the ownership of Attachment Facilities by PJM Transmission Owners. PJM answers that DMEC’s complaint is misplaced. It asserts that Section 44.1 merely states that transmission owners will own Attachment Facilities only to the extent not otherwise provided in a Construction Service Agreement. Under such agreements, and consistent with the provisions of Subparts E and F (formerly Subparts B and C) of Part IV of the PJM Tariff, Attachment Facilities on the interconnection customer’s side of the Point of Interconnection are usually owned by the interconnection customer, although in some situations the transmission owner may own some of the Attachment Facilities. The location of the Point of Interconnection and the ownership of facilities is stated in the customer’s Interconnection Service Agreement. If the interconnection customer and transmission owner do not agree on the location of the Point of Interconnection, then PJM will determine it. PJM contends that DMEC and other interconnection customers therefore have ample opportunity to own Attachment Facilities if they so wish. The Commission agrees with PJM and denies DMEC's request.

\(^8\)DMEC cites PJM Interconnection, L.L.C., et al., 96 FERC ¶ 61,061 at 61,234 (2001).

\(^9\)See Old Dominion, 99 FERC ¶ 61,189.
46. DMEC contends that “excessive capability” related to Capacity and Energy Injection Rights and Firm Transmission Withdrawal Rights associated with Merchant DC Transmission Facilities should be awarded to others, rather than automatically to the owner of such facility. PJM answers that it does not understand what DMEC means by “excessive capability” in this context. PJM notes, however, that it is only appropriate that a merchant DC developer receives all rights created by or associated with its project. Such rights are the means by which the developer sells the transmission capability of its facility and thereby recoups and, if possible, earns a return on, its investment. PJM submits that limiting such rights would unnecessarily reduce economic incentives for the development of merchant DC projects, and DMEC does not justify such a limitation. The Commission agrees with PJM and denies DMEC’s request.

47. DMEC contends that third parties should be permitted to conduct Transmission Interconnection Feasibility Studies and System Impact Studies. PJM answers that Section 36.11 of the PJM Tariff already authorizes PJM’s use of contractors for interconnection studies. Moreover, PJM states that the suggestion of permitting interconnection customers or their own contractors to perform such studies has been thoroughly debated within PJM and rejected. It likewise was debated in the Commission’s stakeholder process related to the rulemaking on generation interconnection in Docket No. RM02-1-000 where stakeholders again declined to support allowing project developers to utilize third parties to conduct studies independently of the transmission provider. PJM states that in a fully integrated planning process that must consider many competing needs for limited transmission capability, all studies must be performed either by or under the coordination and supervision of the transmission provider to ensure that both rights and costs are correctly allocated. The Commission agrees with PJM and denies DMEC’s request.

48. DMEC argues that Section 41.9 should not permit PJM Transmission Owners to conduct interconnection studies, unless the merchant transmission owner or interconnection customer is satisfied that the PJM Transmission Owner does not have a conflict of interest. PJM answers that this concern is unfounded. It contends that Section 41.9 is not a new provision of the PJM Tariff. Moreover, PJM submits that the Commission has approved PJM’s reliance on transmission owners to conduct interconnection studies as long as the studies remain under PJM’s control and supervision. The Commission agrees with PJM and denies DMEC’s request.

49. DMEC opposes the portion of Section 45.3.1 of the PJM Tariff which provides that, to retain Capacity Interconnection Rights, generators must meet the operational standards stated in the applicable Reliability Assurance Agreement and in the PJM Manuals. It similarly contests Sections 48.3 and 48.4, which provide that the
methodology for determination of Incremental Available Transfer Capability Revenue Rights will be stated in the PJM Manuals. DMEC’s complaint is that the manuals are not approved by the Commission. PJM answers that DMEC’s position is untenable. Section 45.3.1 is not a new provision. Instead, it is the former Section 41.3.1, and has merely been renumbered in the proposed revisions now before the Commission. PJM contends that the former Section 41.3.1 has long applied to generators. PJM further submits that the Commission has endorsed PJM’s use of manuals to address technical matters, including matters such as those addressed by Sections 41.3.1, 48.3 and 48.4. The Commission agrees with PJM, and denies DMEC’s request.

50. DMEC argues that PJM should clarify that payments made to transmission owners by interconnection customers or third parties will not be considered Contributions in Aid of Construction. PJM answers that the income tax implications of charges for interconnection-related upgrades are already addressed in the PJM Tariff. Specifically, PJM contends that Section 82.4 includes a safe-harbor provision to enable the Interconnection Customer to avoid income tax gross-ups to the cost of such facilities. PJM has proposed no substantive changes to those provisions in this proceeding. PJM asserts that DMEC’s proposed remedy is already available via the Option to Build of Section 83.2.3 of the PJM Tariff. The Commission agrees with PJM and denies DMEC’s request.

51. DMEC further argues that interconnection customers should be provided the right to contest taxes for which they indemnify PJM Transmission Owners under Section 82.4.2 of the PJM Tariff. PJM answers that DMEC raises an issue that does not relate to any of the tariff changes that PJM has proposed in this proceeding. It asserts that Section 82.4.2 was accepted for generation interconnection in Docket No. ER02-1333. PJM contends that the only changes to Section 82.4.2 that it has proposed in this filing are modifications to include Merchant Network Upgrades. It submits that DMEC’s suggested further change is unwarranted since Section 82.4.2 already acknowledges an interconnection customer’s right to request that a transmission owner contest imposition of tax liability. Since the transmission owner is the taxpayer in this context, it alone has the right to contest its tax liabilities. The Commission agrees with PJM and denies DMEC’s request.

52. DMEC suggests that there should be additional revisions to the transmission interconnection process to make it more streamlined, expedited and less expensive. DMEC further suggests that PJM Transmission Owners should be required to cooperate with merchant transmission owners in obtaining the permits and rights-of-way that a developer must have to meet the milestones of Section 41.7.4 of the PJM Tariff. DMEC fails to specify what changes to the tariff would achieve these results, and without such
specific tariff recommendations, the request was too vague. Accordingly, DMEC's request is denied.

53. PJM requested waiver of the 60-day prior notice requirement of the Federal Power Act and the Commission's regulations. The Commission, however, finds that PJM has failed to show good cause to waive the notice requirement. PJM's waiver request is therefore denied, and the proposed tariff sheet will become effective March 12, 2003.

The Commission orders:

(A) PJM's proposed tariff sheets are accepted for filing, to become effective March 12, 2003.

(B) PJM is hereby directed to make a compliance filing with 30 days of the date this order issues, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,
Secretary.