

135 FERC ¶ 61,211
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 31, 2011

In Reply Refer To:
PJM Interconnection, L.L.C.
Docket No. ER11-3386-000

PJM Interconnection, L.L.C.
955 Jefferson Avenue
Norristown, PA 19403-2497

Attention: Jeanine Schleiden, Esq.
Counsel for PJM Interconnection, L.L.C.

Reference: Request for Limited Tariff Waiver of Emergency Load Response
Provisions of the PJM Tariff

Dear Ms. Schleiden:

1. On April 19, 2011, PJM Interconnection, L.L.C. (PJM), filed a request for a limited waiver of certain provisions of PJM's Emergency Load Response Program¹ in order to allow American Municipal Power, Inc. (AMP) to register certain generation resources as Interruptible Load for Reliability (ILR) resources after the registration deadline for the 2011/2012 Delivery Year. PJM makes this request on behalf of AMP, which acts as the Curtailment Service Provider (CSP) for five municipalities (Municipalities) and their respective ILR resources; PJM asserts that AMP is also the Electric Distribution Company and Load Serving Entity (LSE) for the Municipalities. PJM states that this limited waiver request is necessary to provide AMP additional time prior to June 1, 2011 to secure evidence of Relevant Electric Retail Regulatory Authority (Retail Authority) authorization for the resources to participate in PJM's load response

¹ PJM refers to the Emergency Load Response Program "provided in Schedule 1 of the Operating Agreement as well as parallel provisions of Attachment K-Appendix of the PJM Tariff. *See also* Attachment DD and Attachment DD-1 of the PJM Tariff, and the Reliability Assurance Agreement, Schedule 6." PJM April 19, 2011 Filing at fn. 3 (PJM Filing).

programs.² PJM has requested fast track processing so that an order granting a waiver is issued by May 31, 2011. As discussed below, the Commission grants the requested limited waiver.

2. PJM states that its market rules permit end-use customers aggregated by CSPs to commit demand resources into PJM's Reliability Pricing Model (RPM) as either demand resources or ILR. PJM states that, under the terms of section 5.13 of Attachment DD of the PJM OATT, ILR providers are required to nominate ILR resources for Delivery Year 2011/2012 no later than April 1, 2011, two months prior to that Delivery Year.³

3. PJM states that Order No. 719-A⁴ required that, among other things, Regional Transmission Operators and Independent System Operators (RTOs/ISOs) not accept bids from CSPs⁵ aggregating the demand response of customers of utilities that distributed 4 million MWh or less in the previous fiscal year unless the Retail Authority permits⁶ the CSP to do so. PJM asserts that, when a CSP registers a resource with PJM, PJM will notify the appropriate Electric Distribution Company and LSE and request verification whether the resource is subject to another contractual obligation or regulations of the Retail Authority prohibiting the end-use customer's participation in PJM's load response programs. PJM contends that the EDC or LSE is also expected to verify whether the customer's Electric Distribution Company distributed 4 million MWh or less in the previous fiscal year. However, PJM asserts that, when an LSE or Electric Distribution Company does not present evidence that the Retail Authority permits or conditionally permits demand response activity, the registration will not be processed until evidence of Retail Authority authorization for the resource's participation in PJM's load response programs is provided to PJM within the established deadlines.⁷ In this case, if no such evidence of Retail Authority authorization is presented to PJM within a 10 business day

² PJM Filing at 1.

³ *Id.* at 2.

⁴ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008), *order on reh'g*, Order No. 719-A, 74 Fed. Reg. 37,776 (Jul. 29, 2009), FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

⁵ PJM states the Order No. 719 refers to these entities as Aggregators of Retail Customers, or ARCs. These entities are known as CSPs in PJM. (PJM Filing at fn. 1.)

⁶ PJM Filing at 2.

⁷ PJM Filing at 4.

review period, PJM states that the registration is deemed terminated without prejudice. PJM notes that the CSP may resubmit the registration so long as it is resubmitted within the established load response program registration deadline.⁸

4. Prior to the registration deadline for the 2011/2012 Delivery Year, PJM states that AMP submitted five ILR registrations for Behind the Meter resources owned by the Municipalities, which are: City of Jackson, Ohio (Jackson); City of New Knoxville, Ohio (New Knoxville); City of New Martinsville, West Virginia (New Martinsville); Village of Woodsfield, Ohio (Woodsfield); and Middletown, Pennsylvania (Middletown). PJM asserts that each municipality is its own Retail Authority, and that AMP represented that it is acting as the CSP, Electric Distribution Company and LSE for the Municipalities and their associated Behind the Meter resources.⁹ However, PJM states, the newly enhanced electronic Load Response System¹⁰ automatically prevented successful registration because the electronic Load Response System recognized AMP as an Electric Distribution Company that distributed 4 million MWh or less in the previous fiscal year. In addition, PJM asserts that AMP also needed to provide evidence to PJM of Retail Authority authorization of the Behind the Meter resources' participation in PJM's load response programs.¹¹

5. PJM states that when the electronic Load Response System prevented registration of the Behind the Meter resources, AMP contacted PJM. PJM contends that the reason AMP failed to provide evidence of Retail Authority authorization was that AMP did not realize that the Behind the Meter resources were subject to Retail Authority jurisdiction. PJM asserts that, after discussion between AMP and PJM, the Behind the Meter resources were deemed to be retail customers of AMP because they sometimes receive bills from AMP for power received from AMP.¹² Therefore, PJM states, it concluded that evidence of Retail Authority authorization is required under the PJM Tariff for the Behind the Meter resources to participate in PJM's load response programs. PJM

⁸ *Id.* at 5.

⁹ *Id.* at 6.

¹⁰ *Id.* at 3. (PJM states that it enhanced electronic Load Response System in the fall of 2010 so that it could fully administer the newly accepted PJM Tariff.)

¹¹ *Id.* at 7.

¹² *Id.*

contends that its determination was not made in time for AMP to obtain the evidence of Retail Authority authorization before the ILR registration deadline.¹³

6. PJM states that its limited waiver request is expressly conditioned upon PJM receiving from AMP the underlying required evidence of Retail Authority authorization from the Municipalities no later than May 31, 2011.¹⁴ PJM contends that if AMP does not submit to PJM the required evidence of Retail Authority authorization for a given ILR Resource registration, that particular registration will be deemed terminated. Thus, PJM argues, this proposed waiver is, by its own terms, of limited scope. PJM asserts that the waiver will apply only to the five Behind the Meter resources owned by the Municipalities and registered by AMP for the 2011/2012 Delivery Year. PJM states that this proposed waiver will not harm third parties or have any other undesirable consequences because AMP is the CSP, Electric Distribution Company and LSE for the Municipalities, and each municipality is considered its own Retail Authority.

7. Notice of PJM's filing was published in the *Federal Register*, 76 Fed. Reg. 23,320 (2011), with interventions, comments and protests due on or before May 3, 2011. AMP filed a motion to intervene and comments.

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), AMP's timely unopposed motion to intervene serves to make it a party to this proceeding.

9. In its comments, AMP states that it supports PJM's request for limited waiver. AMP asserts that, at present, Woodsfield is the only AMP member with a pending ILR registration that has not yet provided evidence of Retail Authority authorization. AMP states that Jackson and New Knoxville have provided evidence of Retail Authority authorization to AMP, which has forwarded that evidence to PJM, and that Middletown and New Martinsville have decided to withdraw from the ILR program.¹⁵

10. AMP states that it will provide the evidence of Retail Authority authorization for the remaining municipality with a pending ILR registration if the Commission grants PJM's requested waiver in order to avoid an unnecessary controversy and bring closure to the instant set of registrations more promptly. However, in the future, AMP contends that it reserves its right to contest the characterization of AMP member owned ILR

¹³ *Id.*

¹⁴ *Id.* at 8.

¹⁵ AMP Comments at 4.

resources as retail customers for purposes of specifying the evidence required to register those resources in PJM's Emergency Load Response Program.¹⁶

11. The Commission has previously granted waiver requests of the schedule requirements in RTO/ISO tariffs.¹⁷ Generally, the Commission has granted the waiver requests when: (i) the applicant has been unable to comply with the provision at issue 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.¹⁸ The Commission finds that PJM has demonstrated good cause to grant the request for limited waiver because PJM's requested waiver satisfies the aforementioned conditions.

12. First, PJM and AMP have demonstrated good faith in being unable to comply with the requirements of the Emergency Load Response Program and register the Behind the Meter resources before the April 1, 2011 deadline. Even though the Behind the Meter Resource registrations were unable to be completed before the deadline, AMP states that it initiated the registration process before that time. When the electronic Load Response System would not accept the registration, AMP contacted PJM to resolve the problem. Both parties have been working toward a resolution of this matter. Moreover, AMP states that it has secured the necessary evidence of Retail Authority authorization for all but one of the Municipalities seeking to register the Behind the Meter resources as ILR resources.

13. Second, the requested waiver is of limited scope, because it will only waive the provisions of the Emergency Load Response Program concerning the ILR registration deadline for the Behind the Meter resources owned by the Municipalities for the 2011/2012 Delivery Year. We note that the waiver only applies if the Retail Authority authorization and registration of the Behind the Meter resources as ILR resources is completed before the start of the 2011/2012 Delivery Year.

¹⁶ *Id.* at 5-6.

¹⁷ See *PJM Interconnection, LLC*, 132 FERC ¶ 61,140 (2010); see also *Pittsfield Generating, Co., L.P.*, 130 FERC ¶ 61,182 (2010); *ISO New England, Inc.*, 127 FERC ¶ 61,242 (2009); *Connecticut Light and Power Co.*, 126 FERC ¶ 61,186 (2009); *ISO New England Inc.*, 117 FERC ¶ 61,171 (2006) (citing *Wisvest-Connecticut, LLC v. ISO New England Inc.*, 101 FERC ¶ 61,372 (2002)); *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).

¹⁸ *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010); *ISO New England*, 117 FERC ¶ 61,171, at P 21 (2006).

14. Third, granting the waiver will remedy a concrete problem. The waiver will allow AMP to register the Municipalities' Behind the Meter resources and enable them to participate as ILR resources in PJM's Emergency Load Response Program.

15. Fourth, third parties will not be harmed. As stated above, the waiver is granted only if AMP can secure Retail Authority authorization and successfully register the resources before June 1, 2011, the first day of the 2011/2012 Delivery Year. Therefore, there will be no market uncertainty or disruptions as a result of granting this waiver. Additionally, no third party has shown that it will suffer harm if the waiver is granted.

16. Finally, fast track treatment is justified because the 2011/2012 Delivery Year starts on June 1, 2011. AMP must register the participating Behind the Meter resources as ILR resources before that date.

17. Therefore, due to the specific and unique facts presented above, the Commission finds good cause to grant PJM's request for a waiver of the PJM Tariff.

The Commission orders:

PJM's request to waive certain provisions of the Emergency Load Response Program in the PJM Tariff in order to allow AMP to register Municipalities' Behind the Meter resources as ILR resources before June 1, 2011, as it applies to the unique facts presented by PJM herein, is hereby granted as discussed in the body of this order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.