136 FERC 61,006
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.

PJM Interconnection, L.L.C. Docket No. ER11-3516-000

ORDER DENYING LIMITED WAIVER

(Issued July 1, 2011)

1. On May 3, 2011, PJM Interconnection, L.L.C. (PJM) filed a request for a limited waiver of section 3.2.3(f) of Attachment K-Appendix of the PJM Open Access Transmission Tariff (Tariff) and parallel provisions of Schedule 1 of its Amended and Restated Operating Agreement (Operating Agreement). PJM seeks waiver so that PJM may pay a reduced amount of lost opportunity costs to PPL Montour, LLC (PPL Montour) than stipulated by section 3.2.3(f), in order to make PPL Montour whole for losses PPL Montour incurred when it reduced the output of certain steam-electric generating units at PJM's request. As discussed below, the Commission denies the requested waiver.

I. Background and Request for Waiver

2. PJM states that PPL Montour owns and operates two steam-electric units known as Montour Unit #1 and Montour Unit #2 (Montour Units), and PPL Susquehanna, LLC (PPL Susquehanna) owns two nuclear units known as Susquehanna Unit #1 and Susquehanna Unit # 2 (Susquehanna Units).

3. PJM states that, on October 11, 2010, a Planned Outage took the Lackawanna-Peckville 230kV transmission line and the associated 230kV bus out of service. PJM states that, on October 11, 2010 and October 12, 2010, the gross MW output of the Susquehanna Units experienced multiple oscillations. PJM explains that it conducted a stability study of the Susquehanna Units to determine the cause of the oscillation events and found that there were no stability issues but that the output levels for the Susquehanna Units had exceeded PJM's damping margin, which PJM uses to limit

system exposure related to oscillation events.[1] PJM states that, on November 8, 2010, it determined that the stability for the Susquehanna Units could be increased if the combined output of the Montour Units was reduced. PJM states that, on November 8, 2010, it accordingly directed PPL Montour and PPL Susquehanna to reduce and limit the operation of the combination of the Montour Units and the Susquehanna Units until the identified damping issue was mitigated by implementing a long term solution. PJM explains that the directive limited the Montour Units to output levels of 420 MW (net) each. PJM states that, as a result of the directive, the Montour Units were restricted to an output level in real time that was approximately 280 MW below the economic maximum capability for Montour Unit #1 and 330 MW below the economic maximum capability for Montour Unit #2.

4. PJM states that, during the four-day period between November 8, 2010 and November 12, 2010, while PJM staff was completing the stability analysis to determine whether the reductions would need to continue, PJM never requested that PPL Montour submit the reduced output of the Montour Units in the Day-Ahead Energy Market. PJM states that PPL Montour had the option to do so but chose not to take this course of action. PJM states that PPL Montour instead continued to submit offers into the Day-Ahead Energy Market for the Montour Units based on the units' full economic capabilities despite the fact that PPL Montour was aware that PJM had requested it reduce the operational limits of the Montour Units in real time for reliability reasons. PJM states that, therefore, the Montour Units were committed and scheduled in the PJM Day-Ahead Energy Market at output levels above those to which they were restricted in real time. PJM explains that, on average, the Real-Time Locational Marginal Price (LMP) of energy was higher than the LMP of energy sold in the Day-Ahead Energy Market, so that PPL Montour "lost" money from November 8, 2010 to November 12, 2010. PJM further explains that, once the stability analyses were completed, PJM coordinated with PPL Montour to restrict the output of the Montour Units in the Day-Ahead Energy Market consistent with the restrictions already required in real time.

5. PJM states that "PPL Montour has requested that PJM make its Montour Units whole for reducing their output at PJM's direction from November 8, 2010 to November 12, 2010."[2] PJM explains that, "[g]iven that the operating limits imposed on

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[1] PJM states that damping is the restraining capacity built into a power system to prevent excessive system oscillations which may result in unstable conditions.

[2] Filing at 5.

the Montour Units, i.e., stability limits, are a PJM reliability criterion and a function of the output of the units themselves, PJM would not normally make owners of such limited units whole due to the imposition of such limits."[3] That is, PJM explains, "the very output of the units above the limited level is the cause of the potential system instability, and therefore imposition of limits by PJM on unit output to meet PJM damping criteria are not compensated for lost opportunity cost."[4]

6. However, PJM also states that a make-whole payment may be appropriate in this instance given the uncertainty that existed for the four-day period, and the resulting day-ahead vs. real time financial consequences for PPL Montour. PJM therefore requests a waiver in order to pay a reduced amount; that is, PJM seeks a waiver "as may be necessary to permit PJM to pay a reduced amount of lost opportunity costs to PPL Montour, than is stipulated by Section 3.2.3(f) in order to make PPL Montour whole for losses it incurred when it reduced the output of certain steam-electric generating units at PJM's request."[5]

7. PJM seeks to pay a reduced amount because, PJM explains, it does not believe recovery of lost opportunity costs as currently provided in section 3.2.3(f) of Attachment K-Appendix of the PJM Tariff and Schedule 1 of the Operating Agreement would represent the appropriate make-whole payment in this circumstance.[6] PJM states that section 3.2.3(f) compensates a unit as if it produced its maximum possible quantity of

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[3] *Id*.

[4] *Id*.

[5] *Id*. at 1.

[6] Section 3.2.3(f) provides that "[a] Market Seller's steam-electric generating unit or combined cycle unit…the output of which is reduced or suspended at the request of the Office of Interconnection due to a transmission constraint or other reliability issue, and for which the hourly integrated, real-time LMP at the unit's bus is higher than the unit's offer corresponding to the level of output requested by the Office of the Interconnection…shall be credited hourly in an amount equal to {(LMPDMX – AG) X (URTLMP – UB)}, where: LMPDMW equals the level of output for the unit determined according to the point on the scheduled offer curve on which the unit was operating corresponding to the hourly integrated real time LMP; AG equals the actual hourly integrated output of the unit; URTLMP equals the real time LMP at the unit's bus; UB equals the unit offer for that unit for which output is reduced or suspended…." PJM Tariff, Attachment K-Appendix; Operating Agreement, Schedule 1.

MW in real time by calculating opportunity cost as an hourly quantity that is the positive difference between the real time LMP and the unit's offer price, times the difference between the unit's LMP-based economic output and the unit's real time output. PJM explains that application of section 3.2.3(f) would result in make-whole payments that would compensate the Montour Units as if they were never reduced in real time and as if they could have produced at their maximum output, which, PJM states is inappropriate because the stability analysis confirmed that the Montour Units needed to be reduced in real time to maintain the stability of the bulk power system.

8. Instead, PJM requests that the Commission waive the specific calculation of opportunity costs set forth in section 3.2.3(f) and instead permit PJM to compensate PPL Montour for any loss incurred as a result of being required to buy back the MW sold at the Day-Ahead Energy Market price at a higher real time LMP, i.e., the positive difference between the Real-Time Energy Market LMP and the Day-Ahead Energy Market LMP times the difference between the day-ahead scheduled MW and the quantity produced in real-time. In addition, PJM proposes to net the hours during which there was an economic benefit from the hours in which PPL Montour lost money on a daily basis. PJM states compensation under section 3.2.3(f) would be $764,421, whereas compensation under PJM's proposed formula would be $98,198, a net difference of $666,223.

9. In support of its waiver request, PJM contends that the requested waiver: (1) is of limited scope because it is a one-time waiver that affects only a four-day period, (2) addresses a concrete problem by remedying the financial impact of PPL Montour's required compliance with PJM's directive, and (3) does not harm third parties because it does not result in overcompensation that would need to be allocated to other PJM participants.

II. <u>Notice of the Filing and Responsive Pleadings</u>

10. Notice of the filing was published in the *Federal Register*, 76 Fed. Reg. 27,039 (2011), with interventions and protests due on or before May 24, 2011. A timely motion to intervene was filed by American Municipal Power, Inc.; PPL EnergyPlus, LLC; PPL Montour, LLC; and PPL Susquehanna, LLC (collectively, PPL Companies) filed a motion to intervene and protest. PJM filed an answer to PPL Companies' protest. PPL Companies filed an answer to PJM's answer.

11. In their protest, PPL Companies state that PPL Montour fully expected to be compensated for its lost opportunity costs in reducing the Montour Units in response to PJM's directives, in accordance with section 3.2.3(f) of Attachment K-Appendix of the PJM Tariff and Schedule 1 of the Operating Agreement. PPL Companies state that PPL

Montour had no choice but to comply with PJM's reliability directive or risk violating section 1.7.20 of Schedule 1 of the Operating Agreement,[7] and therefore PPL Montour reduced the output of Montour Units in accordance with PJM's reliability directive. PPL Companies state that section 3.2.3(f) provides that, if a market seller reduces its output at PJM's request "due to a transmission constraint or other reliability issue," the market seller shall be compensated for lost opportunity costs.[8] PPL Companies argue that PJM must follow this tariff requirement and make PPL Montour whole for any revenues lost as a result of reducing the output of its generation facilities in response to PJM's reliability directive.

12. PPL Companies assert that PJM gave no indication to PPL Montour during the four-day period that PPL Montour would not be compensated in accordance with the terms of the Operating Agreement. PPL Companies further argue that PJM has not provided good cause to justify waiving this compensation requirement and that PJM's proposal will not properly compensate PPL Montour for complying with PJM's directive. PPL Companies argue that making PPL Montour whole for the revenues lost as a result of following PJM's directive does not amount to overcompensation, and to not compensate PPL Companies according to the PJM Operating Agreement would penalize PPL Montour for complying with PJM's directive.

13. PPL Companies state that PJM seems to imply that, had PJM not directed PPL Montour to reduce the output of the Montour Units, PPL Montour still would not have been able to operate its facilities at their maximum output during the four-day period. However, PPL Companies contend that, absent a reliability directive from PJM, the Montour Units would have continued their normal operation during the four-day period.

14. PPL Companies argue that granting PJM's request for waiver could jeopardize the incentive for future market sellers to readily comply with PJM's future directives. PPL Companies also argue that allowing PJM to change its compensation requirements *ex post facto* will jeopardize confidence in the PJM market. PPL Companies assert that PJM provides no evidence that the proposed waiver will benefit customers and argues that there would be little to no savings to individual PJM customers if the waiver is granted.

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[7] Section 1.7.20(b) of Schedule 1 of the Operating Agreement provides: "Market Sellers selling from generation resources and/or Demand Resources within the PJM Region shall…respond to the Office of the Interconnection's directives to start, shutdown or change output levels of generation units, or change scheduled voltages or reactive output levels of generation units…."

[8] PPL Companies Protest at 11 (citing PJM Operating Agreement, Schedule 1, section 3.2.3(f)).

15. In its answer, PJM largely reiterates the arguments set forth in its filing.

16. In their answer, PPL Companies argue that PJM's answer contains misstatements of fact and contradictory assertions.

III. Commission Determination

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[9] the timely, unopposed motions to intervene serve to make the parties that filed them parties to this proceeding.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[10] prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept PJM's and PPL Companies' answers because they have aided us in our decision-making.

B. Substantive Matters

19. We find that PJM has not shown good cause to grant the requested limited waiver of section 3.2.3(f) of its tariff over PPL Companies' objections. PPL Companies contend granting the waiver would cause harm to PPL Montour by reducing the amount of lost opportunity costs that would otherwise be paid if PJM complied with its Tariff. In such a circumstance, we find, granting a tariff waiver is not appropriate. In this regard, the Commission has found that "good cause for waiver of existing tariff mechanisms cannot be demonstrated if the waiver unreasonably upsets the balance of expectations of the parties subject to those provisions."[11] Accordingly, the Commission finds that the circumstances here do not justify waiver.[12]

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[9] 18 C.F.R. § 385.214 (2011).

[10] 18 C.F.R. § 385.213(a)(2) (2011).

[11] *Wyo. Interstate Co., Ltd.*, 122 FERC ¶ 61,299, at P 17 (2008).

[12] The Commission makes no findings in this order on the applicability of section 3.2.3(f).

<u>The Commission orders</u>:

PJM's request for limited waiver is hereby denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.