

166 FERC ¶ 61,072
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER18-2068-000

ORDER DENYING REQUEST FOR WAIVER

(Issued January 30, 2019)

1. On July 26, 2018, PJM Interconnection, L.L.C. (PJM) requested, pursuant to section 205 of the Federal Power Act (FPA),¹ a temporary waiver of certain Financial Transmission Rights (FTR) liquidation rules in the PJM Open Access Transmission Tariff (Tariff), Attachment K-Appendix, section 7.3.9, and the identical provisions of Amended and Restated Operating Agreement of PJM (Operating Agreement), Schedule 1, section 7.3.9. PJM states that waiver is necessary to ensure an orderly and efficient liquidation of the large FTR portfolio of a recently defaulted PJM member in a manner that attempts to minimize distortion to the FTR markets. As discussed below, the Commission denies PJM's waiver request.

I. Waiver Request

2. PJM explains that FTRs are a financial product that allows market participants to hedge the costs of day-ahead transmission congestion, allowing market participants to offset potential charges related to the price risk of delivering energy to the grid.²

3. PJM states that, on June 21, 2018, PJM declared GreenHat Energy, LLC (GreenHat) to be in payment default of its financial obligations. As a result of this declaration, PJM initiated procedures to close out and liquidate GreenHat's FTR portfolio

¹ 16 U.S.C. § 824d (2012).

² The FTR serves as a benefit, or credit, to the holder if it represents a flow of energy in the same direction as the congested flow. The FTR serves as a liability, or charge, to the holder if it represents a flow of energy in the opposite direction as the congested flow. PJM Request for Waiver at 2-3.

in accordance with then effective Tariff, Attachment K-Appendix, section 7.3.9.³ PJM states that under then-effective section 7.3.9 of Attachment K-Appendix, when a member default was declared, PJM was required to close out and liquidate the defaulting member's FTR portfolio by, among other requirements: (1) "offer[ing] for sale all current Planning Period FTR positions within the defaulting member's portfolio in the next available monthly balance of Planning Period FTR auction at an offer price designed to maximize the likelihood of liquidation of those positions;"⁴ (2) offering any FTR positions that do not settle until the next or subsequent Planning Periods into the next available FTR auction where such positions would be expected to clear, and in that auction, offering the entire FTR portfolio of the defaulting member at an offer price designed to maximize the likelihood of liquidation of those positions;⁵ (3) where, based on the auction's preliminary solution, any of the closed-out FTR positions would set the market price, offering for sale only one-half of each FTR position and re-execute the auction, and then offering the FTR positions that were not liquidated in the next auction;⁶ and (4) treating the liquidation of the defaulting member's FTR portfolio "pursuant to the foregoing procedures" as the "final liquidated settlement amount" that is included in calculating a Default Allocation Assessment.⁷

4. PJM states that on June 22, 2018, notice of the default pending liquidation was provided to PJM members. At that time, PJM also posted on its website details of the

³ The Commission has since accepted, subject to condition, revisions to Attachment K-Appendix, section 7.3.9 in Docket No. ER19-19-000, effective December 1, 2018, that require defaulted FTR portfolios to go directly to settlement rather than being liquidated through the FTR auction. *PJM Interconnection, L.L.C.*, 165 FERC ¶ 61,188 (2018).

⁴ PJM Request for Waiver at 3-4 (citing Tariff, Attachment K-Appendix, section 7.3.9(c)).

⁵ *Id.* at 4 (citing Tariff, Attachment K-Appendix, section 7.3.9(d)).

⁶ *Id.* (citing Tariff, Attachment K-Appendix, section 7.3.9(e)). Under this Tariff section, if offering only one-half of each FTR position in the upcoming auction would still set the price, PJM would not offer the defaulted FTRs for liquidation in that month, with the goal being that FTRs being liquidated may not set the price in the FTR auction.

⁷ *Id.* (citing Tariff, Attachment K-Appendix, section 7.3.9(f)). The Default Allocation Assessment is allocated to all PJM Members. Operating Agreement, section 15.2.2. Section 7.3.7 of the Tariff provides that within five business days after the close of the bid and offer period for a monthly FTR auction, PJM shall post the winning bidders and the price at which each FTR was awarded.

GreenHat FTR portfolio. PJM explains that GreenHat's FTR portfolio is substantial, consisting of numerous FTRs for the 2018/2019, 2019/2020, and 2020/2021 Planning Periods. PJM further explains that most of the FTRs in the portfolio are currently negatively valued, such that FTR auction participants would assume such FTRs only if paid to do so.⁸

5. PJM indicates that, after providing PJM members with notice of GreenHat's default and posting the details of GreenHat's portfolio, PJM began (but did not conclude) the July 2018 monthly FTR auction consistent with then effective liquidation process in section 7.3.9 of Attachment K-Appendix. PJM states that it closely monitored the auction and observed market illiquidity and large risk premiums in the FTR auction for the positions that might be liquidated. PJM states that, based on the recent offers and bids for the FTR auction conducted in July, PJM expects that the liquidation of GreenHat's entire FTR portfolio in the manner required by the Tariff would result in significant losses to PJM members. Noting that it expects to complete and post the results of the July monthly auction, conducted on July 27, 2018, PJM requests an effective date of July 27, 2018 for its waiver request, so that the waiver is effective beginning with the FTR auction conducted in July.⁹

6. PJM seeks waiver of then effective section 7.3.9¹⁰ to permit it to sell in the July, August, September, and October 2018 monthly FTR auctions (as well as the long-term FTR auction conducted in September 2018) only the portion of GreenHat's FTR 2018/2019 Planning Period portfolio effective in the prompt month (i.e., the first calendar month addressed by each auction). PJM states that the waiver request will give it time to engage with stakeholders to potentially develop an alternative approach to the liquidation process outlined in the Tariff.¹¹ PJM avers that offering all of GreenHat's FTR positions

⁸ PJM Request for Waiver at 3.

⁹ *Id.* at 2 (indicating that PJM expected to post the results of the liquidation the next day).

¹⁰ PJM explains that the GreenHat default represents the first occasion to examine the practical implementation challenges of the subject provisions for liquidating a significant and large FTR portfolio that will likely cause a market disruption event. *Id.* at 6.

¹¹ *Id.* at 1-2. PJM filed an alternative interim approach in Docket No. ER18-2289-000, which the Commission accepted in *PJM Interconnection, L.L.C.*, Docket No. ER18-2289-000 (Oct. 19, 2018) (delegated order). PJM also filed a series of non-interim proposals in Docket Nos. ER19-19-000, ER19-23-000, ER19-24-000, and ER19-25-000. The Commission accepted, subject to condition, PJM's proposal in Docket No. ER19-19-000 and rejected the alternative proposal in Docket No. ER19-25-000 as moot in *PJM*

at an offer price designed “to maximize the likelihood of liquidation,” as required by the Tariff, is not expected to create efficient outcomes given the current environment of market illiquidity and the magnitude of GreenHat’s defaulted portfolio. PJM elaborates that there is limited natural demand and forecasting certainty for a monthly or quarterly FTR product for non-prompt months. Consequently, PJM explains that the forced liquidation of a large FTR portfolio will inject significant FTRs for sale into the market, and with a low level of liquidity, this large portfolio in combination with PJM’s obligation to offer a price designed to maximize the likelihood of liquidation, irrespective of a price floor, would essentially cause the prices to significantly diverge from the expected day-ahead price outcomes.¹² PJM concludes that this could result in distorted market outcomes that are unjust and unreasonable.

7. PJM asserts that a waiver is appropriate in this limited circumstance because this request: (1) is made in good faith as this request for waiver could not have been made earlier because PJM did not observe the impact of the liquidation of the FTR positions until all bids and offers were received for the FTR auction conducted in July; (2) is limited in scope as the waiver is only applicable to a four month period of time; (3) addresses a concrete problem as it avoids locking in significant losses to PJM members, which would result from the illiquidity and apparent high risk premiums currently in the market as a result of the liquidation of GreenHat’s large FTR position; and (4) will not have undesirable consequences as the waiver request is intended to protect PJM members from the undesirable consequences of liquidating GreenHat’s FTR positions in the first applicable FTR auction at an unbounded offer price irrespective of the market illiquidity or dysfunction that could contribute to the Default Allocation Assessment that will be charged to PJM members.¹³

8. On August 24, 2018, PJM submitted a supplement to clarify the relationship between the instant pending waiver request and the then-pending FPA section 205 filing submitted by PJM on August 23, 2018 in Docket No. ER18-2289-000, which also addressed PJM’s FTR liquidation process.¹⁴ PJM explained that because the filing in Docket No. ER18-2289-000 would apply from August 24, 2018 through

Interconnection, L.L.C., 165 FERC ¶ 61,188. The Commission also accepted PJM’s proposal in Docket No. ER19-23-000 in *PJM Interconnection, L.L.C.*, Docket No. ER19-23-000 (Nov. 30, 2018) (delegated order). PJM’s proposal in Docket No. ER19-24-000 is currently pending Commission action.

¹² PJM Request for Waiver at 5.

¹³ *Id.* at 7-9.

¹⁴ In the filing in Docket No. ER18-2289-000, PJM proposed to add new Tariff section, Attachment K-Appendix, 7.3.9(g), which temporarily suspends PJM’s current

November 30, 2018, if accepted, the waiver request would then be limited to the monthly FTR auction conducted in July, and the remaining months sought in the instant waiver would become moot. Thus, the instant waiver would have a scope and duration for the time period from July 27, 2018 through August 24, 2018.¹⁵

II. Notice of the Filing

9. Notice of PJM's filing was published in the *Federal Register*, 83 Fed. Reg. 38,135 (2018), with interventions and protests due on or before August 16, 2018.

10. LS Power Associates, L.P., Mercuria Energy America, Inc. and Mercuria SJAK Trading, LLC, Elliott Bay Energy Trading, LLC, NextEra Energy Marketing, LLC, Dominion Energy Services, Inc., Boston Energy Trading and Marketing LLC, Southern Maryland Electric Cooperative, Inc., EDP Renewables North America LLC, NRG Power Marketing LLC and GenOn Energy Management, LLC, and DC Energy, LLC each filed timely motions to intervene.

11. American Municipal Power, Inc. (AMP), Duke Energy Corporation (Duke Energy), the Independent Market Monitor for PJM (IMM), and Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC (collectively, PSEG) each filed timely motions to intervene and comments.

12. American Electric Power Service Corporation, FirstEnergy Service Company, The Dayton Power & Light Company, Buckeye Power, Inc., and East Kentucky Power Cooperative, Inc. (collectively, PJM Utilities Coalition) each filed timely motions to intervene and joint comments.

13. PJM Industrial Customer Coalition, the Delaware Division of the Public Advocate, and the Office of the People's Counsel for the District of Columbia each filed timely motions to intervene and, together with, the Pennsylvania Office of Consumer Advocate¹⁶ (collectively, Joint Supporters) filed joint comments.

process in section 7.3.9 regarding liquidation of defaults, and requires that defaulted FTR portfolios go directly to settlement for the period between August 24, 2018 and November 30, 2018. This proposal has since been accepted by the Commission. *See PJM Interconnection, L.L.C.*, Docket No. ER18-2289-000 (Oct. 19, 2018) (delegated order).

¹⁵ PJM Supplement at 2-3.

¹⁶ The Pennsylvania Office of Consumer Advocate did not file a motion to intervene in this proceeding.

14. Exelon Corporation (Exelon) filed a timely motion to intervene and, together with, Direct Energy - USA, Direct Energy Business Marketing, LLC, and Direct Energy Business, LLC (collectively, Direct Energy), which filed a motion to intervene out-of-time, filed joint comments.

15. Apogee Energy Trading LLC (Apogee) filed a timely motion to intervene and protest.

16. Financial Marketers Coalition and EDF Trading North America, LLC and EDF Energy Services, LLC (EDF) each filed motions to intervene out-of-time.

III. Responsive Pleadings

A. Comments

17. Several parties submitted comments expressing support for PJM's waiver request.¹⁷ They argue that this is the first time that PJM is tasked with liquidating an FTR portfolio of such magnitude and duration, such that following the current liquidation process in PJM's Tariff will result in distorted market outcomes and significantly higher costs to PJM members.¹⁸ The IMM states that, absent the requested waiver, PJM would be forced to liquidate the entire portfolio as a price taker because there is a lack of depth in the market for, and higher risk associated with, longer term FTRs that could result in the FTRs being available in the auction at deeply discounted prices relative to actual value. The IMM further argues that selling the entire portfolio at the same time and announcing it ahead of time would confer a significant advantage on a small number of potential buyers, which would minimize the value of the liquidated assets and maximize the size of the default burden on the PJM membership.¹⁹ Exelon and DirectEnergy concur, stating that injection of such a large quantity of FTRs into the market will cause

¹⁷ *E.g.*, IMM, AMP, PJM Utilities Coalition, Exelon and DirectEnergy, Duke Energy, and Joint Supporters.

¹⁸ PSEG Comments at 2; Duke Energy Comments at 1; AMP Comments at 3-4; Joint Supporters Comments at 4-5. AMP notes, however, this is not the first significant default. In 2007, a Tower Research Capital L.L.C. affiliate, Power Edge hedge fund, was also declared in default by PJM. The Power Edge default ultimately came to cost PJM members \$51.7 million. AMP states that some estimates indicate that the GreenHat default may be almost triple the Power Edge default. AMP Comments at 4.

¹⁹ IMM Comments at 1-3.

prices to significantly diverge from expected day-ahead price outcomes and cause a market disruption with severe effects on market participants.²⁰

18. Commenters argue that PJM's waiver request has complied with the four requirements used by the Commission to grant waivers. One, they contend that PJM has acted in good faith by waiting to file its waiver request until after all bids and offers were received in the August 2018 auction and PJM was able to determine that liquidating GreenHat's positions would result in significant losses to PJM Members.²¹ Two, they argue that PJM's waiver request is limited in scope because it is only for a four-month period during which PJM intends to offer for liquidation only GreenHat's prompt month FTR positions in each of the monthly FTR auctions at an offer price designed to maximize the likelihood of liquidation, while still allowing PJM the opportunity to develop a liquidation plan with stakeholders.²² Three, commenters state that the waiver request addresses the concrete problem of providing for additional time for PJM to confer with PJM Members to develop an alternative solution that would lead to an efficient market outcome, as well as minimizing harm to PJM Members that would occur under the default allocation assessment and minimizing other market distortions.²³ Finally, commenters argue that the waiver will not have undesirable effects and is an attempt to mitigate the impact of liquidating GreenHat's FTR positions and limit the ultimate default allocation assessment that will be charged to PJM Members.²⁴

19. While Exelon and Direct Energy support PJM's waiver request, they also urge the Commission to alternatively allow PJM to let the FTR positions go to settlement, with the resulting gains or losses from each FTR allocated to PJM Members consistent with PJM's default allocation provisions. They argue that this approach more effectively protects market participants by allowing them to hedge their exposure to their share of GreenHat's positions through the purchase or sale of certain FTR paths or other financial

²⁰ Exelon and DirectEnergy Comments at 3.

²¹ Joint Supporters Comments at 4; PSEG Comments at 2-3; Duke Energy Comments at 1; AMP Comments at 3.

²² Joint Supporters Comments at 5; PSEG Comments at 3; PJM Utilities Coalition Comments at 1; Duke Energy Comments at 1.

²³ Joint Supporters Comments at 5; PSEG Comments at 3; PJM Utilities Coalition Comments at 1; Duke Energy Comments at 1; AMP Comments at 4.

²⁴ PSEG Comments at 3; Duke Energy Comments at 1.

arrangements, whereas liquidation involves valuation of risk at a single point in time in a market that may lack proper price formation.²⁵

B. Protest

20. Apogee protests PJM's waiver request, arguing that it is an unwarranted intervention into the FTR market that creates a new untested and disruptive process for liquidating GreenHat's positions and may result in unintended and harmful consequences. Apogee advocates following the current process in the Tariff, which is designed to liquidate defaulted positions succinctly, quickly and clearly to promote market certainty and "minimize distortion to the FTR markets." Apogee states that failing to uphold the existing liquidation process would damage the integrity of the wholesale power markets because they are one of the few commodities markets where prices are determined by a set of rules relied upon by participants.²⁶

21. Apogee argues that PJM's waiver request does not meet the Commission's requirements for granting waivers and therefore should be denied, contending that the Commission has denied waiver requests when the request would create a new process not in the Tariff, or change existing conditions that could negatively impact participants.²⁷ First, Apogee claims that PJM did not make its waiver request in good faith. According to Apogee, that is because, contrary to its claimed objective, the waiver request will significantly prolong any potential market distortion until at least the third round of the long-term FTR auction in December 2018 and is based on the objective to minimize the Default Allocation Assessments (DAA) to PJM members. Further, Apogee claims that PJM has been aware of the potential GreenHat credit issue for over a year and did nothing to address it until after the default. Instead, Apogee argues that PJM has taken two steps recently to address credit issues for FTR participants that exacerbated the specific GreenHat credit problem, Apogee claims that PJM amended the FTR collateral rules in April 2018 and limited market participants' FTR purchases that increase collateral requirements until they complied with the revised rules. Apogee states that GreenHat's new collateral requirement for the current Planning Period FTRs was

²⁵ Exelon and DirectEnergy note that this outcome is reflected in the August FTR auction, which exhibited market illiquidity and large risk premiums for the positions that were available for liquidation, resulting in "dramatic cost jumps" from the prior month's auction. Exelon and DirectEnergy Comments at 4.

²⁶ Apogee Protest at 3.

²⁷ *Id.* (citing *PJM Interconnection, LLC*, 127 FERC ¶ 61,025 (2009); *PJM Interconnection, LLC*, 135 FERC ¶ 61,036 (2011); *ISO New England Inc.*, 164 FERC ¶ 61,003, at PP 47-48 (2018)).

\$27 million, but GreenHat purchased additional FTRs in the annual auctions in April and May, that brought its collateral requirement back to zero under the new rules. However, Apogee contends that the value of these additional FTRs purchased by GreenHat is approximately negative \$35 million, thus “add[ing] \$35 million to the problem.” Apogee argues that PJM then compounded the problem in July 2018 by filing with the Commission a credit policy revision imposing a \$0.10/MWh minimum credit requirement that will affect over half of market participants. Apogee states that the “low levels of market liquidity” in the auction that included the GreenHat portfolio may be explained by the fact that many market participants were more focused on how to meet new credit requirements for their existing FTRs rather than buying from the GreenHat portfolio.²⁸

22. Second, Apogee argues that PJM’s waiver request is not limited in scope, noting that waiver would continue for four months and materially affect at least five FTR auctions, creating substantial uncertainty for market participants during that time. Apogee asserts that the proposed waiver would interrupt the succinct liquidation of defaulting positions under the Tariff and could have potential long-lasting consequences.²⁹

23. Third, Apogee avers that PJM’s waiver request fails to describe adequately a concrete problem. According to Apogee, the waiver request claims a “lack of liquidity” for non-prompt months, with no concrete data or information as to the scale of the problem. Instead, Apogee states, PJM: (1) only provides a simple average in the aggregate and no analysis regarding non-prompt months; (2) does not provide analysis whether liquidity is different or improved for different non-prompt months; (3) makes generalized claims regarding “apparent high-risk premiums;” and, (4) fails to describe or provide data regarding the market impact if PJM followed its Tariff to resolve succinctly the default issue.³⁰

24. Fourth, Apogee argues that the waiver could result in negative, unintended consequences. Apogee states that, along with other PJM members, it submitted bids in the FTR auction conducted in July, relying on the Tariff liquidation process being followed. Apogee states that it posted collateral to support those bids and spent time in their preparation at a material economic cost. Apogee asserts that PJM’s effort now to “call off” the non-prompt month sale of the GreenHat portfolio will cause economic harm to Apogee and likely other market participants. Further, Apogee claims that departing from the liquidation process in the Tariff to introduce a new process will delay resolution

²⁸ *Id.* at 4-7.

²⁹ *Id.* at 7.

³⁰ *Id.* at 8.

of the default and create uncertainty as to liability. Apogee is concerned that, given the passage of time, other PJM members could default or avoid paying their share of the Default Allocation Assessment. Further, Apogee claims that waiver would create impediments to issuing audited financial statements on a timely basis, due to the material financial and reporting uncertainty. Apogee states that until the total Default Allocation Assessment is known with certainty, each Member has an unknown, uncapped liability, which could result in a qualified or adverse audit opinion. Finally, Apogee argues that PJM may provide an opportunity for market participants to “front run” the sale of the GreenHat portfolio by selling small volumes of FTRs identical to GreenHat’s in the next monthly auctions in order to profit when the sale of the large volume of GreenHat FTRs are sold in the subsequent monthly auctions at lower prices.³¹

C. PJM’s Answer

25. PJM states that the Commission should reject Apogee’s unsupported claims that PJM’s waiver request falls short of Commission standards. PJM argues that Apogee presents no credible rebuttal to the evidence that a forced unloading of large quantities of financial positions, in combination with PJM’s obligation to offer those positions at a price designed to “maximize the likelihood of liquidation” would, for periods with less liquidity (i.e., non-prompt month periods) create significant divergence from expected day-ahead outcomes and cause material market disruption. PJM states that, based on its evaluation of market data, adherence to the Tariff’s liquidation deadlines could reasonably be projected to produce losses multiple times higher than the prompt-month liquidation reflected in the waiver request. PJM further disagrees with Apogee’s arguments that PJM’s recent Tariff revisions to reform credit requirements governing FTRs contributed to worsening market conditions. On the contrary, PJM argues, these Tariff revisions were developed in response to PJM’s awareness of growing exposure associated with GreenHat’s open FTR positions and were designed to strengthen PJM’s credit standards for FTR market participants. PJM states that, had they been in place prior to GreenHat acquiring the majority of its FTRs, GreenHat’s required collateral would have been approximately \$60 million. PJM states that a causal connection between these credit reforms and an “added \$35 million” of default exposure is baseless.³²

26. PJM disagrees that the waiver request is overbroad or proposes a new process. Instead, PJM states that the waiver request targets a timing element of the Tariff and seeks to avoid application of a deadline that would require PJM to offer the entirety of the GreenHat 2018/2019 Planning Period FTR portfolio in the first monthly auction

³¹ *Id.* at 10.

³² PJM Answer at 5-7.

following the default. PJM also notes its interim solution would further limit the scope and application of an already narrow waiver request.³³

27. In response to Apogee's arguments that waiver would frustrate expectations of market participants that relied on the terms of the Tariff, PJM answers that it has an obligation to administer the FTR market in the best interests of *all* its Members. In this instance, PJM states that it has determined that full and immediate liquidation of FTRs, as dictated by the Tariff, will cause material market disruption, which can be mitigated through the more measured and deliberate steps reflected in the waiver request.³⁴

28. Finally, PJM states that the Commission routinely grants waivers similar to that in the waiver request, noting that the waiver request is driven largely by the timing requirements of the Tariff, Attachment K-Appendix, section 7.3.9. PJM argues that the Commission routinely waives timing and deadline provisions contained in utility tariffs and should do so here.³⁵

IV. Discussion

A. Procedural Matters

29. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

30. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2018), the Commission grants Financial Marketers Coalition's, EDF's, and DirectEnergy's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

31. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018) prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We accept PJM's answer because it provides information that assisted us in our decision-making process.

³³ *Id.* at 7

³⁴ *Id.* at 8.

³⁵ *Id.* at 8-10.

B. Substantive Matters

32. We deny 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.³⁶ For the reasons that follow, we conclude that PJM has not shown that the waiver request satisfies these criteria.

33. We find that PJM has not shown that the proposed waiver is limited in scope. PJM explains that, after the July FTR auction had begun—and all bids and offers had been received—it identified what it thought might be significant illiquidity and risk premiums related to the FTRs in the GreenHat portfolio.³⁷ In response, PJM paused aspects of the already-commenced auction and proposed to waive four discrete tariff provisions and begin a stakeholder process to investigate the possibility of adopting new procedures for liquidating GreenHat's FTR portfolio in the already-commenced auction.³⁸ Changing the rules governing an *already-commenced* auction is a significant step that affects both the outcome of that particular auction as well as parties' confidence in the rules governing future proceedings. That is particularly so here, where the record indicates that PJM proposed the waiver in order to avoid the outcome that the already-commenced auction would have produced. In addition, we note that PJM proposes to waive four discrete elements of the Tariff in order to potentially substitute new rules that were not yet formed, much less included in the record, at the time PJM made its waiver request. Such a significant change to multiple parameters of an already-commenced auction is not a remedy that is limited in scope.

34. In addition, we conclude that PJM also has not demonstrated that the waiver request satisfies the fourth element of the Commission's waiver criteria. The Commission previously has denied requests for waiver when doing so would change the results of an already-conducted auction, focusing on the harm that such waiver would impose on other market participants.³⁹ A similar analysis applies here to the

³⁶ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

³⁷ PJM Request for Waiver at 6-7.

³⁸ *Id.* at 1-4.

³⁹ See, e.g., *Northeast Util. Serv. Co.*, 135 FERC. ¶ 61,123, at P 12 & n.3, *order on reh'g*, 136 FERC ¶ 61,123 (2011) (finding that an applicant's requested waiver, which would have allowed it to untimely submit corrected data for its demand response resources where erroneous data for those resources had already been submitted and used

results of an already-commenced auction. The record demonstrates that participants submitted bids in the July monthly FTR auction relying on the liquidation process that existed at the time PJM conducted the auction.⁴⁰ Disrupting those settled expectations is likely to cause harm to third parties, even if doing so might produce otherwise more efficient outcome, as PJM contends the waiver request would. We recognize that PJM requested this waiver as one of a series of proposals intended to alleviate the impact of GreenHat's default on other market participants, and the Commission has approved certain of those proposals.⁴¹ Nevertheless, we find that PJM has not demonstrated that its interest in alleviating the impact of GreenHat's default justifies its request to bypass the rules governing the already-commenced July monthly FTR auction. That is particularly so since all parties—including PJM—were aware before the auction of the Tariff requirement to liquidate the GreenHat portfolio at “at an offer price designed to maximize the likelihood of liquidation.”⁴² Under those circumstances, granting a waiver to change the rules after the auction commenced would be particularly disruptive to settled expectations.

in an auction, would adversely affect the other market participants because it would change the results of the already-conducted auction).

⁴⁰ Apogee argues that the Commission should deny the waiver “to promote an orderly, timely and predictable liquidation of the GreenHat portfolio in the manner anticipated and relied upon by market participants when they developed their FTR positions” and further argues that “not upholding the Tariff would damage the integrity of the wholesale power markets because they are one of the few commodities markets where prices are determined by a set of rules relied upon by participants.” Apogee Protest at 3.

⁴¹ See *PJM Interconnection, L.L.C.*, Docket No. ER18-2289-000 (Oct. 19, 2018) (delegated order) (accepting PJM's proposal to temporarily suspend the process for liquidating defaulted FTR portfolios and allow a defaulting member's current period FTR positions to go directly to settlement for the period between August 24, 2018 and November 30, 2018); *PJM Interconnection, L.L.C.*, 165 FERC ¶ 61,188 (accepting, subject to condition, PJM's proposal allow a defaulting member's FTR positions to go directly to settlement effective December 1, 2018); *PJM Interconnection, L.L.C.*, Docket No. ER19-23-000 (Nov. 30, 2018) (delegated order) (accepting revisions to the Operating Agreement that clarify that a member's per capita portion of the Default Allocation Assessment will not exceed \$10,000 per member per calendar year, cumulative of all defaults, or more than once per each member's ongoing default if Default Allocation Assessment charges for a member's ongoing default span multiple calendar years).

⁴² Tariff, Attachment K-Appendix, section 7.3.9(d).

35. To the extent PJM anticipated that the Commission would grant the waiver request, for instance, by liquidating only GreenHat's August positions and settling GreenHat positions for September, October, November, December and January pursuant to the interim Tariff provision accepted in Docket No. ER18-2289-000⁴³ and the Tariff provision accepted in Docket No. ER19-19-000,⁴⁴ PJM is required to reconcile any such actions by reinstating the original July auction results, or taking steps that are necessary to comply with the effective Tariff language when the July 2018 auction was conducted, and by unwinding settlements made for September, October, November, December and January positions that should have been liquidated.

36. While we are denying PJM's waiver request, we are cognizant of the significant impact that Green Hat's default has had on other market participants and, ultimately, consumers. Prior to the July 2018 auction, the Commission's Office of Enforcement began a non-public investigation under Part 1b of the Commission's regulations into whether Green Hat engaged in market manipulation or other potential violations of Commission orders, rules, and regulations. That investigation is ongoing. The Commission will determine what further action, if any, may be appropriate after it considers the results of the staff investigation.

The Commission orders:

PJM's waiver request is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner McNamee is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴³ See *PJM Interconnection, L.L.C.*, Docket No. ER18-2289-000 (Oct. 19, 2018) (delegated order).

⁴⁴ See *PJM Interconnection, L.L.C.*, 165 FERC ¶ 61,188 (2018).