

164 FERC ¶ 61,004  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Neil Chatterjee,  
Robert F. Powelson, and Richard Glick.

PJM Interconnection, L.L.C.  
Ohio Valley Electric Corporation

Docket Nos. ER18-459-001  
ER18-460-001

ORDER GRANTING MOTION TO DELAY EFFECTIVE DATE AND REQUEST  
FOR LIMITED WAIVER

(Issued July 2, 2018)

1. On February 26, 2018, in Docket Nos. ER18-459-001 and ER18-460-001, Ohio Valley Electric Corporation (OVEC) and PJM Interconnection, L.L.C. (PJM) (collectively, Filing Parties) filed a motion for deferral of effective date and request for limited waiver (February Waiver Request) related to modifications to PJM's Open Access Transmission Tariff (PJM Tariff), the Amended and Restated Operating Agreement (Operating Agreement), the Reliability Assurance Agreement among Load Serving Entities in the PJM Region, and the Consolidated Transmission Owners Agreement (collectively, Revised Tariff Sheets) to implement OVEC's integration into PJM.<sup>1</sup> On April 17, 2018, in Docket Nos. ER18-459-001 and ER18-460-001, the Filing Parties filed a request to change the effective date of the Revised Tariff Sheets from the earlier requested date of June 1, 2018, to "12/31/9998" (April Request), stating that the Filing Parties will apprise the Commission of the actual effective date when it becomes certain. As discussed below, we grant the Filing Parties' February Waiver Request and April Request.

**I. Background**

2. On December 15, 2017, pursuant to section 205 of the Federal Power Act (FPA),<sup>2</sup>

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<sup>1</sup> The Commission accepted the Revised Tariff Sheets in an order issued on February 13, 2018. *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,098 (2018) (OVEC Integration Order).

<sup>2</sup> 16 U.S.C. § 824d (2012).

the Filing Parties submitted the Revised Tariff Sheets in order to implement OVEC's integration into PJM. On February 13, 2018, the Commission issued the OVEC Integration Order, which accepted that filing, effective March 1, 2018, as requested.<sup>3</sup>

3. Subsequently, the Filing Parties submitted the February Waiver Request after they became aware of certain administrative and coordination tasks related to the integration that could not be completed by March 1, 2018, the effective date approved by the Commission. The Filing Parties requested that the effective date for the integration be changed to June 1, 2018.<sup>4</sup> The Filing Parties also sought a limited waiver of the Revised Tariff Sheets accepted in the Integration Order, from March 1, 2018, through the date of an order granting their motion.<sup>5</sup>

4. In support of the February Waiver Request, the Filing Parties state that the request satisfies the four criteria that the Commission has applied in granting waiver. First, the Filing Parties state they are requesting waiver in good faith because they received all Commission approvals necessary to achieve the March 1, 2018 integration date, but need additional time to overcome last-minute administrative hurdles to achieve full integration. Second, the Filing Parties argue that the waiver is of limited scope because it would last only until the Commission makes a determination on the revision to the effective date of the Revised Tariff Sheets. Third, the Filing Parties assert that the waiver would address the concrete problem of OVEC being subject to the Revised Tariff Sheets prior to becoming a member of PJM. Finally, the Filing Parties state the waiver does not have undesirable consequences, such as harming third parties, because it would merely allow continued operation of the PJM Tariff and related agreements in their Commission-approved form.<sup>6</sup>

5. In the April Request, the Filing Parties explain that the date to integrate OVEC's operations into PJM has been further delayed and remains uncertain. Therefore, the Filing Parties state that they have agreed to change the effective date of the Revised Tariff Sheets to "12/31/9998."<sup>7</sup> The Filing Parties commit to apprise the Commission of

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<sup>3</sup> *OVEC Integration Order*, 162 FERC ¶ 61,098.

<sup>4</sup> February Waiver Request at 2.

<sup>5</sup> *Id.* at 3 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Servs. L.P.*, 154 FERC ¶ 61,082, at P 12 (2016); *New York Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015)).

<sup>6</sup> *Id.* at 4.

<sup>7</sup> April Request at 2. *See* Implementation Guide for Electronic Filing of Parts 35, (continued ...)

the actual effective date when it becomes certain, and will submit new versions of the Revised Tariff Sheets for acceptance by the Commission that will reflect that date.<sup>8</sup> The Filing Parties state that the April Request supersedes the effective date contained in the February Waiver Request.

## II. Notice of Filing and Responsive Pleadings

6. Notice of the February Waiver Request was published in the *Federal Register*, 83 Fed. Reg. 9504 (2018), with interventions and protests due on or before March 5, 2018.<sup>9</sup> None were filed.

7. Notice of the April Request was published in the *Federal Register*, 83 Fed. Reg. 17,815 (2018), with interventions and protests due on or before May 8, 2018. On May 8, 2018, American Municipal Power, Inc. (AMP) filed a protest. On May 23, 2018, OVEC filed an answer.

8. In its protest, AMP argues the Commission should reject, without prejudice, the Filing Parties' Revised Tariff Sheets. AMP asserts that recent events cast doubt on OVEC's integration into PJM. AMP argues that the bankruptcy of FirstEnergy Services Corp. (FES) and, specifically, FES's efforts to reject its 4.85 percent share of power purchase obligations under the OVEC Inter-Company Power Purchase Agreement (ICPA)<sup>10</sup> in FES's bankruptcy proceedings, constitute fundamental changes in

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154, 284, 300, and 341 Tariff Filings at 10, <http://www.ferc.gov/docs-filings/etariff/implementation-guide.pdf> (stating that if the effective date is not known at the time of the filing, the date of 12/31/9998 must be reflected in the Commission's eTariff system).

<sup>8</sup> *Id.* at 2.

<sup>9</sup> The Commission's Notice Establishing Answer Period to Motion to Defer Effective Date in Docket Nos. ER18-459-000 and ER18-460-000 denied the Filing Parties' request for a one-day answer period and established an answer date of March 5, 2018.

<sup>10</sup> The ICPA is a long-standing agreement between OVEC and its Sponsoring Companies. The ICPA, first executed in 1953, defines, among other items: the power participation ratio share of each Sponsoring Company; transmission service arrangements; available power supply and generation operation; rates and charges to the Sponsoring Companies for power and energy; and reimbursement of costs to OVEC for its defined functions, including replacement and additional facility costs, payment for employee benefits, and the costs for decommissioning, shutdown, demolition, and close of any of the OVEC facilities. The term of the ICPA extends through June 2040.

circumstances, including impacts to OVEC's financial situation, which could affect whether OVEC will proceed to integrate into PJM. AMP argues that the Revised Tariff Sheets facilitating OVEC's integration should be rejected, without prejudice, until such time as OVEC's integration is more certain and OVEC re-files its tariff sheets.<sup>11</sup>

9. In its answer, OVEC argues that AMP relies on conjecture and, therefore, the Commission should dismiss AMP's protest. OVEC states that the delay is not only the result of administrative and coordinative tasks that must be completed to accommodate the integration, but also a result of the intention to avoid OVEC's operations being concurrently governed by the PJM Tariff and the OVEC Tariff.<sup>12</sup> Finally, OVEC argues that AMP's request that the Commission reject without prejudice the Revised Tariff Sheets constitutes a transparent and impermissible collateral attack on the OVEC Integration Order, a final order, of which AMP did not seek rehearing.<sup>13</sup>

### **III. Commission Determination**

#### **A. Procedural Matters**

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.214 (2017), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the above-noted proceedings.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept the answer filed by OVEC because it has provided information that assisted us in our decision-making process.

#### **B. Substantive Matters**

12. As discussed below, we grant the February Waiver Request and the April Request to change the effective date of the Revised Tariff Sheets, subject to a compliance filing. The Commission has granted waiver of tariff provisions where: (1) the applicant seeking the waiver acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.<sup>14</sup>

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<sup>11</sup> AMP Protest at 8.

<sup>12</sup> OVEC Answer at 4.

<sup>13</sup> *Id.* at 4-5 (citations omitted).

<sup>14</sup> See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14; (continued ...)

13. We find the February Waiver Request satisfies these criteria. First, we find that the Filing Parties acted in good faith, and that despite soliciting and receiving all Commission approvals necessary to facilitate the March 1, 2018 OVEC integration date, have found themselves requiring additional time to achieve full integration. Second, we find that the February Waiver Request is of limited scope and duration, as it covers only the time period from March 1, 2018 through the date of this order. Third, we find that the waiver addresses the concrete problem of OVEC being subject to the Revised Tariff Sheets before becoming a member of PJM. Finally, we find that the waiver would not have undesirable consequences, such as harming third parties. Rather, the waiver would merely allow for the continued operation of the PJM Tariff and related agreements in their prior Commission-approved form, pre-OVEC Integration Order, until the Filing Parties are able to determine a definite OVEC integration effective date. For these reasons, we grant the February Waiver Request from the date the Revised Tariff Sheets became effective, March 1, 2018, through the issuance date of this order.

14. We also grant the Filing Parties' April Request to defer the OVEC integration effective date to 12/31/9998, subject to a compliance filing. We agree with the Filing Parties that additional time is appropriate to ensure an orderly transition of OVEC's operations into PJM. We further agree that the pre-OVEC Integration Order tariff sheets should remain in effect and that the Revised Tariff Sheets should not become effective, until such time that OVEC is integrated into PJM.

15. Although AMP raises various unsupported arguments as to whether OVEC's integration into PJM will come to fruition, AMP fails to explain how any of those arguments support not deferring the effective date of the relevant Tariff sheets.

16. Accordingly, we grant the April Request to defer the OVEC integration subject to the condition that OVEC apprise the Commission of the actual effective date, and submit new versions of the Revised Tariff Sheets, at least 30 days prior to the actual effective date.

The Commission orders:

(A) The Filing Parties' February Waiver Request is hereby granted, as discussed in the body of this order.

(B) The Filing Parties' April Request is hereby granted, subject to the Filing Parties submitting a compliance filing, as discussed in the body of this order.

By the Commission. Chairman McIntyre is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.