

137 FERC ¶ 61,109
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER12-195-000

ORDER GRANTING REQUEST FOR LIMITED TARIFF WAIVER

(Issued November 4, 2011)

1. On October 26, 2011, PJM Interconnection, L.L.C. (PJM) filed a request for a limited waiver of sections 14B.1, 14B.2, 15.1, 15.2, and 15.6 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) and sections 7.1, 7.1A, 7.3, and 10.4 of the PJM Open Access Transmission Tariff (Tariff). PJM requests the limited waiver in order to suspend rebilling and associated payment obligations for the time period July 2009 to July 2011 pending the issuance of a Commission order on the substantive issues raised in the related complaint in Docket No. EL12-8-000 (Complaint). As discussed below, the Commission grants the request for limited waiver until the Commission's proceedings on the Complaint are final, including rehearing if applicable.

I. Background and Description of Limited Waiver Request

2. PJM states it informed DC Energy, LLC and DC Energy Mid-Atlantic, LLC (collectively, DC Energy Entities) by letter dated October 20, 2011 that it intends to retroactively adjust bills issued to the DC Energy Entities for the time period July 2009 to July 2011. PJM explains that it determined that the DC Energy Entities should not have reported in PJM's eSchedules certain internal bilateral transactions (IBTs) between themselves because the transactions did not contemplate the physical transfer of energy. PJM further explains that, accordingly, it must correct its invoicing to the DC Energy Entities by imposing appropriate balancing operating reserve charges on the transactions. PJM states that it informed the DC Energy Entities that it expects to begin incorporating these adjustments in the billing statement to be issued on November 7, 2011, consistent with its tariff obligations regarding rebilling, which would trigger payment obligations as soon as November 9, 2011.

3. PJM states that the DC Energy Entities advised PJM of their intention to file a complaint challenging PJM's interpretation of the IBT provision and the associated

rebilling.¹ PJM represents that the DC Energy Entities and PJM agree that it would be more efficient and orderly under the circumstances to temporarily waive any Tariff and Operating Agreement provisions necessary to suspend rebilling and associated payment obligations pending a Commission order on the substantive issues raised in the Complaint.

4. Accordingly, PJM requests that the Commission temporarily suspend PJM's obligation to issue, and the DC Energy Entities' obligation to pay, adjusted balancing operating reserve charges during the pendency of the related Complaint. Specifically, PJM seeks a limited and temporary waiver of sections 14B.1, 14B.2, 15.1, 15.2, and 15.6 of the Operating Agreement² and sections 7.1, 7.1A, 7.3, and 10.4 of the Tariff,³ in order to suspend rebilling and associated payment obligations for the time period July 2009 to July 2011, pending a Commission order on the substantive issues raised in the Complaint. In support of its request, PJM states that granting the waiver would preserve the status quo and allow for an orderly and fair outcome of the substantive dispute. PJM explains that it requests expedited treatment, by November 4, 2011, to avoid market disruption and uncertainty.

¹ The DC Energy Entities filed a complaint regarding this matter on October 27, 2011 in Docket No. EL12-8-000. In the Complaint, DC Energy Entities request that the Commission issue an order (a) rejecting PJM's plan to rebill DC Energy Entities for balancing operating reserves charges retroactive to July 2009, (b) alternatively grant a permanent waiver of rebilling and associated payment requirements, or (c) if the Commission does not adopt the foregoing, set the issues for hearing.

² Section 14B.1 of the Operating Agreement states when PJMSettlement must issue bills and billing statements; section 14B.2 states when PJM members are obligated to pay bills issued by PJMSettlement; section 15.1 describes the actions that PJM must take if a member defaults on or otherwise does not meet its obligations under the Operating Agreement, including the obligation to make timely payments; section 15.2 sets forth the procedures that PJM will take to remedy a member's default under the Operating Agreement; and section 15.6 describes limitations on claims for billing adjustments.

³ Section 7.1 of the Tariff states when PJMSettlement must issue bills and billing statements; section 7.1A states when PJM members are obligated to pay bills issued by PJMSettlement; section 7.3 sets forth the actions PJM may take in the event of a default; and section 10.4 describes limitations on claims for billing adjustments.

5. PJM argues that it meets the Commission's standards for granting waivers and that the Commission has previously granted waiver requests that had the effect of delaying payment obligations.⁴ PJM contends that it acted in good faith in issuing the original billing statements, and only later began to question whether the IBTs between the DC Energy Entities were in fact "physical" and eligible for reporting in eSchedules. PJM argues that the temporary waiver is limited in scope because it applies to a finite period (July 2009 – July 2011) and will terminate after the Commission issues an order on the Complaint.⁵ PJM also argues that the temporary waiver will remedy a concrete problem, and serve administrative efficiency and market stability pending the outcome of the Complaint proceeding.⁶ PJM asserts that it would be wasteful to engage in resettlement and rebilling and then have to reverse or revise such resettlement and rebilling depending on how the Commission ultimately rules on the Complaint, and that it would be less disruptive to the markets to perform a single rebilling. PJM further asserts that granting the requested waiver would not harm third parties because there would at most be only a delay in any retroactive resettlement and rebilling pending the outcome of the Complaint proceeding.⁷

II. Notice of Filing

6. Notice of the filing was published in the *Federal Register*, 76 Fed. Reg. 67,719 (2011), with interventions and protests due on or before November 2, 2011. Timely motions to intervene were filed by Exelon Corporation and American Municipal Power, Inc. Timely motions to intervene and comments were filed by Scylla Energy LLC (Scylla) and DC Energy Entities. Old Dominion Electric Cooperative filed a motion to intervene out-of-time. No protests were filed. On November 3, 2011, PJM filed a response to Scylla's motion to intervene and comments.

⁴ Filing at 5 (citing *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,069 (2011) (*PJM*)).

⁵ *Id.* at 8 (citing *PJM*, 135 FERC ¶ 61,069 at P 10; *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 10 (2011) (*ISO-NE*); *California Independent System Operator, Inc.*, 132 FERC ¶ 61,004, at P 11 (2010) (*CAISO*); *Hudson Transmission Partners, LLC*, 131 FERC ¶ 61,157, at P 14 (2010) (*HTP*)).

⁶ *Id.* (citing *PJM*, 135 FERC ¶ 61,069 at P 11; *ISO-NE*, 134 FERC ¶ 61,182 at P 11; *CAISO*, 132 FERC ¶ 61,004 at P 11; *HTP*, 131 FERC ¶ 61,157 at P 14).

⁷ *Id.* at 10 (citing *PJM*, 135 FERC ¶ 61,069 at P 12; *ISO-NE*, 134 FERC ¶ 61,182 at P 12; *CAISO*, 132 FERC ¶ 61,004 at P 11; *HTP*, 131 FERC ¶ 61,157 at P 12).

7. In their comments in support of PJM's filing, DC Energy Entities agree that the requested waiver will allow for an orderly one-time resolution of the issues to be addressed in the Complaint and that PJM has satisfied the Commission's criteria for granting waiver. DC Energy Entities assert that denial of PJM's request for waiver would result in disruption and uncertainty to the PJM market and irreparable harm to the DC Energy Entities. Scylla supports PJM's request for waiver and states that resolution of the Complaint proceeding could be frustrated if the requested waiver were not granted. Scylla requests that the Commission note that the waiver should apply to similarly-situated market participants.

8. In its response to Scylla's motion to intervene and comments, PJM states that it does not seek to waive PJM's obligations to bill Scylla and, accordingly, PJM will proceed to rebill to Scylla in accordance with its normal procedures unless directed otherwise by the Commission. If the Commission grants the waiver request and intends to have the waiver apply to other entities similarly situated to DC Energy Entities, PJM asks the Commission to explicitly so indicate in its order.

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁸ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,⁹ the Commission will grant Old Dominion Electric Cooperative's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Commission Determination

11. The Commission has previously granted Regional Transmission Organizations limited waivers of their own tariff provisions when: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem needed to be

⁸ 18 C.F.R. § 385.214 (2011).

⁹ 18 C.F.R. § 385.214(d) (2011).

remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.¹⁰

12. We find that PJM has demonstrated good cause to grant the request for limited tariff waiver because PJM's requested waiver satisfies the aforementioned conditions. First, we find that PJM has acted in good faith. PJM explains that it accepted the DC Energy Entities' reporting of IBTs on eSchedules assuming that they contemplated the physical transfer of energy and only later began to doubt that IBTs between DC Energy Entities were in fact "physical." Otherwise, PJM explains, it previously would have issued bills including the balancing operating reserve charges for these IBTs that PJM asserts are virtual transactions and hence ineligible for reporting in eSchedules.

13. Second, the requested waiver is of limited scope. The waiver applies only to the finite period from July 2009 through July 2011 (the time period during which PJM has tariff authority to rebill) and will terminate after the Commission issues an order on the Complaint. PJM is seeking to preserve the status quo pending the outcome of the DC Energy Entities' Complaint. The requested waiver is temporary and will not affect future transactions.

14. Third, the waiver will remedy a concrete problem. Absent waiver, PJM would need to engage in resettlement and rebilling and then potentially reverse or revise such resettlement and rebilling. We agree with PJM that it would be less disruptive to the markets to perform a single rebilling on the basis of the Commission's final resolution of the substantive issues raised.

15. Fourth, we find that granting the waiver will not lead to undesirable consequences such as harming third parties. As PJM explains, there would at most be only a delay in any retroactive resettlement and rebilling pending the outcome of the Complaint proceeding. Further, we note that section 7.2 of the Tariff provides for interest on unpaid balances.¹¹

¹⁰ See, e.g., *PJM*, 135 FERC ¶ 61,069 at P 8; *ISO-NE*, 134 FERC ¶ 61,182 at P 8; *CAISO*, 132 FERC ¶ 61,004 at P 10; *HTP*, 131 FERC ¶ 61,157 at P 10; *Pittsfield Generating Co., L.P.*, 130 FERC ¶ 61,182, at P 9-10 (2010); *ISO New England Inc. - EnerNOC*, 122 FERC ¶ 61,297 (2008); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008).

¹¹ PJM Interconnection, L.L.C., Open Access Transmission Tariff, Section 7.2, Interest on Unpaid Balances, 2.0.0.

16. Therefore, for good cause shown, we will grant PJM's request for temporary, limited waiver of sections 14B.1, 14B.2, 15.1, 15.2, and 15.6 of its Operating Agreement and sections 7.1, 7.1A, 7.3, and 10.4 of its Tariff to suspend rebilling and associated payment obligations for the time period July 2009 to July 2011, until the Commission's proceedings on the Complaint are final, including rehearing if applicable. This waiver applies to DC Energy, Scylla, and all other similarly situated PJM market participants.

The Commission orders:

PJM's request for limited waiver is hereby granted, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.