

126 FERC ¶ 61,084
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

PJM Interconnection, L.L.C.

Docket No. ER09-368-000

ORDER ON TARIFF REVISIONS

(Issued January 30, 2009)

1. In this order, the Commission accepts proposed revisions to the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT) and the Amended and Restated Operating Agreement (Operating Agreement), subject to conditions, as described below, to become effective February 1, 2009.¹

I. PJM's Filing

2. On December 2, 2008, PJM filed proposed revisions to its OATT and its Operating Agreement. The proposed revisions fall into six categories of changes: (1) a reduction of the breach cure period from three business days to two business days; (2) new reporting of market participant collateral defaults to other PJM members; (3) exclusion of Financial Transmission Rights historical activity from the two month peak financial security credit requirement; (4) elimination of an exception for certain single-month Financial Transmission Rights; (5) clarification of the nature and legal consequence of certain bilateral transactions; and (6) other miscellaneous clarifications and revisions to Attachment Q of PJM's OATT (Credit Policy).

3. PJM states that the purpose of the proposed revisions is to make clarifications and other revisions to its credit risk management rules in order to reduce credit risk exposure to PJM members. PJM contends that, by clarifying credit requirements for certain transactions and by improving the matching of credit requirements to expected activity, the proposed revisions strengthen PJM credit requirements and reduce credit risk. PJM states that, consistent with the Commission's emphasis on the importance of refining the credit policies with stakeholder input, the proposed revisions were developed through a

¹ See attached Appendix for a listing of the filed tariff sheets.

stakeholder process, have been reviewed by the PJM Credit Risk Management Steering Committee and Tariff Advisory Committee, and are supported by the PJM Markets and Reliability and Members Committees.

4. PJM states that these proposed revisions follow on previous modifications to its credit rules,² and that additional modifications are anticipated.

II. Procedural Matters

5. Notice of this proceeding was published in the *Federal Register*, 73 Fed. Reg. 76,627 (2008). Motions to intervene were timely filed by Reliant Energy, Inc., Constellation,³ Allegheny Power and Allegheny Energy Companies,⁴ PHI Companies,⁵ Dominion Resources Services, Inc., Old Dominion Electric Cooperative, JP Morgan Ventures Energy Corporation, Consumers Energy Company, NRG Companies,⁶ and Ameren Services Company.⁷ Timely motions to intervene and comments were filed by Exelon Corporation (Exelon) and PSEG Companies (PSEG).⁸ A timely motion to intervene and protest was filed by American Municipal Power-Ohio, Inc. (AMP-Ohio). On January 7, 2009, PJM filed an answer to protest.

² See *PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,279 (2008); *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,323 (2008).

³ Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.

⁴ Allegheny Power (Monongahela Power Company, The Potomac Edison Company, West Penn Power Company), and Allegheny Energy Supply Company, LLC.

⁵ Pepco Holdings, Inc., Potomac Electric Power Company, Atlantic City Electric Company, Delmarva Power & Light Company, Conectiv Energy Supply, Inc., and Pepco Energy Services, Inc.

⁶ 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.

⁷ Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Company, and Illinois Power Company.

⁸ Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC.

III. Submissions

6. Comments supporting PJM's proposed revisions were filed by Exelon and PSEG. Exelon states that PJM members have been harmed by charges resulting from inadequate collateral requirements. Exelon contends that the tariff revisions are intended to prevent such defaults and requests that the Commission approve the revisions without change. PSEG asserts that it supports the proposed revisions to the credit risk management practices, as a general matter, but argues that the six categories of changes are insufficient in and of themselves. PSEG states that PJM should continue to strengthen its credit policies and contends that the Commission should actively monitor PJM's activity in this area.

7. AMP-Ohio protests PJM's filing. AMP-Ohio objects to the proposed revision that would obligate buyers under a bilateral contract to hold PJM and its members financially harmless from the effects of a supplier default. AMP-Ohio cites to proposed section 1.7.10(a)(v), which would require that a buyer in a bilateral contract guarantee and indemnify PJM and its members for the costs of any Spot Market Backup⁹ required if the seller defaults on its obligation to deliver energy. AMP-Ohio states that the proposed revision would impose an extraordinary measure of financial risk on purchasers in bilateral transactions, and would cause purchasers to either avoid or limit bilateral transactions. Further, AMP-Ohio contends that the proposed revision could result in purchasers of bilateral transactions paying twice for the same energy.¹⁰ AMP-Ohio contends that the potential to pay twice for the same energy is a flaw in the proposed revisions that precludes its adoption as filed. AMP-Ohio states that, if the Commission nevertheless is inclined to approve PJM's proposal, at a minimum, it should require that PJM assign PJM's claim against the defaulting seller to the purchaser in a bilateral transaction. This would give the purchaser a greater chance of offsetting its loss than it would have if it were forced to pursue some sort of derivative claim, especially in the case of supplier bankruptcy.

⁹ PJM defines "Spot Market Backup" as the purchase of energy from, or the delivery of energy to, the PJM Interchange Energy Market in quantities sufficient to complete the delivery or receipt obligations of a bilateral contract that has been curtailed or interrupted for any reason. PJM's December 2, 2008 filing at FN 15.

¹⁰ AMP-Ohio states that this results when a purchaser in a bilateral transaction settles with the bilateral supplier that may subsequently default on spot market energy used to serve the transaction.

8. PJM submitted an answer to the protest of AMP-Ohio.¹¹ PJM contends that the proposed revisions do not impose extraordinary financial risk on buyers under bilateral contracts, but rather place the risk of non-performance of bilateral contracts where it belongs -- with the parties to the contract. PJM goes on to say that when a bilateral counterparty defaults, the buyer may be responsible for covering the default with other energy purchases, here through its counterparty's use of Spot Market Backup. But that cover should be the responsibility of the buyer, whose load is served with the energy, not with the rest of the PJM membership. PJM states that parties to bilateral contracts should not transfer the risk of default to the rest of the PJM members, but rather the parties to a bilateral contract should manage that risk between themselves. Further, PJM contends that the pool does not serve as a guarantor of a party's bilateral transactions and that neither it nor the rest of the PJM membership should be required to establish the creditworthiness or default risk of a bilateral counter-party that a particular market participant voluntarily chooses to purchase from. Rather, PJM contends that parties to a bilateral contract can protect themselves through collateral terms and other contract provisions. For example, settlement of a bilateral contract can take place after the date for the seller's payments to PJM for any Spot Market Backup so that the buyer can be assured that there was no default to PJM for which it will have an indemnification obligation.

9. However, PJM does not object to AMP-Ohio's suggestion that PJM assign its claim against the bilateral seller for nonpayment for Spot Market Backup to any buyer that has made an indemnification payment to PJM with respect to that nonpayment.¹² Finally, in reply to PSEG's comment that certain additional changes to the credit requirements should be implemented immediately, PJM notes that it continues to work with its stakeholders and anticipates additional filings to further address Credit Policy issues.

IV. Commission Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹³ the unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

¹¹ PJM seeks leave to answer the protest to assist the Commission's decision-making process and clarify the issues.

¹² PJM's January 7, 2009 Answer at 7.

¹³ 18 C.F.R. § 385.214 (2008).

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,¹⁴ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PJM's answer because it has provided information that assisted us in our decision-making process.

B. Tariff Revisions

12. The Commission accepts PJM's proposed tariff revisions, to become effective February 1, 2009, subject to conditions, as described below. PJM's revisions will reduce credit risk by clarifying credit requirements and improving the matching of credit requirements to expected activity, consistent with the Commission's *Policy Statement on Electric Creditworthiness*.¹⁵ For example, PJM's reduction of the breach cure period from three business days to two business days will allow PJM to terminate breaching members' activities more quickly in the event of uncured breaches, thereby reducing exposures to other members.

13. AMP-Ohio protests PJM's proposed revision that would require buyers in bilateral transactions to indemnify PJM for the costs of any Spot Market Backup in the event of a seller default.¹⁶ AMP-Ohio urges the Commission to reject this aspect of the filing. However, we do not agree that PJM and its members should be responsible for the seller's default for Spot Market Backup that is acquired to supply a bilateral buyer's load and other obligations. PJM's proposal requires that in assessing the level of risk the purchaser take into account the cost to PJM of satisfying the purchaser's demand in the event of a seller's default. If parties make a business decision to enter into a bilateral contract, it is the responsibility of the buyer to assess the risks and protect itself through collateral terms and other contract provisions. Therefore, we do not agree that the revisions would impose an extraordinary measure of financial risk on purchasers in bilateral transactions.

14. The Commission agrees with AMP-Ohio's concern regarding the potential of double payment due to the proposed revision. PJM argues that a provision addressing double payments is unnecessary because the parties to a bilateral transaction can establish payment and other terms that address any risks of double payments, such as settling a

¹⁴ 18 C.F.R. § 385.213(a)(2) (2008).

¹⁵ *Policy Statement on Electric Creditworthiness*, 109 FERC ¶ 61,186, at P 9 (2004).

¹⁶ See, PJM Tariff, Appendix to Attachment K, § 1.7.10(v) (Fifth Revised Sheet No. 341 and Original Sheet No. 341A) and PJM Operating Agreement, Schedule 1, § 1.7.10(v) (Original Sheet No. 80A).

bilateral contract after the date for the seller's payments to PJM for any Spot Market Backup that may have been purchased. However, PJM does not object to including a provision in its tariff under which it would assign any claim it would have against the seller for non-payment for Spot Market Backup to any buyer that has made an indemnification payment to PJM with respect to that nonpayment.

15. The tariff provision, as filed by PJM, applies to all bilateral contracts as of the implementation date. As stated above, we agree with PJM that the parties to a bilateral transaction can assess the risks of a seller's default and negotiate appropriate contractual protections. Accordingly, we believe the tariff provision, as applied prospectively to new contracts, is just and reasonable and is therefore accepted effective February 1, 2009. However, PJM has not demonstrated how a party to an *existing* bilateral contract would be able to protect itself when it may not be able to amend the existing collateral terms and other contract provisions. Therefore, we direct PJM to make a filing explaining why applying the provision to bilateral contracts executed prior to the effective date of the tariff revision is just and reasonable or proposing tariff revisions relating to the treatment of existing bilateral agreements. Further, as requested by AMP-Ohio and not objected to by PJM, we direct PJM to revise proposed section 1.7.10(a)(v) of its Appendix to Attachment K of its OATT and its Operating Agreement to assign its claim for a seller's nonpayment for Spot Market Backup to any buyer that has made an indemnification payment to PJM with respect to that seller's nonpayment. Thus, we find PJM's proposed tariff revisions acceptable subject to the above conditions concerning Spot Market Backup. PJM is directed to make a filing to comply with the above conditions within 30 days of the date of this order.

16. The Commission notes PSEG's concerns that PJM should continue to strengthen its Credit Policy and make additional changes. However, PJM noted in the instant filing as well as its answer that it continues to meet with stakeholders and anticipates making additional filings in the first quarter of 2009 to further address Credit Policy issues. Therefore, PSEG and other PJM members should suggest any further changes to the PJM Credit Policy during the stakeholder process. Further, in response to PSEG's comment that the Commission should actively monitor PJM's activity in making changes to its Credit Policy, we have previously required PJM to file status reports every 90 days on its progress in reviewing its Credit Policy.¹⁷

¹⁷ *PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,279, at P 37 (2008).

The Commission orders:

The tariff revisions are accepted to become effective February 1, 2009, subject to conditions, as discussed in the body of this order.

By the Commission. Commissioner Kelliher not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

PJM Interconnection, L.L.C.
Third Revised Rate Schedule FERC No. 24

Tariff Sheets Accepted Effective February 1, 2009

Third Revised Sheet No. 49
First Revised Sheet No. 49A
Fifth Revised Sheet No. 50
Sixth Revised Sheet No. 80
Original Sheet No. 80B
First Revised Sheet No. 138D

Tariff Sheets Conditionally Accepted Effective February 1, 2009

Original Sheet No. 80A

PJM Interconnection, L.L.C.
FERC Electric Tariff
Sixth Revised Volume No. 1

Tariff Sheets Accepted Effective February 1, 2009

Fifth Revised Sheet No. 50
Original Sheet No. 341B
First Revised Sheet No. 410E
Fourth Revised Sheet No. 523
Fourth Revised Sheet No. 523A
First Revised Sheet No. 523A.01
Fourth Revised Sheet No. 523B
Fourth Revised Sheet No. 523C
Third Revised Sheet No. 523D
Fifth Revised Sheet No. 523E
Fourth Revised Sheet No. 523F
First Revised Sheet No. 523F.01
First Revised Sheet No. 523F.02
Third Revised Sheet No. 523F.03
Second Revised Sheet No. 523F.04
Fifth Revised Sheet No. 523G
Second Revised Sheet No. 523G.01
Fourth Revised Sheet No. 523H

Appendix

PJM Interconnection, L.L.C.
FERC Electric Tariff
Sixth Revised Volume No. 1

Tariff Sheets Accepted Effective February 1, 2009

Second Revised Sheet No. 523H.01
Fourth Revised Sheet No. 523I
Second Revised Sheet No. 523I.01
Third Revised Sheet No. 523I.01A
Fourth Revised Sheet No. 523I.02
Fourth Revised Sheet No. 523I.05
First Revised Sheet No. 523I.05c
Fourth Revised Sheet No. 523J
Second Revised Sheet No. 523J.01
Seventh Revised Sheet No. 523K
Second Revised Sheet No. 523K.01
Sixth Revised Sheet No. 523L
Seventh Revised Sheet No. 523L.01
Original Sheet No. 523L.02
Fifth Revised Sheet No. 523M
Third Revised Sheet No. 523M.01
Second Revised Sheet No. 523N

Tariff Sheets Conditionally Accepted Effective February 1, 2009

Fifth Revised Sheet No. 341
Original Sheet No. 341A