

137 FERC ¶ 61,184  
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. ER12-412-000

ORDER GRANTING REQUEST FOR LIMITED TARIFF WAIVER

(Issued December 6, 2011)

1. On November 14, 2011, PJM Interconnection, L.L.C. (PJM) filed a request for a temporary, 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 (OATT) to permit PJM to temporarily suspend certain rebilling and associated payment obligations for the period August 2009 or October 2009 (as applicable) through October 2011. For the reasons discussed below, we grant PJM's request for limited waiver.

**I. Background and Description of Limited Waiver Request**

2. PJM states that, on November 2, 2011, it informed 57 owners of generating units in the PJM region that it had discovered a software coding error in the Market Settlement Calculation System (MSCS) used to calculate Balancing Operating Reserve Lost Opportunity Cost (BOR LOC) credits.<sup>1</sup> PJM states that due to this software coding error, the MSCS failed to use the higher of the generator's price offer or cost-based schedule, as its tariff requires, in calculating the BOR LOC credits.

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<sup>1</sup> PJM explains that steam-electric, combustion turbine, and combined cycle generating units are entitled to BOR LOC credits when they clear PJM's day-ahead energy market, but either are not dispatched in real time, or are directed by the system operator to reduce output. PJM explains that the BOR LOC credits are determined by subtracting from the real-time locational marginal price (LMP) the *higher of* the relevant market participant's price-based offer, or the cost-based schedule as provided to PJM for the applicable generating unit.

3. PJM states the software incorrectly used the price offer in settlement calculations, even when the generation owner had submitted to PJM a cost-based schedule that was higher than its price offer for the relevant generating unit. According to PJM, BOR LOC overpayments were made as a result because it subtracted a lower price offer, rather than a higher cost-based offer, from LMPs in computing the BOR LOC credits. PJM states that these BOR LOC overpayments were made when units cleared in the day-ahead energy market, but either did not run, or were directed to reduce output, in real time, and were occurred over a period of years. PJM states that because it notified the affected market participants of the billing error caused by the MSCS coding problem in early November 2011, it intends to retroactively re-calculate and re-bill BOR LOC charges and credits beginning with transactions that cleared in October 2009.<sup>2</sup>

4. PJM states that of the 57 affected entities, only two of these entities, Dominion and Ingenco Wholesale Power LLC (Ingenco), have advised PJM that they contest PJM's claimed billing errors.<sup>3</sup> PJM states that, given these entities' pending claims, a proceeding will be required to address and resolve the relevant issues. Accordingly, PJM states that it will make a separate filing by November 30, 2011, (the Assessment Filing) to address these matters including PJM's proposed calculations and adjustments applicable to Dominion and Ingenco.<sup>4</sup>

5. PJM asserts that, in light of this separate proceeding, it will be more efficient and orderly to temporarily defer PJM's tariff obligation to make billing adjustments applicable to Dominion and Ingenco. Accordingly, PJM requests that the Commission temporarily waive the relevant provisions of the Operating Agreement and OATT to

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<sup>2</sup> PJM notes that its November 2, 2011 notification to the affected generator owners indicated that PJM would re-bill from August 2009 forward. PJM since has determined that the appropriate period for such re-billing generally commences with October 2009 transactions. However, because PJM provided notice of the BOR LOC billing error to one generator, Dominion Resource Services, Inc. (Dominion), in August 2009, when PJM discovered the error, PJM intends to re-bill BOR LOC to Dominion for the period August 2009 through October 2011.

<sup>3</sup> PJM notes that Dominion, for example, may claim that its cost-based schedules, as submitted to PJM for units affected by PJM's planned billing adjustments, did not correctly reflect costs and therefore should not be used by PJM without correction in calculating the necessary billing adjustments. PJM adds that Ingenco has asserted that billing adjustments based on its cost-based schedules are not appropriate.

<sup>4</sup> The Assessment Filing was made in Docket No. ER12-469-000 on November 22, 2011.

postpone PJM's re-billing to and repayment by Dominion and Ingenco pending resolution of the Assessment Filing. PJM asserts that such a delay will avoid any need to modify, at a later date, the billing adjustments for Dominion and Ingenco that its tariff would otherwise require be made by January 2012.

6. PJM states that expedited action on its waiver request is necessary because, in the absence of a waiver, PJM will be required to calculate the required billing adjustments in early December 2011 and include these adjustments in its invoices on or before January 9, 2012. PJM explains that calculation of the required adjustments includes determining to whom and in what amounts the repayments from affected generator owners are owed, and making adjustment to those invoices as well. PJM asserts that this process requires considerable manual work and, therefore, requires several weeks' lead time to complete. PJM states that once the recalculated BOR LOC data is entered into its settlements system, it is difficult to make changes without hindering the timely delivery of its invoices.

7. PJM argues that its temporary, limited waiver request is appropriate and should be granted, consistent with a similar request recently granted by the Commission in Docket No. ER12-195-000.<sup>5</sup> First, PJM argues that it acted in good faith in issuing the billing statements that are now at issue because the MSCS coding error had not been discovered as of that time. Specifically, PJM asserts that at the time these invoices were issued, it reasonably believed that that MSCS correctly calculated BOR LOC in accordance with PJM's tariff. PJM further argues that its waiver request is limited in scope because it will apply to a limited, finite period (August 2009 or October 2009 through October 2011) and will terminate after the Commission issues a final order addressing PJM's Assessment Filing.<sup>6</sup> PJM also argues that its temporary waiver request is appropriate and should be granted because it will remedy a concrete problem by addressing the issues presented in the Assessment Filing on an efficient, orderly basis.

8. Finally, PJM asserts that granting its requested waiver will not harm third parties because it will apply for a limited, temporary period only and will not affect any future transactions. PJM explains that no third parties will be harmed by the delay in retroactive resettlement and re-billing if PJM's temporary waiver request is granted because any

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<sup>5</sup> Filing at 7 (citing *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,109 (2011) (November 2011 Waiver Order)).

<sup>6</sup> *Id.* at 8 (citing November 2011 Waiver Order, 137 FERC ¶ 61,109 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*)).

necessary re-billings will occur following the Commission's resolution of PJM's Assessment Filing.<sup>7</sup>

## **II. Notice of Filing and Responsive Pleadings**

9. Notice of PJM's filing was published in the *Federal Register*, 76 Fed. Reg. 72,197 (2011), with interventions and protests due on or before November 21, 2011. Timely-filed motions to intervene were submitted by Dominion, Ingenco, Exelon Corporation (Exelon), Constellation Energy Commodities Group, Inc., Direct Energy Business, LLC and Energy America, LLC, Retail Energy Supply Association, Old Dominion Electric Cooperative, American Municipal Power, Inc., Twin Cities Power, LLC, City Power Marketing, LLC, and PJM Industrial Customer Coalition. Comments were filed by Dominion and Ingenco. A protest was filed by Exelon. Motions for leave to intervene out-of-time were submitted by DC Energy Mid-Atlantic, LLC (DC Energy), GDF Suez Energy North America, Inc. (GDF) and Consolidated Edison Energy, Inc. (CEE) and Consolidated Energy Solutions, Inc. (CES).

10. Dominion and Ingenco support PJM's temporary waiver request. Dominion notes that, while there may be disputed issues of fact regarding the billing adjustments that PJM will propose to make for Dominion, these issues can and should be addressed in the Assessment Filing. Ingenco concurs that its claims should be addressed and resolved in PJM's Assessment Filing.

11. In its protest, Exelon argues that any adjustments that will ultimately apply to Dominion and/or Ingenco may result in corrected billing adjustments affecting each of the other generators. Exelon therefore argues that PJM's obligation to make these billing adjustments should be deferred not only for Dominion and Ingenco, but also for each of the 57 generators at issue. Exelon asserts that such a deferral will give the parties an opportunity to present their views to the Commission and seek a complete resolution of the matter and thus avoid the need to further modify the billing adjustments, at a later date.

## **III. Discussion**

### **A. Procedural Matters**

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>8</sup> the timely, unopposed motions to intervene serve to make the entities that filed them

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<sup>7</sup> *Id.* at 10 (citing November 2011 Waiver Order, 137 FERC ¶ 61,109 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).

parties to this proceeding. In addition, given the early stage of this proceeding and the absence of undue prejudice or delay, we grant the unopposed late-filed interventions of DC Energy, GDF, CEE and CES.

**B. Commission Determination**

13. 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 remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.<sup>9</sup>

14. 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 in issuing its billing statements containing BOR LOC during the period affected by the previously unknown MSCS coding error, at the time of each of these invoices, it reasonably believed that the MSCS had correctly calculated BOR LOC.

15. Second, the requested waiver is of limited scope. The waiver applies only to the finite period from August 2009 to October 2011 for Dominion and October 2009 through October 2011 for other generators, which is the time period during which PJM has tariff authority to rebill, and will terminate after the Commission issues an order resolving PJM's Assessment Filing. The requested waiver is temporary and will not affect future transactions.

16. Third, the waiver will remedy a concrete problem. Absent waiver, PJM would need to engage in resettlement and rebilling the affected generator owners for their past BOR LOC 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

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<sup>8</sup> 18 C.F.R. § 385.214 (2011).

<sup>9</sup> See, e.g., November 2011 Waiver Order, 137 FERC ¶ 61,109 at P 11; *PJM Interconnection, LLC*, 135 FERC ¶ 61,069, at P 8 (2011); *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).

resettlement and rebilling for the generator owners on the basis of the Commission's final resolution of the relevant issues.

17. Fourth, we find that granting the waiver will not lead to undesirable consequences such as harming third parties. As PJM explains, the requested waiver is temporary and will not affect any future transactions. No third parties will be harmed by the delay in retroactive resettlement and rebilling until the Commission's resolution of the Assessment filing. Further, we note that section 7.2 of the Tariff provides for interest on unpaid balances.<sup>10</sup>

18. 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 the PJM OATT to effectuate the requested waiver and to permit PJM to temporarily suspend rebilling and associated payment obligations for the time period October 2009 to October 2011 (August 2009 through October 2011 for Dominion), subject to the outcome of the Assessment Filing proceeding.<sup>11</sup>

19. Finally, we will grant Exelon's request that we broaden the scope of PJM's requested waiver to operate as a blanket billing deferral applicable to all adjustments that will be made with respect to each of the 57 generators subject to PJM's billing adjustments for the reasons stated in Exelon's request. Therefore, this waiver applies to Dominion, Ingenco, 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.

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<sup>10</sup> PJM Interconnection, L.L.C., Open Access Transmission Tariff, Section 7.2, Interest on Unpaid Balances, 2.0.0.

<sup>11</sup> See *supra* note 4.