

155 FERC ¶ 61,148  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER16-1102-000

ORDER ACCEPTING NOTICE OF CANCELLATION

(Issued May 6, 2016)

1. On March 8, 2016, PJM Interconnection, L.L.C. (PJM) submitted, pursuant to section 35.15 of the Commission's regulations,<sup>1</sup> a notice of cancellation of 52 service agreements (Service Agreements) entered into between March 1, 2002 and November 21, 2014. For the reasons discussed below, we accept PJM's notice of cancellation, effective as of the dates requested.

**I. Background**

2. PJM requests that the Commission accept the notice of cancellation of the Service Agreements because the queue position projects associated with these agreements were withdrawn prior to construction.<sup>2</sup> PJM states that the parties have no remaining obligations under the Service Agreements. PJM also requests waiver of the Commission's 60-day notice requirement to permit the Service Agreements to be cancelled, effective as of the date each Service Agreement was withdrawn.<sup>3</sup>

3. PJM contends that its request is consistent with tariff waiver requests previously granted by the Commission.<sup>4</sup> First, PJM states that its failure to file timely notices of

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<sup>1</sup> 18 C.F.R. § 35.15 (2015).

<sup>2</sup> PJM Notice of Cancellation of 52 Withdrawn Service Agreements at 1 (PJM Filing).

<sup>3</sup> *Id.* at 2.

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

cancellation for the Service Agreements arose from an inadvertent mishap and that it acted in good faith in identifying the Service Agreements.<sup>5</sup> PJM notes that after the Commission cautioned it against filing untimely notices of cancellation in violation of the Commission's regulations,<sup>6</sup> it reviewed all service agreements dated from 2002 through 2014 and discovered that it failed to file timely notices of cancellation for at least 13 years. Second, PJM states that its request is intended to address a limited set of circumstances.<sup>7</sup> Third, PJM states that its inadvertent failure to comply with the Commission's regulations did not result in any harmful impact on reliability or third parties because the parties have no remaining obligations under the Service Agreements.<sup>8</sup> PJM argues that there is no public notice impact arising from its failure to file the notices of cancellation because no additional requirements or payments are due under the Service Agreements and no third parties are impacted by their termination. PJM also argues that the public notice requirement has been met because terminated Service Agreements are removed from the active generator queue on the PJM website and included on the withdrawn queue page, reflecting the withdrawn or cancelled status of the project.<sup>9</sup>

## **II. Notice and Responsive Pleadings**

4. Notice of the PJM Filing was published in the *Federal Register*, 81 Fed. Reg. 13,359 (2016), with interventions and protests due on or before March 29, 2016. Labyrinth Management Group, Inc. (LMG), on behalf of FDS Coke Plant, LLC (FDS), filed comments.<sup>10</sup>

5. On April 5, 2016, PJM filed an answer to the comments filed by LMG on behalf of FDS.

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<sup>5</sup> *Id.* at 3.

<sup>6</sup> *PJM Interconnection, L.L.C.*, Docket No. ER15-218-000 (Dec. 4, 2014) (delegated letter order).

<sup>7</sup> PJM Filing at 4.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> FDS is not a party to the proceeding because it did not file a motion to intervene. 18 C.F.R. § 385.211(a)(2) (2015) (“The filing of a protest does not make the protestant a party to the proceeding. The protestant must intervene under Rule 214 to become a party.”).

6. FDS disputes PJM's assertion that the queue position projects for all of the Service Agreements at issue were withdrawn prior to construction. According to FDS, one of these Service Agreements covers its co-generation project in Toledo, Ohio (Co-Generation Project). FDS states that it did not withdraw from the PJM queue and that PJM did not send FDS official correspondence regarding the cancellation of the Co-Generation Project's position within the PJM queue. FDS also contends that it provided PJM a sufficient financial basis that it believed satisfied the financial security requirements of its Interconnection Service Agreement (ISA) with PJM, and that it requested that PJM waive its Open Access Transmission Tariff (Tariff) on February 5, 2015. FDS claims that PJM rejected these requests without discussion.<sup>11</sup>

7. FDS requests that the Commission deny PJM's request for waiver of the 60-day notice requirement, asserting that the waiver would eliminate the right of FDS and other parties to effective administrative review and due process. FDS also asks the Commission to disallow PJM's request to cancel the Co-Generation Project, and to direct PJM to provide FDS with the opportunity to satisfy PJM's ISA financial security requirements. In addition, FDS claims that PJM's actions are indicative of a problematic "non-inclusive operation approach . . . that results in large public utilities capturing the process."<sup>12</sup>

8. In its answer, PJM asserts that: (1) FDS raises issues beyond the scope of this proceeding; (2) FDS lacks standing to challenge PJM's request to cancel any Service Agreement other than its own; (3) FDS offers no explanation for its delay in seeking the security that it knew was required under the ISA and its failure to communicate with PJM upon being notified that its project was terminated and withdrawn from the PJM queue over a year ago;<sup>13</sup> and (4) FDS failed to satisfy the Commission's conditions for a waiver request because it made no showing of acting in good faith and failed to act on its request for over a year.<sup>14</sup> Moreover, PJM states that it is foreclosed from allowing FDS to return

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<sup>11</sup> Comments on behalf of FDS Coke Plant, LLC, at 1 (FDS Comments).

<sup>12</sup> *Id.* at 2.

<sup>13</sup> PJM states that it notified FDS on February 5, 2015 that its project was terminated and withdrawn for failure to timely provide full security by January 29, 2015, and that on June 12, 2015 it returned the \$100,000 refundable portion of the security deposit, plus interest, to FDS to close out the financial side of the queue project. According to PJM, FDS did not at that time object to the return of the security deposit or to the final withdrawal of its project. PJM Motion for Leave to File Out of Time Answer, at 3-4 (PJM Answer).

<sup>14</sup> *Id.* at 1.

to the queue now because doing so, PJM states, would require re-running eight years of analysis and upgrades by other projects that have progressed through the queue, thereby causing significant delays and financial harm to other projects in the PJM interconnection queue and forcing load customers to bear the cost of any required upgrades.<sup>15</sup>

9. PJM argues that FDS is at fault for its loss of queue position, which PJM states could have been prevented if FDS acted sooner. According to PJM, to the extent FDS's submittal is considered a waiver request, granting such waiver would be unreasonable and set a precedent that any generator who failed to provide adequate time to secure the requisite security deposit could simply file a waiver to secure more time. In addition, PJM contends that allowing generators like FDS to come back over a year after being terminated from the interconnection queue would create uncertainty for projects that have advanced through the queue. PJM asks the Commission to deny FDS's requests for relief.<sup>16</sup>

### **III. Discussion**

#### **A. Procedural Matters**

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest and or answer unless otherwise ordered by the decisional authority. We will accept the PJM Answer because it has provided information that assisted us in our decision-making process.

#### **B. Substantive Matters**

11. We accept PJM's notice of cancellation of the Service Agreements. While PJM framed its filing as a request for waiver, section 35.15 of the Commission's regulations, 18 C.F.R. § 35.15 (2015), requires that notices of cancellation or termination of a rate schedule, tariff or service agreement, or part thereof be filed "at least 60 days ... prior to the date such cancellation or termination is proposed to take effect" for agreements that were entered into or filed with the Commission prior to July 9, 1996, or otherwise within 30 days after such termination takes place. Under section 35.15, "[f]or good cause shown, the Commission may by order provide that the notice of cancellation or termination shall be effective as of a date prior to the date of filing or prior to the date the filing would become effective in accordance with these rules."

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<sup>15</sup> *Id.* at 5-6.

<sup>16</sup> *Id.* at 6-7.

12. We find good cause to accept PJM's notice of cancellation of the Service Agreements, and grant waiver of the Commission's 60-day notice requirement to permit the effective date to be the date each Service Agreement was withdrawn.
13. We note that the queue positions associated with the 52 Service Agreements have been withdrawn, all activities under the Service Agreements ceased on the date each Service Agreement was withdrawn, and the Parties associated with these projects have no remaining obligations under the Service Agreements.
14. We deny FDS's request to have its project reinstated. We find that FDS has not shown good cause. We find that PJM followed its Tariff in terminating FDS's Service Agreement. Specifically, section 212.4(c) of the Tariff provides that a party that requests to defer providing security, as FDS requested, must provide security no later than 120 days after executing the service agreement. FDS's security, therefore, was due on January 29, 2015 because it executed its ISA on October 1, 2014, yet the record indicates that it did not provide security by the required date. Accordingly, under section 212.4(d) of the Tariff, FDS's interconnection request was deemed terminated and withdrawn.
15. To the extent FDS is requesting waiver of these provisions of the Tariff, we deny its request, finding that FDS has not demonstrated that its request for waiver, which is being made over one year after its project has been withdrawn and its partial security deposit refunded, is appropriate or justified under Commission's one-time limited waiver criteria.<sup>17</sup>

The Commission orders:

The Notice of Cancellation is hereby accepted, to become effective as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>17</sup> See, *New York Independent System Operator, Inc.*, 125 FERC ¶ 61,005 (2008), citing, *Wivest-Connecticut, L.L.C.*, *supra* note 3; see also, *PJM Interconnection, L.L.C.*, 125 FERC ¶ 61,279 (2008).

