

139 FERC ¶ 61,080
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. ER12-1178-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS SUBJECT TO
COMPLIANCE

(Issued April 30, 2012)

1. On February 29, 2012, PJM Interconnection, L.L.C. (PJM) submitted revisions to schedule 6 of its Operating Agreement to implement revisions to its Regional Transmission Expansion Planning (RTEP) process, to enable PJM to (1) expand its analyses beyond the tests currently used as part of its reliability and market efficiency analyses and to consider public policy, (2) provide more transparency, and (3) clarify the opportunities for stakeholder participation throughout its transmission planning process. In this order the Commission conditionally accepts PJM's proposed revisions effective May 1, 2012, subject to a compliance filing 30 days from the date of this order.

I. Background

2. PJM began discussing reforms to its planning process at the behest of the PJM Board to address uncertainties in its planning process. In particular, the PJM Board directed PJM to review and consider enhancements to its RTEP process in order to provide more stability and certainty for stakeholders and markets. PJM states that its discussions were further influenced by the Commission's directives in Order No. 1000.¹

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 76 Fed. Reg. 49,842 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323 (2011).

II. Filing

3. PJM proposes several reforms to its transmission planning process.² PJM states that the proposed revisions enable PJM to expand its analyses beyond its current bright-line tests currently used as part of its reliability and market efficiency analyses, allowing PJM to perform more extensive scenario planning analysis using a broader range of assumptions. PJM states that this greater range of analyses includes consideration of public policy objectives in determining whether to move forward with certain transmission projects; PJM submits several proposed revisions to facilitate the use of assumptions concerning renewable resource integration, demand response programs, other environmental initiatives, and generation viability.³ Also, PJM proposes definitions that would enable it to consider public policy objectives in its transmission planning process.⁴ PJM states that these proposed changes will result in more flexible planning criteria, which will enable PJM to plan with more certainty amidst changing conditions, and should minimize and perhaps eliminate the “whipsaw effect” of taking projects in and out of the RTEP.⁵ Additionally, PJM proposes revisions to provide more

² Unless otherwise indicated, the proposed revisions are to PJM’s Operating Agreement, schedule 6, which contains the tariff provisions governing PJM’s Regional Transmission Expansion Planning Process.

³ PJM Filing at 2.

⁴ PJM proposes to add two definitions to its Operating Agreement to define the public policy initiatives that it will consider in its RTEP. First, PJM proposes a definition for Public Policy Objectives which reads as follows:

“Public Policy Objectives” shall refer to Public Policy Requirements, as well as public policy initiatives of state or federal entities that have not been codified into law or regulation but which nonetheless may have important impacts on long term planning considerations.

Second, PJM proposes a definition of Public Policy Requirements which reads as follows:

“Public Policy Requirements” shall refer to policies pursued by state or federal entities, where such policies are reflected in enacted statutes or regulations, including but not limited to, state renewable portfolio standards and requirements under Environmental Protection Agency regulations.

⁵ PJM Filing at 7-8. PJM states that its Board’s abeyance actions affecting the Potomac-Appalachian Transmission Highline and Mid-Atlantic Power Pathway projects are notable examples of uncertainty in the planning process. PJM Filing at 7.

transparency, including adding references to price responsive demand,⁶ and clarifies the opportunities for stakeholder participation throughout its transmission planning process. PJM also proposes the addition of an Independent State Agencies Committee.⁷ Finally, PJM proposes several clarifying revisions to its transmission planning process. PJM requests a May 1, 2012 effective date.

III. Notice of Filing and Responsive Pleadings

4. Notice of the PJM's filing was published in the *Federal Register*, 77 Fed. Reg. 14,357 (2012), with interventions and protests due on or before March 21, 2012.

5. Motions to intervene were timely filed by American Electric Power Service Corporation (AEP),⁸ American Municipal Power, Inc., Atlantic Grid Development, LLC (Atlantic Grid), Atlantic Wind Energy Association (AWEA),⁹ The Dayton Power and Light Company, Dominion Resources Services, Inc., District of Columbia Office of People's Counsel, E.ON Climate & Renewables North America LLC, Exelon

⁶ See, e.g., PJM's proposed revisions at schedule 6, sections 1.4(b) and 1.5.4(d)(iii). Price responsive demand is defined as a state-level initiative pursuant to which an end-use customer can vary its load in response to wholesale electricity prices. See *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,204, at P 2 (2011).

⁷ PJM defines the Independent State Agencies Committee as "a voluntary, stand-alone Committee that consists of Members from regulatory and other state agencies representing all of the states and the District of Columbia within the service territory of PJM. The [Independent State Advisory Committee] is an independent committee that is not controlled or directed by PJM, the PJM Board of Managers, or PJM Members. The purpose of the [Independent State Advisory Committee] is to provide PJM with inputs and scenarios for transmission planning studies. PJM provides a workplace for Independent State Agencies Committee." See PJM's website at <http://www.pjm.com/committees-and-groups/isac.aspx>.

⁸ American Electric Power Service Corporation files on behalf of its affiliates, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, AEP Indiana Michigan Transmission Company, AEP Kentucky Transmission Company, AEP Ohio Transmission Company, and AEP West Virginia Transmission Company.

⁹ The Mid-Atlantic Renewable Energy Coalition filed jointly with AWEA.

Corporation (Exelon), FirstEnergy Transmission Owners,¹⁰ GenOn Parties,¹¹ Iberdrola Renewables (Iberdrola), LS Power Transmission, LLC, NextEra Energy Generators,¹² North Carolina Electric Membership Corporation, NRG Companies,¹³ Old Dominion Electric Cooperative, Organization of PJM States, Inc., Pepco Holdings, Inc., PPL PJM Companies,¹⁴ PSEG Companies,¹⁵ Public Interest Organizations,¹⁶ Public Staff – North Carolina Utilities Commission,¹⁷ and Rockland Electric Company. Motions to intervene

¹⁰ The FirstEnergy Transmission Owners consists of: Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, American Transmission Systems, Incorporated, and Trans-Allegheny Interstate Line Company.

¹¹ The GenOn Parties consists of: GenOn Energy Management, LLC, GenOn Chalk Point, LLC, GenOn Mid-Atlantic, LLC, GenOn Potomac River, LLC, GenOn REMA, LLC, and GenOn Wholesale Generation, LP.

¹² NextEra Energy Generators consists of: FPL Energy Marcus Hook, L.P., North Jersey Energy Associates, L.P., Backbone Mountain Windpower LLC, Mill Run Windpower LLC, Somerset Windpower LLC, Meyersdale Windpower LLC, Waymart Wind Farm, LP, and Pennsylvania Windfarms, Inc.

¹³ The NRG Companies consists of: NRG Power Marketing LLC, Conemaugh Power LLC, Indian River Power LLC, Keystone Power LLC, NRG Energy Center Dover LLC, NRG Energy Center Paxton LLC, NRG Rockford LLC, NRG Rockford II LLC, and Vienna Power LLC.

¹⁴ The PPL PJM Companies consists of: PPL Electric Utilities Corporation; PPL EnergyPlus, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL Susquehanna, LLC; Lower Mount Bethel Energy, LLC; PPL New Jersey Solar, LLC; PPL New Jersey Biogas, LLC; and PPL Renewable Energy, LLC.

¹⁵ The PSEG Companies consists of Public Service Electric and Gas Company, PSEG Power, LLC, and PSEG Energy Resources & Trade LLC.

¹⁶ Public Interest Organizations consists of: The Sustainable FERC Project, Earthjustice, National Audubon Society, Natural Resources Defense Council, Piedmont Environmental Council, Union of Concerned Scientists, and Sierra Club.

¹⁷ Public Staff – North Carolina Utilities Commission (Public Staff) is a state agency separate from the North Carolina Utilities Commission (North Carolina Commission), and is not a “State Commission” for the purposes of 18 C.F.R.

(continued...)

out-of-time were filed by Duke Energy Corporation¹⁸ and Indiana Utility Regulatory Commission (Indiana Commission). Notices of intervention were filed by Delaware Public Service Commission (Delaware Commission), Illinois Commerce Commission, Maryland Public Service Commission (Maryland Commission), New Jersey Board of Public Utilities (New Jersey BPU), North Carolina Commission, and Pennsylvania Public Utility Commission.

6. Comments were filed by AEP, Atlantic Grid, AWEA, Delaware Commission, Exelon, Iberdrola, Maryland Commission, New Jersey BPU, North Carolina Utilities Commission, and Public Interest Organizations. The Indiana Commission submitted comments out of time supporting the comments of the Maryland Commission. On April 4, 2012, PJM filed a limited answer to the various comments.

7. Stakeholders generally support PJM's proposed revisions to its transmission planning process. However, some stakeholders raise concerns with PJM's proposal. The North Carolina Commission and the Delaware Commission express concern about PJM's revision allowing for the consideration of public policy initiatives as a transmission need driven by public policy. Specifically, the North Carolina Commission states that unlike Public Policy Requirements that have been vetted through a legislative or regulatory process where due process requirements generally prevail, public policy initiatives can be transitory, ill-defined, and opaque.¹⁹ Meanwhile, the Delaware Commission states that PJM should specify the vetting process for public policy initiatives more precisely than "in consultation with stakeholders." The Delaware Commission suggests that PJM's study of Public Policy Objectives should be limited to those recommended by the Independent State Agencies Committee.²⁰

8. Exelon is concerned that PJM's proposed revisions to add scenario analysis and eliminate the strict bright-line test are not clear as to what basis PJM will use to

§ 385.214(a)(2) (2011) (explaining notices of intervention). North Carolina Commission Comments at 1-2. The Public Staff submitted its motion to intervene in the same filing as North Carolina Commission's notice of intervention. These agencies jointly filed their comments.

¹⁸ Duke Energy Corporation consists of: Duke Energy Business Services, LLC, Duke Energy Carolinas, LLC, Duke Energy Commercial Asset Management, Inc., Duke Energy Kentucky, Inc., Duke Energy Ohio, Inc., and Duke Energy Retail Sales, LLC.

¹⁹ North Carolina Commission Comments at 5.

²⁰ Delaware Commission Comments at P 8.

recommend transmission projects or upgrades for inclusion in the RTEP, or what decisional mechanism will replace the bright-line test.

9. The Maryland Commission states that PJM's proposal to include price responsive demand in the RTEP should be rejected, given that the Commission has identified several issues as to the reasonableness of price responsive demand in PJM, and has not yet reached a final determination on the matter.²¹ The Maryland Commission explains that the Commission's order accepting and suspending PJM's proposed tariff provisions concerning price responsive demand,²² along with the initiation of a technical conference to further explore these issues, demonstrates that inclusion of price responsive demand in the RTEP is premature and thus should be rejected.²³

10. Commenters including AWEA and Exelon request that PJM clarify various proposed revisions regarding stakeholder involvement in the RTEP process, including but not limited to the role of the Independent Stakeholder Agencies Committee. AWEA urges clarification in the tariff that Independent State Agencies Committee meetings are open to attendance of other stakeholders, even if only the members of the Independent State Agencies Committee can vote.²⁴ Meanwhile, Exelon requests that PJM confirm that in PJM's Order No. 1000 compliance, PJM will provide information to the Transmission Expansion Advisory Committee far enough in advance so that the Transmission Expansion Advisory Committee and other interested parties can provide PJM with meaningful input prior to PJM providing recommendations to its Board.²⁵

11. Finally, while commenters generally support PJM's proposal, they also suggest various additional revisions to PJM's planning process that are, in the commenters' views, necessary for PJM to comply with the directives of Order No. 1000, and should be considered by PJM in the ongoing stakeholder process addressing PJM compliance with Order No. 1000. Such suggestions include, but are not limited to, the need to include a decisional framework to determine which public policy requirements will be included in the study scenarios, which related transmission upgrades are identified, and which upgrades will ultimately be approved for inclusion in the RTEP;²⁶ a cost allocation

²¹ Maryland Commission Comments at 5.

²² *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,204 (2011) (*PJM*).

²³ Maryland Commission Comments at 5-6.

²⁴ AWEA Comments at section IV.C.

²⁵ Exelon Comments at 5.

²⁶ AWEA Comments at section IV.A.

methodology that provides state veto authority for any state that that will incur the financial burden of developing a policy-driven transmission asset;²⁷ and the inclusion of a process for analyzing upgrades due to multiple drivers.²⁸

IV. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d), 18 C.F.R. § 385.214(d) (2011), the Commission will grant Duke Energy Corporation's and Indiana Commission's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PJM's answer because it provided information that assisted us in our decision making process.

B. Commission Determination

14. We conditionally accept PJM's proposed revisions to become effective May 1, 2012, subject to a compliance filing ordered below, for the reasons outlined below.

15. We find that PJM's proposed revisions to its RTEP process that enable PJM to identify and evaluate potential transmission system needs through sensitivity studies, modeling assumption variations, and scenario planning analyses that will consider public policy, are reasonable. We, however, find persuasive protesters' arguments claiming that PJM's proposed revisions lack sufficient detail, and, therefore, accept PJM's proposed revisions subject to a compliance filing, made within 30 days of this order. In the compliance filing, we direct PJM to submit tariff revisions that broadly clarify how sensitivity studies, modeling assumption variations, and scenario planning analyses will be utilized in its RTEP process. To the North Carolina Commission's concern about the vagueness of public policy initiatives, to the extent that the North Carolina Commission objects to PJM's consideration of public policy, we find that PJM is not prohibited by the Federal Power Act from considering Public Policy Requirements or public policy

²⁷ New Jersey BPU Comments at 3.

²⁸ Exelon Comments at 3-4.

initiatives that have not been codified into law or regulation, as defined by PJM, in its RTEP process. In addition, we note that PJM's proposal is a response to issues identified by the PJM Board and is, as well, a product of extensive stakeholder discussions.²⁹

16. Our conditional acceptance of PJM's proposal, and additional clarity from PJM on how its RTEP revisions will be utilized, also address Exelon's concerns regarding how PJM will recommend transmission projects or upgrades for inclusion in the RTEP absent the strict bright line test. Moreover, PJM states that it is proposing to supplement its bright line tests by taking into consideration various scenarios, sensitivity studies, and modeling assumptions.³⁰ PJM states that expanding beyond its current bright line criteria will allow PJM to take into account potential changes in expected future system conditions and uncertainties arising from estimated times to construct transmissions upgrades, which should minimize or eliminate the "whipsaw" effect of taking projects in and out of the RTEP due to changing conditions.³¹ The Commission finds that PJM is not proposing to revise the obligation of the RTEP to maintain reliability nor is it proposing to revise the various reliability standards and criteria that the RTEP must conform to. Therefore, we further find that any decision made regarding the need for and the subsequent inclusion of a particular project must continue to abide by these obligations and standards.

17. The Maryland Commission has concerns regarding PJM's proposal to include references to price responsive demand in the RTEP. In its answer, PJM states that it proposed to include price responsive demand in the RTEP consistent with other demand response products (i.e., it will be factored into the RTEP when it has cleared through PJM's Reliability Pricing Model (RPM) Base Residual Auction (BRA)).³² Since price responsive demand cannot participate in the PJM BRA until May 15, 2012,³³ when the tariff sheets that the Commission accepted and suspended in Docket No. ER11-4628-000

²⁹ PJM Filing at 1, 3-4.

³⁰ PJM's proposed revisions state, in part, "In addition to the bright line tests, the Office of Interconnection shall employ sensitivity studies, modeling assumption variations, and scenario analyses and shall also consider Public Policy Objectives in the studies, so as to mitigate the possibility that bright line metrics may inappropriately include or exclude transmission projects from the long-term plan." See proposed schedule 6, § 1.5.3 (Scope of Studies).

³¹ PJM Filing at 8.

³² PJM Answer at 6.

³³ The 2015/2016 Delivery Year PJM BRA is scheduled for May 7-11, 2012.

become effective,³⁴ we see no harm in accepting inclusion of price responsive demand in the RTEP process. However, we note that our acceptance of references to price responsive demand in the RTEP process has no bearing on the Commission's findings in Docket No. ER11-4628-000. Further, if the Commission reverses its acceptance of price response demand in Docket No. ER11-4628-000, PJM will be required to remove references to price responsive demand in its planning process.

18. As to stakeholder involvement in the proposed Independent State Agencies Committee, we note that the Independent State Agencies Committee Charter states, in part, "The [Independent State Agencies Committee] meetings will be open to all interested stakeholders."³⁵ Additionally, PJM's proposed revisions establish that the role of the Independent State Agencies Committee is to provide input to the PJM planning process. We find Exelon's request for PJM to provide information to stakeholders in a specific timeframe to be outside the scope of this proceeding. We note, however, that Exelon may raise any concerns regarding this issue in the PJM stakeholder process or in response to any future filings raising that issue.

19. Various protesters argue that consideration of Public Policy Objectives is not clear and that the definition may bear upon PJM's Order No. 1000 compliance. To the extent that protestors are concerned that the definition of Public Policy Objectives is unclear because it includes "initiatives that have not yet been codified into law" we note the following. First, the definition is clear that it is limited to those initiatives that "may have important impacts on long term planning considerations." Second, we find that PJM's revisions allow for stakeholders input into which initiatives should be considered by PJM in the planning process. Moreover, this filing is not seeking to implement Order No. 1000.³⁶ Rather, this filing provides PJM the ability to look at potential future Public

³⁴ On September 23, 2011, PJM submitted proposed revisions to its Open Access Transmission Tariff and various other agreements that PJM intended to support the development of price responsive demand. *PJM*, 137 FERC ¶ 61,204 at PP 1-2. The Commission issued an order accepting and suspending PJM's proposed revisions to be effective May 15, 2012, subject to refund, and ordered Commission staff to conduct a technical conference to explore technical and operational issues raised by commenters. *Id.* P 3.

³⁵ See Independent State Agencies Committee Charter, Section III. 1 at 2. http://www.opsi.us/isac/20120120_ISAC_Charter.pdf.

³⁶ PJM explains that:

[it] is not proposing to include any decisional frameworks in this filing that would describe the procedures by which transmission needs driven by Public Policy Requirements

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Policy Objectives when evaluating existing (non-public policy) projects in the regional transmission plan, to help ensure that projects are not approved that may have to be delayed or abandoned at a later date.³⁷ The acceptance of the proposed tariff provisions also does not pre-judge whether these provisions will be acceptable as part of PJM's Order No. 1000 compliance filing. We encourage PJM and its stakeholders to continue their dialogue to resolve issues concerning PJM's compliance with Order No. 1000.

The Commission orders:

The proposed tariff revisions are hereby accepted effective May 1, 2012, subject to PJM submitting a compliance filing within 30 days from the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

would be identified or acted upon. Any such decision frameworks addressing transmission needs driven by Public Policy Requirements are still being discussed in the stakeholder process and, if endorsed, would be included in a subsequent filing.

PJM Filing at 5.

³⁷ See PJM Filing at 7-8; *see also supra* note 5.