

131 FERC ¶ 61,157
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Hudson Transmission Partners, LLC

Docket No. ER10-1281-000

ORDER GRANTING WAIVER

(Issued May 25, 2010)

1. On May 19, 2010, Hudson Transmission Partners, LLC (HTP) submitted a filing requesting expedited waiver of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (PJM OATT) provisions, Section 212.4(c) and Attachment O, Section 6.5, applicable to the posting of deferred security for HTP's transmission project (Hudson Transmission Project).¹ HTP states that without the grant of its expedited request, HTP would be required to post the full security for its project (\$172 million) by May 25, 2010, a payment deadline it cannot meet. HTP asserts that missing this deadline would pose irreparable harm to the Hudson Transmission Project. Accordingly, HTP seeks an expedited, limited waiver of this security deadline through no later than October 31, 2010. HTP states that the grant of its request will have no adverse impact on reliability, the orderly conduct of PJM's planning process, or management of its interconnection queue. For the reasons discussed below, we grant the requested waiver.

¹ Section 212(c) of the PJM OATT ("Deferred Security") provides in relevant part that the "Interconnection Customer may request to defer providing security [for its project] until no later than 120 days after executing the Interconnection Service Agreement, provided Interconnection Customer shall pay a deposit of at least \$200,000 or 125 percent of the estimated costs that will be incurred during the 120-day period, whichever is greater, to fund continued design work, with \$100,000 of such deposit being non-refundable." The same requirement is set forth at Schedule O, section 6.5 of the PJM OATT, which addresses the form of the Interconnection Service Agreement.

Background

2. HTP states that the Hudson Transmission Project is an essential, unique, and complex merchant transmission infrastructure project intended to relieve congestion in and around the New York City area by linking northern New Jersey to mid-town Manhattan by the end of 2012. HTP states that its 673 MW project will run underground and underwater beneath the Hudson River, utilize advanced high voltage direct current (HVDC) technology, and provide control over power flows and synchronized power between PJM and the New York Independent System Operator, Inc. (New York ISO). HTP states that transmission network upgrade costs attributable to the project are estimated at \$172 million.²

3. HTP states that, subject to the requirements of the PJM OATT, its project will require the execution of an Interconnection Service Agreement (ISA) and an Interconnection Construction Service Agreement (ICSA), both of which are three-party agreements between HTP, PJM and Public Service Electric and Gas Company (PSEG), the interconnection transmission owner for the project.³

4. HTP states that while it signed these agreements and returned them to PJM, on January 25, 2009.⁴ On March 9, 2010, PJM informed HTP that changes to the agreements would need to be made, and these revisions were not finalized and agreed to by the parties until May 6, 2010. HTP states that, in the meantime, the 120-day cost deferral period that began to run on the date that HTP first tendered these agreements to PJM (on January 25, 2009) is about to expire. HTP states that following the expiration of

² HTP states that the Hudson Transmission Project was selected in November 2006 by the New York Power Authority (NYPA), through a competitive request-for-proposals process to deliver power to NYPA's customers. HTP states that after five years and tens of millions of dollars in investment, the Hudson Transmission Project is now a matter of months from beginning construction. Specifically, HTP states that all permits have been obtained from New Jersey, where the bulk of the facilities will be located, and that all additional permits are expected to be issued shortly. With respect to financing, HTP states that the lead lenders for its project have been identified and that the financial community is ready to invest. HTP states that the financial closing for the project is expected to occur within the next several months.

³ PJM states that a second ICSA between PJM, HTP, and Jersey Central is fully executed and is designated as Original Service Agreement No. 2439, as reported in PJM's most recent Electric Quarterly Report.

⁴ While the filing states January 25, 2009, this date appears to be incorrect and should instead be January 25, 2010.

this deferral period (and absent the grant of the waiver it requests), HTP will be required to pay to PJM the full amount of the deferred security (\$172 million), as required by PJM OATT, Section 212.4(c) and Attachment O, Section 6.5.

5. Accordingly, HTP seeks a limited waiver of these provisions, such that the deadline applicable to its deferred security payment will be extended until October 31, 2010.

Notice of Filing and Responsive Pleadings

6. Notice of HTP's filing was issued on May 20, 2010, with interventions, comments and protests due on a shortened basis, as requested by HTP, on or before May 21, 2010. Notices of intervention and/or timely-filed motions to intervene were submitted by PJM, PSEG, Hess Corporation, and Jersey Central Power & Light Company (Jersey Central). Comments generally supportive of HTP's waiver's request were filed by PJM and PSEG. A protest was filed by Jersey Central, but subsequently withdrawn on May 25, 2010. On May 24, 2010, Cavallo Cross Hudson Management Company, LLC (Cross Hudson) submitted a motion to intervene out-of-time and protest.

7. PJM states that it supports HTP's waiver request, provided that no other projects will be delayed or result in increased costs due to the granting of HTP's request. PJM states that it is not aware of any such projects at this time. PJM also notes that the original \$625,000 deposit provided by HTP when it deferred its security on January 29, 2010, may not be enough to cover the work that will be done by PSEG and Jersey Central during the extended deferral period sought by HTP. PJM notes that should it become aware of the need for additional monies to cover work that is being done for HTP's project or any other projects that enter into an ISA and share in the upgrades for which HTP is now responsible, PJM would require HTP to post such additional amount before work can proceed.

8. Cross Hudson, in its protest, argues that the NYPA is the real party in interest with respect to the Hudson Transmission Project and that, as such, the NYPA will do what is necessary to save the project, including making the deferred security payment, as required by the PJM OATT. Cross Hudson also argues that HTP's project is neither complex nor unique, and that good cause cannot be shown, here, where the payment problem addressed by HTP in its waiver request was essentially a known problem of HTP's own making. Cross Hudson adds that it is in direct competition with HTP, as the developer of a 700 MW high voltage alternating current transmission cable running from an existing switchyard in northern New Jersey to mid-town Manhattan.⁵ Cross Hudson

⁵ Cross Hudson notes that on May 17, 2010 it commenced an open season, offering service over this proposed line.

argues that, as such, it will be harmed by the grant of HTP's waiver request. Cross Hudson asserts that granting HTP's waiver request would be the equivalent of granting HTP a bridge loan for five months while HTP attempts to finance its project and secure a litigated certificate from the New York Public Service Commission.

Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will also accept the unopposed late filed motion to intervene submitted by Cross Hudson and grant the withdrawal of the protest submitted by Jersey Central.

B. Analysis

10. For the reasons discussed below, we will grant HTP's request for limited waiver of the PJM OATT, Section 212.4(c) and Attachment O, Section 6.5. The Commission has previously granted waiver requests of the schedule requirements in RTO tariffs.⁶ The Commission has granted relief when: (i) the applicant has been unable to comply with the tariff provision at issue in good faith; (ii) the waiver is of limited scope; (iii) a concrete problem will be remedied by granting the requisite waiver; and (iv) the waiver does not have undesirable consequences, such as harming third parties.⁷

11. We find that HTP's requested waiver satisfies the aforementioned conditions. Under the unique circumstances presented here, as discussed further below, we agree that a limited waiver of the 120-day deferred security deadline set forth in the PJM OATT through October 31, 2010, is warranted.

⁶ See, e.g., *Pittsfield Generating Co., L.P., et al.*, 130 FERC ¶ 61,182, at P 9 (2010); *ISO New England Inc.*, 127 FERC ¶ 61,242 (2009); *The Connecticut Light and Power Company, et al.*, 126 FERC ¶ 61,186 (2009); *PSEG Power Connecticut LLC*, 126 FERC ¶ 61,062 (2009); *ISO New England Inc.*, 117 FERC ¶ 61,171, (2006) (citing *Wisvest-Connecticut, LLC v. ISO New England Inc.*, 101 FERC ¶ 61,372, (2002) (*Wisvest*); *Great Lakes Gas Transmission Limited Partnership*, 102 FERC ¶ 61,331 (2003); *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330 (2003); and *Northern Border Pipeline Co.*, 76 FERC ¶ 61,141 (1996).

⁷ See, e.g., *EnerNOC*, 122 FERC ¶ 61,297 (2008); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008).

12. First, we accept HTP's representations (as confirmed by PJM and PSEG in their comments) that all parties to the ISA and ICSA have worked in a good faith effort to satisfy their respective obligations in connection with the numerous milestones applicable to the Hudson Transmission Project. We note, in this regard, that subsequent to HTP's original execution and submittal of the ISA and ICSA to PJM, other parties proposed to make a number of material changes, including changes to the schedule of work. The terms of the three-party agreements were not ultimately agreed upon until recently (May 6, 2010), and the agreements have not yet been executed. Under these circumstances, HTP's inability to satisfy this single OATT requirement (the deferred security deadline) does not detract from its good faith efforts to satisfy its obligations in the interconnection process.

13. Moreover, we note that the purpose of PJM's 120-day deferral period is to provide interconnecting customers with additional time and flexibility to obtain financing after having a complete ISA. However, given the significant material changes to the ISA and ICSA proposed by other parties after HTP had already executed them, and the overall complexity of the project involved here, HTP states that it could not obtain financing for its project without the additional deferral period it has requested. In these circumstances, we find that the waiver requested by HTP, and endorsed by the other parties to the agreements (PJM & PSEG) is consistent with the fundamental purpose of the deferred security provisions of PJM's tariff.

14. We also agree that this waiver is limited in scope and will remedy a concrete problem, i.e., the grant of the requested waiver will keep the Hudson Transmission Project on schedule. Finally, we agree that granting the requested waiver will not have undesirable consequences, given that each of the parties to the three-way interconnection agreements fully support HTP's waiver request, and PJM has represented that it does not know of any project that will be delayed, or incur increased costs, in the event HTP's request is granted.

15. We reject the protest submitted by Cross Hudson. Cross Hudson argues that NYPA is the real party in interest with respect to the three-way interconnection agreements required to be executed under the PJM OATT, because it is NYPA's customers that will ultimately benefit from the Hudson Transmission Project. Cross Hudson posits that, as such, the NYPA will come forward at the final hour to satisfy the applicable security payment deadline. However, Cross Hudson's argument is grounded in speculation only. Moreover, Cross Hudson does not suggest that HTP can satisfy the PJM OATT deadline on its own.

16. We also reject Cross Hudson's argument that HTP's waiver request should be denied because the underlying transmission project is neither complex nor unique. Even assuming that Cross Hudson's argument has been, or could be, factually supported, our analysis here, as discussed above, does not turn alone on a consideration of the

transmission project's complexity or uniqueness. Nor do we agree with Cross Hudson that the revisions required to be made to the ISA and ICSA in this case (and the time that elapsed before these agreements could be finalized) present a "problem" solely within HTP's control.

17. As noted above, PJM proposed material changes to the ISA after HTP had already executed it, which HTP states prevented it from obtaining financing with a 120-day period from the date it executed the original agreements. This development was outside of HTP's control. Finally, we are not persuaded that Cross Hudson's status as a competing transmission project developer, with its own proposed project, means that it will be unduly harmed by the grant of HTP's waiver request. HTP's waiver request is an accommodation supported by PJM and PSEG, following HTP's long-standing commitment and dedication of resources to its project. Cross Hudson offers only general allegations of commercial harm, and does not identify any specific harm (such as increased costs or delays to its own project) that it will suffer as a result of granting HTP's waiver request.

18. Due to the specific and unique facts presented here, we will grant HTP's request for limited waiver of the PJM OATT. This waiver will apply solely to the deadline to post deferred security prescribed in Section 212.4(c) and Attachment O, Section 6.5 of the PJM OATT.

The Commission orders:

HTP's request to waive the PJM OATT, Section 212.4(c) and Attachment O, Section 6.5, as it applies to Hudson Transmission Project, is hereby granted through October 31, 2010, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.