

135 FERC ¶ 61,069
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER11-3047-000

ORDER GRANTING REQUEST FOR LIMITED TARIFF WAIVER

(Issued April 25, 2011)

1. On March 8, 2011, PJM Interconnection, L.L.C., in its own right and on behalf of PJM Settlement, Inc.¹ (collectively, PJM) filed a request for a limited waiver of section 15.1.5 of PJM's Amended and Restated Operating Agreement (Operating Agreement).² The waiver would allow PJM to avoid a strict application of the Operating Agreement's default provisions to York Generation,³ whose payment default arises from a billing error, and instead let York Generation remedy the default pursuant to the terms of a Repayment Agreement between the parties. If the Commission grants the waiver, PJM asks that it be made effective March 10, 2011, and remain in effect until York Generation has fulfilled its payment obligation to PJM. As discussed below, the Commission grants the request for limited waiver.

¹ PJM Settlement, Inc. is a non-profit member organization formed on October 20, 2010, to act as a central counterparty for transactions in PJM Markets and to serve as credit and billing agent for PJM. *See generally PJM Interconnection L.L.C.*, 133 FERC ¶ 61,278 (2010).

² Operating Agreement, section 15.1.5. Default Notification and Remedy at PJM, Intra-PJM Tariffs, 15.1, OA 15.1 Failure to Meet Obligations (0.0.0)

³ York Generation Company, L.L.C. (York Generation) owns and/or operates Generation Capacity Resources and is required by PJM's Open Access Transmission Tariff (Tariff) and PJM's Operating Agreement to submit offers for the available capacity of such resource in the Day-ahead Energy Market.

I. Filing

2. PJM states that a billing error resulted in credits being included in invoices from PJM to York Generation, which resulted in aggregate overpayments to York Generation of approximately \$511,000. After identifying the error, PJM notified York Generation that its February monthly statement would include an adjustment, i.e., additional charges, of approximately \$450,000 to correct for prior billing periods.⁴ The February billing adjustment triggered a requirement that York Generation post additional collateral in accordance with PJM's credit policy. York Generation indicated that it would not be able to post the required additional collateral within the required two day period (by March 10, 2010), and as a result, on March 8, 2011, PJM notified York Generation that it was in breach of PJM's credit policy. PJM states that York Generation also informed PJM that it would be unable to pay full amount of the February month-end invoice by its due date of March 11, 2011, which would place it in breach of its payment obligation to PJM and likely in payment default as of March 15, 2011.

3. PJM states that in accordance with the PJM Operating Agreement and PJM's Tariff, PJM Members have an obligation to make full and timely payments of all bills rendered,⁵ and to maintain sufficient creditworthiness as outlined in PJM's Tariff.⁶ If a Member is determined to be in breach of its payment and/or creditworthiness requirements, PJM will notify the affected Member, and the Member must remedy such breach within two days.⁷ If the affected Member fails to remedy its breach within the allotted two business days after notification of the breach, the Member will be declared in default and, in addition to other possible remedies available to PJM, will be precluded from buying or selling in any market operated by PJM until the default has been remedied.⁸

⁴ PJM notes that as a result of the timing of the settlement system processing of the remaining billing corrections, an additional amount of approximately \$61,000, will be included in York Generation's future month-end billing statements. *See* PJM request for waiver at 3 & n.8.

⁵ Operating Agreement, section 15.1.3 (Payment of Bills at PJM).

⁶ *See* Intra-PJM Tariff, Open Access Transmission Tariff, Attachment Q (6.0.0) (Attachment Q).

⁷ Operating Agreement, section 15.1.4 (Breach Notification and Remedy).

⁸ Operating Agreement, section 15.1.5 (Default Notification and Remedy at PJM).

4. PJM states that York Generation has agreed to a bilateral Repayment Arrangement, under which York Generation shall satisfy its outstanding payment obligations to PJM through a combination of periodic lump sum payments and by allowing PJM to retain a portion of its expected monthly Reliability Pricing Model (RPM) revenues over several months. Additionally, PJM states that York Generation has agreed to forego its right to buy in any PJM Markets, eliminating York Generation's incurrence of additional payment and/or collateral obligations. PJM also states that York Generation has pledged its RPM revenues as security for the amounts to be recovered in the Repayment Arrangement.⁹

5. PJM requests that the Commission grant a limited waiver of the requirement in Section 15.1.5 of the Operating Agreement to avoid the need to automatically prohibit York Generation from participating in the PJM Interchange Energy Market, the PJM Capacity Credit Market, or any other market operated by PJM, until the default is remedied pursuant to the terms of the Repayment Arrangement. PJM requests expedited treatment of this request and an effective date of March 10, 2011.¹⁰

6. PJM argues that it meets the Commission's standards for granting waivers. PJM argues that the need for the requested waiver in this proceeding is a result of an anomalous and inadvertent error under which both PJM and York Generation acted in good faith. PJM argues that the requested waiver is for a limited time and scope, as it applies only to York Generation and only until it has remedied its default, during which time it will not incur further charges as a result of its participation in PJM's Markets due to its contractual preclusion as a Market Buyer in all relevant markets. York Generation's remaining generating units will be anticipating credits for capacity and energy transactions that will allow it to satisfy its outstanding obligations to PJM within a short time period, likely not later than October 2011.¹¹ Additionally, PJM argues that the

⁹ PJM's Credit Policy allows that if a Participant remedies a notification of collateral call in a manner deemed acceptable by PJM Settlement, Inc. within two business days of the collateral call, the Participant shall be deemed to have complied with the policy. *See* Operating Agreement Attachment Q, section VII.

¹⁰ PJM states that it intends to allow York Generation to continue limited participation in PJM's energy and capacity markets while Commission approval of this waiver request is pending so as to minimize any harmful effects on York Generation, PJM and PJM's Market Participants.

¹¹ PJM states that while it anticipates that the October 2011 payment completion date will be met, this waiver request should not expire until York Generation has satisfied its outstanding payment amount. PJM states that it will notify the Commission when York Generation has remedied its defaults according to the Repayment Arrangement.

waiver addresses a single concrete problem. Absent the requested relief, York Generation would be declared in default of its creditworthiness and payment obligations to PJM, with no recourse through which to re-pay its obligations as a Market Seller in PJM's Markets, which could result in socialized costs to PJM's Members. Finally, PJM argues that the waiver would not harm any third parties or otherwise have any undesirable consequences, because (1) the Repayment Arrangement, and this waiver, is limited to allowing York Generation to sell into PJM's Markets, thereby precluding the possibility of incurring further charges; (2) granting the waiver will prevent PJM and the PJM Members from incurring a loss due to York Generation's inability to satisfy its outstanding obligation and the resulting socialization of payment default to other PJM Members; and (3) it will allow York Generation to abide by the "must offer" requirements of PJM's RPM rules in order to receive their RPM revenues that will be used to fulfill the terms of the Repayment Arrangement.

II. Notice of Filing

7. Public notice of the filing was issued on March 9, 2011. Interventions and protests were due on or before March 29, 2011. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹² all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

III. Discussion

8. The Commission has previously granted Regional Transmission Organizations limited waivers of their own tariff provisions when: (i) the underlying error was made in good faith; (ii) the waiver is of limited scope; (iii) a concrete problem needed to be remedied; and (iv) the waiver did not have undesirable consequences, such as harming third parties.¹³

9. The Commission finds that PJM has demonstrated good cause to grant the request for waiver, to the extent necessary, because PJM's requested waiver satisfies the

¹² 18 C.F.R. § 385.214 (2010).

¹³ See, e.g., *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,140 (2010); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010); *ISO New England Inc.*, 117 FERC ¶ 61,171, at P 21 (2006).

aforementioned conditions. First, PJM's failure to correctly bill York Generation was an inadvertent error made in good faith.

10. Second, the requested waiver is of limited scope. This waiver will exempt only York Generation from only the provision in section 15.1.5 of PJM's Operating Agreement prohibiting a defaulting Market Participant from participating in any PJM Market, and only until it has remedied its default.¹⁴ The Commission notes that PJM has committed to notifying the Commission when York Generation has remedied its defaults.

11. Third, the waiver will remedy a concrete problem. Without it, PJM would be obligated to declare York Generation in default of its creditworthiness and payment obligations, leaving York Generation without the corresponding ability to re-pay those obligations through participating as a Market Seller in PJM's Markets as per the Repayment Arrangement. This could result in socialized default payment costs to PJM's Members.¹⁵

12. Fourth and finally, there appears to be no undesirable consequence that would result from granting of a waiver. Granting of the waiver will not adversely affect any

¹⁴ PJM makes clear that it is seeking waiver of the Operating Agreement provision prohibiting a defaulting Market Participant from participating in any PJM Market. The Commission notes that this section of the Operating Agreement includes four subsections of which only the subsection 15.1.5(i) is at issue in this waiver request. As a result, the remaining three subsections are not being waived and therefore shall remain in force as they pertain to York Generation until such time as York Generation has remedied its default. The remaining subsections of section 15.1.5 of PJM's Operating Agreement state:

(ii) A defaulting Member shall not be entitled to participate in the activities of any committee or other body established by the Members Committee or the Office of the Interconnection; and (iii) A defaulting Member shall not be entitled to vote on the Members Committee or any other committee or other body established pursuant to this Agreement; (iv) PJM shall notify all other members of the default.

¹⁵ Section 15.2 of PJM's Operating Agreement states in part that, "In order to remedy a default...the PJM Board may assess against, and collect from, the Members not in default, in proportion to their Default Allocation Assessment, an amount equal to the amount that the defaulting Member has failed to pay to the Office of the Interconnection.... along with appropriate interest."

third parties and should avert the potential default risk to PJM members that could result if waiver was not granted.

13. Therefore, for good cause shown, the Commission will grant PJM's request for waiver of section 15.1.5(i) of PJM's Operating Agreement effective March 10, 2011, for the limited purpose established in its filing and until such time that York Generation has satisfied its payment obligation to PJM.

The Commission orders:

The Commission grants PJM's request to waive section 15.1.5(i) of its Operating Agreement, as it applies to the unique facts presented in York Generation's expected default of its payment and creditworthiness obligations, effective March 10, 2011, until such time as the outstanding payment obligation is fulfilled, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.