

108 FERC ¶ 61,117
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

PJM Interconnection, L.L.C.

Docket Nos. ER03-406-004
and ER03-406-005

ORDER ON COMPLIANCE FILINGS

(Issued August 2, 2004)

1. On February 27, 2004, as amended on March 1, 2004, PJM Interconnection, L.L.C. (PJM) made a compliance filing in response to a Commission order issued in this proceeding on January 28, 2004.¹ For the reasons discussed below, we will accept PJM's compliance filing, subject to conditions.

Background

2. On January 10, 2003, PJM submitted proposed tariff changes to its Open Access Transmission Tariff (OATT) and to its Amended and Restated Operating Agreement (Operating Agreement) to establish: (i) a new Firm Transmission Rights (FTR) auction and (ii) an allocation mechanism for the auction revenues, using Auction Revenue Rights (ARRs). In an order issued by the Commission on March 12, 2003, we accepted PJM's filing but required PJM to submit certain additional changes in a compliance filing, including procedures governing the self-scheduling of ARRs into FTRs, and transition provisions for new zones added to PJM, permitting members in these zones to receive an allocation of FTRs instead of ARRs.² PJM submitted a compliance filing addressing these issues on April 11, 2003, and amended it on April 22, 2003.

¹ PJM Interconnection, L.L.C., 106 FERC ¶ 61,049 (2004) (January 28 Order).

² PJM Interconnection, L.L.C., 102 FERC ¶ 61,276 (2003) (March 12 Order).

3. In the January 28 Order, we accepted PJM's compliance filing and denied requests for rehearing of the March 12 Order. However, we also required PJM to make two further changes. First, we required PJM to amend its OATT to make clear that an ARR holder need not secure credit in order to self-schedule its ARRs into FTRs. We noted that because self-scheduling entities would be entering traditional bids, creditworthiness requirements would not be necessary.

4. Second, we required PJM to amend section 5.2.2(e) of its OATT to state that PJM, prior to its initial allocation of FTRs in new regions, will make a filing with the Commission under section 205 of the Federal Power Act (FPA)³ setting forth its proposed allocation of ARRs. We stated that this filing requirement was necessary because under the procedures set forth in the PJM OATT, there was some uncertainty as to the exact level of ARRs that a customer in an area joining PJM would receive and because these customers should be given the opportunity to challenge PJM's proposed allocations before they are made effective.

Compliance Filing

5. PJM states that it has fully complied with the requirements of the January 28 Order. First, PJM states that it has added to section 7.1.1(b) of Schedule 1 of the Operating Agreement a statement that FTRs obtained from conversion of a market participant's ARRs will not be included in the calculation of such market participant's credit requirement for the annual FTR auction.

6. In addition, PJM states that it has added to section 5.2.2(e) of Schedule 1 of the Operating Agreement a statement that, prior to the effective date of the initial allocation of FTRs in a new PJM zone, PJM will file with the Commission the FTRs and ARRs allocated in accordance with sections 5 and 7 of Schedule 1. PJM adds that identical changes have been added to sections 5.2.2(e) and 7.1.1(b) of the Appendix to Attachment K of the PJM OATT.

7. PJM requests that its proposed revisions be made effective February 28, 2004.

Notices and Responsive Pleadings

8. Public notices of PJM's filing and amendment were issued on March 3, 2004, and March 4, 2004, respectively, and published in the Federal Register⁴ with interventions and protests due March 22, 2004. A motion to intervene and

³ 16 U.S.C. § 824d (2000).

⁴ 69 Fed Reg. 11,611 (2004) and 69 Fed Reg. 11,612 (2004) , respectively.

comments were timely filed by MidAmerican Energy Company (MidAmerican). In addition, a motion to intervene and protest were timely filed by the Illinois Municipal Electric Agency (IMEA).

9. In its comments, MidAmerican asserts that under PJM's FTR allocation methodology, holders of monthly firm reservations will be able to acquire monthly FTRs only after the initial allocation of annual FTRs and an auction of remaining annual FTRs. MidAmerican asks the Commission to ensure that monthly firm transmission service receives an allocation of FTRs as entities join PJM.

10. IMEA takes issue with PJM's proposed revisions to section 5.2.2(e) of the PJM OATT, namely, the following proposed language: "Prior to the effective date of the initial allocation of FTRs in a new PJM zone, PJM shall file with FERC the FTRs and ARRs allocated in accordance with sections 5 and 7 of this Schedule 1." IMEA asserts that this language fails to specify that the filing at issue must be made under section 205 of the FPA, not just for informational purposes. In addition, IMEA argues that the proposed language fails to specify that the filing at issue must be made prior to the initial allocation of FTRs in new regions.

11. On April 5, 2004, PJM filed an answer to the responsive pleadings submitted by MidAmerican and PJM. On April 13, 2004, MidAmerican filed an answer to PJM's answer.

Discussion

Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁵ the timely unopposed motions to intervene submitted by MidAmerican and IMEA serve to make these entities parties to this proceeding. Rule 213(a) of the Commission's Rules of Practice and Procedure⁶ prohibits an answer to a protest and an answer to an answer, unless otherwise permitted by the decisional authority. We are not persuaded to accept the answers filed by PJM and MidAmerican and therefore will reject them.

⁵ 18 C.F.R. § 385.214 (2003).

⁶ Id. at § 385.213(a)(2).

Analysis

13. We will accept PJM's compliance filing, subject to conditions. As directed by the January 28 Order, PJM's proposed revisions properly clarify that an ARR holder need not secure credit in order to self schedule its ARRs into FTRs. In addition, PJM's proposed revisions generally comply with our directive that the PJM OATT obligate PJM to make a filing prior to its initial allocation of FTRs in new regions, setting forth its proposed allocation of ARRs. However, in order to ensure clarity, we will grant IMEA's protest and require as condition of accepting PJM's proposed FTR allocation method for new areas that it include specific language in its tariff stating that its filing showing the final allocation of FTRs will be made under section 205 of the FPA. Such a condition is necessary, because, no matter how fair and equitable the allocation method in PJM's OATT may appear to be in the abstract, PJM must make a filing justifying the actual allocation of FTRs so that the Commission can review that allocation to determine whether customers with long-term firm transmission agreements received FTRs reasonably commensurate with their prior firm service or whether additional measures may be needed. Accordingly, we will require PJM to make this change in a compliance filing to be made within 30 days of the date of this order.

14. We will deny the relief requested by MidAmerican as beyond the scope of this proceeding. In fact, MidAmerican does not challenge PJM's compliance with the January 28 Order or otherwise challenge the proposed tariff revisions included in PJM's compliance filing. Rather, MidAmerican raises a collateral issue regarding the entitlement of a monthly firm transmission service holder to acquire FTRs. This issue is outside the scope of this compliance filing, and we will not address this issue here. However, we note that the justness and reasonableness of PJM's FTR allocation methodology for new areas integrating into PJM (the issue raised by MidAmerican in its comments) is currently being reviewed by the Commission subject to section 206 of the FPA⁷ in Docket Nos. ER04-742-000 and EL04-105-000.⁸ This is the appropriate forum for MidAmerican to pursue any concerns it may have regarding PJM's FTR allocations.

The Commission orders:

(A) PJM's compliance filings are hereby accepted, subject to conditions, as discussed in the body of this order.

⁷ 16 U.S.C. § 824e (2000).

⁸ See PJM Interconnection, L.L.C., 107 FERC ¶ 61,223 (2004).

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(B) PJM is hereby required to make a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.