

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.

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Docket No. ER15-____-000

**REQUEST OF
PJM INTERCONNECTION, L.L.C.
FOR EXPEDITED GRANT OF TARIFF WAIVER**

PJM Interconnection, L.L.C. (“PJM”) hereby seeks a one-time waiver of the PJM Open Access Transmission Tariff (“Tariff”) to permit PJM to delay its next Base Residual Auction (“BRA”)¹ for a short period to allow the Commission an opportunity to decide on important pending reforms to improve capacity resource performance² *before* PJM conducts that BRA. The Commission’s March 31, 2015 action³ in Docket No. ER15-623-000—neither rejecting nor accepting PJM’s Capacity Performance Filing in that proceeding, and instead seeking more information on that filing—has engendered considerable uncertainty over whether an opportunity to apply the proposed Capacity Performance rules to the 2015 BRA can and should be preserved. This filing is designed to squarely present, and precipitate prompt resolution of, that important question, by requesting authority to delay the 2015 BRA from May 11-15, 2015 to a week that is 30 to 75 days after a Commission order on the merits of PJM’s response to the March 31 Deficiency Letter, but no later than the week of August 10-14, 2015. Given the need for

¹ Capitalized terms that are used but not defined in this pleading have the meaning provided in the Tariff.

² *PJM Interconnection, L.L.C.*, Reforms to the Reliability Pricing and Related Rules in the PJM Open Access Transmission Tariff and Reliability Assurance Agreement Among Load Serving Entities, Docket No. ER15-623-000 (Dec. 12, 2014) (“Capacity Performance Filing”).

³ *PJM Interconnection, L.L.C.*, Letter Order, Docket No. ER15-623-000 (March 31, 2015) (“March 31 Deficiency Letter”).

market participant certainty on the status, schedule, and rules for that BRA, *PJM asks the Commission to act on this waiver request by no later than Friday, April 24, 2015*, i.e., ten working days before the currently scheduled opening of the BRA on Monday, May 11, 2015. To leave no doubt as to the importance of market certainty by that deadline, PJM hereby advises the Commission and all interested stakeholders that this waiver request is *time-limited* and should be deemed *withdrawn* if the Commission has not acted on it by April 24, 2015.⁴ To facilitate an April 24 decision, *PJM asks the Commission to set April 14, 2015 as the deadline for comments and protests* on this waiver request.

INTRODUCTION AND OVERVIEW

PJM emphasizes that the Commission's action on this waiver request is without prejudice to whatever action the Commission may take on the Capacity Performance Filing. Grant of this waiver request will simply preserve the opportunity to *apply* to the 2015 BRA any Commission decision in the next two months on the merits of the Capacity Performance Filing. Conversely, denial of (or failure to timely act upon) this waiver request would require PJM to conduct the 2015 BRA under the existing Tariff rules without any of the reforms that PJM has shown are needed to enhance both fuel security and generator performance, which the Commission has found "directly contributes to the overall reliability of the grid and just and reasonable rates."⁵ Given that the Commission reasonably *could* take favorable action on the Capacity Performance

⁴ As a ministerial matter, PJM will submit a motion to withdraw this waiver request on Monday, April 27, 2015 if the Commission does not act on the waiver request by April 24, 2015.

⁵ *Centralized Capacity Markets in Reg'l Transmission Orgs. and Indep. Sys. Operators/Winter 2013-2014 Operations and Market Performance in Reg'l Transmission Orgs. and Indep. Sys. Operators*, 149 FERC ¶ 61,145, at P 8 (2014).

Filing within the next two months, and thereby endorse that filing's critical reforms to performance incentives, a short deferral of the BRA would ensure that those important reforms could also be implemented in the BRA for the 2018/2019 Delivery Year, as specifically proposed and amply supported in the Capacity Performance Filing.

PJM does not take this step lightly. PJM has cleared BRAs for eight successive years on a 36-month forward basis. Market participants have integrated the BRA's 36-month forward schedule into their business practices and development schedules. In particular, developers of new entry projects have come to rely on the current BRA schedule, and some generation project sponsors have made clear to PJM that a delay could impact the costs and construction schedule of certain planned units for which they structured their financing and schedules around receiving the results of the 2015 BRA in May. Under almost any other circumstance, PJM would not seek, and likely would oppose, a BRA delay. The present circumstances are unique, however, because:

- 1) Resource performance is critical: it is the means for realizing the reliability that is the purpose of RPM;
- 2) PJM has shown, and events have underscored, that the current RPM rules do not provide sufficient incentives to ensure that committed resources deliver the performance for which loads are paying;
- 3) PJM has proposed to correct those current shortcomings and provide the needed incentives through reforms that are substantially similar to those the Commission approved just last year for ISO-New England, Inc., for essentially the same purpose;⁶
- 4) The Commission has not yet accepted the Capacity Performance Filing, but it has identified its specific concerns with PJM's proposal, and PJM is confident that it can successfully address and resolve those specific concerns;⁷ and

⁶ *ISO New England Inc.*, 147 FERC ¶ 61,172, at P 23 (2014).

⁷ PJM reads the Commission's questions in its March 31 Deficiency Letter as fairly capturing the most significant areas of concern that the Commission has with the Capacity Performance Filing, and PJM appreciates being afforded the opportunity to address those concerns. If PJM was not confident that it could successfully address those identified concerns, or felt that timely and favorable Commission action was unlikely, then PJM would not be seeking this delay in the BRA.

- 5) The BRA delay contemplated here would be limited to only one to three months, as described below.

Under these circumstances, a short delay in the BRA is warranted, so that if the Commission does find within the next two months that the Capacity Performance reforms are just, reasonable, and required to ensure capacity resources have adequate incentives to perform, then those reforms can be fully applied in the BRA for the 2018/2019 Delivery Year—rather than delaying their full implementation until four years from now, i.e., the 2019/2020 Delivery Year.⁸

PJM emphasizes, however, that a *short* delay is a critical element of this waiver request; at some point (which PJM proposes is no later than mid-August, 2015) PJM must conduct its BRA and market participants must know the rules governing that BRA. In particular, PJM *does not want* the marketplace to face a situation where grant of this waiver defers the BRA from the currently scheduled time of mid-May until as late as mid-August, but at that time there still is no definitive ruling from the Commission on the Capacity Performance Filing. Consequently, if the Commission somehow believes that the Capacity Performance Filing is not capable of timely resolution by mid-June 2015 based on the current record and PJM’s soon-to-be-filed responses to the March 31 Deficiency Letter (“deficiency response”), then it should deny the waiver request and avoid creating uncertainty at a future point in time.

⁸ A short delay in the 2015 BRA also could prove beneficial in light of this year’s *other* extraordinary circumstance, i.e., the substantial uncertainty concerning the Commission’s jurisdiction over end-use customer demand response participation in wholesale markets, as engendered by *Electric Power Supply Ass’n v. FERC*, 753 F.3d 216 (D.C. Cir. 2014).

SPECIFIC TARIFF WAIVER REQUESTED

Considering these unique circumstances, PJM asks that the Commission waive the requirement in section 5.4(a) of Attachment DD of the Tariff,⁹ that the BRA be “conducted in the month of May that is three years before the start of [the relevant] Delivery Year,” and instead permit PJM to conduct the 2015 BRA during a week that is no earlier than 30 days, and no later than 75 days, after the Commission issues an order on the merits of the deficiency response and the underlying Capacity Performance Filing, but in any event no later than the week of August 10-14, 2015. The specific auction date within that range would depend on the content of the Commission’s order on PJM’s forthcoming deficiency response (including any compliance directives) and the state of PJM and stakeholder readiness to proceed with the auction.

PJM expects that it will likely submit its deficiency response in the Capacity Performance proceeding by April 10, 2015. Under the Federal Power Act’s 60-days’ notice rule,¹⁰ the Commission would have to act on that deficiency response by no later than mid-June. However, inasmuch as: (i) the Capacity Performance Filing has been pending for nearly four months; (ii) an extensive record has already been developed in that proceeding; and (iii) the March 31 Deficiency Letter narrowly focused on relatively few elements of the Capacity Performance Filing, the Commission *should* be capable of acting on the deficiency response and the merits of the Capacity Performance Filing in

⁹ To the extent deemed necessary, PJM also seeks waiver of section 2.5 of Attachment DD of the Tariff, which defines the BRA as an auction “conducted three years prior to the start of the [relevant] Delivery Year.”

¹⁰ FPA section 205(d), 16 U.S.C. § 824d(d).

significantly less time, e.g., 30 to 40 days.¹¹ The period of time the Commission takes to review the deficiency response will in turn affect the timing of the rescheduled BRA under PJM's proposal in this waiver request.

Thus, if the Commission does not take a full 60 days to act on the merits of the deficiency response, then it could act on that filing in May, meaning that the BRA would be deferred (under PJM's proposal herein to use the Commission's Capacity Performance order as a trigger for the rescheduled BRA) to June or July. Alternatively, if the Commission took the full 60 days and issued an order on the merits of the Capacity Performance Filing in mid-June, then the BRA would be deferred to July or August. To be clear, if this waiver is granted, PJM intends that it would conduct the BRA with as little delay as possible. PJM proposes flexibility in its revised BRA schedule under this waiver solely as a contingency, to accommodate any actions that PJM or market participants may need to take in response to the Commission's Capacity Performance order, and to ensure an orderly auction process.¹² But in the interests of market certainty, PJM also proposes that the delayed BRA be scheduled no later than the week of August 10-14, 2015.

PJM will announce the specific timing for the rescheduled BRA shortly after the Commission's action on the deficiency response in the Capacity Performance proceeding. At that time, PJM also would announce deadlines for updates by market participants to

¹¹ While PJM anticipates that its deficiency response will urge the Commission to act as quickly as possible, PJM does not anticipate seeking waiver of the 60-day notice requirement in that filing.

¹² PJM recognizes that if a Commission order directs so many significant changes to PJM's filed proposal that orderly conduct this summer of a BRA under those rules becomes too challenging or uncertain, then the better course at that point may be to conduct the auction under PJM's current tariff rules.

their pre-auction submissions, such as offer quantities, offer-price caps, and credit submissions, as necessary and appropriate to reflect the Capacity Performance rules accepted by the Commission.¹³ If so directed, PJM could file that timing announcement in this docket as an informational filing.

THE REQUESTED WAIVER MEETS THE COMMISSION'S WAIVER STANDARDS

PJM's proposed waiver meets the Commission's waiver standards, as the waiver request: (1) is of limited scope; (2) addresses a concrete problem that must be remedied; and (3) does not have undesirable consequences, such as harming third parties.¹⁴

First, the waiver request is of limited scope. It applies only to one auction, i.e., the BRA, for a single Delivery Year. And the only change it makes is to enable rescheduling of that auction from May 2015 to a subsequent week in the summer of 2015. As discussed above, approval of this waiver does not require adoption of the Capacity Performance changes, nor would it change any of the other substantive rules for the conduct of the auction. Thus, the singular focus of this waiver request on a scheduling change necessarily means that this waiver request is of limited scope.

Second, this waiver filing addresses a concrete problem. Specifically, it provides a mechanism for resolution of an important issue that the March 31 Deficiency Letter

¹³ PJM would follow the Tariff rules that specify how many days in advance of the relevant auction a market participant must take a particular action, to the extent the rescheduled date for the BRA allows time for such actions under those Tariff rules.

¹⁴ See *Indianapolis Power & Light Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,047, at P 64; (2014); *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,178, at P 38 (2014), *New York Independent System Operator, Inc.*, 144 FERC ¶ 61,147, at P 8 (2013); *New York Independent System Operator, Inc.*, 139 FERC ¶ 61,108, at P 14 (2012); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011).

implicates but does not answer, i.e., whether an opportunity should be preserved to implement the proposed Capacity Performance changes in the BRA for the 2018/2019 Delivery Year, to the extent those changes are approved by the Commission when it acts on PJM's deficiency response. As noted above, the March 31 Deficiency Letter neither accepts nor rejects the Capacity Performance Filing and, consequently, makes no affirmative finding that PJM should, or should not, fully implement the Capacity Performance changes in the BRA for the 2018/2019 Delivery Year. Moreover, none of the questions posed by the Commission in the March 31 Deficiency Letter addresses the issue of implementation for the 2018/2019 Delivery Year, so there is no indication that the Commission has any concerns on this timing aspect of the filing. Despite that silence on whether PJM should or should not include Capacity Performance reforms in the BRA for the 2018/2019 Delivery Year, the March 31 Deficiency Letter's extension of the time for Commission action raises a conflict with the Tariff requirement that PJM conduct the BRA in May.

Given the need for improvements in PJM's rules for Capacity Resource performance, this important question of the timing of full implementation of those improvements should not be decided through silence or by mere default.¹⁵ The requested waiver solves a concrete problem because it provides a means for the Commission to squarely address the question of whether an opportunity should be preserved to

¹⁵ PJM recognizes that, in the interests of market certainty, this filing proposes to deem the waiver request withdrawn if the Commission has not acted on it by April 24, 2015. By squarely presenting this sole question, however, this filing provides the Commission an opportunity to make clear that it does not intend to foreclose full implementation of the Capacity Performance changes for the 2018/2019 Delivery Year. If the Commission declines that opportunity by choosing not to act on this filing, then PJM and stakeholders would at least be satisfied that the Commission explicitly considered the question.

implement in the 2015 BRA any Capacity Performance rules that the Commission approves in the next two months. Indeed, without this waiver, the Commission would lose any ability to include such rules in the 2015 BRA even if it later finds that such rules are just, reasonable, and needed to promote reliability.

Third, the proposed waiver meets the Commission's standards concerning impact on third parties. In applying this standard, the Commission factors such impacts into its overall assessment of the waiver and does not require that the waiver have zero impact on third parties.¹⁶ Here, the proposed short delay in holding the BRA will not have major consequences that outweigh a grant of the request. The vast majority of market participants have already taken the steps required under the Tariff to participate in the BRA, and will take any remaining Tariff-required steps in the next few weeks, in accordance with currently established deadlines. Deferral of the BRA will not change those already-completed preparatory actions. And, as noted above, PJM proposes to allow updates to prior market participant submissions to the extent those can be accommodated within the revised schedule for the BRA.

Finally, PJM recognizes that some developers of new entry projects that have entered agreements or made arrangements that assume a 36-month period between the BRA and the start of the relevant Delivery Year could face complications if that time

¹⁶ See *PJM Interconnection, L.L.C.*, 150 FERC ¶ 61,122, at P 47 (2015) (approving waiver of Incremental Auction capacity release rule even though the rule could have “lower[ed] capacity costs” for loads, had it not been waived); *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,078, at P 41 (2014) (granting waiver of PJM Tariff and Operating Agreement to permit submissions of cost-based offers at prices that exceed the \$1,000/MWh offer-price cap, even though it could result in temporary cost increases to load); see also *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,041, at P 5, *order on reh’g*, 149 FERC ¶ 61,059 (2014) (allowing waiver of certain make-whole payment Tariff provisions even though the waiver had the potential to increase costs).

period is shortened, especially if it is reduced by as much as three months. PJM does not minimize such concerns, which the Commission may hear directly from affected parties in comments on this filing. On balance, however, considering the needs of the PJM Region as a whole, the Commission can and should find that the requested waiver is reasonable, because an auction delay is the only means available to ensure that favorable Commission action on the Capacity Performance Filing can be implemented in the BRA for the 2018/2019 Delivery Year. The alternative would be that, even if the Commission finds that changes in the capacity resource performance rules in the PJM Region are warranted, such changes could not be incorporated in a BRA for another year, thereby pushing full implementation of Capacity Performance reforms out to the 2019/2020 Delivery Year.

Accordingly, the requested waiver satisfies the Commission's waiver standards and is just and reasonable.

ADDITIONAL INFORMATION

PJM requests that all correspondence and communications with respect to this filing be sent to, and the Secretary include on the official service list, the following:¹⁷

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PJM has served a copy of this filing on all PJM members and on all state utility regulatory commissions in the PJM Region by posting this filing electronically. In accordance with the Commission's regulations,¹⁸ PJM will post a copy of this filing to the FERC filings section of its internet site, located at the following link: <http://www.pjm.com/documents/ferc-manuals/ferc-filings.aspx>, with a specific link to the newly-filed document, and will send an e-mail on the same date as this filing to all PJM

¹⁷ To the extent necessary, PJM requests waiver of Rule 203(b)(3) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.203(b), to permit all of the persons listed to be placed on the official service list for this proceeding.

¹⁸ See 18 C.F.R. §§ 35.2(e) and 385.2010(f)(3).

members and all state utility regulatory commissions in the PJM Region¹⁹ alerting them that this filing has been made by PJM and is available by following such link. PJM also serves the parties listed on the Commission's official service list for this docket. If the document is not immediately available by using the referenced link, the document will be available through the referenced link within 24 hours of the filing. Also, a copy of this filing will be available on FERC's eLibrary website located at the following link: <http://www.ferc.gov/docs-filing/elibrary.asp>, in accordance with the Commission's regulations and Order No. 714.

¹⁹ PJM already maintains, updates, and regularly uses e-mail lists for all PJM members and affected state commissions.

CONCLUSION

For the reasons stated above, PJM requests that the Commission grant the requested waiver of Attachment DD, section 5.4(a) of its Tariff solely as to the timing of the BRA for the 2018/2019 Delivery Year, to permit PJM to delay the 2015 BRA from May 11-15, 2015 to a week that is 30 to 75 days after a Commission order on the merits of PJM's response to the March 31 Deficiency Letter, but no later than the week of August 10-14, 2015. PJM also requests that the Commission issue an order on this waiver request by April 24, 2015.

Respectfully submitted,

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