

126 FERC ¶ 61,280
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER09-585-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued March 27, 2009)

1. On January 28, 2009, PJM Interconnection, L.L.C. (PJM) submitted revisions to its Open Access Transmission Tariff (Tariff) and the PJM Amended and Restated Operating Agreement (Operating Agreement) to offer long-term transmission rights to load-serving entities located outside the PJM region by modifying its annual Auction Revenue Rights allocation process (PJM filing). In this order, the Commission accepts PJM's revised long-term financial transmission rights (FTR) allocation procedures, effective March 1, 2009, as discussed below.

I. Background

2. The Commission requires that transmission organizations with organized electricity markets make available long-term firm transmission rights that satisfy the guidelines established in Order No. 681.¹ PJM filed its long-term transmission rights proposal prior to the issuance of Order No. 681; however, PJM indicated that its filing was intended to comply with the Commission's long-term firm transmission rights policies.² In the November 2006 Order, the Commission approved PJM's long-term firm transmission rights procedures and directed PJM to submit a compliance filing to modify the procedures to be consistent with the guidelines of Order No. 681.

¹ See *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226, *order on reh'g*, Order No. 681-A, 117 FERC ¶ 61,201 (2006), *order on reh'g*, Order No. 681-B, 126 FERC ¶ 61,254 (2009).

² *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,220, at P 9 (2006) (November 2006 Order), *order on compliance filing and reh'g*, 119 FERC ¶ 61,144 (May 2007 Rehearing Order), *clarified*, 121 FERC ¶ 61,073 (2007).

3. In the PJM market, PJM gives transmission price certainty assurances to market participants by providing a financial hedge against transmission congestion costs through two types of transmission rights: FTRs, which are limited to one planning period;³ and Auction Revenue Rights, which may feature terms up to ten years. FTRs entitle the holder to receive transmission congestion credits that can offset transmission charges due to congestion. Auction Revenue Rights entitle the holder to receive auction revenues from the sale of FTRs at auction. Alternatively, a holder of Auction Revenue Rights may convert them to annual FTRs. Auction Revenue Rights featuring terms greater than one year are allocated on a preferential basis to load serving entities in the first stage (stage 1-A) of a two-stage process. Qualifying load serving entities may request Auction Revenue Rights for a term covering ten consecutive planning periods for a subset of their historical resources and a set-aside quantity based on a pro-rata share of their historical load. In stage 1-B, qualifying load-serving entities may request additional single planning period Auction Revenue Rights. In the subsequent stage 2 allocation, any remaining Auction Revenue Rights are available for single-planning periods to all market participants.⁴

4. As reflected in the May 2007 Rehearing Order, PJM stakeholders requested that the Commission direct PJM to develop procedures to offer priority, or stage 1-A, long-term Auction Revenue Rights to load-serving entities located outside of the PJM region that rely on the PJM system for transmission from generation sources in PJM.⁵ In response, PJM developed and filed the instant Auction Revenue Rights allocation proposal.

II. Notice of Filing and Responsive Pleadings

5. Notice of PJM's filing was published in the *Federal Register*,⁶ with interventions and protests due on or before February 18, 2009. Allegheny Energy Companies;⁷

³ A PJM planning period runs from June 1 through May 31 of the following year.

⁴ See Operating Agreement, Schedule 1, section 7.4.

⁵ May 2007 Rehearing Order, 119 FERC ¶ 61,144 at P 46 & n.40 (discussing proposal by Long Island Power Authority to provide for long-term transmission rights for its merchant transmission project).

⁶ 74 Fed. Reg. 1,669 (2009).

⁷ These Allegheny Energy Companies consist of the public utilities operating under the trade name Allegheny Power: Monongahela Power Company, The Potomac Edison Company and West Penn Power Company, and Allegheny Energy Supply Company, LLC, a generation and marketing affiliate.

Duke Energy Corporation (Duke);⁸ Exelon Corporation; Long Island Power Authority and its operating subsidiary, LIPA (collectively LIPA); and Old Dominion Electric Cooperative filed timely motions to intervene. Dominion Resources Services, Inc. (Dominion) filed a motion to intervene out of time on behalf of its jurisdictional affiliates operating in PJM with market-based rate sales authority.⁹

6. American-Municipal Power-Ohio, Inc. (AMP-Ohio) filed a timely motion to intervene and protest. On March 2, 2009, PJM filed an answer to the AMP-Ohio protest, including a clarification addressing an issue raised in AMP-Ohio's protest concerning the application of the tariff revisions to external load-serving entities that seek to designate the uncommitted portion of capacity resources (or "partial" capacity resources) for Auction Revenue Rights allocations.

III. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d), the Commission will grant Dominion'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. Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), 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. External Load-Serving Entity Auction Revenue Rights Allocation Proposal

8. PJM proposes to add a new section 7.4.2(j) to Schedule 1 of its Operating Agreement.¹⁰ Section 7.4 of Schedule 1 contains PJM's annual Auction Revenue Rights

⁸ Duke intervenes on behalf of its affiliated franchised utilities: Duke Energy Ohio, Inc.; Duke Energy Indiana, Inc.; Duke Energy Kentucky, Inc.; and Duke Energy Carolinas, LLC; and also on behalf of Duke Energy Business Services, LLC, which is the PJM voting member for the Duke affiliates.

⁹ These Dominion affiliates are Dominion Energy Marketing, Inc.; Elwood Energy, LLC; Fairless Energy, LLC; State Line Energy, LLC; Kincaid Generation, LLC; and Virginia Electric and Power Company d/b/a Dominion Virginia Power.

¹⁰ Because PJM's Operating Agreement, Schedule 1 and Tariff, Attachment K-Appendix are identical, PJM proposes corresponding changes to its Tariff.

allocation procedures. According to PJM, new section 7.4.2(j) permits long-term firm point-to-point customers and network service customers that serve load outside of the PJM region to participate in stage 1 of the annual Auction Revenue Rights allocation.¹¹ According to PJM, these external load-serving entities may request annual allocations of long-term and annual Auction Revenue Rights in stage 1 of the allocation process from qualifying generation resources, which may be located either outside or within PJM, to load outside PJM.¹² These customers may also request stage 2 Auction Revenue Rights allocations up to the allowable quantity in stage 1 but not awarded in stage 1. PJM states that the new procedures provide the same priority and conditions to external load-serving entities' requests for stage 1 Auction Revenue Rights that currently apply to internal PJM load-serving entities.

9. PJM indicates that new section 7.4.2(j) contains several conditions on the availability of stage 1 Auction Revenue Rights to external load-serving entities. Among the conditions are the following: (1) the underlying transmission service must remain in effect for the stage 1A period addressed in the allocation; (2) the control area in which the load to be served is located must provide reciprocal treatment; (3) the designated resources must be owned by or under a binding long-term supply contract (minimum term of 10 years) with the external load-serving entity;¹³ (4) a designated resource cannot be a designated PJM capacity resource and network service resources must be either committed into the PJM Reliability Pricing Model market or designated as part of the external load-serving entity's Fixed Resource Requirement capacity plan for serving the relevant external load;¹⁴ and (5) the external load-serving entity's Auction Revenue

¹¹ PJM filing at 4 (citing Operating Agreements, Schedule 1, section 7.4.2 (j)).

¹² *Id.* at 5. PJM states that allocations are limited to the lesser of a point-to-point customer's firm transmission reservation or firm transmission withdrawal rights and to an external network customer's peak load or firm transmission withdrawal rights. Firm transmission withdrawal rights are defined as the right to schedule withdrawals of electric energy and capacity at the point of interconnection. *See* PJM Tariff, sections 1.3E, 1.13A, 232.2.

¹³ PJM filing at 5 (discussing Schedule 1, section 7.4.2(j)(i) through (iii)).

¹⁴ *Id.* at 6 (discussing section 7.4.2(j)(iv) and citing the Fixed Resource Requirement provisions in the Reliability Assurance Agreement Among Load-Serving Entities in the PJM Region, PJM Rate Schedule FERC No. 44, schedule 8.1 (Reliability Assurance Agreement)).

Rights requests may not increase flow on binding facilities or cause other facilities to exceed applicable ratings under PJM's simultaneous feasibility test.¹⁵

10. PJM asserts that the new provisions respond fully to the Commission's instruction that PJM offer priority access to long-term Auction Revenue Rights to qualifying external load-serving entities that take transmission service and pay embedded system costs.¹⁶

11. PJM states that the proposed eligibility conditions preserve PJM load-serving entities' priority access to long-term transmission rights, which is based on historical contributions to grid and generation capacity costs, established when the transmission zones were integrated into PJM. PJM further states that the conditions acknowledge that qualifying external load-serving entities, including merchant transmission facilities, likewise contribute to embedded costs and may rely on generation resources in PJM to meet retail service obligations to loads outside PJM. According to PJM, its proposal balances the interests of external and PJM load-serving entities by permitting external load-serving entities to obtain allocations of stage 1 Auction Revenue Rights with the same priority as internal load-serving entities' requests for the addition of new stage 1 resources or a change in their historic stage 1 resources. PJM concludes that the proposed conditions reasonably permit external load-serving entities to hedge against PJM congestion while maintaining PJM's internal load-serving entities' priority to long-term transmission rights, to which PJM states they are entitled under the Federal Power Act (FPA) and Order No. 681.¹⁷

12. PJM requests waiver of the Commission regulations to permit the revisions to become effective March 1, 2009. PJM indicates that such approval would permit allocations of Auction Revenue Rights to external load-serving entities for the 2009/2010 planning period that begins on June 1, 2009, for which the nomination process begins after the proposed effective date. Also, PJM cites nearly unanimous endorsements of the proposal by PJM committees.¹⁸

¹⁵ *Id.* (discussing section 7.4.2(j)(vii)). For more information on how the simultaneous feasibility test works in PJM, *see generally* November 2006 Order, 117 FERC ¶ 61,220 at P 36, 39; May 2007 Rehearing Order, 119 FERC ¶ 61,144 at P 16-17; *see also* PJM Manual M-06 at 24-25, 49.

¹⁶ *Id.* at 7 (citing May 2007 Rehearing Order, 119 FERC ¶ 61,144 at P 46 n.40).

¹⁷ *Id.* at 7-8 (citing FPA section 217(b)(4); 16 U.S.C. § 824q(a)(4)).

¹⁸ *Id.* at 8-9 (describing stakeholder support for the proposal, including endorsement by the PJM Markets and Reliability Committee, with three objections and

(continued)

C. AMP-Ohio Protest and PJM Response

13. AMP-Ohio, which owns and operates generation, transmission, and municipal distribution facilities within and outside of PJM, filed a limited protest to the PJM proposal. AMP-Ohio seeks clarification that the proposed condition in new section 7.4.2(j)(iv) prohibiting an external load-serving entity from designating a PJM capacity resource would not apply to the entire capacity of a resource if only a portion of that resource is committed as a PJM capacity resource.¹⁹ Proposed section 7.4.2(j)(iv) states:

For Long-Term Firm Point-to-Point Transmission customers requesting stage 1 Auction Revenue Rights pursuant to this subsection 7.4.2(j), at the time of the request, the generation resource(s) designated as source points cannot be Capacity Resources.

14. AMP-Ohio states that the proposed language appears to suggest that an external load-serving entity would not be permitted to point to a resource that is also used as a capacity resource.²⁰ According to AMP-Ohio, this condition should not prohibit an external load-serving entity from receiving stage 1 Auction Revenue Rights from a designated source point that is only partially committed as a capacity resource. AMP-Ohio bases its interpretation that this provision should not apply to that portion of a resource that is not a capacity resource, on the definition of Capacity Resource provided in the PJM Reliability Assurance Agreement.

Capacity Resources shall mean megawatts of (i) net capacity from existing or Planned Generation Capacity Resources meeting the requirements of Schedules 9 and 10 that are or will be owned by or contracted to a Party and that are or will be committed to satisfy that Party's obligations under this Agreement for a Delivery Year; (ii) net capacity from existing or Planned Generation Capacity Resources within the PJM Region not owned or contracted for by a Party which are accredited to the PJM Region pursuant to the procedures set forth in Schedules 9 and 10; and (iii) load reduction capability provided by Demand Resources or [Interruptible

four abstentions, and endorsement by the PJM Members Committee with no objections or abstentions).

¹⁹ AMP-Ohio protest at 4.

²⁰ *Id.* at 5.

Load for Reliability] that are accredited to the PJM Region pursuant to the procedures set forth in Schedule 6.²¹

15. AMP-Ohio requests that the Commission direct PJM to clarify that section 7.4.2(j)(iv) does not prohibit an external load-serving entity from designating as a source point for stage 1 Auction Revenue Rights allocation purposes the uncommitted portion of a generation resource that is only partially committed as a PJM Capacity Resource.²² If, however, addressing AMP-Ohio's concern requires a change to PJM's proposal rather than a clarification, AMP-Ohio protests the filing and requests that the Commission direct PJM to make the change AMP-Ohio requests.

16. In its answer, PJM states that it agrees with AMP-Ohio:

PJM agrees that Section 7.4.2(j)(iv) precludes an external [load-serving entity] only from relying on any portion of a generating resource that is designated as a Capacity Resource in PJM. Accordingly, an external [load-serving entity] may designate as a source point for stage 1 [Auction Revenue Rights] a partial Capacity Resource to the extent of the resource's generating capacity that is not identified as a Capacity Resource.²³

D. Commission Determination

17. The Commission accepts PJM's proposed Tariff and Operating Agreement revisions effective March 1, 2009. With the exception of AMP-Ohio's limited protest, which we address below, no other party commented on the proposal.

18. PJM provides long-term congestion hedging as required by Order No. 681 through Auction Revenue Rights available to PJM load-serving entities to support the long-term power supply arrangements that the load-serving entities use to satisfy their service obligations. In this filing, PJM proposes to make long-term Auction Revenue Rights available to external load-serving entities. We find this to be in accordance with Order No. 681-A. In addition, we find that PJM's proposal is consistent with the Commission's

²¹ PJM Reliability Assurance Agreement, section 1.8. The Reliability Assurance Agreement, section 1.42 defines Interruptible Load for Reliability (ILR) as a resource with a demonstrated capability to provide a reduction in demand or otherwise control load that is certified by PJM.

²² AMP-Ohio protest at 6.

²³ PJM March 2, 2009 answer at 3.

determination in Order No. 681-B that the allocation of long-term firm transmission rights and the application of eligibility criteria must not be unduly discriminatory as between internal and external load serving entities.²⁴ PJM's filing specifies that the new procedures will apply to external load-serving entities' requests for stage 1 Auction Revenue Rights "the same priority and same conditions that apply currently to internal PJM [load-serving entities'] requests for new stage 1 resources or changes in their respective stage 1 historic resources."²⁵ The Commission finds that PJM's treatment of external load-serving entities is not unduly discriminatory when compared to existing terms providing Auction Revenue Rights to internal load-serving entities that may seek to add a new resource or change a historic resource. PJM's proposal subjects these internal and external load-serving entities to comparable conditions and provides them with the same priority in the allocation of long-term firm transmission rights, the stage 1-A Auction Revenue Rights. Therefore, the Commission finds that the proposal meets the requirements of Order No. 681-B and is just, reasonable, and not unduly discriminatory in its treatment of similarly situated external and internal load-serving entities.

19. AMP-Ohio seeks a Commission directive that PJM clarify that section 7.4.2(j)(iv), one of the terms governing the availability of Auction Revenue Rights to external load-serving entities, does not exclude consideration of the uncommitted portion of a "partial" capacity resource, i.e., that portion of a resource not designated as a Capacity Resource in PJM. PJM's answer confirms that an external load-serving entity may seek Auction Revenue Rights for the megawatts of a resource that are not committed as a capacity resource in PJM. However, in light of the fact that the proposed tariff language is susceptible to another interpretation – the interpretation highlighted by AMP Ohio – we direct PJM to make a compliance filing to revise its Tariff and Operating Agreement to make explicit the clarification provided in its answer. With the clarification provided, the Commission finds that PJM's proposal is just, reasonable, not unduly discriminatory, and consistent with the Commission's long-term firm transmission rights policies, subject to the modifications directed in the compliance filing. Consequently, we conditionally accept the tariff revisions for filing.

The Commission orders:

(A) The Tariff and Operating Agreement sheets submitted in Docket No. ER09-585-000 are conditionally accepted, effective March 1, 2009, as discussed in the body of this order.

²⁴ Order No. 681-A, 117 FERC ¶ 61,201 at P 79, 80; Order No. 681-B, 126 FERC ¶ 61,254 at P 35.

²⁵ PJM filing at 5.

(B) PJM shall make a compliance filing within 30 days of the date of this order to revise its Tariff and Operating Agreement, as discussed in the body of this order.

By the Commission.

Kimberly D. Bose,
Secretary.