

147 FERC ¶ 61,090
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Illinois Municipal Electric Agency

Docket No. ER14-1681-000

ORDER GRANTING WAIVER

(May 2, 2014)

1. On April 7, 2014, pursuant to section 207(a)(5) of the Commission's Rules of Practice and Procedure,¹ the Illinois Municipal Electric Agency (IMEA) filed 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)² and any related provision of any other PJM Interconnection, L.L.C. (PJM) governing document necessary to permit the Naperville, Illinois portion of IMEA's load in the Commonwealth Edison (ComEd) Locational Deliverability Area (LDA) to use PJM's Fixed Resource Requirement (FRR) Alternative for the Delivery Year beginning June 1, 2017. For the reasons discussed below, we grant IMEA's request for waiver for the 2017/18 Delivery Year.

I. Background

2. The Reliability Assurance Agreement, a rate schedule on file with the Commission, contains an alternative method—the FRR Alternative—for meeting PJM's Reliability Pricing Model (RPM) capacity obligation. The FRR Alternative allows an eligible Load Serving Entity to satisfy its obligation to ensure reliable service to loads in PJM by self-supply and bilateral agreements.³ Schedule 8.1, Section D.5 of the Reliability Assurance Agreement provides that for each LDA with a separate Variable

¹ 18 C.F.R. § 385.207(a)(5) (2013).

² See PJM Interconnection, L.L.C., Intra-PJM Tariffs, RAA, Schedule 8.1, § D.5 (5.0.0).

³ *Id.* § A.

Resource Requirement Curve, entities intending to participate in the FRR Alternative must submit an FRR Capacity Plan that includes a minimum percentage of Capacity Resources physically located within that LDA.⁴ That percentage is equal to the LDA Reliability Requirement minus the Capacity Emergency Transfer Limit for the Delivery Year, and is expressed as a percentage of the Unforced Capacity Obligation.⁵

3. IMEA states that it is a municipal power agency with full requirements contracts with its members—including Naperville, Rock Falls, St. Charles, and Winnetka—extending through September 30, 2035.⁶ These members are all located within the ComEd LDA in the noncontiguous, northern Illinois portion of PJM. IMEA states that it has satisfied its capacity obligations in the ComEd LDA of PJM using owned and contracted external resources since January 1, 2008, either through a FRR Capacity Plan or through the Base Residual Auction.⁷

II. Waiver Request

4. IMEA states that on March 7, 2014, it submitted to PJM its election to utilize the FRR Alternative for its Naperville load for Delivery Year 2017/18. IMEA states that PJM provided IMEA written notice that IMEA meets the eligibility requirements of the FRR Alternative, and on March 26, 2014, IMEA submitted its FRR Capacity Plan for its Naperville load—a plan consisting of external capacity resources and firm transmission rights—to PJM. IMEA states that on March 28, 2014, PJM advised IMEA that it had established a separate Variable Resource Requirement Curve for the ComEd LDA for the 2017/18 Base Residual Auction and, consistent with Schedule 8.1, Section D.5 of the

⁴ Under the terms of Section D.5, this minimum percentage of internal resources is required for any LDA for which PJM establishes a separate Variable Resource Requirement Curve. The Office of the Interconnection establishes Variable Resource Requirement Curves each year, including the establishment of new curves, under the terms set forth in the RPM. *See* PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT, Attachment DD, § 5.10(a) (15.0.0).

⁵ PJM Interconnection, L.L.C., Intra-PJM Tariffs, RAA, Schedule 8.1, § D.5.

⁶ IMEA Request for Waiver, Affidavit of Alice Schum at PP 3-4.

⁷ *Id.* P 10.

Reliability Assurance Agreement, IMEA is required to meet 72.4 percent of its FRR Capacity Obligation from Capacity Resources located within the ComEd LDA.⁸

5. IMEA states that it has invested over \$1.3 billion in constructing generation resources and has contracted to pay an additional \$468 million for rights to capacity resources for continued self-supply of its ComEd load, and that these contracts are valid for another 21 years. IMEA states that it has acquired firm transmission rights to deliver energy from its external capacity resources—located in Kentucky and Illinois—to its load in the ComEd LDA of PJM.⁹ IMEA states that, absent a waiver, there is no economical way for it to utilize these self-supply resources to serve Naperville, and that its “investments in self-supply for that member will become effectively worthless.”¹⁰ IMEA therefore requests waiver of the requirement that IMEA supply power for its Naperville load using resources internal to the ComEd LDA.¹¹

6. IMEA states that the Commission has previously granted waivers of tariff provisions where (1) the waiver is of limited scope; (2) a concrete problem needs to be remedied; and (3) the waiver does not have undesirable consequences, such as harming third parties.¹² IMEA states that its waiver request meets these three conditions. First, IMEA argues that the waiver is limited in scope because it involves waiving the requirement for a single Load Serving Entity with a separately identified service area for a defined capacity obligation for which firm transmission rights already exist. Second, IMEA argues that the problem is concrete because the generation resources referred to here “were planned, developed and constructed in large part to provide self-supplied capacity to its PJM load and for which it made substantial investment and incurred large debt obligations.”¹³ Third, IMEA argues that the waiver request will have no undesirable

⁸ Transmittal Letter at 4-5. The posted planning parameters state that the ComEd Minimum Internal Resource Requirement is actually 72.6 percent. *2017-2018 RPM Base Residual Auction Planning Period Parameters* (Mar. 21, 2014), available at <http://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/2017-2018-planning-period-parameters.ashx>.

⁹ Transmittal Letter at 2-4.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 5-6.

¹² *Id.* at 6 (citing *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,162, at P 8 (2009); *ISO New England Inc.*, 117 FERC ¶ 61,171, at P 21 (2006)).

¹³ *Id.*

consequences because IMEA already has firm transmission rights with roll-over rights in place, and therefore IMEA will not be contributing to any regional transmission shortage. IMEA argues that, given the relatively small load size of 413.2 MW plus load growth, there should be a minimal impact on the ComEd LDA.¹⁴

7. IMEA argues that the impact of denying the waiver, however, would be substantial, resulting in “as much as \$2 million per month/ \$24 million per year in additional costs to serve its Naperville load.”¹⁵ IMEA also argues that equity favors granting the waiver, stating that at the outset of PJM’s RPM, “municipal agencies like IMEA were assured of their continuing ability to provide self-supply to their loads in PJM,” but that the assurance ended with a 2011 Commission decision, and that the FRR Alternative is now the only way Load Serving Entities like IMEA can self-supply capacity into PJM.¹⁶ IMEA states that it undertook investment in capacity in good faith, obtained the necessary firm transmission rights, and “qualified that capacity under PJM’s FRR Alternative as the least cost alternative for meeting its load-serving obligations,” within the time limits dictated by the Reliability Assurance Agreement.¹⁷ IMEA further argues that if the Commission denies the waiver that it will have to forgo self-supply and bid its capacity into the Base Residual Auction at prices close to zero. It asserts that in this scenario, its customers will effectively pay twice for capacity: once through investments in self-supply and then again under the capacity auction.¹⁸

8. IMEA requests expedited action on its waiver request. IMEA states that it discovered the impact of the establishment of a separate ComEd Variable Resource Requirement Curve and the associated internal resource requirement on March 28, 2014 when PJM informed IMEA, and it made this filing as soon as possible thereafter. IMEA states that it requests expedited action so that it can accurately provide required final

¹⁴ *Id.* at 6-7.

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 7-8 (citing *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 (2011) (accepting a proposed tariff revision subjecting self-supply resources to the Minimum Offer Price Rule), *on compliance filing and rehearing*, 137 FERC ¶ 61,145 (2011), *aff’d sub. nom.*, *New Jersey Board of Public Utilities, et al. v. FERC*, 744 F.3d 74 (3rd. Cir. 2014)).

¹⁷ *Id.* at 8.

¹⁸ *Id.*

information and calculations that must be submitted to PJM by May 5, 2014 in advance of the May 12, 2014 Base Residual Auction.

III. Notice of Filing and Responsive Pleadings

9. Notice of IMEA's waiver request was published in the *Federal Register*, 79 Fed. Reg. 21,222 (2014), with protests or interventions due on or before April 17, 2014. PJM filed a motion to intervene on April 17, 2014, and filed comments out-of-time on April 25, 2014. IMEA filed an answer on April 28, 2014. No protests were filed.

10. PJM does not oppose the waiver but requests that the Commission grant the waiver based on the narrow circumstances of this filing. PJM notes that the "ComEd LDA was *recently, and for the first time ever*, modeled with a separate VRR Curve," and that IMEA was unprepared to meet the internal resource requirement on short notice.¹⁹ Should the Commission grant the IMEA request, PJM requests a limited waiver of the PJM Open Access Transmission Tariff (Tariff) to ensure that the ComEd LDA Reliability Requirement accurately reflects that the Naperville load will not be served by internal resources.²⁰ IMEA supports PJM's request for limited waiver.

IV. Commission Determination

A. Procedural Matter

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,²¹ PJM's timely, unopposed motion to intervene serves to make PJM a party to this proceeding.

12. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,²² the Commission will accept PJM's comments out-of-time given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

¹⁹ PJM Comments at 2-4.

²⁰ *Id.* at 4-5. See PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT, Attachment DD, §2.39 (15.0.0).

²¹ 18 C.F.R. § 385.214 (2013).

²² 18 C.F.R. § 385.214(d) (2013).

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a comment unless otherwise ordered by the decisional authority.²³ We will accept IMEA's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

14. We find good cause exists to grant IMEA's request for waiver of Schedule 8.1, Section D.5 of the Reliability Assurance Agreement for IMEA's Naperville load as limited to the 2017/18 Delivery Year. We encourage IMEA to continue to discuss with PJM resolution of the internal resources requirement for the ComEd LDA for upcoming Delivery Years.

15. The Commission has previously granted requests for waiver from tariff requirements in situations where (1) the applicant has been unable to comply with the tariff provision at issue in good faith; (2) the waiver is of limited scope; (3) the waiver would address a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.²⁴ We find that IMEA's requested waiver satisfies these conditions.

16. First, we find that IMEA has acted in good faith. PJM provided notice that IMEA was eligible to participate in the FRR Alternative, and IMEA submitted its FRR Capacity Plan detailing its intent to self-supply with generation located outside of the ComEd LDA before the applicable deadline. IMEA states that on March 28, 2014, PJM advised IMEA that it had established a separate Variable Resource Requirement Curve for the ComEd LDA. There is every indication that IMEA acted in good faith in preparing to participate in the FRR Alternative for Delivery Year 2017/18 and that PJM's announcement of the internal resource requirement followed shortly thereafter.²⁵ We note that no party

²³ 18 C.F.R. § 385.213(a)(2) (2013).

²⁴ See, e.g., *Southwest Power Pool, Inc.*, 146 FERC ¶ 61,110, at P 10 (2014); *PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,060, at P 12 (2013); *New York Independent System Operator, Inc.*, 144 FERC ¶ 61,108, at P 14 (2012); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011); *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *California Independent System Operator Corp.*, 132 FERC ¶ 61,1004, at P 10 (2010).

²⁵ Schedule 10.1, Section C of the Reliability Assurance Agreement states that the procedures for setting the percentage of internal resources required is to be determined by procedures in PJM's manuals. PJM Interconnection, L.L.C., Intra-PJM Tariffs, RAA, Schedule 10.1, § C (5.0.0). PJM Manual 18 states that the "minimum Percentage of

(continued...)

disputes IMEA's statement that this waiver request is a result of efforts between itself and PJM to resolve this issue.

17. Second, we find that IMEA's requested waiver is of limited scope, and for a limited period. The waiver applies to a single Load Serving Entity with a separately identified service area for a defined and limited capacity obligation for which firm transmission rights already exist.

18. Third, we find that the waiver will remedy a concrete problem. Absent this waiver, IMEA will be unable self-supply its Naperville load with resources: (1) that IMEA has been permitted to utilize since January 1, 2008; (2) for which IMEA has made significant investment; and (3) that IMEA would have continued to use but for the establishment of a separate Variable Resource Requirement Curve and the resulting internal resource requirement for the ComEd LDA. We further note that, despite IMEA's good faith efforts, it was given little time to prepare, whether financially or otherwise, for the internal resource requirement.

19. Finally, we find that granting IMEA's request for waiver will not lead to undesirable consequences. We find that granting this waiver will not deprive any other entity of available transmission rights or contribute to any regional transmission shortage. We agree that, given the small size of the affected load relative to the ComEd LDA Reliability Requirement,²⁶ the impact on the ComEd LDA should be minimal. Granting the waiver will allow IMEA to continue using resources for which it has long term contracts and firm transmission rights for Delivery Year 2017/18. The Commission

Internal Resources Required in a constrained LDA for the Delivery Year will be posted by February 1 prior to the commencement of the RPM Base Residual Auction for such Delivery Year." PJM Manual 18: PJM Capacity Market, Revision 21, § 11.6. The Variable Resource Requirement curve information for the ComEd LDA, including the minimum Percentage of Internal Resources Required, appears to have been posted on March 21, 2014. PJM, *RPM Auction User Information*, <http://www.pjm.com/markets-and-operations/rpm/rpm-auction-user-info.aspx>; *2017-2018 RPM Base Residual Auction Planning Period Parameters* (Mar. 21, 2014), available at <http://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/2017-2018-planning-period-parameters.ashx>.

²⁶ The Naperville load of 413.2 MW represents 1.4 percent of the overall ComEd LDA Reliability Requirement. See *2017-2018 RPM Base Residual Auction Planning Period Parameters* (Mar. 21, 2014), available at <http://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/2017-2018-planning-period-parameters.ashx>.

reviews each request for waiver of RTO/ISO tariffs on a case-by-case basis, and granting this waiver will not impact our decision-making process on other waiver requests.

20. We do not grant PJM's request for a limited waiver because it is unnecessary. The Tariff requires PJM to reduce the LDA Reliability Requirement by the "minimum internal resources required for all FRR Entities in such Locational Deliverability Area."²⁷ Because we have granted waiver of Schedule 8.1, Section D.5 of the Reliability Assurance Agreement to IMEA, the ComEd LDA Reliability Requirement should not be reduced by the Percentage of Internal Resources Required to serve the Naperville load.

The Commission orders:

IMEA's request for waiver of the Reliability Assurance Agreement, Schedule 8.1, Section D.5 for IMEA's Naperville load for the 2017/18 Delivery Year is hereby granted, as discussed in the body of this order.

By the Commission. Commissioner Moeller is dissenting with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁷ PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT, Attachment DD, §2.39 (15.0.0).

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Illinois Municipal Electric Agency

Docket No. ER14-1681-000

(Issued May 2, 2014)

MOELLER, Commissioner, *dissenting*:

Given the limited amount of time that is available for Illinois Municipal Electric Agency (IMEA) to properly arrange delivery of its power, this Commission has a good rationale for granting the waiver. Yet today's action will transfer costs incurred on behalf of IMEA to everybody else in Chicago and its neighboring areas. On balance, this Commission has inadequate justification to transfer these costs to the rest of the region.

Accordingly, I respectfully dissent.

Philip D. Moeller
Commissioner