

153 FERC ¶ 61,351
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 29, 2015

In Reply Refer To:
Old Dominion Electric Cooperative
Docket No. ER16-436-000

Adrienne E. Clair, Esq.
Stinson Leonard Street LLP
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Washington, DC 20006

Dear Ms. Clair:

1. On November 30, 2015, you filed on behalf of Old Dominion Electric Cooperative (ODEC) a request for the Commission to grant waiver of the one-year notice rollover requirement for long-term firm transmission service agreements under Sections 2.2 and 2.3 of PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (Tariff) to deliver purchased power over facilities owned by FirstEnergy Solutions Corp. (FirstEnergy), and operated by PJM, to its member cooperatives so that they can serve their retail load. The Commission grants the requested waiver as discussed below.

2. You explain that, in compliance with the Commission's Order No. 890,¹ Section 2.2 of the PJM Tariff provides that a customer with a firm service agreement with a five-year minimum term is eligible for rollover rights. Section 2.3 of the PJM Tariff provides that such rollover rights require a customer to provide PJM a one-year notice prior to the expiration of the firm service agreement of their intent to exercise rollover rights for continued transmission service.²

¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

² Waiver Request at 2.

3. You state that ODEC's existing network integration transmission service agreement (NITSA) with PJM for transmission service over FirstEnergy's facilities has a five-year term which expires January 1, 2016. You state that ODEC claims that, as a result of inadvertent administrative oversight, it overlooked the need to notify PJM of its intention to continue its transmission service. Upon learning of the impending expiration, you claim that ODEC confirmed with FirstEnergy that a conforming *pro forma* NITSA was sufficient, and that ODEC notified PJM of its intent to execute a new five-year, conforming *pro forma* NITSA to replace the expiring NITSA. You state that ODEC asserts that the subsequent NITSA was executed on November 23, 2015, and that ODEC seeks waiver to allow for the continuation of service.

4. By way of background for its request for waiver, ODEC supplies capacity and energy to its eleven electric distribution cooperative members,³ all of which are located within the PJM control area. ODEC is a generation-owning utility, which uses the transmission facilities operated by PJM under its Tariff to deliver both the output of ODEC's generation located within the PJM region and periodic power purchases from third-party sellers to the load of its member systems in PJM's footprint. ODEC purchases network integration transmission service from PJM to deliver power over facilities owned by FirstEnergy. ODEC takes transmission service from PJM on behalf of ODEC's member distribution cooperatives.

5. You state that good cause exists for granting ODEC a waiver, as ODEC's failure to comply with the one-year notice requirement was an administrative oversight and unintentional. You claim that ODEC satisfies the waiver criteria the Commission has applied in similar cases.⁴ You assert that ODEC has complied with applicable deadlines and notice requirements in the past, and intends to comply with these requirements in the future.

6. Notice of ODEC's filing was published in the *Federal Register* 80 Fed. Reg. 76,015, (2015), with protests or interventions due on or before December 21, 2015. PJM filed a timely motion to intervene.

³ ODEC's member distribution cooperatives are A&N Electric Cooperative, BARC Electric Cooperative, Choptank Electric Cooperative, Inc., Community Electric Cooperative, Delaware Electric Cooperative, Inc., Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative.

⁴ See, e.g., *Argonne Wind LLC*, 145 FERC ¶ 61,106 (2013).

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁵ PJM's timely, unopposed motion to intervene serve to make it a party to this proceeding.

8. The Commission has granted limited waivers of tariff provisions where: (i) the applicant has been unable to comply with the tariff provision at issue in good faith; (ii) the waiver is of limited scope; (iii) a concrete problem will be remedied by granting the requisite waiver; and (iv) the waiver does not have undesirable consequences, such as harming third parties.⁶ ODEC's failure to comply with the current one-year notice requirement appears to have been an inadvertent error. We note that, while ODEC executed the new NITSA with PJM on November 23, 2015, ODEC states that it has complied with applicable deadlines and notice requirements in the past, and intends to comply with these requirements in the future. We further find that ODEC's request for a one-time waiver is also of limited scope. Moreover, a concrete problem will be remedied by granting the requested waiver because ODEC also points out that, with the requested waiver, ODEC will be able to continue to deliver crucial power supplies to its member cooperatives so that they, in turn, will be able to meet their load requirements. Finally, no party contested ODEC's waiver request.

9. ODEC's request for limited waiver of the one-year notice rollover requirement for network integration transmission service under Sections 2.2 and 2.3 of PJM's Tariff allowing for continuation of network integration transmission service is hereby granted, effective January 1, 2016. We note that nothing in this grant of a limited waiver would be applicable to any other change in rates prior to January 1, 2016.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵ 18 C.F.R. § 385.214 (2015).

⁶ See, e.g., *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,069, at P 8 (2011); *Hudson Transmission Partners, LLC*, 131 FERC ¶ 61,157, at P 10 (2010).