

132 FERC ¶ 61,140
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 17, 2010

In Reply Refer To:
PJM Interconnection, L.L.C.
Docket No. ER10-1481-000

PJM Interconnection, L.L.C.
955 Jefferson Avenue
Norristown, PA 19403

Attention: Pauline Foley, Assistant General Counsel

Reference: Request for Limited Tariff Waiver

Dear Ms. Foley:

1. On June 17, 2010, PJM Interconnection, L.L.C. (PJM), filed a request for a limited waiver of section 113 of its Open Access Transmission Tariff (OATT), as may be necessary to excuse its inability to comply with the study time requirements relative to notice of reliability impacts associated with a generation owner's request to deactivate a generator unit(s) coincidental with a request to transfer the generator unit's Capacity Interconnection Rights (CIRs) to another generator unit. If the Commission grants the waiver, PJM asks that it remain in effect until December 31, 2010. As discussed below, the Commission grants the requested waiver.

2. PJM states that in April 2009, it received a letter from PSEG Energy Resources & Trade LLC (PSEG ER&T) submitted on behalf of PSEG Fossil LLC (PSEG Fossil) notifying PJM of PSEG Fossil's intent to retire the Kearny Units Nos. 10 and 11, effective as of June 1, 2012.¹ PSEG ER&T also notified PJM of PSEG Fossil's intent to transfer the retired units' CIRs to new Kearny generating units in order to offset system upgrade costs. These new units are currently identified in the PJM generator interconnection queue, as Queue Nos. T41 and T42. PJM states that this request is a

¹ PJM's June 17, 2010 Filing at 3 (PJM Filing).

variation of a “typical” request to deactivate a generator unit, as it involves a Generation Owner’s request to retire a generator unit and to transfer the generator unit’s existing CIRs to a new or other existing generator unit either at the same site or another site.

3. PJM states that section 113, specifically, section 113.2 of its OATT requires it to inform a generation owner whether deactivation would adversely affect the transmission system’s reliability within 30 days of receipt of the Generation Owner’s notice to deactivate a generator unit within the PJM Region.² If PJM finds that no such adverse effects will occur, the Generation Owner may deactivate its generator unit thereafter. If PJM determines that deactivation would adversely affect the reliability of the transmission system absent system upgrades, PJM informs the Generation Owner by: (i) identifying the specific reliability impact that will result from the proposed deactivation of the generator unit; and (ii) providing an initial estimate of the amount of time required to complete the necessary system upgrades.³ PJM coordinates with the affected transmission owners to determine the upgrades needed to alleviate any potential reliability violations that generator unit deactivations could cause. The required system upgrades are then incorporated into PJM’s Regional Transmission Expansion Plan (RTEP). If the necessary upgrades cannot be completed by the requested Deactivation

² *Id.* at 1-2. Section 113.2 of the OATT dictates PJM’s obligations upon receipt of a Generation Owner’s notice to deactivate a generating unit. It contains a number of requirements in addition to the requirement that PJM inform a Generation Owner whether Deactivation would adversely affect the transmission system’s reliability within 30 days of receipt of the Generation Owner’s notice to deactivate a generator. Within 60 days of the Generation Owner’s notice of Deactivation, the Generation Owner must inform PJM “whether the generating unit proposed for Deactivation will continue operating beyond its desired Deactivation Date during the period of construction of the Transmission System reliability upgrades necessary to alleviate the reliability impact resulting from the Deactivation.” PJM, FERC Electric Tariff, Fourth Revised Sheet No. 224A-224A.01. Additionally, for generating units that will continue to operate beyond their desired Deactivation dates, section 113.2 states that PJM must “provide an updated estimate of the period of time it will take to complete the Transmission System upgrades necessary to alleviate the reliability impact” within 75 days of receipt of the Generation Owner’s notice of Deactivation. *Id.* at 224B. PJM must also “post on its internet site full details of the transmission upgrades necessary to alleviate the reliability impact that would result from the Deactivation of the generating unit” within 90 days of receipt of the Generation Owner’s notice of Deactivation. *Id.*

³ PJM Filing at 2.

Date, PJM may ask the Generation Owner to defer retirement pending completion of such upgrades. The Generation Owner then decides whether to defer the deactivation of the generator unit.⁴

4. PJM states that it has been unable to comply with the time restrictions set forth in section 113.2 of the OATT.⁵ Specifically, it was unable to timely: (i) identify the specific reliability impact(s) resulting from the proposed deactivation of the generator unit and (ii) provide an initial estimate of the period of time it would take to complete the transmission reliability upgrades necessary to alleviate the reliability impact.

5. PJM explains that its inability to comply with the OATT arose for reasons beyond PJM's reasonable control despite its good faith efforts to comply with the OATT.⁶ To support this point, PJM states that it experienced extensive delays in completing the 2012 base case retool, which was a necessary step to complete the analysis for the proposed retirement of the Kearny Units Nos. 10 and 11. PJM states that the reasons for the delay include: (i) the change in projected system load for 2012, which caused the need for re-evaluation of the baseline upgrades; and (ii) the change in the commercial operation dates for the backbone high voltage transmission lines, particularly the Susquehanna-Roseland line which has a direct impact in the PSEG Zone. PJM asserts that because of these delays, it completed its analysis in August 2009 and forwarded it to PSE&G. PSE&G then had to perform its analysis, which typically includes a review of the PJM findings and an analysis of the lower voltage system in the PSE&G Zone.

6. In response to PSEG Fossil's request to coordinate the deactivation of the Kearny Units Nos. 10 and 11 with commercial operation of Queue Nos. T41 and T42, PJM completed its deactivation analysis in August 2009 and forwarded it to PSEG Fossil for its review.⁷ In January 2010, PSEG Fossil verified PJM's analysis and suggested upgrades necessary to alleviate potential reliability issues if the new generating units are not operational by the Deactivation Date.

7. By letter dated April 15, 2010, PJM advised PSEG ER&T that unless the new generating units are in service coincident with the deactivation date of the Kearny Units Nos. 10 and 11, the proposed deactivation would adversely affect the transmission

⁴ *Id.*

⁵ *Id.* at 3.

⁶ *Id.* at 3-4.

⁷ *Id.* at 4.

system's reliability absent upgrades.⁸ In a response letter, PSEG ER&T acknowledged the reliability concerns but affirmed PSEG Fossil's commitment to construct and operate the new generator units by June 1, 2012. PSEG ER&T also stated in its response letter that the project is on target to meet the established timeframe. In support of its statement, PSEG ER&T stated that: (i) Queue Position No. T41 is committed in the 2012/2013 and 2013/2014 PJM Reliability Pricing Model base residual auctions; (ii) PSEG Fossil is actively permitting the unit; and (iii) PSEG Fossil has started to purchase the equipment and prepare the site for development of the project. Moreover, PSEG ER&T stated that if PSEG Fossil encounters any issues that would prevent the project from meeting its commercial operation date, PSEG ER&T is willing to continue to operate Kearny Units No. 10 and No. 11 beyond their desired deactivation date. Thus, system reliability would not be jeopardized as a result of this failure to comply with the OATT requirements in this case.

8. PJM asserts that its current OATT process lacks the flexibility necessary to allow it to reasonably and efficiently plan its transmission system when faced with a request to deactivate coincident with a request to transfer the CIRs to another unit. On this point, PJM states that PSEG Fossil has already bid and cleared the new generating units into the Reliability Pricing Model Auction for the 2011/2012 year.⁹ PJM points out, however, that until PSEG Fossil executes an Interconnection Service Agreement (ISA) for the new generating facilities, PJM does not include the new units in its analysis results. Thus, without an executed ISA for the new generating units, PJM was unable to provide a complete analysis consistent with section 113 of the OATT. PJM states that if it must meet the OATT's response deadlines in such a situation, it would have to require the relevant transmission owner to build significant upgrades that would be unnecessary once the "new" generating facilities are placed into service.¹⁰

9. PJM states that it is currently in the process of reviewing its OATT with its stakeholders to modify section 113 and section 230 to accommodate a request to deactivate coincident with the transfer of CIRs to a new or other existing generating facility.¹¹ PJM asserts that these modifications will provide the flexibility needed to allow it to reasonably and efficiently plan its transmission system without the need for unnecessary system upgrades.

⁸ *Id.* at 5.

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ *Id.* at 5.

10. PJM respectfully requests that the Commission grant a limited waiver to remain in effect until December 31, 2010, of the analysis timeframes set forth in section 113.2 of the OATT to study: (i) the Notice to Deactivate for Kearny Units Nos. 10 and 11 and (ii) any new Notices to Deactivate that are accompanied with a request to simultaneously transfer CIRs to a “new” or other existing generating unit in the PJM interconnection queue.¹² PJM argues that this limited waiver is necessary to allow it the flexibility to handle these types of Notices to Deactivate on a case-by-case basis until the OATT modifications have been implemented. PJM anticipates that these needed revisions will be effective by December 31, 2010. PJM proposes to file a status report no later than November 1, 2010 to provide an update regarding these proposed OATT revisions.¹³

11. Notice of PJM’s filing was published in the *Federal Register*, 75 Fed. Reg. 37,423 (2010), with interventions and protests due on or before July 9, 2010. American Municipal Power, Inc. (AMP) and Hess Corporation (Hess) filed motions to intervene and comments. Old Dominion Electric Cooperative filed a motion to intervene.

12. AMP and Hess offer comments in support of PJM’s waiver request. AMP states that while it takes no position with respect to PSEG’s request, it supports PJM’s limited request for waiver of section 113 of the OATT. Hess states that it supports PJM’s request as a necessary step to provide more efficiency and certainty to the generation interconnection process.

13. The Commission has previously granted waiver requests of the schedule requirements in RTO tariffs.¹⁴ It has done so when: (i) the applicant has been unable to comply with the OATT provision at issue in good faith; (ii) the waiver is of limited scope; (iii) a concrete problem needed to be remedied; and (iv) the waiver did not have undesirable consequences, such as harming third parties.¹⁵

¹² *Id.* at 6.

¹³ *Id.* at 7.

¹⁴ *Pittsfield Generating, Co., L.P.*, 130 FERC ¶ 61,182 (2010); *ISO New England, Inc.*, 127 FERC ¶ 61,242 (2009); *Connecticut Light and Power Co.*, 126 FERC ¶ 61,186 (2009); *See also, e.g., ISO New England Inc.*, 117 FERC ¶ 61,171 (2006) (citing *Wisvest-Connecticut, LLC v. ISO New England Inc.*, 101 FERC ¶ 61,372 (2002); *Great Lakes Gas Transmission Limited Partnership*, 102 FERC ¶ 61,331 (2003); *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330 (2003); and *Northern Border Pipeline Co.*, 76 FERC ¶ 61,141 (1996)).

¹⁵ *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010); *ISO New England*, 117 FERC ¶ 61,171, at P 21 (2006).

14. The Commission finds that PJM has demonstrated good cause to grant the request for waiver, to the extent necessary, because PJM's requested waiver satisfies the aforementioned conditions. First, despite its good faith efforts, it has shown that it has been unable to comply with the time restrictions set forth in section 113.2 of its OATT due to several factors outside of its control.

15. Second, the requested waiver is of limited scope, because it will only waive the analysis timeframes that section 113.2 of the OATT provides to study the Notice to Deactivate for Kearny Units Nos. 10 and 11 and any new Notices to Deactivate that accompany a request to simultaneously transfer CIRs to a "new" or other existing generating unit in the PJM interconnection queue.

16. Third, grant of waiver will remedy concrete problems. Without it, PJM would have to require the transmission owner to build upgrades that would become unnecessary once PSEG Fossil's new generating facilities go into service. The waiver will also give PJM time to implement a process that will provide flexibility to reasonably and efficiently plan its transmission system when faced with a similar request. Finally, there appears to be no undesirable consequence that would result from granting of a waiver.

17. Therefore, due to the specific and unique facts presented above, the Commission finds good cause to grant PJM's request for a waiver of the analysis timeline requirements of PJM's OATT, to be effective until December 31, 2010, with respect to the Notice to Deactivate for PSEG Fossil's Kearny Units Nos. 10 and 11 and any new Notices to Deactivate that are accompanied with a request to simultaneously transfer CIRs to a "new" or other existing generating unit in the PJM interconnection queue. Additionally, in accordance with PJM's suggestion, we direct PJM to file a status report in Docket No. ER10-1481-000 by November 1, 2010 in order to provide an update on its proposed OATT modifications.¹⁶

The Commission orders:

(A) PJM's request to waive section 113.2 of its OATT, as it applies to the unique facts presented by the Notice to Deactivate for PSEG Fossil's Kearny Units Nos. 10 and 11 and any new Notices to Deactivate that are accompanied with a request to simultaneously transfer CIRs to a "new" or other existing generating unit in the PJM interconnection queue, is hereby granted through December 31, 2010, as discussed in the body of this order.

¹⁶ We note that this report is for informational purposes only and does not require Commission action.

(B) PJM is hereby directed to submit an informational report on the status of its proposed modifications to sections 113 and 230 of its OATT by November 1, 2010, as discussed in the body of this order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.