

149 FERC ¶ 61,169
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Transource, LLC

Docket No. ER14-2985-000

ORDER GRANTING WAIVER

(Issued November 25, 2014)

1. On September 30, 2014, Transource, LLC (Transource) filed a waiver request that would permit Transource to convert ten Interconnection Requests submitted pursuant to Attachment S of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (PJM Tariff) into three Upgrade Requests encompassing the ten Queue Positions submitted pursuant to Attachment EE of PJM Tariff with the priority of each Upgrade Request equal to the priority of the latest Queue Position contained in each respective Upgrade Request. The conversion from Attachment S to Attachment EE will facilitate the determination by PJM of the necessary upgrades to achieve the Auction Revenue Rights (ARRs) that are requested by Transource, within the limits of the PJM Tariff, thereby speeding the process by which Transource is able to cause the construction of upgrades that will relieve congestion in the PJM transmission system. For the reasons discussed below, we grant the requested waiver.

I. Background

2. ARRs are entitlements allocated annually to firm transmission service customers that entitle the holder to receive an allocation of the revenues from the annual Financial Transmission Rights (FTRs) auction.¹ Incremental ARRs are the additional Auction Revenue Rights, not previously feasible, created by the addition of Incremental Rights-Eligible Required Transmission Enhancements, Merchant Transmission Facilities, or of one or more Customer -Funded Upgrades.² Incremental ARRs are allocated to the

¹ Financial Transmission Rights are financial instruments used to hedge the risk of transmission congestion by entitling the holders of these instruments to compensation for transmission congestion charges.

² See PJM, Intra-PJM Tariffs, Open Access Transmission Tariff, pt. 1.14 B.

customers proportionally to their share of the project cost in a three-round allocation process. Incremental ARR can be requested and obtained by any party who agreed to fund upgrades necessary to support the requested rights as set forth in PJM's Amended and Restated Operating Agreement.³ The upgrade requests must specify a source, sink, and megawatt amount, and must be submitted via Attachment EE to the PJM Tariff. PJM conducts studies to determine the upgrades required to accommodate the requested Incremental ARR and ensure that all outstanding ARRs are simultaneously feasible.⁴

II. Transource's Filing

3. In the instant filing, Transource states that it and PJM are parties to ten separate Transmission Interconnection Feasibility Study Agreements with respect to ten Interconnection Requests submitted by Transource. These ten Interconnection Requests are located in the delivery zones of three different transmission utilities and were submitted to PJM pursuant to Attachment S and Section 36.1 of the PJM Tariff.⁵ Transource asserts that it is in the business of identifying upgrades to the transmission system that relieve congestion and result in the award of Incremental ARRs and other financial rights. Transource states that proceeding pursuant to Attachment S of the PJM OATT will not enable it to obtain the ARRs necessary to make funding of the construction of the upgrades financially feasible. It further asserts that, in order to receive the Incremental ARRs it has requested, Transource seeks a conversion of the ten Interconnection Requests pursuant to Attachment S to three Upgrade Requests; one for each delivery zone encompassing the ten Queue Positions pursuant to Attachment EE. Thus, Transource states that it is requesting a limited waiver of the PJM Tariff that would permit the priority of each Upgrade Request to be equal to the priority of the latest Queue Position contained in each respective Upgrade Request.

4. Transource states that the conversion from Attachment S to Attachment EE will facilitate the determination by PJM of the necessary upgrades to achieve the ARRs that are requested by Transource, thereby speeding the process by which Transource is able to cause the construction of the upgrades that will relieve congestion in the PJM transmission system. Transource further states that the only consequence of its request for a limited waiver is to enable the Upgrade Requests to maintain equal, rather than lower, Queue Positions. In addition, Transource states that the timely completion of

³ See PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 1, § 7.8.

⁴ See PJM Manual 6: Financial Transmission Rights, rev. 15, § 4.9, at 30-33 (Allocation of Incremental Auction Revenue Rights (ARRs)).

⁵ Transource Transmittal Letter at 1.

these transmission upgrades is in the public interest as they will relieve congestion and permit a more efficient dispatch of PJM generation to serve load.⁶

5. Transource states that the Commission has previously granted one-time waiver of tariffs in situations where: (i) the applicant was not able to comply with the tariff provision at issue in good faith; (ii) the waiver is of limited scope; (iii) a concrete problem must be remedied; and (iv) a waiver does not have undesirable consequences, such as harming third parties.⁷

6. In support of its requested waiver, Transource states that it attempted in good faith to comply with PJM's Tariff, but compliance would not yield the best result for Transource, PJM, or consumers in the PJM territory. Transource further states that the waiver is of limited scope since it is limited to the ten Interconnection Requests which would be converted to three Upgrade Requests, respectively. Furthermore, Transource contends that the waiver will remedy a concrete problem because granting the waiver will allow the completion of the upgrades without delaying them for a period of six to twelve months.⁸ Additionally, Transource contends that the waiver will not have undesirable consequences because there are no market participants holding intervening Queue Positions that will be affected by this limited waiver request.⁹ Finally, Transource asserts that PJM does not oppose this request for a limited waiver.

III. Notice of Filing and Responsive Pleadings

7. Notice of Transource's filing was published in the Federal Register, 79 Fed. Reg. 61,074 (2014), with interventions and protests due on or before October 21, 2014. None was filed.

IV. Discussion

8. For the reasons discussed below, we grant Transource's request for waiver of the PJM Tariff, noting, however, that the waiver granted herein is of limited scope. Although not the only basis for granting a waiver, the Commission has previously found good cause to grant one-time waivers of tariff provisions in situations where: (1) the applicant was not able to comply with the tariff provision at issue in good faith; (2) the waiver is of

⁶ *Id.* at 2.

⁷ *Id.* at 3.

⁸ *Id.*

⁹ *Id.* at 4.

limited scope; (3) a concrete problem must be remedied; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹⁰

9. We find that Transource's requested waiver satisfies the aforementioned conditions. Transource has represented that it attempted in good faith to comply with the tariff provision at issue. We further find that the waiver is of limited scope—i.e., the conversion from Attachment S to Attachment EE of the PJM Tariff, that will allow Transource to maintain equal, rather than lower, Queue Positions. We also agree that the waiver will remedy a concrete problem as the completion of the transmission upgrades will be kept on schedule without six to twelve months' delay. Finally, based on the reasoning presented by Transource, we conclude that no third parties will be harmed by granting this limited waiver of the PJM Tariff. We also note that PJM does not oppose this limited waiver request and that no market participants protested this request.

10. Due to the specific and unique facts presented above, the Commission finds good cause to grant Transource's request for a waiver of any relevant provisions of the PJM Tariff to permit the conversion of ten Interconnection Requests pursuant to Attachment S to three Upgrade Requests pursuant to Attachment EE of the PJM Tariff. We emphasize the importance of adhering to the rules set forth in the PJM Tariff in order for PJM to be able to effectively administer the markets. However, for reasons described above, we grant Transource's request for waiver.

The Commission orders:

Transource's request for waiver is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁰ See, e.g., *New York Indep. Sys. Operator, Inc.*, 144 FERC ¶ 61,147, at P 8 (2013); *New York Indep. Sys. Operator, Inc.*, 139 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 Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010); *Midwest Indep. Trans. Sys. Operator, Inc.*, 130 FERC ¶ 61,172, at P 13 (2010); *Midwest Indep. Trans. Sys. Operator, Inc.*, 130 FERC ¶ 61,124, at P 25 (2010); *Illinois Power Co.*, 120 FERC ¶ 61,237, at P 22 (2007).