

132 FERC ¶ 61,056
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

American Transmission Systems, Inc.

Docket No. ER09-1589-003

ORDER GRANTING WAIVER

(Issued July 19, 2010)

1. On May 20, 2010, FirstEnergy Service Company filed, on behalf of its affiliated ATSI Utilities,¹ a petition requesting waiver of certain penalties that might be imposed on Demand Resource Providers whose offers cleared in the ATSI Utilities' Fixed Resource Requirement (FRR) Integration Auctions. Specifically, the ATSI Utilities seek waiver of the provisions of PJM Interconnection, L.L.C.'s (PJM) Reliability Assurance Agreement (RAA)² that would impose a FRR Capacity Deficiency Charge on a Demand Resource Provider when its resources are no longer available to support the Demand Resource Provider's capacity obligation because of the permanent departure of the load

¹ FirstEnergy Service Company was formed in 1997 through the merger of the Ohio Edison Company and Centerion Energy Corporation, a transaction that brought, under common control, the ATSI Utilities (Cleveland Electric Illuminating Company, Ohio Edison Company, the Toledo Edison Company, and Pennsylvania Power Company). In 1999, American Transmission Systems, Inc. (ATSI) was established as a consolidation of the ATSI Utilities' transmission assets.

² *Reliability Assurance Agreement Among Load Serving Entities in the PJM Region*, PJM Interconnection, L.L.C., Rate Schedule FERC No. 44. The purpose of the RAA is, *inter alia*, to ensure that adequate Capacity Resources, including planned and existing Generation Capacity Resources, planned and existing Demand Resources, Energy Efficiency Resources, and Interruptible Load for Reliability, are available to provide reliable service to loads within the PJM Region.

resource associated with the obligation. As discussed below, the Commission grants the requested waiver.

I. Background

2. On August 17, 2009, ATSI submitted a filing requesting that the Commission approve the termination of its status as a transmission operator, owner, and local balancing authority in the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), effective June 1, 2011, its proposed date of integration into PJM. In its filing, ATSI stated that its participation in PJM's Reliability Pricing Model (RPM) capacity market processes could not occur as of the date of integration into PJM because the RPM Base Residual Auctions covering the first two years of the post-integration period (the 2011-2012 and 2012-2013 Delivery Years) had already occurred.³ Accordingly, ATSI proposed that the ATSI zone's load serving entities (LSE) satisfy their capacity obligations for the two-year post-integration period by utilizing a modified version of PJM's FRR alternative.⁴ While the FRR alternative ordinarily requires that the capacity be acquired through self-supply and bilateral agreements, ATSI proposed that the ATSI zone LSEs be required to acquire this capacity through special auctions.

3. On December 17, 2009, the Commission issued an order conditionally authorizing ATSI to terminate its existing obligations to the Midwest ISO and to transfer operational

³ In the RPM capacity market, PJM purchases capacity on a multi-year forward basis through an auction mechanism. PJM conducts a Base Residual Auction three years ahead of each Delivery Year and three scheduled Incremental Auctions during the three-year period between the Base Residual Auction and the Delivery Year.

The RPM auctions at issue were held during the months of May 2008 for the 2011-2012 Delivery Year and May 2009 for the 2012-2013 Delivery Year. *American Transmission Systems, Inc.*, 129 FERC ¶ 61,249, at P 59 (2009).

⁴ Schedule 8.1.A of the PJM RAA provides: "The [FRR] Alternative provides an alternative means, under the terms and conditions of this Schedule, for an eligible Load-Serving Entity to satisfy its obligation hereunder to commit Unforced Capacity to ensure reliable service to loads in the PJM Region."

The modified version of the FRR alternative was proposed to be based on the same model approved by the Commission in authorizing the recent re-integration of the Duquesne Light Company into PJM's capacity markets. *See Duquesne Light Co.*, 126 FERC ¶ 61,074 (2009).

control of its facilities to PJM.⁵ The December 17, 2009 Order found that use of the FRR alternative proposed by ATSI provided an appropriate basis for the ATSI zone to be integrated into PJM's capacity markets and that the special auctions proposed by ATSI as a means to acquire this capacity were reasonable.⁶

II. Details of the Filing

4. The ATSI Utilities state that the FRR Integration Auctions for the 2011-2012 and 2012-2013 Delivery Years were held from March 15, 2010 to March 19, 2010, and were successful in procuring the entire amount of the capacity requirement for those years. The ATSI Utilities also state that PJM's summary of the results of the auctions indicates that approximately 978 MW and 218 MW of demand resources were cleared for the 2011-2012 and 2012-2013 Delivery Years, respectively.⁷

5. The ATSI Utilities argue that Demand Resource Providers whose offers cleared now stand in approximately the same circumstances as Demand Resource Providers whose resources cleared in RPM auctions. Specifically, the ATSI Utilities state that the Demand Resource Providers whose resources cleared in the FRR Integration Auctions have a contractual obligation to provide PJM-qualified demand resources in the stated amount to the ATSI Utilities for the Delivery Year for which the providers' offers cleared. Accordingly, these same Demand Resource Providers have risks that are similar to Demand Resource Providers whose resources cleared in the RPM auctions; specifically, the risk of permanent departure or shutdown of the load resource that is the source of supply for the Demand Resource Provider's offer.

⁵ *American Transmission Systems, Inc.*, 129 FERC ¶ 61,249 (2009) (December 17, 2009 Order).

⁶ On April 30, 2010, EnerNOC Inc. filed a formal complaint in Docket No. EL10-63-000 against FirstEnergy Service Company alleging that the recent ATSI Integration Auctions failed to comply with directives as established by the Commission in the December 17, 2009 Order. Docket No. EL10-63-000 is currently pending before the Commission.

⁷ PJM's report on the results of the auction is available at: <http://www.epjm.net/markets-and-operations/~media/markets-ops/rpm/rpm-auction-info/atsi-frr-integration-auction-results.ashx>. According to PJM, its Market Monitor, Monitoring Analytics, LLC, has certified that the auction results were competitive, the Three Pivotal Supplier Test was correctly applied, the Market Clearing Prices were accurately calculated and the auction process was conducted with no undue preference for any participant.

6. Schedule 8.1(F)(2) of the RAA provides that “An FRR Entity shall be assessed an FRR Capacity Deficiency Charge in each Zone addressed in such entity’s FRR Capacity Plan for each day during a Delivery Year that it fails to satisfy its Daily Unforced Capacity Obligation in each Zone.”⁸ The ATSI Utilities state that in the case of RPM auctions, Section 8.4, Attachment DD, of the PJM Open Access Transmission Tariff (PJM Tariff)⁹ protects Demand Resource Providers from being assessed a Capacity Resource Deficiency Charge¹⁰ in the event of permanent shutdown or load departure by the load resource that is the source of supply for an RPM capacity obligation.¹¹

⁸ The FRR Capacity Deficiency Charge “shall be in an amount equal to the deficiency below such FRR Entity’s Daily Unforced Capacity Obligation for such Zone times....” Schedule 8.1(F)(2) of the RAA.

⁹ PJM Interconnection, L.L.C., FERC Electric Tariff, Sixth Revised Vol. No. 1, Substitute Second Revised Sheet Nos. 619-620.

¹⁰ Section 8.1, Attachment DD, of the PJM Tariff provides that a Capacity Resource Deficiency Charge “shall be assessed on any Capacity Market Seller that Commits a Capacity Resource, and on any Locational UCAP Seller that sells Locational UCAP for a Delivery Year based on a Generation Capacity Resource, for a Delivery Year that is unable or unavailable to deliver Unforced Capacity for all or any part of such Delivery Year for any reason....”

Section 8.2, Attachment DD, of the PJM Tariff provides that the Capacity Resource Deficiency Charge “shall equal the Daily Deficiency Rate...multiplied by the megawatt quantity of deficiency below the level of capacity committed in such Capacity Market Seller’s Sell Offer(s) or bilateral capacity commitments, or Locational UCAP Seller’s Locational UCAP sale for each day such seller is deficient.”

¹¹ Section 8.4, Attachment DD, of the PJM Tariff reads:

“A Capacity Market Seller or Locational UCAP Seller that is otherwise subject to the Capacity Resource Deficiency Charge solely as a result of section 8.1(e) may receive relief from such Charge if it demonstrates that the inability to provide the level of demand response specified in its Sell Offer is due to the permanent departure (due to plant closure, efficiency gains, or similar reasons) from the Transmission System of load that was relied upon for load response in such Sell Offer; provided, however, that such seller must provide the Office of the Interconnection with all information deemed necessary by the Office of the Interconnection to assess the merits of the request for relief.”

(continued...)

The ATSI Utilities state that the relief provided by Section 8.4, Attachment DD, of the PJM Tariff is not available to entities who operate under PJM's FRR alternative.¹² Accordingly, ATSI Utilities request waiver of the FRR Deficiency Charge in instances where a Demand Resource Provider's offer cleared in the FRR Integration Auctions but whose load resources are no longer available due to permanent load departure, in order to place FRR Integration Auction Demand Resource Providers in approximately the same position that they would have been in had their offers cleared in an RPM auction. Alternatively, the ATSI Utilities request that the Commission find that the relief described in Section 8.4, Attachment DD, of the PJM Tariff is available to the ATSI Utilities and to Demand Resource Providers whose offers cleared in the FRR Integration Auctions.¹³

7. The ATSI Utilities state that they are authorized to advise the Commission that Monitoring Analytics, the Independent Market Monitor for PJM, supports the request for waiver and that PJM does not oppose the requested relief.

III. Notice of Filing and Responsive Pleadings

8. Notice of FirstEnergy Service Company's filing was published in the *Federal Register*, 75 Fed. Reg. 30810 (2010), with interventions, protests, or comments due on or before June 10, 2010. No comments, protests, or interventions were filed.

IV. Commission Determination

9. The ATSI Utilities seek waiver of the provisions of PJM's RAA that would impose a FRR Capacity Deficiency Charge on a Demand Resource Provider when its resources are no longer available to support the Demand Resource Provider's capacity

ATSI Utilities note that PJM advises that the reference to Section 8.1(e) of Attachment DD of the PJM Tariff is a typographical error. The correct reference should be to Section 8.1(f) of Attachment DD of the PJM Tariff.

¹² ATSI Utilities Filing at 4.

¹³ The ATSI Utilities note that ATSI Utilities' ratepayers are protected in any event because the supplier agreements between the ATSI Utilities and affected Demand Resource Providers call for the Demand Resource Provider to pay all PJM charges that are attributed to the provider's capacity resources that cleared one or both of the auctions, including deficiency charges resulting from permanent load departure. ATSI Utilities Filing at 4-5.

obligation because of the permanent departure of the load resource associated with the obligation.¹⁴ The Commission finds that there is good cause to grant waiver, as discussed below.

10. In the RPM capacity market, PJM purchases capacity on a multi-year forward basis through an auction mechanism. In these RPM auctions, if a Demand Resource Provider is unable to meet its capacity obligation due to the permanent departure of a load resource that it relied upon to make its offer, Section 8.4, Attachment DD, of the PJM Tariff provides for relief from the applicable Capacity Resource Deficiency Charge. However, the PJM Tariff does not provide for such a waiver of the Capacity Resource Deficiency Charge when capacity is not procured through the RPM auction, such as in the case of the FRR option. Based on the specific facts presented in this case, the Commission will grant waiver of PJM's FRR Capacity Deficiency Charge to ATSI Utilities and the Demand Resource Providers whose offers cleared in the ATSI Utilities' FRR Integration Auctions for the 2011-2012 and 2012-2013 Delivery Years and whose resources are no longer available to support their capacity obligation because of the permanent departure of the load resource associated with the obligation.

The Commission orders:

The requested waiver is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁴ Schedule 8.1(F)(2) of the RAA provides that "An FRR Entity shall be assessed an FRR Capacity Deficiency Charge in each Zone addressed in such entity's FRR Capacity Plan for each day during a Delivery Year that it fails to satisfy its Daily Unforced Capacity Obligation in each Zone."