

195 FERC ¶ 61,117
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Laura V. Swett, Chairman;
David Rosner, Lindsay S. See,
Judy W. Chang, and David LaCerte.

FirstEnergy Service Company

Docket No. ER26-1780-000

ORDER REJECTING PROPOSED TARIFF REVISIONS

(Issued May 15, 2026)

1. On March 16, 2026, FirstEnergy Service Company (FirstEnergy) filed, on behalf of itself and FirstEnergy's affiliated Electric Distribution Companies (EDC),¹ pursuant to section 205 of the Federal Power Act (FPA),² and Part 35 of the Commission's regulations,³ revisions to Attachments M-1 and M-2 of PJM's Open Access Transmission Tariff (Tariff)⁴ (FirstEnergy Attachments M-1 and M-2). In this order, we reject FirstEnergy's proposed Tariff revisions, as discussed below.

I. Background

A. Attachments M-1 and M-2

2. FirstEnergy states that Attachment M-1 provides a comprehensive explanation of the methodology and mechanics that the FirstEnergy EDCs use to report the Total Hour

¹ The FirstEnergy EDCs are: Ohio Edison Company, The Toledo Edison Company, The Cleveland Electric Illuminating Company, Pennsylvania Power Company, Metropolitan Edison Company, Pennsylvania Electric Company, Jersey Central Power and Light Company, Monongahela Power Company, West Penn Power Company, and The Potomac Edison Company.

² 16 U.S.C. § 824d (2025).

³ 18 C.F.R. pt. 35 (2025).

⁴ FirstEnergy explains that pursuant to Order No. 714, PJM submits this filing on behalf of FirstEnergy as part of an XML filing package that conforms with the Commission's regulations. Transmittal at 1, n.3; see *Elec. Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008), *clarified*, Order No. 714-A, 147 FERC ¶ 61,115 (2014).

Energy Obligation (THEO)⁵ of both wholesale and retail LSEs to PJM and the LSEs themselves. FirstEnergy also states that it uses this information to calculate the monthly market energy interchange bill for each LSE. FirstEnergy's THEO formula provides for the accounting of losses through contractually or mutually determined loss factors added to the interconnection point meter readings. FirstEnergy states that Attachment M-1 also provides that unaccounted-for energy is not allocated to wholesale LSEs unless otherwise specified in their contracts or other agreements with FirstEnergy.⁶

3. FirstEnergy states that Attachment M-2 establishes the procedures and methodologies for determining the Peak Load Contribution (PLC) and the Network Service Peak Load (NSPL) used by each EDC in the different FirstEnergy Zones. FirstEnergy explains that the PLC is a measure of a customer's share of the system's peak during the yearly five coincident peak hours and the NSPL is a customer's contribution to the network's single zone peak used to allocate transmission costs.⁷

B. Procedural History

4. On August 3, 2012, FirstEnergy filed, on behalf of itself and its affiliated EDCs, revised Attachments M-1 and M-2 to the PJM Tariff (2012 Filing). This filing replaced in substance all previous provisions of Attachments M-1 and M-2. Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, and West Penn Power Industrial Intervenors (collectively, the Industrial Groups), American Municipal Power, Inc. (AMP), and Old Dominion Electric Cooperative (ODEC) protested the 2012 Filing. On October 2, 2012, the Commission issued an order setting the proceeding for hearing and settlement judge procedures.⁸

5. On June 24, 2013, FirstEnergy, on behalf of its affiliated EDCs; Allegheny Electric Cooperative, Inc.; AMP, on behalf of itself and its individual members;

⁵ THEO is the amount of energy (measured in megawatt-hours) that a wholesale or retail LSE is responsible for supplying in each hour of each day. *Id.* at 2.

⁶ *Id.*

⁷ *Id.* at 3.

⁸ The Commission found that, despite FirstEnergy's assertions to the contrary, the Commission's "preliminary analysis suggests that FirstEnergy does propose in the instant filing to make substantive changes to the manner in which it calculates the figures contained in Attachments M-1 and M-2." The Commission also found that protests raised issues of material fact that could not be resolved based on the record. *PJM Interconnection, L.L.C.*, 141 FERC ¶ 61,009, at PP 24-25 (2012) (emphasis added).

Buckeye Power, Inc.; and the Industrial Groups⁹ submitted a Settlement Agreement and Offer of Partial Settlement (the 2013 Partial Settlement Agreement), under which Attachments M-1 and M-2 were revised to include modifications to the terms governing the determination of THEO, PLC, and NSPL for wholesale and retail LSEs serving load in the service territories of the FirstEnergy EDCs in PJM.¹⁰ The 2013 Partial Settlement Agreement resolved all the issues raised by those parties in the proceeding and provided for the withdrawal of the pending request for clarification or rehearing filed by the Industrial Groups. On September 27, 2013, the Commission issued an order approving the 2013 Partial Settlement Agreement.¹¹

6. The 2013 Partial Settlement Agreement includes a Modification section stating that “[t]he terms of this Settlement shall be subject to change solely by written amendment executed by the Settling Parties”¹² and a Standard of Review section stating that

[t]he standard of review for any modification to this Settlement, whether (i) set forth in a written amendment executed by the Settling Parties, (ii) pursuant to the Commission’s exercise of its authority under section 206 of the Federal Power Act, whether acting sua sponte or on a complaint filed by a Settling Party, or (iii) proposed by a non-Settling Party, shall be the “just and reasonable” standard.¹³

⁹ These parties are identified as the settling parties to the 2013 Partial Settlement Agreement. *See PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,240, at P 1 (2013).

¹⁰ The 2013 Partial Settlement Agreement states that “Attachments M-1 and M-2 shall be revised and clarified as specified and as shown in Attachment A [to the 2013 Partial Settlement Agreement].” 2013 Partial Settlement Agreement, § II.A.1 (Attachments M-1 and M-2). The 2013 Partial Settlement Agreement also states that, “[t]he matters resolved by this Settlement shall be implemented through revisions to the PJM OATT, Attachments M-1 and M-2. *Id.* at § II.A.2 (Tariff Sheet Revisions).

¹¹ *PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,240. On March 7, 2014, the revisions to FirstEnergy’s Attachments M-1 and M-2 to the PJM Tariff that implemented the 2013 Partial Settlement Agreement were accepted by letter order effective September 27, 2013. *See PJM Interconnection, L.L.C., Intra-PJM Tariffs, attach. M-1 (FirstEnergy Zones) (2.0.0): id. attach. M-2 (FirstEnergy Zones) (2.0.0).*

¹² 2013 Partial Settlement Agreement, § IV.A (Modifications).

¹³ *Id.* at § IV.B (Standard of Review) (emphasis added).

The 2013 Partial Settlement Agreement also includes a provision under the Miscellaneous section stating that “[n]othing in this Settlement shall constitute a waiver of any Settling Party’s rights under sections 205 and 206 of the Federal Power Act, 16 U.S.C. §§ 824d, 824e.”¹⁴

7. ODEC and FirstEnergy did not reach agreement on the issues raised by ODEC in the proceeding, and the case proceeded to hearing on those issues. On July 15, 2014, an Administrative Law Judge in this proceeding issued his initial decision, finding in favor of ODEC on all issues.¹⁵ Thereafter, the Commission issued Opinion No. 543, affirming the initial decision and accepting the 2012 Filing subject to the condition that FirstEnergy’s affiliate, Potomac Edison, submit a compliance filing to apply Attachments M-1 and M-2 to ODEC and ODEC Load and the Town of Front Royal, Virginia (Front Royal), as modified to reflect the Commission’s findings in Opinion No. 543.¹⁶

8. After Opinion No. 543, FirstEnergy, AMP, and ODEC entered discussions focused on FirstEnergy’s implementation of the Commission’s compliance directive. On April 25, 2016, FirstEnergy filed, on behalf of its affiliates, AMP, and ODEC,¹⁷ a Settlement Agreement and Offer of Settlement (2016 Settlement Agreement, together, with the 2013 Partial Settlement Agreement, the Settlement Agreements) to resolve certain compliance-related issues. On August 26, 2016, the Commission issued an order approving the 2016 Settlement Agreement.¹⁸

9. Under the 2016 Settlement Agreement, FirstEnergy, AMP, and ODEC agreed to the terms and conditions under which Potomac Edison will calculate and report THEO, PLC, and NSPL for the ODEC Load and Front Royal, and memorialized those terms and

¹⁴ *Id.* at § V (Miscellaneous).

¹⁵ *PJM Interconnection, L.L.C.*, 148 FERC ¶ 63,003 (2014).

¹⁶ *PJM Interconnection, L.L.C.*, Opinion No. 543, 153 FERC ¶ 61,216 (2015), *order on reh’g*, 154 FERC ¶ 61,136 (2016).

¹⁷ These parties are identified as the settling parties to the 2016 Settlement Agreement. *See PJM Interconnection, L.L.C.*, 156 FERC ¶ 61,133 at P 1 (2016).

¹⁸ *PJM Interconnection, L.L.C.*, 156 FERC ¶ 61,133 (2016). On November 25, 2016, the Service Agreements implementing the 2016 Settlement Agreement were accepted by letter order effective September 25, 2016. *See PJM Interconnection, L.L.C.*, PJM Service Agreements Tariff, PJM SA No. 4453 (PJM SA No. 4453 between ODEC and Potomac Edison) (0.0.0), *id.* PJM SA No. 4454 (PJM SA No. 4454 between AMP and Potomac Edison) 0.0.0; *id.* PJM SA No. 4452 (PJM SA No. 4452 between ODEC and Potomac Edison) (0.0.0).

conditions in two agreements: (i) a Settlement Agreement between Potomac and ODEC for the ODEC Load (SA No. 4453); and (ii) a Settlement Agreement between Potomac and AMP for Front Royal (SA No. 4454). In addition, Potomac Edison and ODEC entered into an Operating and Interconnection Agreement for Wholesale Load (SA No. 4452, together, with SA Nos. 4453 and 4454, the Service Agreements).

10. The 2016 Settlement Agreement contains the same Modification, Standard of Review, and Miscellaneous sections as the 2013 Partial Settlement Agreement.¹⁹

II. Filing

11. FirstEnergy states that the primary purpose of the proposed revisions to FirstEnergy's Attachments M-1 and M-2 is to: (1) update the resettlements process language to reflect currently accepted procedures included in similar PJM transmission owner tariffs; and (2) consolidate the two separate Attachments M-1 and M-2 tariff sheets into a single tariff attachment, Attachment M-1/M-2.²⁰ FirstEnergy further seeks to amend language to update how it utilizes loss factors at specific delivery points, along with other ministerial edits throughout the document.

12. FirstEnergy states that this filing clarifies its obligations under Attachments M-1 and M-2 concerning the determination and reporting of hourly energy obligations and supplier peak load shares for market participants in the PJM pricing zone of FirstEnergy EDC affiliates. FirstEnergy further states that this filing will not result in a rate increase.²¹

III. Notice of Filing and Responsive Pleadings

13. Notice of the Filing was published in the *Federal Register*, 91 Fed. Reg. 13299 (Mar. 19, 2026), with interventions and protests due on or before April 6, 2026. AMP, Buckeye Power, and ODEC filed timely motions to intervene. On April 6, 2026, AMP and ODEC filed protests. On April 20, 2026, FirstEnergy filed a motion for leave to answer and answer to AMP's and ODEC's protests (April 20 Answer). On April 27, 2026, FirstEnergy filed a motion to withdraw its answer and replace it with an amended motion for leave to answer and answer to AMP's and ODEC's protest

¹⁹ 2016 Settlement Agreement, §§ IV.A (Modifications), IV.B (Standard of Review), V (Miscellaneous).

²⁰ Transmittal at 3 & n.10. Specifically, the proposed revisions to FirstEnergy's Attachment M-1 and M-2 would revise the currently effective Attachment M-1 into the consolidated single tariff and cancel the currently effective Attachment M-2.

²¹ Transmittal at 3.

(Amended Answer). On May 5, 2026, ODEC filed an answer to FirstEnergy's motion to withdraw and a motion for leave to answer to FirstEnergy's April 20 Answer and FirstEnergy's Amended Answer (Answer).²²

A. Protests

14. AMP asserts that the instant filing is prohibited by the 2013 Partial Settlement Agreement, the 2016 Settlement Agreement, and the Commission's orders approving those settlements. AMP states that the 2013 Partial Settlement Agreement and the 2016 Settlement Agreement contain provisions that address modifications to Attachments M-1 and M-2. AMP further states that the modification provisions state that "[t]he terms of this Settlement shall be subject to change solely by written amendment executed by the Settling Parties."²³ AMP contends that under the Settlement Agreements, FirstEnergy has two options that it could take to revise Attachments M-1 and M-2: (1) obtain agreement of the settling parties, which includes AMP, to a written amendment of the terms and conditions and make a section 205 filing; or (2) make a section 206 filing and meet its burden to demonstrate that the existing terms and conditions of Attachments M-1 and M-2 are unjust, unreasonable, or unduly discriminatory before the Commission can consider FirstEnergy's proposed replacement. AMP asserts that instead of pursuing one of these options, FirstEnergy seeks to impose its unsupported vague replacement terms and conditions through a section 205 filing without the written consent of the settling parties. Therefore, AMP states that the Commission should reject the instant filing as prohibited by the 2013 Partial Settlement Agreement, the 2016 Settlement Agreement, and the Commission's orders approving those settlements.²⁴

15. Further, AMP and ODEC contend that FirstEnergy has not provided any explanation of how its proposed revisions to Attachments M-1 and M-2 are consistent with the Settlement Agreements and the Commission's orders approving those settlements or how the proposed revisions will not adversely affect them. Specifically, ODEC points to language in the current Attachments M-1 and M-2 that states that the Attachments are "not intended to supersede or replace any contractual arrangement(s) between FirstEnergy (or its affiliated FirstEnergy EDC) and the applicable LSE that otherwise governs the calculations. Such contractual arrangement(s) shall prevail unless silent on a particular

²² ODEC does not oppose FirstEnergy's motion to withdraw. ODEC states that it is providing a response to FirstEnergy's motion to withdraw "[b]ecause both versions of FirstEnergy's Answer are available in ELibrary and the Commission has not yet acted on FirstEnergy's Withdrawal Motion." ODEC Answer at 2-3.

²³ AMP Protest at 3-4 (quoting 2016 Settlement Agreement, § IV.A (Modifications); 2013 Partial Settlement, § IV.A (Modifications)).

²⁴ AMP Protest at 4.

issue or calculation.”²⁵ ODEC states that FirstEnergy has replaced this with language stating that the revised Attachments M-1 and M-2 “do[] not amend or replace any existing contracts or agreements between FirstEnergy and any LSEs.”²⁶ ODEC asserts that this language could be interpreted to apply only to contracts or agreements in existence as of the effective date of the new Attachment M-1/M-2, which would amount to grandfathering existing contracts and preclude any later contracts or even amendments to existing contracts, such as the Settlement Agreements. ODEC states that FirstEnergy must explain and clarify that its proposed revisions to Attachments M-1 and M-2 will not violate the terms of the Settlement Agreements or the Service Agreements. Moreover, ODEC asserts that Attachments M-1 and M-2 must continue to apply to ODEC and the ODEC Load.²⁷

16. Alternatively, AMP asserts that if the Commission does not find that FirstEnergy’s filing was procedurally improper, then it should find that FirstEnergy has not demonstrated that the filing is just, reasonable, and not unduly discriminatory and reject the filing.²⁸ ODEC similarly asserts that the Commission should reject the filing and provide guidance if the Commission deems it appropriate, so that FirstEnergy can submit a later filing demonstrating that its proposed revisions to Attachments M-1 and M-2 are just, reasonable, and not unduly discriminatory or preferential. ODEC avers that the last time the Commission reviewed FirstEnergy’s Attachments M-1 and M-2 in Docket No. ER12-2399, FirstEnergy also did not adequately explain its proposed revisions.²⁹ ODEC explains that in that proceeding, the Commission accepted the filing but established hearing and settlement judge procedures.³⁰ ODEC further explains that those proceedings lasted several years, with parties litigating the issues before ultimately reaching a settlement after the Commission issued an order on the Initial Decision.

²⁵ ODEC Protest at 7 (citing Attachments M-1 and M-2).

²⁶ *Id.* at 7-8.

²⁷ *Id.*

²⁸ AMP Protest at 7.

²⁹ ODEC Protest at 16 (citing *PJM Interconnection, L.L.C.*, 141 FERC ¶ 61,009 at P 24 (“FirstEnergy states in its filing that it proposes only to update, reorganize, and streamline Attachments M-1 and M-2. It further notes in its answer that it is proposing ‘no changes to the current methodologies used for making calculations.’ Nevertheless, our preliminary analysis suggests that FirstEnergy does propose in the instant filing to make substantive changes to the manner in which it calculates the figures contained in Attachments M-1 and M-2.”) (citations omitted)).

³⁰ *Id.* (citing *PJM Interconnection, L.L.C.*, 141 FERC ¶ 61,009 at P 26).

ODEC submits that the parties and the Commission should not have to expend such significant resources to clarify and remedy an FPA section 205 filing that is patently deficient.

17. ODEC notes that the Commission has stated “FPA sections 205(c) and (d), and Commission regulations, provide the Commission with authority to prescribe the rules and regulations regarding the tariffs and rate schedules filed by public utilities and require such tariffs to ‘stat[e] plainly’ and ‘clearly and specifically specify[]’ all rates and charges and terms and conditions of service.”³¹ Additionally, ODEC notes that, with respect to a rate change, the Commission’s regulations require, among other things, a brief description of the rate change and a statement of reasons for the change.³² ODEC notes that the Commission has rejected tariff provisions that are too vague and do not appropriately define the meaning of the provision.³³ ODEC asserts that the instant filing fails to meet the requirement to state rates, terms, and conditions of service “plainly and clearly.” Moreover, ODEC asserts that FirstEnergy has failed to provide sufficient information for the Commission to determine that its proposed changes to Attachments M-1 and M-2 are just, reasonable, and not unduly discriminatory or preferential.³⁴

18. AMP and ODEC separately provide a non-exhaustive list of provisions in FirstEnergy’s proposed revisions to Attachments M-1 and M-2 that they argue have not been adequately explained, have not been shown to be just and reasonable, or are impermissibly vague.³⁵ AMP and ODEC assert that the fact that these concerns are unaddressed by FirstEnergy in its filing are evidence that FirstEnergy’s filing is deficient and cannot be accepted. Therefore, AMP and ODEC urge the Commission to reject FirstEnergy’s filing on the merits.³⁶

³¹ *Id.* at 5 (citing *Duquesne Light Co.*, 189 FERC ¶ 61,181, at n.109 (2024) (citing 16 U.S.C. § 824d(d), 18 C.F.R. § 35.1(a) (2025))).

³² *Id.* (citing 18 C.F.R. §§ 35.12(b)(4), (b)(5) (2025)).

³³ *Id.* (citing *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,283, at P 79 (2008); *see also Cal. Indep. Sys. Operator Corp.*, 108 FERC ¶ 61,022, at P 45 (2004)).

³⁴ *Id.*

³⁵ AMP Protest at 5, n.12, 6-7; ODEC Protest at 8-9, 12, 13-14, 15-16.

³⁶ AMP Protest at 7; ODEC Protest at 16-17.

B. FirstEnergy Amended Answer

19. FirstEnergy contends that the proposed Attachments M-1 and M-2 revisions do not undermine the 2013 Partial Settlement Agreement, 2016 Settlement Agreement, or the associated Service Agreements, emphasizing that the SA No. 4453 expressly recognizes that Attachments M-1 and M-2 may be “amended from time to time.”³⁷ FirstEnergy states that, to recognize the pre-existing Settlement Agreements, the proposed revisions to Attachments M-1 and M-2 include language stating that it “does not amend or replace any existing contracts or agreement between FirstEnergy and any LSEs.” FirstEnergy argues that AMP mischaracterizes the Settlement Agreements, explaining that the 2013 Partial Settlement Agreement led to the revisions to Attachments M1 and M-2, and the 2016 Settlement Agreement and associated Service Agreements are specific agreements to govern the calculations for AMP and ODEC—separate from the Tariff.³⁸ FirstEnergy asserts that it does not need the settling parties’ consent to amend its own tariff because no substantive changes to the previously agreed-upon provisions are proposed, and the 2013 Partial Settlement Agreement provides that “[n]othing in this Settlement shall constitute a waiver of any Settling Party’s rights under section 205 and 206 of the Federal Power Act, U.S.C. §§ 824d, 824e.”³⁹

20. As to the proposed revisions to Attachments M-1 and M-2, FirstEnergy argues that AMP’s and ODEC’s concerns are speculative and unsupported, emphasizing that similar language has been approved in other PJM transmission owners’ Attachments M-2,⁴⁰ and that such vague assertions do not establish a genuine issue of material fact.⁴¹ FirstEnergy contends that it is not seeking to implement substantive changes to its Attachments M-1 and M-2. Rather, FirstEnergy avers that it solely seeks to modernize Attachments M-1 and M-2 to conform with the other PJM transmission owners’ M-2 Attachments and preserve the status quo for AMP and ODEC.⁴²

³⁷ FirstEnergy Amended Answer at 8-9 (citing SA No. 4453, § 1.1).

³⁸ *Id.* at 9-10.

³⁹ *Id.* (citing 2013 Partial Settlement Agreement, § V).

⁴⁰ FirstEnergy explains that the proposed changes were modeled generally after the Duke Energy Ohio, Inc. and Public Service Electric and Gas Company Attachment M-2. *See Id.* at 6, n.12.

⁴¹ *Id.* at 6.

⁴² *Id.* at 8.

C. ODEC Answer

21. ODEC argues that FirstEnergy's Amended Answer does not cure the deficiencies with its filing as highlighted in ODEC's and AMP's protests. Specifically, ODEC asserts that FirstEnergy still fails to demonstrate that its proposed revisions to Attachments M-1 and M-2 are just and reasonable and still does not offer any explanation for the significant and substantive revisions it proposes.⁴³ ODEC states that FirstEnergy's assertion that its proposed revisions to Attachments M-1 and M-2 are "generally" and "mostly" based on other PJM transmission owners' Attachments M-2 is insufficient to meet FirstEnergy's FPA section 205 burden that the proposed revisions are just and reasonable.⁴⁴

22. In addition, ODEC avers that FirstEnergy's statement in its Amended Answer that it "is not seeking to implement substantive changes to Attachment M-1/M-2," cannot be reconciled with the substantive revisions FirstEnergy proposes in the instant filing.⁴⁵ ODEC notes that the Commission previously dealt with FirstEnergy's attempts to make substantive revisions to its Attachments M-1 and M-2, while claiming that it was not doing so.⁴⁶ ODEC reiterates its request that the Commission should reject FirstEnergy's filing rather than once again requiring the parties and the Commission to expend considerable resources in order to clarify and remedy an FPA section 205 filing that is patently deficient and has not satisfied the FPA section 205 burden as was the case in Docket No. ER12-2399.⁴⁷

IV. Discussion

A. Procedural Matters

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2025), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2025), prohibits an answer to a protest or an answer unless otherwise

⁴³ ODEC Answer at 8.

⁴⁴ *Id.* at 8-9.

⁴⁵ *Id.* at 9 (citing FirstEnergy Amended Answer at 8).

⁴⁶ *Id.* at 9 (citing *PJM Interconnection, L.L.C.*, 141 FERC ¶ 61,009 at P 24).

⁴⁷ *Id.* at 9-10.

ordered by the decisional authority. We accept FirstEnergy's Amended Answer and ODEC's Answer because they have provided information that assisted us in our decision-making process.

25. Rule 216(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.216(a) (2025), provides that any participant may seek withdrawal of a pleading by filing a notice of withdrawal. Rule 216(b) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.216(b), provides that the withdrawal of any pleading is effective at the end of 15 days from the date of filing of a notice of withdrawal, if no motion in opposition to the notice of withdrawal is filed within that period and the Commission does not issue an order disallowing the withdrawal within that period. Pursuant to Rule 216, we grant FirstEnergy's motion to withdraw its April 20 Answer and replace it with its Amended Answer.

B. Substantive Matters

26. As discussed below, we reject FirstEnergy's proposed revisions to Attachments M-1 and M-2 of the Tariff because the filing is prohibited by the Modification and Standard of Review sections of the Settlement Agreements.

27. The terms of both Settlement Agreements expressly provide that "the terms of this Settlement shall be subject to change solely by written amendment executed by the Settling Parties"⁴⁸ and that "the standard of review for any modification to this Settlement . . . set forth in a written amendment executed by the Settling Parties . . . shall be the 'just and reasonable' standard."⁴⁹ We find that these provisions, when read together, require FirstEnergy to obtain the written agreement of all settling parties before making an FPA section 205 filing revising Attachments M-1 and M-2. Specifically, the redlined version of Attachments M-1 and M-2 that were submitted as part of the 2013 Partial Settlement demonstrate that the parties agreed to revisions to all sections of Attachments M-1 and M-2 as filed by FirstEnergy in its 2012 Filing⁵⁰ and, accordingly, we find that FirstEnergy may not modify these sections of Attachments M-1 and M-2 except as permitted in the Settlement Agreements.

28. We disagree with FirstEnergy that the general provision in the Settlement Agreements stating that "[n]othing in this Settlement shall constitute a waiver of any

⁴⁸ 2013 Partial Settlement Agreement § IV.A (Modifications), 2016 Settlement Agreement § IV.A (Modifications).

⁴⁹ 2013 Partial Settlement Agreement § IV.B (Standard of Review), 2016 Settlement Agreement § IV.B (Standard of Review).

⁵⁰ *See supra* n.10.

Settling Party's rights under sections 205 and 206 of the Federal Power Act, 16 U.S.C. §§ 824d, 824e⁵¹ allows FirstEnergy to revise Attachments M-1 and M-2 under FPA section 205 without written consent of all the settling parties. Under standard principles of contract interpretation, specific provisions control over general provisions.⁵² Therefore, we find that this general provision does not supersede or render superfluous the specific modification and standard of review provisions in the Settlement Agreements requiring a written amendment executed by all settling parties. The general provision simply preserves statutory rights to the extent they do not conflict with the modification provisions negotiated in the Settlement Agreements. We also disagree with FirstEnergy's argument that it may revise its tariff without the settling parties' consent because its proposed revisions to Attachments M-1 and M-2 are not substantive.⁵³ The protesters, however, dispute FirstEnergy's characterization of its proposed revisions to Attachments M-1 and M-2, and assert that FirstEnergy's proposed revisions are substantive,⁵⁴ and under the Settlement Agreements FirstEnergy needs to get their approval to make the changes.

29. Finally, we disagree with FirstEnergy's argument that the Settlement Agreements cannot constrain its FPA section 205 filing rights. Public utilities may agree to restrict or condition their filing rights otherwise available under FPA section 205.⁵⁵ We find that the settling parties, which include FirstEnergy, affirmatively chose to include language in the Settlement Agreements that conditions revisions to Attachments M-1 and M-2, which were filed with the Commission pursuant to the terms of the 2013 Partial Settlement Agreement, on unanimous written agreement. That choice is valid, and the Commission

⁵¹ See FirstEnergy Amended Answer at 10 (citing 2013 Partial Settlement Agreement § V (Miscellaneous)).

⁵² See, e.g., *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639 (2012) ("The debtors' reading of § 1129(b)(2)(A), under which clause (iii) permits precisely what clause (ii) proscribes, is hyperliteral and contrary to common sense. . . . Here, where general and specific authorizations exist side-by-side, the general/specific canon avoids rendering superfluous a specific provision that is swallowed by the general one.").

⁵³ See FirstEnergy Amended Answer at 10.

⁵⁴ See ODEC Answer at 9 (citing FirstEnergy Amended Answer at 8).

⁵⁵ See *Me. Pub. Utils. Comm'n v. FERC*, 454 F.3d 278, 283 (D.C. Cir. 2006) (under the *Mobile-Sierra* doctrine "utilities may choose to voluntarily give up, by contract, some of their rate-filing freedom under section 205" (citing *Atl. City Elec. Co. v. FERC*, 295 F.3d 10-11 (D.C. Cir. 2002))).

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must apply the modification process the parties selected unless FirstEnergy can show that its changes satisfy the public interest standard under *Mobile-Sierra*.

30. Because we reject the filing as procedurally improper, we do not reach the merits of FirstEnergy's proposed revisions to Attachments M-1 and M-2.

The Commission orders:

FirstEnergy's proposed Tariff revisions are hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Carlos D. Clay,
Deputy Secretary.

Document Content(s)

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