

154 FERC ¶ 61,270  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

March 31, 2016

In Reply Refer To:  
PJM Interconnection, L.L.C.  
Docket No. ER16-1138-000

PJM Interconnection, L.L.C.  
1200 G St NW, #600  
Washington, DC 20005

Attention: Craig Glazer, VP –  
Federal Government Policy

Dear Mr. Glazer:

1. On March 11, 2016, PJM Interconnection, L.L.C. (PJM) filed a request for limited waiver, in order to be granted a 30-day extension of time to comply with the deadline in its Amended and Restated Operating Agreement (Operating Agreement), in Schedule 1, section 6.6(b), and the matching deadline in its Open Access Transmission Tariff (OATT) in the appendix to Attachment K for evaluating resource operating parameters. For good cause shown, we grant the extension of time, as discussed below.

2. Under PJM's Capacity Performance construct, Capacity Resources, including Generation Capacity Resources, may sell their capacity through the PJM marketplace as Capacity Performance Resources if the resources can meet certain performance requirements.<sup>1</sup> In order to benchmark resource performance, PJM, in consultation with the Independent Market Monitor (IMM), evaluates each resource's operating parameters, and assigns unit-specific, parameter limited schedule values for each participating Generation Capacity Resource prior to the start of a given delivery year. If the Generation Capacity Resource's owner does not believe that it can comply with these parameters due to actual operating constraints, it may request an adjustment from PJM.<sup>2</sup>

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<sup>1</sup> The Commission approved the current version of the Capacity Performance program in *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, *order on reh'g*, 152 FERC ¶ 61,064 (2015) (*PJM*).

<sup>2</sup> PJM petition at 2.

PJM must then inform the Capacity Market Seller whether the request is approved or denied.

3. PJM states that this is the first year that it is evaluating such requests under the new Capacity Performance construct. For the 2016/2017 Delivery Year, which begins June 1, 2016, a Capacity Market Seller could file as late as February 28, 2016 to seek an adjustment. The Operating Agreement requires PJM to approve or deny all requests by April 15, 2016. PJM asserts that it anticipated a large number of requests, and thus began its evaluations early, and has announced its results on a rolling basis. Nevertheless because of the substantial volume and complexity of the requests, PJM does not believe it will be able to complete sufficiently thorough evaluations of all requests by April 15, 2016. PJM states that if it is unable to complete its review of a request for an adjusted unit-specific parameter value by then, it will likely need to deny the request.<sup>3</sup>

4. Accordingly, PJM requests waiver of its Operating Agreement and OATT in order to allow a 30-day extension of time, extending the April 15, 2016 deadline until May 15, 2016. PJM argues that this new deadline will still provide Capacity Market Sellers with sufficient time to prepare for the 2016/2017 Delivery Year beginning June 1, 2016. PJM also proposes that, in order to eliminate any potential harm to affected Capacity Market Sellers, PJM will contact Capacity Market Sellers whose requests are not expected to be completely reviewed by April 15, 2016, and ask them whether they want to receive PJM's determination by April 15, 2016 based on as detailed a review as it is able to give them at that time, or whether they prefer to wait to receive PJM's determination based on a full and complete review of their requests after April 15, 2016.<sup>4</sup>

5. Notice of the filing was published in the *Federal Register*, 81 Fed. Reg. 14,438 (2016), with interventions and comments due on or before March 21, 2016. A motion to intervene and comments were timely filed by Dominion.<sup>5</sup> Interventions without comments were also timely filed by Delaware Division of the Public Advocate, NRG Power Marketing LLC and GenOn Energy Management, LLC, and American Municipal Power, Inc. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>6</sup> notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

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<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.* at 4, 6.

<sup>5</sup> Dominion Resources Services, Inc., on behalf of Virginia Electric and Power Co., doing business as Dominion Virginia Power and Dominion Energy Marketing, Inc.

<sup>6</sup> 18 C.F.R. § 385.214 (2016).

6. Dominion supports PJM's limited request for waiver. Dominion states that PJM has sufficiently shown that the waiver request is limited in scope, remedies a concrete problem, and will not harm third parties; whereas failing to grant the waiver might harm Capacity Market Sellers. However, Dominion "also requests that if FERC grants the extended deadline and PJM still cannot resolve all adjustment requests by May 15, that FERC direct PJM to file reports with the Commission explaining the issues still needed to be resolved while continuing to resolve all outstanding adjustment requests."<sup>7</sup> Dominion argues that much of the delay is due to this being the first year under the new Capacity Performance process, and counsels PJM not to simply reject requests in order to meet its deadline.

7. We find good cause to grant the requested extension of time, subject to the conditions that PJM recommends imposing upon itself in its petition. Our usual method of determining good cause applies:

The Commission has previously granted requests for waiver from a Regional Transmission Organization's tariff requirements in situations where: (1) the applicant is unable to comply with the tariff provision at issue in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.<sup>8</sup>

8. First, we find that PJM has been attempting in good faith to comply with the deadline in the first year under the new Capacity Performance process.<sup>9</sup> PJM started its review early, well aware that new tariff provisions are often more difficult to implement in the first application than they are once participants have become familiar with the provisions. PJM has already issued its determinations with respect to some requests, and has stated that, even if the Commission grants its waiver request, it will endeavor to

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<sup>7</sup> Dominion comments at 4.

<sup>8</sup> *Reliant Energy Seward, LLC*, 154 FERC ¶ 61,017 (2016).

<sup>9</sup> As PJM notes, in some versions of the Regional Transmission Organization (RTO) waiver policy, the Commission uses the word "error" in describing the first factor, and in this particular petition, "no error has occurred." PJM petition at 4. However, that does not mean that "the first factor does not apply," as PJM argues. PJM petition at 5. Even in the numerous orders where the Commission used the word "error" in describing its RTO waiver policy, the Commission's interest has not so much been with whether the petitioner's behavior was erroneous, but with whether the petitioner's behavior was in good faith.

complete its review of all requests as close to April 15, 2016 as possible. PJM also evaluated its own performance well ahead of the April 15, 2016 deadline, and filed its request for extension of time five weeks in advance.

9. Second and third, the waiver is of limited scope and addresses a concrete problem, insofar as it requests an extension of time for a single delivery year. Here, relaxing a procedural requirement is preferable to PJM denying numerous requests simply because it was unable to complete reviews of those requests by the original deadline.

10. Fourth, the waiver does not have undesirable consequences, such as harming third parties. The Commission finds it reasonable to allow PJM more time to complete its evaluations, as this will likely lead to better evaluations. This finding is conditioned on PJM following through on the plan of action that it proposes in its petition: PJM will contact Capacity Market Sellers whose requests are not expected to be completely reviewed by April 15, 2016, and ask them whether they want to receive PJM's determination by April 15, 2016 based on as detailed a review as it is able to give them at that time, or whether they prefer to wait to receive PJM's determination based on a full and complete review of their requests after April 15, 2016.<sup>10</sup> We note that PJM has ameliorated any harmful effects by filing five weeks in advance of the deadline, so that Capacity Market Sellers have sufficient time to evaluate their options. By announcing five weeks in advance exactly how Capacity Market Sellers can cope with the disruption that its tardiness is causing, PJM reduces the likelihood that the burden on any particular seller, or on the market as a whole, will be unreasonable, or will outweigh the benefits of implementing the new Capacity Performance process carefully and correctly. Finally, we note that no entity opposes this waiver request.

11. Dominion supports PJM's request, but asks the Commission to require PJM to file a report explaining any unresolved issues if it cannot resolve all adjustment requests by May 15. We do not find such a report necessary, and we decline to require it. Under the terms of the Operating Agreement and OATT, and in accordance with the waiver granted here, PJM must address all adjustment requests for the 2016/2017 Delivery year by May 15. We note that PJM has expressed its belief that it will be able to meet this deadline.<sup>11</sup>

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<sup>10</sup> *Id.* at 4, 6.

<sup>11</sup> *Id.* at 4.

12. For the above stated reasons, we find good cause to grant PJM a 30-day extension of time to comply with Operating Agreement and OATT's April 15, 2016 deadline for responding to Capacity Market Seller requests.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.