

166 FERC ¶ 61,093
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. ER19-24-000

ORDER GRANTING MOTION TO WITHDRAW

(Issued February 5, 2019)

1. On October 1, 2018, pursuant to section 205 of the Federal Power Act (FPA),¹ PJM Interconnection, L.L.C. (PJM) filed revisions to the PJM Open Access Transmission Tariff (Tariff), Attachment K-Appendix, section 7.3.9 and revisions to Schedule 1, section 7.3.9 of PJM's Amended and Restated Operating Agreement (Operating Agreement). On November 30, 2018, Commission staff issued a deficiency letter. Subsequently, on December 18, 2018, PJM filed a motion to withdraw its proposed Tariff and Operating Agreement revisions (Motion to Withdraw). On January 2, 2018, Shell Energy North America (Shell) filed an answer to PJM's Motion to Withdraw, requesting that the Commission deny PJM's motion to withdraw. As discussed below, we grant PJM's Motion to Withdraw its filing and deny requests for further action.

2. In its October 1, 2018 filing, PJM proposes revisions to allow a seller who sold Financial Transmission Right (FTR) positions in a bilateral contract to a buyer who subsequently defaulted, to assume ownership of the "negatively-valued" FTR positions (i.e., those FTR positions that are negatively-valued compared to the original purchase price).² PJM clarifies that it is not changing the obligation of the seller to indemnify PJM for FTR charges that a defaulting buyer fails to pay. Some parties, including Shell, protested the filing, contending that in situations in which the defaulting buyer held

¹ 16 U.S.C. § 824d (2012).

² PJM explains an FTR position would be considered to have a negative value under the proposed revisions if: (1) in the most recent applicable auction for each FTR prior to the date of the member's default declaration, or (2) the most recent applicable auction for each FTR prior to the effective date of this provision, if later, those FTR positions would have cleared at a price lower than the original purchase price of the FTR. PJM Transmittal Letter at 3.

multiple FTR positions, some positive and some negative, PJM should offset those amounts before holding the seller responsible to indemnify PJM.

3. On November 30, 2018, Commission staff issued a deficiency letter seeking additional information regarding the interaction between certain Tariff provisions³ and the bilateral seller's indemnification obligation. Staff also sought information regarding the process by which PJM handles a default with respect to FTRs acquired in bilateral contracts, among other things.

4. On December 18, 2018, PJM filed a Motion to Withdraw its October 1, 2018 filing, stating that its proposal does not provide sufficient benefits to the PJM membership to justify PJM continuing to seek approval from the Commission.⁴ PJM states that it sought member feedback on its intent to withdraw through a briefing and advisory vote at the December 6, 2018 Members Committee meeting and found that the members endorsed PJM's planned withdrawal. PJM notes that it has committed to review with stakeholders its existing bilateral indemnification procedures and will make any future filings on the topic as appropriate.⁵

5. Shell filed an answer requesting that the Commission deny PJM's Motion to Withdraw. Shell argues that although it opposes the Tariff revision proposed by PJM in this proceeding, withdrawal of the revisions at this time would prevent the Commission from addressing important issues raised by the filing and PJM's implementation of related Tariff provisions.⁶ Alternatively, if the Commission grants PJM's Motion to Withdraw, Shell requests that the Commission initiate a FPA section 206⁷ proceeding on its own authority to determine whether PJM's interpretation of the guarantee and indemnification provision of its Tariff is consistent with the Commission-approved Tariff, or whether, in the alternative, the existing Tariff provision is unjust, unreasonable, or unduly discriminatory.⁸

³ Operating Agreement, Schedule 1, §§ 7.11 (b) and 5.2.2(d)(v) & (vi).

⁴ PJM Motion to Withdraw at 1-2.

⁵ PJM Motion to Withdraw at 2.

⁶ Shell Answer to Motion at 1.

⁷ 16 U.S.C. § 824e (2012).

⁸ Shell Answer to Motion at 2.

6. Section 35.17(a) of the Commission's regulations provides that a public utility may withdraw in its entirety a rate schedule, tariff, or service agreement that has not become effective and upon which no Commission or delegated order has been issued, by filing a withdrawal motion with the Commission and that the proposed rate schedule, tariff or service agreement sections will not become effective under section 205(d) of the Federal Power Act in the absence of Commission action making the rate schedule, tariff or service agreement filing effective.⁹ PJM's October 1, 2018 filing has neither become effective, nor has the Commission issued any previous orders regarding this filing. As PJM no longer supports its filing under section 205, the Commission has no authority to require PJM to continue to make the proposal under section 205.¹⁰ We therefore grant the Motion to Withdraw, and accordingly deny Shell's protest to the withdrawal, leaving PJM's previously-accepted tariff language in effect.

7. We also deny Shell's request that the Commission institute a proceeding under FPA section 206. Although we decline to institute an FPA section 206 proceeding based on the current record, Shell remains free to file a complaint.¹¹

⁹ 18 C.F.R. § 35.17(a) (2018).

¹⁰ See *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,009 (2013) (allowing withdrawal of filing even after it became effective since the utility no longer supports its Federal Power Act section 205 filing rate increase filing and had imposed no charges); *Columbia Gulf Transmission Company*, 127 FERC ¶ 61,059, at P 19 (2009) ("Since Applicants are not required to offer the proposed [rate] service, and are not prepared to support their proposed tariff sheets, applicants may withdraw the [relevant] tariff sheets.").

¹¹ Complaints must be filed separately from motions to intervene and protests. See, e.g., *Entergy Services, Inc.*, 52 FERC ¶ 61,317, at 62,270 (1990); *Louisiana Power & Light Co.*, 50 FERC ¶ 61,040, at 61,062-63 & n.3 (1990).

The Commission orders:

PJM's December 18, 2018 Motion to Withdraw its filings in this proceeding is hereby granted.

By the Commission. Commissioner McNamee is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.