

150 FERC ¶ 61,179
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.

Illinois Municipal Electric Agency

Docket No. ER15-834-000

ORDER DENYING WAIVER

(Issued March 9, 2015)

1. On January 8, 2015, pursuant to section 207(a)(5) of the Commission's Rules of Practice and Procedure,¹ the Illinois Municipal Electric Agency (Illinois MEA) 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 provisions of any of the PJM Interconnection, L.L.C. (PJM) governing documents necessary to permit Illinois MEA to serve its Naperville, Illinois load through PJM's Fixed Resource Requirement (FRR) Alternative for the 2018/2019 Delivery Year. For the reasons discussed below, we deny Illinois MEA's request for waiver for the 2018/2019 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 Locational Delivery Area (LDA) with a separate Variable Resource Requirement Curve, entities intending to participate in

¹ 18 C.F.R. § 385.207(a)(5) (2014).

² See PJM Interconnection, L.L.C., Intra-PJM Tariffs, RAA, Schedule 8.1, § D.5 (7.0.0).

³ *Id.* § A (1.0.0).

the FRR Alternative must submit an FRR Capacity Plan that includes a minimum percentage of Capacity Resources physically located within that LDA. 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.⁴

3. Illinois MEA's load in PJM includes the cities of Naperville, Rock Falls, and St. Charles, Illinois and the Village of Winnetka, Illinois. Illinois MEA states that these members have all been within the Commonwealth Edison (ComEd) zone since before ComEd joined PJM, and that Illinois MEA has always used resources in downstate Illinois or its plants in Trimble County, Kentucky to meet the capacity obligations of that load. Illinois MEA explains that, in addition to its investments in these resources, it has acquired long-term, firm transmission rights to deliver the resources into PJM.

4. Illinois MEA elected to participate in the FRR Alternative on March 7, 2014, for its Naperville load, beginning with Delivery Year 2017/2018 continuing for the next four delivery years as required by the Reliability Assurance Agreement. On March 28, 2014, PJM informed Illinois MEA that its FRR Capacity Plan for the 2017/2018 Delivery Year did not meet the ComEd LDA's newly established internal resource requirement and was therefore deficient. In response, on April 7, 2014, Illinois MEA filed for a waiver of Schedule 8.1, Section D.5 of the Reliability Assurance Agreement for the delivery year beginning June 1, 2017.

5. The Commission granted Illinois MEA's requested waiver on May 2, 2014.⁵ The May 2014 Order waived Schedule 8.1, Section D.5 of the Reliability Assurance Agreement for the 2017/2018 Delivery Year, allowing Illinois MEA to use capacity resources located outside of the ComEd LDA to meet the internal resource requirement associated with its election to use the FRR Alternative for its load located in Naperville. Without a waiver of this section, Illinois MEA would have been required to supply a minimum percentage of capacity from resources physically located within the ComEd LDA for its Naperville load because PJM elected to establish a separate Variable Resource Requirement Curve for the ComEd LDA. Furthermore, the May 2014 Order noted that Illinois MEA was given little time to prepare for the internal resource requirement.

⁴ *Id.* § D.5 (7.0.0).

⁵ *Illinois Municipal Electric Agency*, 147 FERC ¶ 61,090 (2014) (May 2014 Order), *order denying clarification and reh'g*, 150 FERC ¶ 61,040 (2015) (Order Denying Rehearing).

6. Illinois MEA requested rehearing of the May 2014 Order and asked the Commission to extend the waiver for the life of its external resources or through the minimum duration of its five-year FRR commitment. On January 22, 2015, the Commission denied rehearing, noting that it had granted the waiver in substantial part because of the timing of PJM's notice to Illinois MEA and noted that it was concerned that extending such a waiver would expose other customers in the ComEd LDA to the possibility of paying higher prices.⁶

7. Illinois MEA states that, following the May 2014 Order, it met with PJM to discuss a resolution to the internal resource requirement for future delivery years, as encouraged by the Commission. Illinois MEA states that it developed a solution with PJM management which is currently pending in the PJM stakeholder process. Illinois MEA states that these changes, if adopted as drafted, would likely make future waiver requests of Schedule 8.1, Section D.5 of the Reliability Assurance Agreement unnecessary. Nevertheless, Illinois MEA does not expect that the corresponding PJM tariff and Reliability Assurance Agreement changes will be filed until October 2015. Illinois MEA asserts that, without these changes, it has little ability to work around the underlying problems and self-supply its Naperville load absent the requested waiver.

II. Waiver Request

8. Illinois MEA states that it remains obligated under the FRR Alternative to self-supply its load in the ComEd LDA through the 2021/2022 Delivery Year with long-term capacity commitments. If PJM models the ComEd LDA with a separate Variable Resource Requirement Curve for the 2018/2019 Delivery Year, Illinois MEA claims it must supply Naperville with internal resources or potentially incur the FRR Commitment Insufficiency charge, which it estimates will be significant. Therefore, Illinois MEA requests waiver of Schedule 8.1, Section D.5 of the Reliability Assurance Agreement and any other PJM governing document to serve its Naperville load in the ComEd LDA for Delivery Year 2018/2019.

9. Illinois MEA states that imposing the risk of these penalties is inconsistent with the Commission's finding in the May 2014 Order that the previous waiver would not deprive any other entity of available transmission rights or contribute to any regional transmission shortage and that given the relatively small size of the Illinois MEA load involved, any impact on the ComEd Zone should be minimal.⁷ Illinois MEA asserts that its good faith efforts are not restricted to the first year of its commitment to use the FRR

⁶ Order Denying Rehearing, 150 FERC ¶ 61,040 at PP 12, 13, 17.

⁷ Waiver Request at 11 (citing May 2014 Order, 147 FERC ¶ 61,090 at P 19).

Alternative and that those efforts extend until at least the end of the 2021/2022 Delivery Year.

III. Notice of Filing and Responsive Pleadings

10. Notice of Illinois MEA's waiver request was published in the *Federal Register*, 80 Fed. Reg. 2688 (2015), with protests or interventions due on or before January 29, 2015. The Illinois Commerce Commission (Illinois Commission) filed a notice of intervention and submitted comments. The Independent Market Monitor for PJM (Market Monitor) filed a motion to intervene and submitted a protest. PJM filed a motion to intervene and comments. Exelon Corporation filed an out-of-time motion to intervene on February 9, 2015. On February 9, 2015, Illinois MEA filed an answer.

A. Comments and Protests

11. PJM states that it does not oppose Illinois MEA's requested waiver and that, following the May 2014 Order, it met with Illinois MEA to understand Illinois MEA's problem and discuss a solution.⁸ PJM states that, during these discussions, it uncovered a potential issue relating to the allocation of transfer capability to market participants which had historically committed transfer capability prior to the implementation of RPM.⁹ PJM explains that its current modeling practices do not have a mechanism that recognizes the benefits of historically committed transfer capability into a constrained Zone/LDA from external point-to-point transmission.¹⁰ PJM states that this deficiency can have a negative impact, including imposing an internal resource requirement on FRR entities even when the entities' resources were committed to serve PJM load in the zone since the implementation of RPM and prior to the zone becoming constrained.¹¹ PJM states that the external transfer capability is beneficial to the constrained Zone/LDA especially when the external transfer capability is significant when compared to PJM's internal transfer capability into the constrained LDA.¹²

⁸ PJM Comments at 1-3.

⁹ *Id.* at 4.

¹⁰ *Id.* at 4-5.

¹¹ *Id.* at 5.

¹² *Id.* at 5-6.

12. PJM states that it is aware of the Commission's concerns about harm to third parties by increasing the amount of internal resources that other entities would be required to procure; that external systems may curtail firm transmission rights when managing congestion; and that Illinois MEA was subject to the risk and costs of the LDA becoming constrained when it elected the FRR Alternative.¹³ PJM believes that addressing Illinois MEA's concerns through the stakeholder process will allow the Commission's concerns to be vetted and inform any proposed revisions to the relevant governing documents. PJM states that, while it does not anticipate that many FRR entities or capacity market participants will have historically committed transfer capability, it is worth pursuing this proposal to address an issue that was created as a result of moving to the RPM construct in the capacity market, and that such is similar to how PJM addressed the analogous issue of allocating auction revenue rights in the energy market.¹⁴

13. The Illinois Commission states that granting the waiver could have a significant financial impact on the other load serving entities in the ComEd LDA if PJM decides to model the ComEd LDA separately in the May 2015 base residual auction and the ComEd LDA subsequently binds on the Capacity Emergency Transfer Limit (CETL).¹⁵ The Illinois Commission asserts that, if the Commission grants Illinois MEA's waiver request and does not require Illinois MEA to share in the cost consequences on a *pro-rata* basis, then all non-Illinois MEA load serving entities and their ratepayers in the ComEd LDA will be forced to bear a greater share of those cost consequences than they would if the Commission did not grant the requested waiver.¹⁶ The Illinois Commission estimates that even a small \$1/MW-day increase in capacity prices to the ComEd LDA would result in an annual increase in capacity costs of over \$10.2 million and speculates that the price impact could be larger if the CETL binds in the base residual auction.¹⁷ The Illinois Commission states that the Commission should therefore not grant the requested waiver because the waiver does not meet the Commission's standard of no adverse consequences, such as harming third parties, since the financial impact of the waiver could be significant for other load serving entities.¹⁸

¹³ *See id.* at 6.

¹⁴ *Id.* at 6-7.

¹⁵ Illinois Commission Comments at 4.

¹⁶ *Id.* at 6.

¹⁷ *Id.*

¹⁸ *Id.* at 7-8.

14. The Illinois Commission states that it would be inequitable and discriminatory for the Commission to resolve Illinois MEA's problems by shifting this potential cost to other load serving entities in the ComEd LDA.¹⁹ Therefore, the Illinois Commission suggests that the Commission consider other solutions to Illinois MEA's problems instead of granting Illinois MEA's waiver request.²⁰ Alternatively, if the Commission grants Illinois MEA's waiver request, the Illinois Commission requests that the Commission also direct PJM to reduce the ComEd LDA reliability requirement by the amount of internal capacity that Illinois MEA is excused from providing.²¹ The Illinois Commission suggests that this will ensure that non-Illinois MEA load serving entities will only have to acquire and pay for the same amount of internal capacity as they would have if Illinois MEA had complied with the internal resource requirement of the FRR Alternative.²²

15. The Market Monitor states that Illinois MEA does not meet the Commission's conditions for waiver of a filed tariff and therefore the request should be denied.²³ The Market Monitor states that not only would granting the waiver have an adverse effect on third parties, but Illinois MEA's request also fails to satisfy other required conditions of granting waiver.²⁴ The Market Monitor asserts that Illinois MEA's request does not address a concrete problem because Schedule 8.1, Section D.5 of the Reliability Assurance Agreement is operating exactly as it is intended to operate and there is no reason to apply a different rule to Illinois MEA.²⁵ The Market Monitor explains that Illinois MEA's unmet expectations do not justify the waiver and that Illinois MEA is no different than any other party that invested in resources with expectations that were altered by the implementation of RPM. Furthermore, the Market Monitor asserts that Illinois MEA has not shown that it cannot comply with the Reliability Assurance Agreement in good faith. The Market Monitor asserts that Illinois MEA has not shown

¹⁹ *Id.* at 6-7.

²⁰ *Id.* at 7.

²¹ *Id.*

²² *Id.*

²³ Market Monitor Comments at 1.

²⁴ *Id.* at 2.

²⁵ *Id.* at 2-3.

that it has tried but could not comply with the internal resource requirement or that it could not pay the FRR Commitment Insufficiency charge.²⁶

B. Answer

16. Illinois MEA states that there have been two significant developments since it filed its waiver request. First, PJM announced it will model the ComEd LDA as if it were constrained and, therefore, Illinois MEA must meet 91.7% of its capacity needs with resources located within the ComEd LDA.²⁷ Second, Illinois MEA notes PJM's comments that recognize the gap in its modeling process, that there are benefits that Illinois MEA's resources provide the ComEd LDA, and that there is a generic solution to these issues pending in the stakeholder process.²⁸

17. Illinois MEA states that denying the waiver will force it to limit its sales and lead to the withholding of roughly 400 MW from serving PJM load under the RPM, which it claims will result in net harm to PJM customers.²⁹ Illinois MEA asserts that, because it is a price-taker in PJM, each MW of capacity it provides benefits PJM customers whether or not there is price separation.³⁰ Illinois MEA states that it is unlikely that there will be a binding constraint between the CETL and Capacity Emergency Transfer Objective (CETO), and resulting price separation. It explains that PJM's planning parameters show that the ComEd Zone has a CETL-to-CETO ratio above 6, which is above the CETL-to-CETO ratio of 1.15 that triggers zones to be modeled as a separate LDA,³¹ and above the CETL-to-CETO ratio of 3.07 that did not price separate during the 2017/2018 Delivery

²⁶ *Id.* at 3-4.

²⁷ Illinois MEA Answer at 4.

²⁸ *Id.* at 5-6.

²⁹ *Id.* at 7.

³⁰ Illinois MEA estimates that other PJM customers would be subject to increased capacity costs of \$348 million to \$757 million across all of PJM if the Commission denies its waiver request and the same conditions as the 2017/2018 base residual auction hold. In the event of price separation, Illinois MEA estimates that denying the waiver will result in increased capacity costs between \$246 million and \$546 million for the rest of PJM. *See* Illinois MEA Answer at 8.

³¹ *See* PJM Interconnection, L.L.C., Intra-PJM Tariffs, RAA, Schedule 10.1, § A (7.0.0).

Year base residual auction.³² Illinois MEA states that granting the waiver will permit 530 MWs to enter the ComEd LDA, which will lower capacity prices because its resources are price-takers and will lower prices under all conditions, including if there are binding constraints.³³

18. Illinois MEA states that the Illinois Commission's and the Market Monitor's comments do not recognize that Illinois MEA's transfer rights potentially provide reliability benefits to all market participants.³⁴ Illinois MEA states that neither commenter recognizes the core issue that will be addressed through the PJM stakeholder process: that the transfer capability of resources which entities such as Illinois MEA have relied on are included in the CETL without the owners of those resources being given the benefits of the transfer capability.³⁵ Furthermore, Illinois MEA states that denying the waiver will unfairly benefit other market participants because denial would take away Illinois MEA's historic firm transfer rights without compensation.³⁶

19. Illinois MEA also states that the Illinois Commission's and the Market Monitor's reliance on the Order Denying Rehearing and Commissioner Moeller's dissent are misplaced and do not support denying the waiver request.³⁷ Illinois MEA explains that the facts available to the Commission have changed since those decisions, including the ongoing PJM stakeholder process and Illinois MEA's demonstration of the benefits its resources provide to PJM.³⁸

20. Illinois MEA also disputes the Market Monitor's claim that it does not meet the Commission's standards for waiver. Illinois MEA states that it has made a good faith effort to resolve the issue, the requested waiver is of a limited scope and for a limited period, and granting the requested waiver will not lead to undesirable consequences.³⁹

³² Illinois MEA Answer at 7.

³³ *Id.* at 8.

³⁴ *Id.* at 9.

³⁵ *Id.*

³⁶ *Id.* at 10.

³⁷ *Id.*

³⁸ *Id.* at 10-11.

³⁹ *Id.* at 2-3.

Illinois MEA states that granting waiver would remedy a concrete problem, which is currently being addressed under the stakeholder process, and its “unrealized expectations” are longstanding arrangements recognized by the Commission.⁴⁰ Second, Illinois MEA states that it acted in a timely fashion to address the issue as it engaged in discussions with PJM to resolve the issue, which have resulted in the current stakeholder process.⁴¹ Finally, Illinois MEA states that it has acted in good faith in its efforts to resolve the issue.⁴² Illinois MEA explains that it has explored several alternatives to waiver, including pseudo-tying the resources to PJM, constructing or purchasing generation in the ComEd Zone, buying ComEd internal capacity to serve the load, and pursuing other programs, such as demand response that qualify as capacity in the ComEd Zone.⁴³ However, Illinois MEA states that none of these options is viable under the terms of the Reliability Assurance Agreement, the required time frame, or the financial premium required.⁴⁴

21. Finally, Illinois MEA states that the alternatives proposed by the Illinois Commission are not viable. First, Illinois MEA explains that none of these alternatives could be implemented in time to meet its fundamental problem.⁴⁵ Second, Illinois MEA states that exiting the FRR Alternative is not an effective way to solve its problem. Illinois MEA explains that the FRR Alternative is structured to incentivize a long term commitment and, as such, Illinois MEA would be unable to use its resources in PJM under the FRR Alternative for five years if it exited the FRR Alternative.⁴⁶ Third, Illinois MEA explains that the Illinois Commission’s second alternative of requiring PJM to limit its criteria for modeling the ComEd LDA separately would require tariff changes or an additional waiver and is therefore not viable.⁴⁷

⁴⁰ *Id.* at 11-12 (citing May 2014 Order, 147 FERC ¶ 61,090 at P 18).

⁴¹ *Id.* at 12.

⁴² *Id.* at 13-14.

⁴³ *Id.* at 14.

⁴⁴ *Id.*

⁴⁵ *Id.* at 15.

⁴⁶ *Id.* at 16.

⁴⁷ *Id.* at 17.

IV. Commission Determination

A. Procedural Matters

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

23. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission grants Exelon Corporation'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.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Illinois MEA's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

25. We deny Illinois MEA's request for waiver. The Commission has granted requests for waiver from tariff requirements in situations where: (1) the waiver is of limited scope; (2) the waiver would address a concrete problem; and (3) the waiver does not have undesirable consequences, such as harming third parties.⁴⁸ We find that Illinois MEA has not demonstrated that the waiver will not have undesirable consequences, and, accordingly, we deny the requested waiver.

26. We recognize that the Commission granted Illinois MEA a similar waiver for the 2017/2018 Delivery Year, but disagree with Illinois MEA's request for an additional waiver for the 2018/2019 Delivery Year. As the Illinois Commission and the Market Monitor explain, and the Commission noted in its Order Denying Rehearing, relieving Illinois MEA of its obligation to procure capacity from within the ComEd LDA could potentially result in a significant cost shift to other customers in the ComEd LDA if price separation occurs. Notwithstanding Illinois MEA's claims that "the only potential for harm if the waiver is granted would be if the ComEd LDA binds on the CETL for the

⁴⁸ See, e.g., *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,154, at P 9 (2014); *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.*, 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 Independent System Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010).

2018/2019 Delivery Year,” and that the likelihood of that occurring is small,⁴⁹ it nevertheless represents the potential for substantial costs to other load located in the ComEd LDA. If the ComEd LDA binds, PJM will purchase capacity within the ComEd LDA based on an internal capacity requirement that includes Illinois MEA’s capacity obligation such that the rest of the load-serving entities in the ComEd LDA would be required to purchase more capacity at the higher ComEd LDA capacity price. The application of an internal resource requirement is intended to protect the reliability of the PJM system,⁵⁰ and we do not find, based on the record before us, that Illinois MEA has demonstrated that it should be relieved of its share of that internal resource requirement.

27. Illinois MEA’s waiver request can be distinguished from the waiver granted in the May 2014 Order. First, we note that Illinois MEA’s prior waiver request was not protested, and therefore parties did not raise the same concerns regarding undesirable consequences, specifically including the potential shift of costs from Illinois MEA to other customers in the ComEd LDA. Furthermore, the Commission granted Illinois MEA’s previous waiver request largely because Illinois MEA had not received adequate notice of the internal resource requirement. The same notice concern does not apply to the 2018/2019 Delivery Year.

28. PJM and Illinois MEA note that the treatment of Illinois MEA’s external resources is being addressed through the PJM stakeholder process, which will allow for concerns related to reliability and harm to third parties to be vetted and, as appropriate, inform any proposed changes to the Reliability Assurance Agreement or other PJM governing documents.⁵¹ We recognize that denial of Illinois MEA’s waiver for the 2018/2019 Delivery Year will require Illinois MEA to adjust its capacity portfolio for the planning year, but we encourage Illinois MEA and PJM to continue to work on a longer term solution.

⁴⁹ Illinois MEA Answer at 6-7.

⁵⁰ See Order Denying Rehearing, 150 FERC ¶ 61,040 at P 14.

⁵¹ See PJM Comments at 6.

The Commission orders:

Illinois MEA's request for waiver of Schedule 8.1, Section D.5 of the Reliability Assurance Agreement and any related provisions of any of the PJM governing documents is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.