

142 FERC ¶ 61,028  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

January 14, 2013

In Reply Refer To:  
East Kentucky Power Cooperative, Inc.  
Docket Nos. ER13-414-000  
ER13-478-000 (not  
consolidated)

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Dear Mr. Robbins:

1. On November 15, 2012, East Kentucky Power Cooperative (EKPC) filed in Docket No. ER13-414-000 a request for waiver to authorize its participation in PJM Interconnection, L.L.C.'s (PJM) Spring 2013 Reliability Pricing Model Base Residual Auction (November 15 Filing).
2. On November 30, 2012, EKPC filed in Docket No. ER13-478-000, a petition to submit an out-of-time initial Fixed Resource Requirement Plan (FRR Plan) to PJM allowing EKPC to serve approximately 35 MW of EKPC's member load (EKPC DEOK Zone load) covering the period February 1, 2013, through May 31, 2013 (November 30 Filing). Specifically, EKPC requests waivers of certain provisions in Section 8.1 of the Reliability Assurance Agreement Among Load-Serving Entities in the PJM Region (RAA) and of obligations under the PJM Open Access Transmission Tariff (OATT) which, among other things, will allow EKPC to submit its FRR Plan out-of-time.<sup>1</sup>

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<sup>1</sup> PJM Reliability Assurance Agreement, Rate Schedule FERC No. 44. The PJM Reliability Assurance Agreement is a PJM agreement intended to ensure that adequate capacity resources will be planned and made available to provide reliable service to loads within the PJM Region, to assist other parties during emergencies, and to coordinate planning of such resources.

3. As discussed below, we grant EKPC's requested waiver in Docket No. ER13-414-000 so that it may participate in the PJM Spring 2013 Reliability Pricing Model Base Residual Auction. We also grant EKPC's request for waivers in Docket No. ER13-478-000 and allow the submission of an initial FRR Plan to PJM out-of-time.

4. In Docket No. ER13-414-000, EKPC states that it has previously informed the Commission of its intent to fully integrate into PJM effective June 1, 2013.<sup>2</sup> EKPC adds that it has attached for the Commission's information a technical implementation plan for integration into PJM as set forth in the Agreement to Implement Expansion of PJM Region for East Kentucky Power Corporation (PJM-EKPC Implementation Agreement), which the parties executed on January 9, 2012.<sup>3</sup>

5. EKPC asserts that the first stages of its integration implementation plan require that generation and load connected to the EKPC transmission system align their operations with the PJM system. EKPC states that its proposed June 1, 2013 integration date coincides with the beginning of the next PJM Delivery Year 2013-2014. EKPC also asserts that, while it has planned its integration into PJM for June 1, 2013, due to the three-year forward looking structure of the Reliability Pricing Model, PJM's Base Residual Auctions for Delivery Years 2013-2014, 2014-2015, and 2015-2016 have already occurred. EKPC explains that, in the future, it plans to file a FRR Plan covering the period from June 1, 2013 through May 31, 2016<sup>4</sup> to satisfy independent resource adequacy obligations for Delivery Years 2013-14, 2014-15 and 2015-16 because, as stated previously, PJM has already conducted the Base Residual Auctions for those years. However, with regard to the upcoming PJM Base Residual Auction, EKPC seeks to integrate the EKPC zone load into the PJM Reliability Pricing Model Auction for Delivery Year 2016-2017 by participating in PJM's May 2013 Base Residual Auction prior to its June 1, 2013 integration date. EKPC, therefore, requests that the Commission authorize EKPC's participation in the PJM May 2013 Base Residual Auction for Delivery Year 2016-2017 prior to its June 1, 2013 integration into PJM by granting all necessary waivers of any Commission requirement, rule, or regulation for participation in this auction.

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<sup>2</sup> November 15 Filing at 1 (citing Motion for Extension of Time to Comply with Order No. 1000 of EKPC, Docket No. RM12-23-000, filed October 3, 2012).

<sup>3</sup> EKPC attached a copy of this agreement to its November 15 Filing and it is labeled as "Exhibit 1."

<sup>4</sup> The Commission notes that EKPC submitted a proposed initial FRR Plan covering the period February 1, 2013 through May 31, 2013 in Docket No. ER13-478-000, which is also being addressed in the instant order.

6. In addition, EKPC requests that the Commission grant its requested relief by January 15, 2013. EKPC asserts that granting waiver by January 15, 2013, will: (1) ensure that all affected parties have sufficient time to understand the process; (2) allow sufficient time for it to resolve any outstanding issues; and (3) allow EKPC to submit any necessary data that PJM requires by February 1, 2013, in order to include EKPC in the Base Residual Auction.<sup>5</sup>

7. Notice of EKPC's November 15 Filing in Docket No. ER13-414-000 was issued on November 19, 2012, with interventions and protests due on or before December 6, 2012. PJM filed a motion to intervene and comments. American Municipal Power filed a motion to intervene. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

8. PJM supports EKPC's November 15 Filing. PJM states, as EKPC has indicated, the three-year forward structure of PJM's Reliability Pricing Model requires EKPC to participate in the Base Residual Auction for Delivery Year 2016-2017 before EKPC's June 1, 2013, integration into PJM. PJM asserts that EKPC must, therefore, seek Commission authorization to do so. PJM states that it supports this action and that such action is consistent with prior Commission precedent.<sup>6</sup> Accordingly, PJM asks that the Commission grant EKPC's requested waiver.

9. In Docket No. ER13-478-000, EKPC filed a petition for waiver of certain provisions of the PJM RAA and the PJM OATT to allow EKPC's submission of an out-of-time, initial FRR Plan to PJM. EKPC's petition includes details of EKPC's proposed initial FRR Plan. In its initial FRR Plan, EKPC intends to serve approximately 35 MW of EKPC's member load that is connected to the Duke Energy Kentucky (Duke) transmission system (which is part of the DEOK Zone in PJM) from February 1, 2013 through May 31, 2013. EKPC states that this load is currently served through the Smith and Downing substations, which are connected to transmission facilities owned by Duke Energy and that comprise the DEOK Zone within PJM. EKPC contends that the EKPC DEOK Zone load is presently served by EKPC under dynamic interchange agreements between EKPC and PJM; consequently, EKPC currently obtains transmission service from PJM to serve that load. EKPC states that the objective of the initial FRR Plan is to

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<sup>5</sup> November 15 Filing at 6.

<sup>6</sup> PJM Comments at 3 (citing *Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.*, 133 FERC ¶ 61,058, at P 15 (2010); *American Transmission Systems, Inc and First Energy Service Co.*, 129 FERC ¶ 61,249, at P 78 (2009)).

terminate the dynamic interchange arrangements and enable EKPC to serve the EKPC DEOK Zone load from the PJM markets prior to the integration of EKPC's total load into PJM as of June 1, 2013.

10. EKPC asserts that the provisions for which it is requesting waiver as part of the initial FRR Plan are contained in the FRR Alternative as stated in Schedule 8.1 of the RAA and apply to requirements for the timing of submitting a FRR filing and the duration of the FRR Plan. EKPC proposes to designate capacity from its H.L. Spurlock Station (Spurlock), in an amount adequate to satisfy the criteria for an FRR Alternative Capacity Plan for the EKPC DEOK Zone Load under Schedule 8.1 of the RAA and the applicable PJM rules and manuals.

11. Therefore, EKPC requests a waiver of Section C.1 of Schedule 8.1 of the RAA, and the obligations under Attachment DD of the PJM OATT, along with any applicable corresponding or related provisions of any PJM manual, to the extent the provision(s) would have required EKPC to submit an FRR Plan prior to the Base Residual Auctions for the period including the interim period, or which would otherwise restrict EKPC's compliance with the RAA and the OATT for the initial FRR Plan. EKPC also seeks waiver of Section C.2 of Schedule 8.1 of the RAA regarding notice of termination, to the extent any such waiver is necessary due to the short duration and pre-determined termination date for the initial FRR Plan. EKPC also requests waiver of the provisions of Section D.1 of Schedule 8.1 of the RAA regarding the requirement to update the initial FRR Plan one month prior to the PJM Base Residual Auction, because these auctions will have already occurred.

12. EKPC contends that the requested waivers are necessary because the PJM Reliability Pricing Model Base Residual Auction for commitments in the Delivery Year 2013 was conducted in 2009, long before EKPC began its current efforts to fully integrate into PJM. EKPC further argues that, because there is no third-party wholesale or retail wheeling load included in the EKPC DEOK Zone Load, no other parties are affected by the proposed initial FRR Plan.

13. Notice of EKPC's filing in Docket No. ER13-478-000 was issued on November 30, 2012, with interventions and protests due on or before December 21, 2012. No interventions, comments or protests were filed.

14. The Commission has typically granted waivers when: (1) the waiver is of limited scope; (2) a concrete problem needed to be remedied; and (3) the waiver does not have undesirable consequences, such as harming third parties.<sup>7</sup>

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<sup>7</sup> See, e.g., *Demand Response Partners, Inc.*, 140 FERC ¶ 61,093 (2012); *New York Power Authority.*, 139 FERC ¶ 61,157 (2012); *ISO New England, Inc.*, 134 FERC

15. With regard to Docket No. ER13-414-000, the Commission finds that the requested waiver to allow EKPC's participation in the PJM Spring 2013 Reliability Pricing Model Base Residual Auction is of limited scope, as the waiver will only apply to EKPC. Second, the waiver will address a concrete problem. The three-year forward planning process structure of PJM's Reliability Pricing Model requires EKPC to participate in PJM's Spring 2013 Base Residual Auction for Delivery Year 2016-2017 prior to its June 1, 2013 integration into PJM. Granting waiver will allow EKPC's participation in this upcoming auction so that EKPC's Zone load will be included in the PJM Reliability Pricing Model process for Delivery Year 2016-2017. Third, granting the waiver so that EKPC can participate in the upcoming auction will not have undesirable consequences, such as harming third parties. Granting EKPC's request to participate in the Spring 2013 auction will allow EKPC to align its operations with PJM and resolve any open issues to allow for EKPC's full participation in PJM. Further, PJM supports EKPC's request for waiver and also requests Commission action in this matter. Accordingly, we will grant the requested waiver and thus allow EKPC to participate in PJM's May 2013 Base Residual Auction for Delivery Year 2016-17 prior to EKPC's June 1, 2013 integration into PJM.

16. With regard to Docket No. ER13-478-000, we grant EKPC's request for waivers of Sections C.1, C.2, and D.1 of Schedule 8.1 of the RAA and the obligations under Attachment DD of the PJM OATT,<sup>8</sup> and allow submission of an out-of-time FRR Plan to PJM. We find that the requested waivers are limited in scope, as the waivers will only apply to EKPC's initial FRR Plan for the period February 1, 2013 through May 31, 2013. Second, granting the requested waivers will resolve a concrete problem because, as stated previously, the PJM Reliability Pricing Model Base Residual Auctions for commitments in the Delivery Year 2013 occurred long before EKPC sought to integrate into PJM. Hence, granting the waiver will allow EKPC to serve the EKPC DEOK Zone Load for a limited period and EKPC will have an opportunity to gain experience in operating under the PJM markets before integrating its full load on June 1, 2013. Finally, granting the requested waivers will not have undesirable consequences, such as harming third parties

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¶ 61,182 (2011); *New York Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,119 (2008); *ISO New England, Inc.*, 117 FERC ¶ 61,171 (2006); *New York Indep. Sys. Operator, Inc.*, 112 FERC ¶ 61,347 (2005). The Commission notes that there can be a fourth factor appropriate for consideration, which is that "the underlying error was made in good faith." However, this factor is not applicable here since there is no error involved, and so we need not consider it in our analysis of EKPC's waiver requests.

<sup>8</sup> In addition, to the extent that there are other provisions of the PJM manuals or Commission rule or regulation requiring waiver to grant EKPC's requested action in this matter, we hereby grant such relief.

because, as EKPC argues, there is no third party wholesale or retail wheeling load included in the DEOK Zone Load covered by the initial FRR Plan. Accordingly, we will grant EKPC's request for waivers and allow the submission of an initial FRR Plan to PJM out-of-time.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.