

128 FERC ¶ 61,162
FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

August 17, 2009

In Reply Refer To:
PJM Interconnection, L.L.C.
Docket No. ER09-1346-000

Wright & Talisman, P.C.
Attn: Paul M. Flynn
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Dear Mr. Flynn:

1. On June 23, 2009, PJM Interconnection, L.L.C. (PJM) submitted for filing a request for limited waiver of the Reliability Assurance Agreement among Load-Serving Entities in the PJM Region (RA Agreement), at Schedule 8.1, section G, and the PJM Open Access Transmission Tariff (OATT), at Attachment DD, section 2.41.¹ PJM states that its requested waiver will allow loads in the Duquesne Light Company (Duquesne) zone, at their option, to utilize locational unforced capacity (UCAP) to meet their capacity needs for the 2011-12 delivery year, as part of the capacity plan Duquesne will be required to file, by December 31, 2009, under the settlement agreement terminating Duquesne's request to withdraw from PJM (Duquesne Settlement).²

¹ On July 29, 2009, PJM filed a notice of withdrawal relating to an additional requested waiver included in its initial filing, regarding Schedule 8.1, section E.1 of the RA Agreement.

² *Duquesne Light Co.*, 126 FERC ¶ 61,074, *reh'g denied*, 127 FERC 61,187 (2009). The Duquesne Settlement provided for Duquesne's continued participation as a transmission owner in PJM, following the issuance of earlier orders addressing Duquesne's conditional request to withdraw. In those prior orders, the Commission directed that Duquesne-zone loads be removed from PJM's Reliability Pricing Model (RPM) auction for the 2011-12 delivery year. The Duquesne Settlement provided that Duquesne and other Duquesne zone load serving entities (LSEs) would be permitted to

(continued...)

2. For the reasons discussed below, we grant PJM's requested waiver, effective June 24, 2009, as requested.

3. PJM states that, under the FRR alternative, qualifying LSEs are permitted to meet their RPM capacity obligations through capacity resources secured outside the RPM auction process. PJM adds that, under the Duquesne Settlement, waivers were granted allowing this alternative to be utilized by Duquesne-zone loads for the 2011-12 delivery year, including waivers applicable to the timing of FRR submissions.

4. PJM states that, out of an abundance of caution, an additional waiver is appropriate, here, to clarify certain related rights that were not expressly anticipated under the Duquesne Settlement, namely, the right of Duquesne to include in its capacity plan locational UCAP (a product recently approved by the Commission for parties in RPM that allows them to assign responsibility for capacity resource commitments to the suppliers of those capacity resources).³ PJM asserts that for the 2011-12 delivery year, Duquesne-zone load should be permitted to utilize this option as part of their FRR capacity plan. PJM notes that because the Duquesne-zone LSEs are using the FRR alternative for this limited period only because their loads had previously been removed from the RPM auction, by direction of the Commission (and based on an assumption that Duquesne would proceed with its withdrawal application), it is reasonable to put these LSEs in a position comparable to LSEs whose loads were included in the auction.

5. PJM states that its requested waiver will not harm capacity suppliers, who will only assume responsibility for resource commitments if they agree to do so in their negotiations with LSEs. PJM further states that many capacity suppliers will prefer to take responsibility for their resources, both out of recognition that they have more control over these resources, and to take full advantage of RPM rules that determine resource commitment and performance levels of a seller's multiple resources on a net basis.

6. Notice of PJM's filing was published in the *Federal Register*, 74 Fed. Reg. 32145 (2009), with interventions and protests due on or before July 14, 2009. Motions to intervene were timely filed by Dominion Resource Services, Inc., American Municipal

satisfy their capacity requirements for that year under the RA Agreement's Fixed Resource Requirement (FRR) alternative.

³ See *PJM Interconnection, L.L.C.*, Docket No. ER09-494-000, Letter Order (Feb. 20, 2009). PJM states that under its new locational UCAP service, a supplier that previously committed capacity through the RPM auction process that will not be available for any reason may seek locational UCAP as replacement capacity by entering into a bilateral agreement to do so.

Power, Inc., Constellation Energy, and Allegheny Energy Supply Company (Allegheny). Motions to intervene out-of-time were submitted by Old Dominion Electric Cooperative (ODEC), on July 15, 2009, the Mirant Parties (Mirant), on July 20, 2009, and American Electric Power Service Corporation, on July 21, 2009 (AEP).⁴

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F. R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We also grant the late, unopposed interventions sought by ODEC, Mirant, and AEP for good cause shown.

8. We grant PJM's requested limited waiver of the RA Agreement at Schedule 8.1, section G, and the PJM OATT at Attachment DD, section 2.41. We agree that under circumstance presented here, waiver of these provisions, for the limited period requested, satisfies the Commission's standards for tariff waivers. Specifically, we find that PJM's requested waivers are of limited scope, address a concrete problem that needs to be remedied, and will not have undesirable consequences, such as harming third parties.⁵

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴ A limited protest was filed by Allegheny regarding PJM's initially-requested waiver of Schedule 8.1, section E.1 of the RA Agreement. As noted, above, PJM has withdrawn its request.

⁵ See, e.g., *Southwest Power Pool, Inc.*, 124 FERC ¶ 61,316 (2008); *ISO New England, Inc.*, 117 FERC ¶ 61,171, at P 21 (2006).