

155 FERC ¶ 61,303
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

PJM Interconnection, L.L.C.

Docket No. ER16-1520-000

ORDER ACCEPTING IN PART, AND REJECTING IN PART,
PROPOSED TARIFF REVISIONS

(Issued June 23, 2016)

1. On April 28, 2016, PJM Interconnection, L.L.C. (PJM) submitted proposed changes to the PJM Open Access Transmission Tariff (OATT), the Amended and Restated Operating Agreement (Operating Agreement), and the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region (RAA), pursuant to section 205 of the Federal Power Act (FPA).¹ The proposed revisions would, among other things, amend the requirements applicable to a Capacity Import Limit exception, as set forth in the RAA. As discussed below, we accept in part, and reject in part, PJM's filing, effective June 27, 2016, as requested.

I. PJM's Filing

2. PJM states that it has identified certain provisions and cross-references in and among its three governing agreements (the OATT, the RAA, and the Operating Agreement) that are ambiguous, incorrect, or in need of clarification.² PJM asserts that the majority of these revisions were largely endorsed by its stakeholders but that one of the proposed changes, a revision to the definition of PJM's Capacity Import Limit, at RAA section 1.7A(ii), was opposed by certain participants.³

¹ 16 U.S.C. § 824d (2012).

² Transmittal at 1.

³ *Id.* at 3. The Members Committee endorsed this proposed revision by acclamation with 16 objections and no abstentions.

3. The existing Capacity Import Limit, determined by PJM on an annual basis, restricts the amount of capacity from external generation resources which may be committed in PJM's capacity auctions.⁴ The Capacity Import Limit is intended to address the risk of non-delivery to PJM in the relevant delivery year due to a curtailment of firm transmission service or a related congestion management action taken by an adjoining third party system.⁵

4. Currently, section 1.7A of the RAA provides for an exception to the Capacity Import Limit, if the relevant resource: (i) is equivalent to an internal generation resource that is not subject to tagging by the North American Electric Reliability Corporation (NERC) as an interchange transaction, or where the seller represents that, absent circumstances beyond its control, it will satisfy this requirement prior to the relevant delivery year; (ii) has long-term firm transmission service extending from the resource's location into PJM; and (iii) complies with the same must-offer requirement that applies to internal generation, except as otherwise provided by PJM's governing agreements.⁶

5. The instant filing modifies the second of these three requirements, at section 1.7A(ii), where PJM proposes to provide, under a new subsection (a) allowance, the term for which firm transmission service will be required. PJM further proposes to add, as a subsection (b) allowance, a second, alternative means of satisfying the long-term firm transmission service requirement. Specifically, PJM proposes to clarify that a resource must have long-term firm transmission service confirmed on the complete transmission path from such resource into PJM:

[(a)] for the relevant Delivery Year and each subsequent Delivery Year up through and including the Delivery Year for the next Base Residual Auction if the initial Capacity Import Limit exception request is for a Delivery Year for which the Base Residual Auction has already been conducted; or (b)[...] with rollover rights for the relevant Delivery Year if the Capacity Import Limit exception request is for a Base Residual Auction.⁷

⁴ See *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,060 (2014) (Capacity Import Limit Order).

⁵ *Id.* P 25.

⁶ See PJM OATT at Attachment DD, section 6.6.

⁷ See proposed RAA at section 1.7A(ii).

6. PJM characterizes these proposed changes as clarifications of the existing provisions, stating that the RAA's current reference to a "long-term firm transmission service," at section 1.7A(ii), contemplates (and was intended to require) a term of service longer than the minimum one-year term of service as reflected in the PJM OATT's defined term, "Long-Term Firm Point-to-Point Transmission Service."⁸ PJM asserts, however, that under section 1.7A(iii), a resource seeking an exception is required to comply with PJM's must-offer requirement. PJM explains that this obligation requires an external resource to have transmission service for both the relevant delivery year and future delivery years through rollover rights. PJM further asserts that the intent of section 1.7A is to treat external resources as if they were in the PJM footprint.

7. Finally, and as noted above, PJM proposes non-substantive, clerical, and/or ministerial revisions, as summarized at Attachment A of its filing.

II. Notice of Filing and Responsive Pleadings

8. Notice of PJM's filing was published in the *Federal Register*, 81 Fed. Reg. 28,863 (2016), with interventions and protests due on or before May 19, 2016. Timely-filed motions to intervene were submitted by North Carolina Electric Membership Corporation (NCEMC), NRG Power Marketing LLC, GenOn Energy Management, LLC, Monitoring Analytics, LLC, acting as PJM's independent market monitor, and American Municipal Power, Inc. A protest was filed by NCEMC. On June 3, 2016, PJM filed an answer to NCEMC's protest. On June 17, 2016, NCEMC filed an answer to PJM's answer.

A. Protest

9. NCEMC argues that PJM's proposed revision to the Capacity Import Limit exception will impose undue and unnecessary burdens on load serving entities seeking to use external resources to serve their loads. NCEMC argues that load serving entities may be required during certain unexpected conditions to shift their load portfolios due to, for example, a unit retirement or an extended outage. NCEMC asserts that, while a load serving entity in this circumstance could resell its transmission service in the secondary market, such a sale often generates only pennies on the dollar. NCEMC adds that to obtain rollover rights for long-term firm transmission service under PJM's OATT, a transmission customer must enter into a transmission service agreement of five years or longer.⁹ NCEMC asserts, however, that such an obligation is inconsistent with PJM's capacity auction construct, which establishes only a single-year revenue stream.

⁸ See PJM OATT at section 1.18.

⁹ NCEMC Protest at 7 (citing PJM OATT at section 2.2).

10. NCEMC also argues that the proposed revision is not required to ensure resource adequacy or reliability, given PJM's prior representations in Docket No. ER14-503-000, *et al.* (i.e., in the filing addressed by the Commission in the Capacity Import Limit Order).¹⁰ NCEMC further notes that a five-year transmission service agreement requirement for external resources would not measurably improve resource adequacy or reliability in the PJM region because external resources are a *de minimis* part of the PJM region's overall capacity resource mix.¹¹

11. NCEMC also challenges PJM's claim that its proposed revision is consistent with the underlying intent of section 1.7A, as accepted by the Commission in the Capacity Import Limit Order. NCEMC argues that had PJM intended that a seller seeking a Capacity Import Limit exception have firm transmission rollover rights, it should have addressed that matter expressly, and would not have required the seller to confirm, in the officer certification form that accompanies its requested exception, that it has a firm transmission service for "the Delivery Year for which the exception applies."¹² NCEMC adds that the Capacity Import Limit Order rejected a protester's argument seeking to extend to five years the term of the transmission service agreement needed to support an exception,¹³ which, according to NCEMC, confirms the Commission's own interpretation of PJM's intent.

12. Finally, NCEMC asserts that PJM's proposal is unduly discriminatory between external resources and internal resources and erects a barrier to entry. NCEMC explains

¹⁰ *Id.* at 12. NCEMC asserts that, in that proceeding, PJM represented that an external resource meeting the requirements of section 1.7A will have: (i) eliminated the risks attributable to firm transmission curtailment; and (ii) demonstrated a commitment to operate as a PJM capacity resource.

¹¹ NCEMC notes that for the 2016-17 delivery year it cleared only 215 MW of installed capacity that was supported by external resources. NCEMC adds that, based on PJM data for the 2018-19 delivery year, all external capacity was represented by resources that had received an exception to the Capacity Import Limit. NCEMC asserts that, based on PJM's Planning Parameters report for the 2019-20 delivery year, no imports will be cleared in the auction other than those for which a Capacity Import Limit exception has been granted. *Id.* at 20.

¹² *Id.* at 14.

¹³ *Id.* at 12 (citing Capacity Import Limit Order, 147 FERC ¶ 61,060 at P 40).

that internal resources have no obligation comparable to the five-year term requirement that PJM seeks to impose on external resources. NCEMC further notes that an internal resource has the ability to obtain an exemption to the must-offer obligation, as well as an option to delist in any given year on an annual basis.¹⁴ NCEMC argues that, as such, PJM's proposed definition imposes a higher requirement on an external resource by requiring external resources to have five-year firm transmission service confirmed to be eligible for the Capacity Import Limit exception.

B. Answers

13. PJM argues that its Capacity Import Limit process was established to ensure that energy from external resources could be reliably imported into the PJM region on a long-term basis, with requirements that treat internal and external resources on a comparable basis. PJM asserts that its proposed clarification is comparable to its provision requiring that an internal generation capacity resource be assessed with respect to its deliverability throughout the PJM region and pay for any network upgrades that might be required to ensure deliverability.¹⁵ PJM adds that a must-offer requirement, which applies to both internal resources and the Capacity Import Limit exception, is intended to serve both as a mitigation measure against economic withholding and as a reasonable system planning indicator.¹⁶ PJM argues that these are ongoing requirements that could not have been supported by merely one year of transmission service.¹⁷

14. PJM also responds to NCEMC's argument that, under PJM's proposal, NCEMC could be required to incur a stranded transmission service investment, in the event that its external resource is delisted. PJM argues that an internal resource seeking to delist for the purpose of reaching an off-system market would similarly have a stranded investment relative to any internal network upgrade costs it had been required to pay.¹⁸

¹⁴ *Id.* at 15-17 (citing PJM's Deficiency Letter Response, in Docket No. ER14-503-000 at 6).

¹⁵ PJM Answer at 7.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 6-7.

15. In response to NCEMC's argument that it could have made its present intentions clear in its prior filing, in Docket No. ER14-503-000, *et al.*, PJM asserts that it was not aware of any difference of views on this issue until it had the opportunity to work with participants in advance of PJM's subsequent capacity auctions. PJM also argues that while, currently, section 1.7A does not expressly provide for the need for long-term firm transmission service with rollover rights, the intent of this provision is clear. In addition, PJM asserts that while its officer certification does not expressly refer to rollover rights and, instead, refers to a transmission service that at a minimum covers the delivery year for which the Capacity Import Limit applies, the terms of this form are not dispositive relative to section 1.7A.¹⁹

16. NCEMC, in its answer, reiterates its protest argument that PJM's proposed modifications would fundamentally change the Capacity Import Limit exception criteria and are not justified by a demonstration of a reliability need.²⁰

III. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers submitted by PJM and NCEMC, because they have provided information that has assisted us in our decision-making process.

IV. Discussion

18. For the reasons discussed below, we accept in part, and reject in part, PJM's filing, to become effective June 27, 2016, as requested.²¹ We reject PJM's proposal to modify its Capacity Import Limit exception criteria, at RAA section 1.7A, upon finding that PJM has failed to demonstrate that this revision is just and reasonable. With respect to PJM's

¹⁹ *Id.* at 8.

²⁰ NCEMC Answer at 3-4.

²¹ The Commission can revise a proposal under FPA section 205 as long as the filing utility accepts the change. *See City of Winnfield*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

proposed revisions to its tariff that are not contested and not specifically discussed herein, we find that they are just and reasonable and accept them for filing.

19. PJM summarizes its proposed revision to section 1.7A in a spreadsheet compilation at Attachment A of its filing. In that spreadsheet summary, PJM characterizes its proposed revision as a clarification consistent with: (i) its existing authorizations, as issued by the Commission in the Capacity Import Limit Order; and (ii) the underlying intent of PJM's filing in that proceeding. PJM, however, cites to no finding in the Capacity Import Limit Order supporting its claim, nor does it reference any pleading submitted by PJM, or any other party in that proceeding, corroborating PJM's assertion that the existing provisions of section 1.7A contemplate the need for a firm transmission service arrangement that includes rollover rights. In addition, PJM acknowledges, in its answer, that the officer certification form that a seller is required to submit in support of its request for an exception references the need for a firm transmission service only for the delivery year for which the Capacity Import Limit exception applies. As such, we disagree with PJM's characterization that its proposed revisions to the Capacity Import Limit exception are simply clarifying in nature and do not alter the rights and obligations of a seller seeking an exception to the Capacity Import Limit.

20. PJM argues, in the alternative, that even if the Commission finds PJM's proposal is not clarifying in nature, its proposed revisions to section 1.7A can nonetheless be accepted as just and reasonable. However, while PJM points to certain requirements applicable to an internal resource as comparable to its instant proposal, PJM has not provided any evidence to demonstrate that the proposed requirement for a firm transmission service arrangement that includes rollover rights is necessary to support a Capacity Import Limit exception for an external resource. Accordingly, we find that PJM has failed to demonstrate that this provision is just and reasonable.

The Commission orders:

(A) PJM's proposed tariff revisions to RAA section 1.7A are hereby rejected, as discussed in the body of this order.

Docket No. ER16-1520-000

- 8 -

(B) PJM's remaining tariff revisions are hereby accepted, to become effective June 27, 2016, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)

ER16-1520-000.DOCX.....1-8