

164 FERC ¶ 61,153
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
and Richard Glick.

PJM Interconnection, L.L.C.

Docket No. ER18-2222-000

ORDER GRANTING WAIVER

(Issued August 30, 2018)

1. On August 13, 2018, PJM Interconnection, L.L.C. (PJM) requested waiver of its Open Access Transmission Tariff (Tariff) to allow a delay of the 2019 Base Residual Auction (BRA) for the 2022-2023 delivery year from May 2019 to August 14-28, 2019 (Waiver Request). PJM states that unique circumstances justify the proposed delay, because the Commission has found certain of the existing Tariff rules governing the BRA unjust and unreasonable, and has initiated a proceeding to determine the just and reasonable replacement rules.¹ As discussed below, the Commission grants PJM's Waiver Request.

I. Background

2. In the June 2018 Order, the Commission found existing Tariff provisions relating to PJM's minimum offer price rule applied in its capacity market to be unjust and unreasonable and unduly discriminatory. The June 2018 Order also instituted a paper hearing under section 206 of the Federal Power Act (FPA)² to determine the just and reasonable replacement rate.

3. On July 27, 2018, the Organization of PJM States, Inc. filed a motion to extend the deadline for submitting initial testimony in the paper hearing from August 28, 2018 to

¹ See *Calpine Corp. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (2018) (June 2018 Order).

² 16 U.S.C. § 824e (2012).

October 11, 2018, and reply testimony from September 27, 2018 to November 26, 2018.³ On August 9, 2018, PJM filed an answer in support of the requested extension. By notice issued August 22, 2018, the initial and reply testimony deadlines were extended to October 2, 2018, and November 6, 2018, respectively.⁴

II. PJM's Proposal

4. PJM requests waiver of three Tariff provisions to allow a delay of the 2019 BRA for the 2022/2023 delivery year until August 14-28, 2019. Specifically, PJM requests waiver of: (1) Attachment DD, section 5.4(a), requiring that the BRA be conducted in May three years prior to the relevant delivery year;⁵ (2) Attachment DD, sections 5.10(a)(vi)(B) and 5.10(d), requiring PJM to post by February 1 before the BRA the Variable Resource Requirement curves to be used in the BRA and the Preliminary PJM Region Peak Load Forecast for the delivery year;⁶ and (3) Attachment DD, section 6.6(g), requiring any seller seeking an exception to the BRA must-offer requirement on the basis of the deactivation of its resource to submit a preliminary written request by the September 1 preceding the BRA, and provide confirmation by December 1.⁷

5. PJM explains that it supported the motion to extend the deadlines for initial and reply testimony in the paper hearing proceeding,⁸ but that the requested extensions would make it infeasible for the Commission to issue an order on the replacement rules by

³ Organization of PJM States, Inc., Motion for Extension of Filing Deadline, Docket No. EL16-49-000 (July 27, 2018).

⁴ Notice of Extension of Time, *Calpine Corp. v. PJM Interconnection, L.L.C.*, Docket No. EL16-49-000, *et al.* (issued Aug. 22, 2018).

⁵ PJM, Intra-PJM Tariffs, OATT, Attachment DD.5.4, Reliability Pricing Model Auctions (5.0.0).

⁶ *Id.* Attachment DD. 5.10, Auction Clearing Requirements (24.0.0), §§ 5.10(a)(vi)(B), 5.10(d). PJM proposes to post these parameters on May 1, 2019.

⁷ *Id.* Attachment DD.6, Market Power Mitigation (20.0.0), § 6.6(g). PJM proposes that sellers submit such preliminary written requests no later than March 17, 2019, and provide confirmation by April 16, 2019.

⁸ Waiver Request at 1-2 (citing Organization of PJM States, Inc., Motion for Extension of Filing Deadline, Docket No. EL16-49-000 (July 27, 2018)).

January 4, 2019, the date PJM previously suggested would accommodate the current May 2019 BRA.⁹ PJM states that it therefore requests a one-time, limited waiver of the identified Tariff provisions to delay the 2019 BRA to August 2019, in order to allow stakeholders, PJM, and the Commission more time to develop and establish just and reasonable replacement rules.¹⁰ PJM explains that this delay will also provide stakeholders with additional certainty regarding how and when the auction will be conducted.¹¹

6. PJM asserts that the Waiver Request satisfies the Commission's waiver standards because the request: (1) is made in good faith; (2) is limited in scope; (3) addresses a concrete problem; and (4) will not have undesirable consequences.¹²

7. First, PJM asserts that it requests waiver in good faith. PJM explains that it has been working diligently, aided by a special stakeholder process, to develop its paper hearing submission. According to PJM, the requested delay in the auction balances the need for certainty regarding market rules with the importance of the forward investment signal of the auction.¹³ PJM asserts that the Commission has granted waiver requests in similar circumstances.¹⁴

8. Second, PJM states that the Waiver Request is limited in scope because it applies to only one auction and related deadlines, for a single delivery year.¹⁵ Third, PJM states that the Waiver Request addresses a concrete problem, by ensuring there is adequate time

⁹ Waiver Request at 5; *see also id.* at 6 (citing June 2018 Order, 163 FERC ¶ 61,236 at P 172).

¹⁰ PJM requests a final Commission order in the section 206 proceeding by March 15, 2019.

¹¹ *Id.* at 2.

¹² *Id.* at 4-8.

¹³ *Id.* at 5.

¹⁴ *Id.* at 5 & n.9 (citing *N.Y. Indep. Sys. Operator, Inc.*, 164 FERC ¶ 61,053, at P 22 (2018); *Midcontinent Indep. Sys. Operator, Inc.*, 163 FERC ¶ 61,024, at PP 2, 8 (2018)).

¹⁵ *Id.* at 5. PJM asserts that the Commission granted a similar waiver to delay the BRA for the 2018/2019 delivery year, and should do so here. *Id.* at 5-6 (citing *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,067, at P 26 (2015)).

between the Commission's order following the paper hearing and the BRA, thereby providing certainty to market participants regarding applicable market rules.¹⁶

9. Fourth, PJM states that the Waiver Request will not have undesirable consequences or harm third parties, explaining "the proposed short delay in holding the BRA will not have major consequences that outweigh a grant of the request."¹⁷ PJM asserts that the Commission should find the requested waiver to be reasonable, because any potential complications for individual developers that could result from the delay are outweighed by the benefit of providing market certainty to the PJM region as a whole. PJM asserts that rejection of the Waiver Request "could result in the 2019 BRA being conducted pursuant to an unjust and unreasonable Tariff, and result in unreasonable price distortions and cost shifts caused by out-of-market support mechanisms."¹⁸

III. Notice of Filing and Responsive Pleadings

10. Notice of PJM's filing was published in the *Federal Register*, 85 Fed. Reg. 42,495 (2018), with interventions and protests due on or before August 23, 2018. Notices of intervention or timely motions to intervene were filed by Allegheny Electric Cooperative, Inc.; American Electric Power Service Corporation; American Municipal Power, Inc.; Buckeye Power, Inc.; Calpine Corporation; Delaware Division of the Public Advocate; East Kentucky Power Cooperative, Inc. (East Kentucky); Electric Power Supply Association; Exelon Corporation; FirstEnergy Service Company (FirstEnergy); Illinois Commerce Commission; Maryland Public Service Commission; NRG Power Marketing LLC; Old Dominion Electric Cooperative. East Kentucky, FirstEnergy, and PSEG¹⁹ filed comments supporting the Waiver Request. No protests were filed.

IV. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which these pleadings were filed.

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 7.

¹⁸ *Id.* at 8.

¹⁹ PSEG includes Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC.

V. Substantive Matters

12. As discussed below, the Commission grants PJM's Waiver Request. The Commission has granted waiver of tariff provisions where: (1) the applicant acted 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.²⁰ We find that these conditions are satisfied here, and we therefore grant PJM's request for a limited one-time waiver of Attachment DD, section 5.4(a); Attachment DD sections 5.10(a)(vi)(B) and 5.10(d); and Attachment DD, section 6.6(g) of the PJM Tariff, as applicable to the 2019 BRA for the 2022-2023 delivery year.

13. First, we find that PJM requests waiver in good faith to ensure that market participants are provided with certainty of the rules governing the 2019 BRA prior to the auction. Second, we find that the Waiver Request is of limited scope, as it only applies to a single BRA and related deadlines. Third, we find that the Waiver Request remedies a concrete problem. In light of the Commission's extension of the initial and reply testimony deadlines, PJM states that, without a waiver, it may not have sufficient time to conduct the BRA based on the just and reasonable replacement rate established by the Commission following the paper hearing.²¹ Finally, we find based upon the record here that the requested waiver does not have undesirable consequences. No party opposed the Waiver Request, and we agree with PJM that granting the requested waiver may benefit PJM market participants.

14. For the foregoing reasons, we grant PJM's Waiver Request.

²⁰ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Servs., L.P.*, 154 FERC ¶ 61,082, at P 12 (2016); *N.Y. Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

²¹ As PJM recognizes, order issuance dates are within the Commission's discretion. Waiver Request at 3. Our grant of the Waiver Request should not be interpreted as a commitment by the Commission to meet the order issuance dates in the Waiver Request.

The Commission orders:

PJM's request for a limited one-time waiver of Attachment DD, section 5.4(a); Attachment DD sections 5.10(a)(vi)(B) and 5.10(d); and Attachment DD, section 6.6(g) of the PJM Tariff is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.