

151 FERC ¶ 61,019
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. ER15-1232-000

ORDER GRANTING WAIVER

(Issued April 10, 2015)

1. On March 11, 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, sections E.2 and E.4 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, including section 11.7 of Manual 18,³ that are designed to limit the amount of capacity a utility operating under PJM's Fixed Resource Requirement (FRR) Alternative may sell into the PJM Reliability Pricing Model (RPM) for the 2018-2019 Delivery Year. For the reasons discussed below, we grant Illinois MEA's request for waiver.

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 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.⁴ As a condition of FRR Alternative participation, Schedule 8.1, sections E.2 and E.4 place limits on the amount of capacity resources that any participating load serving entity may offer to sell into the RPM auction.

¹ 18 C.F.R. § 385.207(a)(5) (2014).

² See PJM Interconnection, L.L.C., Intra-PJM Tariffs, RAA, Schedule 8.1, §§ E.2, E.4 (2.0.0).

³ PJM Manual 18: PJM Capacity Market, Revision 21, § 11.7.

⁴ PJM Interconnection, L.L.C., Intra-PJM Tariffs, RAA, Schedule 8.1, § A (1.0.0).

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 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 Locational Deliverability Area's (LDA) newly established internal resource requirement and was therefore deficient. In response, Illinois MEA filed for a waiver of the FRR Alternative's internal resource requirement, which the Commission granted on May 2, 2014 for the 2017-2018 Delivery Year.⁵

5. Illinois MEA then engaged with PJM to discuss a resolution to the internal resource requirement for future delivery years and developed a solution with PJM management that is currently pending in the PJM stakeholder process. Illinois MEA does not expect that the corresponding PJM tariff and Reliability Assurance Agreement changes will be filed until October 2015. Therefore, Illinois MEA sought waiver of the internal resource requirement for the 2018-2019 Delivery Year. However, in a March 9, 2015 Order, the Commission denied Illinois MEA's request because Illinois MEA did not demonstrate that the requested waiver would not have undesirable consequences.⁶

II. Waiver Request

6. Illinois MEA now requests waiver of Schedule 8.1, sections E.2 and E.4 because it cannot use the capacity resources it owns or has under long-term contract to meet its FRR

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

⁶ *Illinois Municipal Electric Agency*, 150 FERC ¶ 61,179, at P 25 (2015) (March 9 Order).

capacity obligations.⁷ Therefore, Illinois MEA seeks to mitigate the costs of purchasing additional capacity to satisfy the internal resource requirement by selling its historic resources into the RPM auctions. Illinois MEA states that it has begun the process of pseudo-tying its resources to PJM so that they will qualify as fully deliverable, non-curtaillable Capacity Performance Resources. However, Illinois MEA states that though it is permitted to sell excess capacity into the RPM auctions, the amount of capacity it may sell is limited by Schedule 8.1, sections E.2 and E.4 and section 11.7 of PJM Manual 18. Therefore, Illinois MEA seeks waiver of these provisions.

7. Illinois MEA explains that as an FRR entity it must explicitly declare that it will sell excess capacity into the market and it must also designate a higher amount of capacity (the Threshold Quantity) in its FRR Capacity Plan than it otherwise is required to provide under the FRR Alternative.⁸ Illinois MEA states that the Threshold Quantity is limited by the Reliability Assurance Agreement and that once an FRR Entity designates a higher Threshold Quantity it is permitted to sell some, but not necessarily all, of its surplus capacity into the RPM auction.⁹ Illinois MEA explains that Schedule 8.1, section E.2 contains a general requirement that limits the surplus resources an FRR entity may sell into RPM up to the lesser of 25% of its FRR Capacity Obligation or 1300 megawatts (MW). Furthermore, Illinois MEA states that all FRR Entities that have both FRR loads and non-FRR loads in PJM are subject to additional limitations under Schedule 8.1, section E.4. Illinois MEA explains that under this provision the FRR entity may sell the resources into the RPM if it designates them as self-supply for its non-FRR loads but it can only do so up to the lesser of 25% of its combined FRR and non-FRR Unforced Capacity obligation or 200 MW, unless it meets the Threshold Quantity. Illinois MEA states that it is prepared to designate the extra MWs in its FRR Capacity Plan to meet the Threshold Quantity.¹⁰

8. Illinois MEA states that without its requested waiver upwards of 400 MW of capacity will be excluded from the PJM market. Therefore, Illinois MEA requests a waiver of the restrictions imposed by Schedule 8.1, sections E.2 and E.4 to permit it to

⁷ Illinois MEA states that it is only permitted to self-supply about 35 MW of capacity in its FRR Capacity Plan from its resources outside of the ComEd Zone due to the internal resource requirement.

⁸ Illinois MEA Waiver Request at 9 (citing PJM Interconnection, L.L.C., Intra-PJM Tariffs, RAA, Schedule 8.1, § D.2 (7.0.0)).

⁹ *Id.* at 9-10 (quoting PJM Interconnection, L.L.C., Intra-PJM Tariffs, RAA, Article 1 – Definitions, § 1.82 (14.0.1)).

¹⁰ *Id.* at 10-11.

sell its resources into the RPM auctions in excess of 25%, up to the lesser of its total FRR and non-FRR loads or its total owned and long-term contracted resources without regard to the caps, which it asserts would be no more than 400 MW. Illinois MEA states that the waiver meets the Commission's criteria because (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.

9. Illinois MEA explains that the request is of limited scope because the waiver is limited to approximately 400 MW to be sold into the RPM auctions and is limited to the 2018-2019 Delivery Year. Illinois MEA states that the waiver addresses the concrete problem of the internal resources requirements not recognizing the capacity transfer rights of load serving entity that have historic, long-term, firm transmission rights to serve their network loads with external resources. Illinois MEA states that the ongoing PJM stakeholder process should address this problem and make future waiver requests like those considered here and in the March 9 Order unnecessary. Nevertheless, Illinois MEA states that until that process is complete, its capacity will be excluded from PJM, which harms it and "the entire PJM market."¹¹

10. Illinois MEA also asserts that granting the waiver does not have undesirable consequences and would benefit third parties. Illinois MEA explains that the entire market benefits because Illinois MEA is a price taker that will add additional MWs of capacity to the auction. It asserts that this extra capacity will hold down the auction price and result in a savings across all of PJM. Illinois MEA assures the Commission that in the event of price separation there would be no additional cost to consumers in the ComEd LDA from granting the waiver. Finally, Illinois MEA argues that the waiver would not do any violence to Schedule 8.1, sections E.2 and E.4. Illinois MEA states that it believes the purpose of the provisions is to prevent FRR entities from arbitraging between the FRR Alternative and RPM and using the FRR Alternative as a mechanism to flood the market and drive down capacity prices. Illinois MEA asserts that the waiver will not create these conditions and will permit the continuation of the status quo of allowing its resources to be used within PJM.

III. Notice of Filing and Responsive Pleadings

11. Notice of Illinois MEA's waiver request was published in the *Federal Register*, 80 Fed. Reg. 14,998 (2015), with interventions and protests due on or before March 23, 2015. The Illinois Commerce Commission (Illinois Commission) filed a notice of intervention and filed a motion to file comments out-of-time and comments on April 1, 2015. The Independent Market Monitor for PJM (Market Monitor) filed a motion to intervene and submitted an out-of-time protest on March 26, 2015. On

¹¹ *Id.* at 15.

March 27, 2015, Illinois MEA filed a motion to reject the Market Monitor's out-of-time protest as out of time and alternative motion to answer if the Commission accepts the Market Monitor's out-of-time protest. On April 1, 2015, the Market Monitor filed a motion to permit its out-of-time protest and Illinois MEA filed an answer. On April 7, 2015, the PJM Power Providers Group (PJM Power Providers) filed a motion to intervene out of time and file late comments and Illinois MEA filed an answer requesting the PJM Power Providers late-filed motion be denied and an alternative motion to answer if the Commission accepts PJM Power Providers out-of-time comments. On April 9, 2015, Exelon Corporation filed an out-of-time motion to intervene.

12. The Market Monitor argues that Illinois MEA does not meet the conditions of a waiver because the waiver does not address a concrete problem. The Market Monitor states that the FRR sales cap is designed to protect competitive investment in the non-FRR areas of PJM, similar to the Minimum Offer Price Rule. The Market Monitor asserts that no FRR capacity should be allowed to sell into PJM's competitive market, but the 25% cap was agreed to as part of the PJM RPM settlement in 2006.¹² The Market Monitor argues that the cap exists because the FRR areas of PJM do not rely on competitive investment, as they assign investment risk to captive customers.

13. Similarly, the Market Monitor argues that the FRR areas of PJM must coexist with the neighboring areas of PJM that rely on competitive price signals. The Market Monitor states that Illinois MEA is free to sell the balance of its capacity into other control areas (i.e., the Midcontinent Independent System Operator). The Market Monitor argues that neither the FRR rules, nor the prior Commission orders denying other waiver requests create a problem that needs to be solved by excusing Illinois MEA from the tariff. Instead, the Market Monitor states that the problem is Illinois MEA's election of the FRR Alternative when it was not prepared to comply with all the terms of Schedule 8.1 of the Reliability Assurance Agreement.

14. Finally, the Market Monitor notes that in a previous Illinois MEA waiver request, the Illinois Commission suggested that the Commission grant Illinois MEA a waiver from the five-year stay-in provision for FRR participants in the Reliability Assurance Agreement. The Market Monitor states that if Illinois MEA sought such a waiver, it would not oppose it.¹³

15. The Illinois Commission states that under the current circumstances it supports Illinois MEA's waiver request and recommends that the Commission grant the request.

¹² Market Monitor Protest at 2 (citing *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 (2006)).

¹³ *Id.* at 3.

16. PJM Power Providers states that Illinois MEA's proposed waiver request should be denied because it does not meet the Commission's conditions for a waiver of a filed tariff rule and would constitute anti-competitive behavior. PJM Power Providers states that Illinois MEA's waiver request is based on the same facts as its previous filings and is essentially a request for rehearing of the Commission's March 9 Order. PJM Power Providers asserts that the Commission should deny this waiver request for all of the same reasons it denied Illinois MEA's previous waiver request.¹⁴ PJM Power Providers states that, though Illinois MEA has indicated that it is in the process of pseudo-tying its resources to PJM, there is nothing to differentiate this filing from Illinois MEA's previous waiver request, and Illinois MEA has not provided any assurance that its resources will actually qualify as capacity resources for FRR purposes.

17. PJM Power Providers asserts that Illinois MEA's waiver request raises all of the same market-distorting concerns as its requests for waiver of the internal resource requirement. PJM Power Providers asserts that the FRR sales cap was designed to protect competitive investment in the non-FRR regions of PJM and that Illinois MEA's request ignores the long-standing necessity of the FRR sales cap to ensure that uncompetitive capacity does not otherwise distort the market and negatively affect other market participants.¹⁵ Finally, PJM Power Providers states that the ongoing stakeholder process had not yet concluded; therefore, PJM Power Providers asserts Illinois MEA's waiver request is premature and may thwart other, more appropriate avenues to address its concerns.

IV. Commission Determination

A. Procedural Matters

18. 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.

19. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will accept Exelon Corporation's and PJM Power Providers' motions to intervene out of time given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. We will also accept the out-of-time protests or comments of the Illinois Commission, the Market Monitor, and PJM Power Providers.

¹⁴ PJM Power Providers Comments at 3 (citing March 9 Order, 150 FERC ¶ 61,179 at PP 10-11).

¹⁵ *Id.* at 4 (citing *PJM Interconnection*, 117 FERC ¶ 61,331).

20. 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 or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Illinois MEA's answers and therefore reject them.

B. Substantive Matters

21. 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.¹⁶ As discussed below, we find that Illinois MEA's request satisfies the Commission's waiver criteria and therefore grant the waiver.

22. First, we find that the requested waiver – which would allow Illinois MEA to sell a limited and defined amount of capacity, not to exceed 400 MW, into the RPM for only the 2018-2019 Delivery Year – is of limited scope.

23. Second, we find that the waiver will remedy a concrete problem. As addressed by the Commission in prior orders,¹⁷ the establishment of the internal resource requirement for the ComEd zone after Illinois MEA elected to use the FRR Alternative presented a clear challenge for Illinois MEA, which had arranged to meet the capacity obligations for its Naperville load through a resource outside the ComEd zone. The Commission granted Illinois MEA's initial request for waiver of its obligation to meet the internal resource requirement for the 2017-2018 Delivery Year, finding that Illinois MEA's requested

¹⁶ 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).

¹⁷ *Illinois Municipal Electric Agency*, 147 FERC ¶ 61,090 (2014), *order denying clarification and reh'g*, 150 FERC ¶ 61,040 (2015); March 9 Order, 150 FERC ¶ 61,179.

waiver would remedy a concrete problem.¹⁸ We similarly find here that Illinois MEA has demonstrated that its requested relief will remedy a concrete problem by reducing the cost to Illinois MEA's customers of complying with PJM's tariff rules while Illinois MEA and PJM work towards a longer term solution to the disconnect between Illinois MEA's reliance on external resources to meet its five-year FRR Alternative commitment and the internal resource requirement established after Illinois MEA made that commitment.

24. We disagree with the Market Monitor that the Commission should deny waiver of the FRR sales cap because Illinois MEA's request does not solve a concrete problem that needs to be remedied. As noted above, the Commission has previously recognized that Illinois MEA faces a concrete problem. Furthermore, the FRR sales cap was agreed to in a settlement to strike a balance between the needs of FRR entities and participants in the RPM capacity auctions. We find that, under the circumstances here, granting the waiver strikes an appropriate balance by ensuring Illinois MEA's satisfaction of its internal resource requirement obligations while also mitigating the financial impact of those obligations on its customers. We further note that the waiver is only for one year and involves less than 400 MW of capacity, so we disagree that strict application of the FRR sales cap here is necessary to protect competitive investment.

25. Finally, we find that granting Illinois MEA's request for waiver will not have undesirable consequences. As noted in the March 9 Order, the Commission's denial of Illinois MEA's request for waiver of the internal resource requirement would compel Illinois MEA to adjust its capacity portfolio for the 2018-2019 Delivery Year.¹⁹ Illinois MEA has now procured sufficient capacity from within the ComEd zone to satisfy its share of the internal resource requirement, and seeks waiver to permit the sale of its external capacity into the RPM for the 2018-2019 Delivery Year. We find, under the circumstances present here, that granting waiver is appropriate, as it will allow Illinois MEA to temporarily adjust its resources, through offsetting actions, to reduce the financial impact of procuring internal resources while a potential change to the treatment of Illinois MEA's external resources proceeds through the PJM stakeholder process. Furthermore, we note that granting waiver will allow Illinois MEA's external resources,

¹⁸ *Illinois Municipal Electric Agency*, 147 FERC ¶ 61,090, at P 18 (2014). While the Commission denied Illinois MEA's request to waive its obligation to procure capacity from within the ComEd Zone to satisfy its share of the internal resource requirement for the 2018-2019 Delivery Year, the Commission did so because of concerns that Illinois MEA's requested relief would shift costs for satisfying the internal resource requirement to other customers in the ComEd zone. March 9 Order, 150 FERC ¶ 61,179 at PP 26-27.

¹⁹ March 9 Order, 150 FERC ¶ 61,179 at P 28.

which have historically served load in PJM, to continue to contribute towards system reliability.²⁰

26. We disagree with PJM Power Providers that the Commission should deny Illinois MEA's waiver request due to the same concerns identified by the Commission in the March 9 Order. In that proceeding, Illinois MEA sought waiver of its obligation to procure its share of capacity within the ComEd zone for the 2018-2019 Delivery Year; by contrast, Illinois MEA now indicates that it will meet its share of the internal resource requirement. In the absence of waiver, Illinois MEA's customers will be required to pay for the same capacity twice – first for their external resources and associated transmission service, and then for the capacity procured from within the ComEd zone – with limited opportunity to mitigate their costs arising from an internal resource requirement that was established *after* Illinois MEA had already committed to its five-year FRR term. Furthermore, as noted above, denying Illinois MEA's waiver would result in the removal of capacity that has historically served load in PJM, and given the limited term and scope of the requested relief, as well as Illinois MEA's continuing efforts to address this situation through the PJM stakeholder process, we find that it is appropriate, under the circumstances here, to provide Illinois MEA with a reasonable opportunity to mitigate its customers' costs.

27. We note, however, that the waiver granted herein applies only to the requirements of sections E.2 and E.4 of Schedule 8.1 of the Reliability Assurance Agreement. Therefore, Illinois MEA's external resources governed by this waiver must satisfy any other applicable eligibility requirements to participate in the RPM for the 2018-2019 Delivery Year.

The Commission orders:

Illinois MEA's requested waiver of the Reliability Assurance Agreement, Schedule 8.1, sections E.2 and E.4 for Illinois MEA's external resources for the 2018-2019

²⁰ See generally *Duke Energy Ohio, Inc.*, 133 FERC ¶ 61,058, at P 133 (2010) (waiving sections E.2 and E.4 for particular resources as part of a plan for integration into PJM where the resources had historically participated in PJM).

Delivery Year is hereby granted in an amount not to exceed 400 MW, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.