

150 FERC ¶ 61,040  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
Norman C. Bay, and Colette D. Honorable.

Illinois Municipal Electric Agency

Docket No. ER14-1681-001

ORDER DENYING CLARIFICATION AND REHEARING

(Issued January 22, 2015)

1. On May 2, 2014, the Commission issued an order granting the Illinois Municipal Electric Agency's (Illinois MEA) request for waiver of Schedule 8.1, Section D.5 of the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region (Reliability Assurance Agreement)<sup>1</sup> for Illinois MEA's Naperville, Illinois load in the Commonwealth Edison (ComEd) Locational Deliverability Area (LDA) for the 2017/18 Delivery Year.<sup>2</sup> On June 2, 2014, Illinois MEA filed a motion for clarification or, in the alternative, rehearing of the May 2 Order (Motion for Clarification or Rehearing). For the reasons discussed below, the Commission denies the request for clarification and the alternative request for rehearing.

**I. May 2 Order**

2. The May 2 Order waived Schedule 8.1, Section D.5 of the Reliability Assurance Agreement for the 2017/18 Delivery Year, allowing Illinois MEA to use capacity resources located outside of the ComEd LDA to meet the internal resource requirement associated with its election to use the Fixed Resource Requirement (FRR) Alternative for its load located in Naperville. Without a waiver of this section, Illinois MEA would have been required to supply a minimum percentage of capacity from resources physically located within the ComEd LDA for its Naperville load because PJM Interconnection, L.L.C. (PJM) elected to establish a separate Variable Resource Requirement Curve for the ComEd LDA.

---

<sup>1</sup> See PJM Interconnection, L.L.C., Intra-PJM Tariffs, RAA, Schedule 8.1, § D.5 (5.0.0).

<sup>2</sup> *Illinois Municipal Electric Agency*, 147 FERC ¶ 61,090 (2014) (May 2 Order).

3. The May 2 Order found that Illinois MEA met the Commission's standard for waiver because: (1) Illinois MEA acted in good faith in preparing to participate in the FRR Alternative; (2) the waiver was of limited scope and for a limited period; (3) the waiver addressed a concrete problem, including the limited time Illinois MEA had to prepare for the internal resource requirement; and (4) the waiver did not have undesirable consequences, such as harming third parties.

## **II. Illinois MEA's Request for Clarification or Rehearing**

4. Illinois MEA seeks clarification of the May 2 Order, requesting that the Commission clarify that the waiver is for the term of the life of Illinois MEA's resource investments and commitments or at a minimum for the five-year minimum term of the FRR Alternative.<sup>3</sup> Illinois MEA alleges that the May 2 Order could be read as limiting the waiver to only the 2017/18 Delivery Year and does not grant the life-of-facility term that it claims it requested in its filing, which it states, would cause it substantial harm.<sup>4</sup> Illinois MEA asserts that the Commission misinterpreted its request as only for the 2017/18 Delivery Year.<sup>5</sup>

5. Illinois MEA states that under the terms of the Reliability Assurance Agreement it must self-supply its Naperville load for at least five years under the FRR Alternative until Delivery Year 2022/23. Illinois MEA states that it was able to make this commitment because it has used its own and contracted external resources to self-supply capacity obligations in the ComEd LDA since 2008 and can continue to do so with its long-term investments, contractual commitments, and transmission rights.<sup>6</sup>

6. Illinois MEA asserts that PJM provided no analysis or support for its decision to create a separate Variable Resource Requirement Curve for the ComEd LDA, which triggered Illinois MEA's need for a waiver.<sup>7</sup> Illinois MEA asserts that the imposition of a minimum internal resource requirement effectively forecloses Illinois MEA's ability to self-supply under the FRR Alternative for Delivery Year 2017/18 and any future year with a Variable Resource Requirement Curve, which it expects PJM to impose in all future delivery years. Therefore, Illinois MEA states that it needs a waiver of

---

<sup>3</sup> See Motion for Clarification or Rehearing at 11-12.

<sup>4</sup> See *id.* at 1.

<sup>5</sup> *Id.* at 3-4.

<sup>6</sup> *Id.* at 4-6.

<sup>7</sup> See *id.* at 8-9.

Schedule 8.1, Section D.5 for all future delivery years in order to economically self-supply with the resources it has under contract.<sup>8</sup> Illinois MEA asserts that a waiver for less than the full term of its elected FRR Alternative defeats the purpose of the FRR Alternative.<sup>9</sup>

7. Illinois MEA states that it believes that the Commission intended to grant its waiver request for the term of its resource acquisition investments and commitments to supply Naperville. Illinois MEA asserts that the Commission should clarify that it meant to grant waiver for this term because the same findings the Commission made for a one-year waiver apply to a waiver of any length. It states that the impact of granting waiver for all subsequent delivery years will be as minimal as granting waiver for one year because: (1) no other PJM customers will be harmed by the waiver; (2) no entity will be deprived of transmission rights; (3) there will be there no contribution to any regional transmission shortage; and (4) there will be no cost impact on others.<sup>10</sup>

8. Illinois MEA also asserts that a waiver of only Delivery Year 2017/18 exposes it to unnecessary financial risks in any delivery year for which PJM elects to establish a separate Variable Resource Requirement Curve for the ComEd LDA and Illinois MEA has no waiver from the internal resource requirement.<sup>11</sup> It explains that under the terms of the FRR Alternative it will face a penalty charge if it is unable to meet the minimum internal capacity obligation, and it estimates the penalty charges will be approximately \$100 million per year. Illinois MEA asserts that if the Commission had denied its waiver request it would be better off because it would have likely withdrawn its FRR Alternative plan instead of committing to the FRR Alternative for at least five years. Illinois MEA asserts that exposing it to these risks is inconsistent with the Commission's basis for granting the waiver because "the waiver would not deprive any other entity of available transmission rights or contribute to any regional transmission shortage and that given the relatively small size of the Illinois MEA load involved, any impact to the ComEd Zone should be minimal."<sup>12</sup>

---

<sup>8</sup> *See id.* at 9-10.

<sup>9</sup> *Id.* at 6.

<sup>10</sup> *See id.* at 11-12.

<sup>11</sup> *See id.* at 9-11.

<sup>12</sup> *Id.* at 10-11 (citing May 2 Order at P 19).

9. Furthermore, Illinois MEA asserts that its good faith efforts to elect the FRR Alternative are not restricted to the first year of its election because it had to commit to self-supply for a minimum of five years and PJM's action did not give Illinois MEA adequate time to prepare for the internal resource requirement for the entirety of the five-year commitment after PJM instituted the Variable Resource Requirement Curve for the ComEd LDA. Illinois MEA states that, although the Commission encouraged it to work with PJM to resolve the problem, it is unreasonable to require Illinois MEA to negotiate either changes to the Reliability Assurance Agreement, or the way that PJM determines which areas are subject to a Variable Resource Requirement Curve. Illinois MEA asserts that these changes are the only way to fix the problem that firm transmission rights were supposed to resolve absent a waiver unless PJM decides not to elect to institute a Variable Resource Requirement Curve in future delivery years.<sup>13</sup>

10. Illinois MEA states that if the Commission declines to clarify that the waiver is for more than Delivery Year 2017/18 it requests rehearing of that decision. It states that the Commission failed to examine the relevant data and articulate a satisfactory explanation for limiting the waiver to a single delivery year and also failed to articulate reasons for departing from precedent. Illinois MEA states that the Commission's reasons for granting waiver apply to a waiver of any term and the Commission cannot reasonably distinguish a one-year waiver from a waiver for the life of the investment or a waiver for five years. Therefore, Illinois MEA states that limiting the waiver to a single delivery year is arbitrary and capricious.<sup>14</sup>

11. Illinois MEA further asserts that limiting the waiver to a single delivery year exposes Illinois MEA to potential excessive costs caused solely by PJM's unreviewed and unexplained decision to create a separate Variable Resource Requirement Curve for the ComEd LDA.<sup>15</sup> Illinois MEA states that PJM did not make its decision based on measurable criteria but instead it applied the Variable Resource Requirement Curve because of potential future generation deactivations. Illinois MEA states that this decision substantially and detrimentally affects Illinois MEA because of potential penalties and potentially strips it of its option for self-supply found in section 217 of the Federal Power Act (FPA).<sup>16</sup> Illinois MEA asserts that it has acted in good faith and could not have reasonably foreseen this change in circumstances.<sup>17</sup> Finally, Illinois MEA

---

<sup>13</sup> *Id.* at 12-13.

<sup>14</sup> *Id.* at 14-16.

<sup>15</sup> *Id.* at 17.

<sup>16</sup> *Id.* at 18 (citing 16 U.S.C. § 824q(b) (2012)).

<sup>17</sup> *Id.*

asserts that the Commission should grant rehearing because limiting the waiver to a single delivery year violates the concept of cost causation and the Commission did not adequately explain its departure from this precedent.<sup>18</sup>

### III. Discussion

12. We deny Illinois MEA's motion for clarification, or in the alternative, request for rehearing.

13. The May 2 Order granted Illinois MEA's request for a waiver of its internal resource requirement "as limited to the 2017/18 Delivery Year."<sup>19</sup> Although Illinois MEA's request for waiver did not specify a term—whether for one year or five years—we granted the waiver in substantial part because of the timing of PJM's notice to Illinois MEA of its decision to establish a separate Variable Resource Requirement Curve for the ComEd LDA, and we noted that Illinois MEA had little time to prepare for the internal resource requirement.<sup>20</sup> But these considerations apply only to the 2017/18 Delivery Year. For subsequent delivery years, Illinois MEA has sufficient time to prepare for the requirements of the FRR Alternative.

14. Illinois MEA asserts that the Commission granted the waiver so that it could avoid significant financial harm and that limiting the waiver to only Delivery Year 2017/18 exposes it to significant financial harm because it will be unable to utilize its resources to self-supply its Naperville load in subsequent years as well. However, in granting the waiver, we considered the impact of the internal resource requirement on Illinois MEA in light of the limited notice that Illinois MEA had to meet PJM's new requirements and noted that Illinois MEA acted in good faith in its preparations.<sup>21</sup> Under the terms of the Reliability Assurance Agreement, all FRR Alternative participants are subject to an internal resource requirement for any LDA for which PJM established a separate Variable Resource Requirement Curve.<sup>22</sup> The internal resource requirement is necessary to protect the reliability of the PJM system. Due to transmission constraints that may arise, PJM needs to ensure, in some instances, that there are sufficient internal resources in a

---

<sup>18</sup> *Id.* at 18-19.

<sup>19</sup> May 2 Order at P 14.

<sup>20</sup> *Id.* P 18.

<sup>21</sup> *See id.* P 16.

<sup>22</sup> *See* PJM Interconnection, L.L.C., Intra-PJM Tariffs, RAA, Schedule 8.1, § D.5 (5.0.0).

locational deliverability area to meet reliability requirements. Nevertheless, as PJM noted, it established the Variable Resource Requirement Curve for the ComEd LDA for the first time ever and admits that it was understandable for Illinois MEA to be unprepared for the subsequent requirements on short notice.<sup>23</sup> Because of the lack of notice, the Commission agreed to grant the requested waiver of Schedule 8.1, Section D.5 of the Reliability Assurance Agreement for Delivery Year 2017/18.

15. Illinois MEA is incorrect in its assertion that the reasons for granting the waiver for Delivery Year 2017/18 are the same as those for granting a waiver for the life of the facilities or for a minimum of five years. Illinois MEA's further contention that the Commission should grant the waiver for at least five years because the FRR Alternative has a minimum five-year commitment is also incorrect. As noted above, the internal resource requirement is a provision of the Reliability Assurance Agreement that applies to all FRR Alternative participants with load located within a LDA with a separate Variable Resource Requirement Curve. When an entity elects to participate in the FRR Alternative, it is subject to the provisions of the Reliability Assurance Agreement, and it is on notice that PJM may apply an internal resource requirement in future delivery years if it determines that a separate Variable Resource Requirement Curve is needed for a LDA to assure an acceptable level of reliability.<sup>24</sup> Although Illinois MEA, as PJM concedes, may not have had sufficient time to prepare for an internal resource requirement for the ComEd LDA for the 2014 Base Residual Auction, Illinois MEA has not explained why it does not have sufficient time to prepare for a potential internal resource requirement applicable to future auctions.

16. In addition, after PJM establishes a separate Variable Resource Requirement Curve, an internal resource requirement applies to any FRR Alternative participant with load in the respective LDA regardless of when it elects to participate in the FRR Alternative, including those who are already committed. In addition, each LDA's internal resource requirement varies year to year based on changes in load, capacity, and transmission (i.e., changes to the elements affecting reliability).<sup>25</sup> Illinois MEA therefore is in no different position than any other FRR entity to which an internal resource requirement may apply during its five-year commitment. Moreover, as Illinois MEA

---

<sup>23</sup> See PJM Comments on the Illinois MEA Request for Waiver at 2, 4.

<sup>24</sup> See PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT, Attachment DD, § 5.10(a)(ii)(C) (17.0.0).

<sup>25</sup> See PJM Interconnection, L.L.C., Intra-PJM Tariffs, RAA, Schedule 8.1, § D.5 (5.0.0); PJM Manual 18: PJM Capacity Market, Revision 21, § 2.4.

notes,<sup>26</sup> the Variable Resource Requirement Curve may or may not be necessary for future capacity auctions.

17. Moreover, contrary to Illinois MEA's assertions that no third parties will be harmed if its waiver was extended for future years, we are concerned that such a waiver will expose other customers in the ComEd LDA to the possibility of paying higher prices. This is because in order to ensure reliability in the ComEd LDA, the overall internal resource requirement for the ComEd LDA will need to be met in future delivery years, and the LDA's aggregate internal resource requirement would need to be increased to the extent that Illinois MEA does not procure internal resources.<sup>27</sup>

18. Illinois MEA's assertion that a waiver limited to Delivery Year 2017/18 exposes Illinois MEA to excessive costs in violation of section 217 of the FPA<sup>28</sup> is a challenge to tariff provisions already accepted by this Commission and is beyond the scope of this waiver request.<sup>29</sup>

19. Illinois MEA's contention that firm transmission rights are sufficient to address PJM's reliability concerns is incorrect. Firm transmission rights are insufficient to ensure deliverability to the LDA because firm transmission service may be curtailed by external systems managing their own congestion which may affect deliverability of energy to PJM load.<sup>30</sup>

20. Finally, Illinois MEA's contention that PJM's actions violate cost causation if the waiver is limited to Delivery Year 2017/18 is misplaced. Illinois MEA is exposed to penalties and potential future costs because its generation is located outside the ComEd LDA, which PJM has identified as constrained. As noted above, PJM may determine that an LDA is constrained under the terms of its tariff in order to ensure an acceptable level of reliability within that LDA. The application of these terms to the ComEd LDA to ensure reliability does not violate the principle of cost causation.

---

<sup>26</sup> Motion for Clarification or Rehearing at 13.

<sup>27</sup> May 2 Order at P 20; 7 PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT, OATT ATTACHMENT DD.2 DEFINITIONS (16.0.0), §2.39.

<sup>28</sup> 16 U.S.C. § 824q(b)(2) (2012).

<sup>29</sup> Illinois MEA raised this argument on rehearing in Docket No. ER14-503. The concurrently issued order in that docket addresses Illinois MEA's argument.

<sup>30</sup> *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,060, at P 25 (2014).

21. While we recognize that limiting the waiver granted to Illinois MEA to the 2017/2018 delivery year will likely require adjustments to Illinois MEA's capacity portfolio, we note that Illinois MEA has alternatives to the use of its external capacity in meeting its internal resource requirement. Illinois MEA may contract, to the extent necessary, with capacity located internal to the ComEd LDA, and sell its own external capacity bilaterally. If Illinois MEA chooses not to continue under the FRR Alternative, it could seek a waiver of Schedule 8.1 of the Reliability Assurance Agreement to permit the early termination of the FRR status of the Naperville load so that Illinois MEA may instead participate in PJM's capacity auctions. If Illinois MEA chooses to request such a waiver, it would need to demonstrate how it meets the Commission's requirements for granting waivers.

The Commission orders:

Illinois MEA's motion for clarification, or in the alternative, request for rehearing is denied, as discussed in the body of this order.

By the Commission. Commissioner Honorable is voting present.

( S E A L )

Kimberly D. Bose,  
Secretary.