

150 FERC ¶ 61,154
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Appalachian Power Company,
Kentucky Power Company,
Wheeling Power Company, and
Indiana Michigan Power Company

Docket No. ER15-909-000

ORDER GRANTING WAIVER

(Issued February 27, 2015)

1. On January 26, 2015, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure,¹ Appalachian Power Company, Kentucky Power Company, Wheeling Power Company, and Indiana Michigan Power Company (collectively, the AEP FRR companies)² requested a limited waiver of two approaching deadlines under PJM Interconnection, L.L.C.'s (PJM) Reliability Assurance Agreement Among Load-Serving Entities in the PJM Region (RAA) that require Fixed Resource Requirement (FRR) entities to notify PJM of their FRR elections and to submit their FRR capacity plans for the 2018/2019 Delivery Year by March 11 and April 11, 2015, respectively. In this order, we grant the requested waiver, as discussed below.

I. Background

2. The AEP FRR companies have always self-supplied their generating capacity requirements, and do not participate in PJM's Reliability Pricing Model (RPM) capacity market. The AEP FRR companies instead have elected the FRR alternative and have each filed their FRR capacity plans with PJM through the 2017/2018 Delivery Year.

¹ 18 C.F.R. § 385.207(a)(5) (2014).

² American Electric Power Service Corporation (AEP) filed the request on behalf of the AEP FRR companies, which are its state-regulated utility affiliates within PJM Interconnection, L.L.C.

3. On December 12, 2014, PJM proposed reforms to its market-based auction process under the RPM (Capacity Performance proposal), including changes to unit performance metrics and penalties for non-performance; PJM proposes to apply these changes to FRR entities as well as the RPM.³ On January 20, 2015, the AEP FRR companies, jointly with Duke Energy Kentucky, protested PJM's Capacity Performance proposal, arguing that applying the changes to FRR entities is unjust and unreasonable and will significantly increase the financial risks for entities that elect the FRR alternative. They also argued that PJM ignores the history and development of the FRR alternative and fails to account for state regulatory oversight of FRR entities. In the protest, the AEP FRR companies and Duke Energy Kentucky ask that the Commission exempt FRR entities from the proposed Capacity Performance proposal provisions. PJM requested an effective date of April 1, 2015, in its Capacity Performance filing.

4. Schedule 8.1(C)(1) of the RAA imposes two deadlines on FRR entities. First, at least two months before PJM conducts the Base Residual Auction, an entity must notify PJM of its election of the FRR alternative. Then, no later than one month before the Base Residual Auction, the entity must submit its capacity plan to PJM. The deadline for FRR entities to notify PJM of their FRR election for the 2018/2019 Delivery Year is March 11, 2015, and the deadline for submitting their FRR capacity plan is April 11, 2015.

II. Waiver Request

5. The AEP FRR companies state that, in light of the significant uncertainties surrounding the FRR construct as a result of PJM's Capacity Performance proposal, and the fact that PJM requested an effective date after the March 11, 2015, deadline for the AEP FRR companies to notify PJM, the AEP FRR companies request that the Commission grant a limited waiver of the March 11 and April 11, 2015, deadlines and grant the requested extensions. The AEP FRR companies request that the Commission grant this waiver on or before March 1, 2015. The AEP FRR companies argue that they should not be expected to make this critical decision with respect to approximately 13,000 MW of generation without knowing what rules will apply to FRR or RPM entities for the 2018/2019 Delivery Year. In addition to waiving the deadlines, the AEP FRR companies request an extension of the deadlines, such that, no later than ten days after the Commission issues an order resolving the application of the Capacity Performance proposal to existing FRR entities, the AEP FRR companies will notify PJM of their decision to elect the FRR alternative or to participate in the RPM. If they elect FRR, the AEP FRR companies would submit their capacity plans within ten days of providing such notice to PJM.

³ Docket No. ER15-623-000.

6. The AEP FRR companies state that the Commission has previously granted waivers of tariff provisions where the requested waiver: (1) is made in good faith; (2) is of limited scope; (3) addresses a concrete problem that will be remedied; and (4) does not have undesirable consequences.⁴ The AEP FRR companies state that their waiver request meets these four factors.

7. First, the AEP FRR companies argue that their request for waiver is made in good faith. The AEP FRR companies state that AEP's vertically-integrated utilities have consistently elected to self-supply their capacity obligations since the RPM and FRR alternatives were approved in 2006. According to the AEP FRR companies, their experience has proven that FRR is an effective method for securing long-term resources and generation reliability, yet PJM proposes to apply its Capacity Performance proposal to both RPM and FRR participants. As a result, they continue, FRR may no longer be the most prudent option for the AEP FRR companies and their customers. Without a waiver, the AEP FRR companies argue that they will be forced to decide whether to commit approximately 13,000 MW to either FRR or RPM three years out, without knowing the rules that will govern their participation, the financial risks associated with the decision, how retail ratepayers will be affected, the operating parameters, and the treatment of demand response in FRR. The AEP FRR companies point out that, on January 16, 2015, the Commission granted a similar waiver request to extend the compliance deadline under the PJM tariff due to the uncertainty caused by the Capacity Performance proposal to Brookfield Energy Marketing, LP.⁵ There, the AEP FRR companies state that the Commission found that Brookfield acted in good faith because it submitted its waiver request in advance of the deadline; likewise, in this proceeding, the AEP FRR companies state they are acting in good faith because they are submitting the waiver request seven weeks in advance of the deadline under the RAA by which an entity must make its FRR election.

8. Second, the AEP FRR companies assert that their waiver request is reasonable and of limited scope. They state that they are only requesting a one-time, limited waiver of

⁴ Appalachian Power Company, Kentucky Power Company, Wheeling Power Company, and Indiana Michigan Power Company January 26, 2015 Request for Waiver at 6 (citing *Indianapolis Power & Light Co.*, 149 FERC ¶ 61,047, at P 64 (2014), *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,078, at P 38 (2014), *Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,184, at P 18 (2014), *Southwest Power Pool, Inc.*, 148 FERC ¶ 61,013, at P 13 (2014), and *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,132, at P 8 (2014)).

⁵ *Id.* at 7 (citing *Brookfield Energy Marketing, LP*, 150 FERC ¶ 61,018 (2015) and *RC Cape May Holdings, LLC*, 147 FERC ¶ 61,085 (2014)).

two RAA deadlines just until the Commission has issued an order so that they have a meaningful opportunity to evaluate and understand the ramifications of the final Capacity Performance rules, if any.

9. Third, the AEP FRR companies contend that their waiver request is necessary to remedy a concrete problem. According to the AEP FRR companies, PJM's Capacity Performance proposal has created significant uncertainties for current FRR entities. Furthermore, they state that the March 11 notification deadline is not just a single-year decision, but rather represents a significant, long-term commitment as to how the AEP FRR companies will meet their capacity obligations in PJM. The AEP FRR companies explain that the rules governing FRR entities are designed to prevent such entities from switching back and forth between FRR and RPM. Specifically, under the RAA, if the AEP FRR companies decide to terminate their FRR elections, they will not be eligible to re-elect FRR for five consecutive Delivery Years. The AEP FRR companies argue that it is fundamentally unfair, unjust, and unreasonable to require them to decide whether to elect to continue as FRR entities without knowing the rules that will govern their elections; they contend that their waiver request is intended to address this concrete problem. According to the AEP FRR companies, the Commission granted a temporary waiver of a tariff provision under similar circumstances in order to allow NYISO's stakeholders an opportunity to analyze the impacts of certain market design changes.⁶

10. Lastly, the AEP FRR companies assert that granting their limited waiver will not have any undesirable consequences or harm any party. The AEP FRR companies explain that the RPM is a three-year, forward capacity market, meaning that the May 11, 2015, Base Residual Auction will procure capacity for the 2018/2019 Delivery Year. They argue that, therefore, extending the RAA's March 11 and April 11, 2015, deadlines for a short period of time is reasonable and will not have any undesirable consequences or cause harm to other market participants. To the contrary, they continue, the failure to extend the deadlines may result in harm to the AEP FRR companies and their retail customers. The AEP FRR companies state that they will commit to submitting their elections within ten days of a Commission order on the Capacity Performance proposal, and to submitting their capacity plans, if necessary, within ten days after making their elections. The AEP FRR companies assert that it is not unusual for PJM to be finalizing its auction parameters and forecasts right up to the date of the Base Residual Auction; thus, PJM and other market participants will not be harmed by granting the AEP FRR companies this short extension.⁷

⁶ *Id.* at 9 (citing *New York Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,012, at P 18 (2013)).

⁷ *Id.* at 9-10.

III. Notice of Filing

11. Notice of the request for wavier was published in the *Federal Register*, 80 Fed. Reg. 7446 (2015), with comments due on February 9, 2015. Old Dominion Electric Cooperative filed a timely motion to intervene. No comments or protests were filed.

IV. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁸ Old Dominion Electric Cooperative's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

13. The Commission has previously granted one-time waivers of tariff provisions in situations where: (1) the applicant will be unable to comply with the tariff provision at issue in good faith; (2) the waiver is of limited scope; (3) granting the waiver would remedy a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.⁹ We find that good cause exists to grant the AEP FRR companies' unopposed request for waiver. First, we find that the AEP FRR companies are acting in good faith. They submitted their limited waiver request more than seven weeks before the March 11, 2015, deadline under the RAA by which they must make their FRR elections. We recognize that there are uncertainties for FRR entities caused by the pending Capacity Performance proposal. Second, we find that the AEP FRR companies' requested waiver is of limited scope, and for a limited period. The requested wavier is of two RAA deadlines and only until the Commission issues an order on the Capacity Performance proposal to give the AEP FRR companies a meaningful opportunity to evaluate the outcome of Capacity Performance proposal proceeding. Third, we find that the waiver will remedy a concrete problem. Unless the AEP FRR companies receive a waiver, they will be required to decide whether to remain in FRR or to participate in the RPM without knowing what rules will be in place, and to do so three years before the Delivery Year. Finally, we find that granting the AEP FRR companies' request for limited wavier will not have any undesirable consequences or harm any third parties. Waiving the RAA's March 11 and April 11, 2015, deadlines under these

⁸ 18 C.F.R. § 385.214 (2014).

⁹ 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).

circumstances will not delay the RAA or adversely affect PJM's market operation. We also note that no parties opposed the AEP FRR companies' request. Accordingly, we grant the AEP FRR companies' request for a limited, one-time waiver of the deadlines set forth in section 8.1(C)(1) of the RAA Schedule.

14. As for the AEP FRR companies' request that they be given ten days after the Commission issues an order on the Capacity Performance proposal in Docket No. ER15-623-000 to make their FRR elections for the 2018/2019 Delivery Year, and ten days after their elections to submit their capacity plans, we find this timeline untenable. In light of the size of load represented by the AEP FRR companies, their election or non-election of the FRR alternative will have a meaningful impact on the Base Residual Auction's planning parameters. We are therefore concerned that giving the AEP FRR companies an open deadline for FRR election could result in other FRR entities not having sufficient time to prepare for the auction. Therefore, although we grant the limited waiver, we require that the AEP FRR companies submit their elections of the FRR alternative no later than April 10, 2015, to ensure that other entities have sufficient time to prepare for the May 11, 2015, Base Residual Auction, and that, if necessary, they submit their capacity plans no later than April 20, 2015.

The Commission orders:

The AEP FRR companies' request for waiver is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.