

143 FERC ¶ 61,032
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 10, 2013

In Reply Refer To:
Appalachian Power Company
Docket No. ER13-1076-000

Amanda Riggs Conner
American Electric Power Service Corporation
801 Pennsylvania Avenue, NW
Suite 320
Washington, DC 20004-2684

Dear Ms. Conner:

1. On March 12, 2013, American Electric Power Service Corporation (AEP), on behalf of certain of its affiliates,¹ requested a limited waiver of the five-year minimum term election requirement of the Fixed Resource Requirement (FRR) specified in Schedule 8.1 of the PJM Reliability Assurance Agreement (RAA) in order to permit Northeastern Rural Electric Membership Corporation (Northeastern) to terminate its participation in the FRR 48 months early, effective June 1, 2016, and to permit Northeastern to participate in the May 2013 Base Residual Auction (BRA) for the 2016/2017 Delivery Year. AEP requests Commission action on the requested waivers no later than April 11, 2013. Finally, AEP states that PJM does not oppose the requested waiver. For the reasons discussed below and good cause shown, the Commission grants the requested waiver.

2. Northeastern is a member-owned corporation that supplies electric power to members located throughout northeastern Indiana. Northeastern does not own any generating resources but receives power via wholesale power agreements. Northeastern's load in PJM currently includes members in portions of Allen, Huntington, Kosciusko, Noble, Wabash, and Whitley Counties. AEP notes that under

¹ For the purposes of this petition, the following AEP affiliates are included: Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company.

PJM's Reliability Pricing Model (RPM), Northeastern currently serves a portion of its load through PJM's FRR Alternative and a portion through the RPM auction.

3. AEP states that, pursuant to Schedule 8.1 of the RAA, a Load Serving Entity (LSE) is not required to participate in the RPM auction if it can meet its resource requirements under the FRR Alternative. The FRR Alternative allows an LSE to meet its capacity obligations, including PJM's reserve margin requirements, through its own generation or through securing capacity contracts.

4. AEP notes that, in the time period leading up to the May 2012 auction for the 2015/2016 Delivery Year, Northeastern had entered into negotiations with AEP for a wholesale power arrangement. AEP states that, prior to the 2015/2016 BRA, it was AEP's understanding that Northeastern wanted all of its customers to be included as part of AEP's FRR Plan for the 2015/2016 Delivery Year. However, since that time, and after the 2015/2016 RPM auction cleared, Northeastern informed AEP that it did not wish to enter into a long term wholesale agreement past the 2015/2016 Delivery Year. AEP states that, although the agreement did not come to fruition, it believes that both Northeastern and AEP engaged in good faith efforts towards establishing a wholesale power arrangement.

5. AEP argues that, given that Northeastern is responsible to serve the load of its constituents, and that it has neither generation nor a wholesale capacity arrangement in place for 2016/2017, allowing Northeastern to serve its load under the RPM auction is a reasonable and rational alternative. Consequently, AEP states that it discussed with PJM the option of seeking a waiver of the requirements of Schedule 8.1 to allow Northeastern to withdraw from the FRR 48 months early and PJM has indicated that it concurs with AEP's request.

6. In support of its waiver request, AEP argues that the request meets the Commission's criteria for granting waiver of RTO tariff deadlines because:

- a. The failure to comply with the Tariff was due to an error, which was made in good faith;
- b. The waiver is of limited scope;
- c. Granting waiver would remedy a concrete problem; and

- d. The waiver does not have undesirable consequences (such as harming third parties).²

7. AEP argues that the initial underlying decision to include Northeastern's load in AEP's FRR plan was made in good faith. AEP also argues that the requested waiver is limited in scope as it is one-time waiver of the FRR five-year requirement, which only affects approximately 140 MW of capacity for Northeastern. In addition, AEP states that the requested waiver will remedy a concrete problem as Northeastern does not have a contract to supply its capacity requirements for the 2016/2017 Delivery Year. Without the waiver, AEP asserts that Northeastern will be forced to continue under FRR without a wholesale power agreement to supply its requirements. Finally, AEP argues that the requested waiver will not result in undesirable consequences, as Northeastern's 140 MW load is a relatively small when compared to the 164,000 MWs of capacity PJM cleared in the 2015/2016 auction.

8. Notice of AEP's filing was issued on March 13, 2013, with protests or interventions due on or before April 2, 2013. PJM did not oppose the request. FirstEnergy Service Company (FirstEnergy), on behalf of its affiliates,³ filed a motion to intervene and comments on April 2, 2013. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁴ the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding.

9. In its comments, FirstEnergy states that it does not oppose a waiver for the purpose of terminating Northeastern's FRR status; rather, it is concerned that Northeastern's entrance into the PJM's BRA for the 2016/2017 Delivery Year at this

² Petition at 5 (citing *ISO New England, Inc. and Footprint Power, LLC*, 142 FERC ¶ 61,051, at P 20 (2013); *East Kentucky Power Cooperative, Inc.*, 142 FERC ¶ 61,028 (2013); *PJM Interconnection, L.L.C.*, 141 FERC ¶ 61,103 (2012); *Linden VFT, LLC*, 140 FERC ¶ 61,244 (2012); *Pittsfield Generating Co., L.P. and Pawtucket Power Associates, L.P.*, 130 FERC ¶ 61,182 (2010); *ISO New England, Inc.*, 122 FERC ¶ 61,297 (2008)).

³ The affiliates are: FirstEnergy Solutions Corp.; Allegheny Energy Supply Company, LLC; Monongahela Power Company d/b/a Allegheny Power; PATH Allegheny Transmission Company, LLC; Potomac Edison Company d/b/a Allegheny Power; Trans-Allegheny Interstate Line Company; West Penn Power Company d/b/a Allegheny Power; American Transmission Systems, Inc.; Cleveland Electric Illuminating Company; Jersey Central Power & Light Company; Metropolitan Edison Company; Ohio Edison Company; Pennsylvania Electric Company; Pennsylvania Power Company; and Toledo Edison Company.

⁴ 18 C.F.R. § 385.214 (2012).

late date will erode the principles of certainty and predictability on which the auction process depends. FirstEnergy argues that PJM has released the parameters of the 2016/2017 BRA, and FirstEnergy has relied upon those parameters in making its own commitments and planning decisions. Therefore, FirstEnergy argues that granting the requested waiver for the purposes of allowing Northeastern to enter the 2016/2017 BRA could have undesirable consequences.⁵ FirstEnergy also contends that granting the proposed limited waiver could be cited as precedent by other entities proposing early termination of FRR status. Finally, First Energy states that if Northeastern does not participate in the RPM, it has other options, such as participating in one of PJM's incremental auctions for the 2016/2017 Delivery Year or entering into bilateral agreements for capacity to serve its load.

10. The Commission will grant the requested waiver. We find that AEP has shown good cause for granting its waiver request because it appears that: (1) AEP's initial decision to include Northeastern's load in AEP's FRR Plan was made in good faith, as the parties were working toward a wholesale power arrangement that did not come to fruition; (2) the requested waiver is limited in scope because it will only apply to Northeastern's 140 MW load; (3) granting the requested waiver would allow AEP and Northeastern to remedy a concrete problem, as it will allow Northeastern to exit AEP's FRR 48 months early and participate in the 2016/2017 BRA; and (4) granting the requested waiver would have no undesirable consequences for PJM or third parties. These findings are based on AEP's representations that: (1) Northeastern informed AEP that it did not wish to enter into a long term wholesale agreement past the 2015/2016 Delivery Year; and (2) Northeastern has neither generation nor a wholesale capacity arrangement in place for 2016/2017 to serve the load of its constituents.

11. First Energy does not oppose the waiver request for Northeastern to terminate its FRR status but it does oppose AEP's request to allow Northeastern to participate in the 2016/2017 BRA. As to First Energy's concern that Northeastern's entrance in the BRA at this late date creates uncertainty and affects planning decisions for other market participants, we find that given the relatively small size of Northeastern's load and that market participants have been given adequate notice of Northeastern's participation in the BRA auction to be held on May 13, 2013, First Energy's concerns are not warranted. Furthermore, the Commission reviews each request for waiver of RTO/ISO tariffs on a case-by-case basis, and granting this waiver will not impact our decision-making process on other waiver requests.

⁵ FirstEnergy Comments at 5 (citing *Amer. Municipal Power, Inc.*, 140 FERC ¶ 61,102, at P 10 (2012)).

12. Accordingly, we grant limited waiver of Schedule 8.1 of PJM's RAA for the limited purpose of allowing Northeastern to terminate its participation in AEP's FRR Plan 48 months early, effective June 1, 2016, and to allow Northeastern's participation in the May 2103 BRA for the 2016/2017 Delivery Year, effective June 1, 2013, as requested.

By direction of the Commission.

Kimberly D. Bose,
Secretary.