

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell

Outback Power Marketing, Inc.,
SESCO Enterprises L.L.C., and
Black Oak Energy, L.L.C.

v.

Docket Nos. EL03-207-001
EL03-207-002

PJM Interconnection, L.L.C.

ORDER ON COMPLIANCE

(Issued October 23, 2003)

1. On July 28, 2003, PJM Interconnection, L.L.C. (PJM) filed amendments to its OATT to comply with the Commission's July 14 Order.¹ There, the Commission directed PJM to file its existing requirements for creditworthiness and collateral pursuant to Section 205 of the Federal Power Act (FPA). We will accept PJM's creditworthiness provisions. This ruling will benefit market participants by placing PJM's existing creditworthiness provisions in its tariff.

Background

2. On July 3, 2003, Outback Power Marketing, Inc., SESCO Enterprises L.L.C. and Black Oak Energy, L.L.C. (Outback, et al.) filed a complaint pursuant to Section 206 of the FPA,² naming as the respondent PJM. In their complaint, Outback et al., alleged that on July 15, 2003, PJM intended to unilaterally implement new credit requirements and bid screening rules applicable to certain financial trades made or tendered in PJM's day ahead energy market.

3. On July 14, 2003, the Commission issued an order finding, under § 206, that PJM's tariff was no longer just and reasonable, because it failed to include its

¹ PJM Interconnection, L.L.C., 104 FERC ¶ 61,079 (2003).

² 16 U.S.C. § 824e (2000).

creditworthiness conditions relating to service, and permitted PJM to revise those conditions without making a §205 filing with the Commission. Since the existing creditworthiness conditions had been imposed during the period when PJM had authority to modify its creditworthiness conditions without making a §205 filing, the Commission found that PJM's existing creditworthiness provisions were just and reasonable and directed PJM to file to include its existing creditworthiness requirements, as reflected in the PJM Manuals, in its tariff. In addition, the Commission noted that if any revisions were made to PJM's creditworthiness requirements, PJM must submit such changes pursuant to Section 205 of the FPA. On July 22, 2003 as amended July 23, 2003, PJM filed revisions (previously reflected in PJM's Credit Policy Manual) to its OATT incorporating PJM's pre-existing credits standards. PJM states that Attachment Q of its tariff sets forth its credit policy as currently in effect and posted. In addition, PJM makes conforming changes to its tariff to reflect the incorporation of the creditworthiness requirements.³

Notice of Filing and Responsive Pleadings

4. Notice of PJM's filings was published in the Federal Register, with interventions, comments and protests due on or before August 12 and August 18, 2003 respectively.⁴ Motions to intervene and comments were timely filed by Outback Power Marketing, Inc., SESCO Enterprises L.L.C. and Black Oak Energy, L.L.C. (Outback, et al.); and Advantage Energy, Inc. (Advantage).

5. Outback, et al., raises no objection to the instant filing.

6. Advantage argues that the existing creditworthiness and collateral requirements filed by PJM are not the same requirements that existed in 1997. Advantage contends that the creditworthiness and collateral requirements filed by PJM were implemented on September 1, 2002. Further, Advantage claims that during the process, Advantage suggested that the proposed changes to the credit policy requirements be filed with the Commission for approval. However, Advantage contends that the current requirements have never been subjected to the full protections of Section 205 of the FPA.

7. Advantage argues that the excessive security required of unrated energy marketers likely precludes many from participating in PJM administered markets. Advantage contends that the current requirements require high security amounts from Members that are rated BBB – or lower and unrated Members owed PJM a total of \$18,466,000 while the total financial security provided by these Members was \$145,626,000. Additionally,

³ Section 11 of PJM's OATT has been revised by adding the statement that the "Transmission Provider's credit policy is set forth in Attachment Q to this Tariff."

⁴ 68 Fed. Reg. 45,809 (2003); and 68 Fed. Reg. 49,466 (2003).

Advantage argues that the undue disadvantage upon unrated marketers is further exacerbated because the existing requirements lack a provision for prepayment. Advantage claims that prepayment would allow PJM to lower their credit risk while at the same time allowing Members to lower the amount of security they are required to post.

8. Additionally, Advantage contends that the failure to allow surety bonds as an acceptable form of financial security is prejudicial and discriminatory toward unrated market participants. Advantage asserts that for unrated market participants seeking to avoid tying up significant amounts of cash through cash deposits, the greater cost and hassle involved in obtaining a letter of credit may discourage participation altogether. Further, Advantage contends that in order to participate in both the PJM and NYISO markets, an unrated marketer would be required to post a total of one hundred and fifty (150) days security. As a result, Advantage suggests that PJM and NYISO should give consideration to pooling the security deposit requirements or permitting the netting of import transactions if they wish to address seams issues.

Commission Response

9. We accept PJM's tariff sheets as being consistent with the Commission's directives to include PJM's pre-existing creditworthiness requirements in its tariff. Advantage maintains that these tariff provisions were not previously subject to a §205 filing at the Commission, and argues that they impose unreasonable and discriminatory security for unrated energy marketers and fail to provide for prepayment, pooling, or surety bond options. These tariff provisions were put in place under the November 25, 1997 order,⁵ which permitted PJM to modify its creditworthiness provisions without filing with the Commission. To change the existing provisions, the Commission must act under §206 of the FPA. The Commission, however, already has established a process to examine whether PJM's creditworthiness conditions should be modified to reduce reliance on upfront collateral requirements.⁶ This proceeding would be the appropriate venue for Advantage to pursue its concerns with the existing creditworthiness requirements, as opposed to having the Commission establish a second proceeding in this docket to investigate only Advantage's concerns. Since PJM's tariff filing complies with the July 14 Order, we accept PJM's proposed tariff revisions as filed.

⁵ See Pennsylvania-New Jersey-Maryland Interconnection, 81 FERC ¶ 61,257 n.50 (1997).

⁶ See PJM Interconnection, L.L.C., 104 FERC ¶ 61,309 (2003).

The Commission orders:

PJM's compliance filing codifying pre-existing creditworthiness standards into its tariff and the conforming changes are hereby accepted to become effective July 14, 2003.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.