175 FERC ¶ 61,078
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, James P. Danly,
Allison Clements, and Mark C. Christie.

PJM Interconnection, L.L.C. Docket No. ER21-1211-000

ORDER ACCEPTING TARIFF REVISIONS SUBJECT TO COMPLIANCE FILING

(Issued April 28, 2021)

1. On February 25, 2021, PJM Interconnection, L.L.C. (PJM), together with PJM Settlement, Inc. (PJM Settlement), filed proposed revisions to the PJM Open Access Transmission Tariff (Tariff) to incorporate provisions allowing the use of surety bonds as a form of collateral.[1] Specifically, PJM proposes to incorporate surety bonds in the definition of collateral as an acceptable form of collateral and in its Credit Risk Management Policy in Attachment Q of its Tariff.[2] PJM's proposed revisions to Attachment Q (1) incorporate surety bonds as a form of credit support; (2) include surety bonds as a form of collateral in the minimum participation requirements provisions; (3) incorporate references to surety bonds in the virtual transaction credit requirement provisions; and (4) include a small number of ministerial tariff revisions.[3] As discussed below, we accept PJM's proposed Tariff revisions effective May 1, 2021, as requested, subject to PJM submitting a compliance filing to incorporate revisions it suggested in its filing.

I. **Filing**

2. PJM states that currently it accepts only cash or letters of credit as collateral and that, with the proper protections and limitations incorporated, surety bonds can be comparable to letters of credit and an additional option for collateral. PJM explains that surety bonds may be a preferred option for some entities because they (1) do not diminish a principal's borrowing capacity; (2) are typically classified as off balance

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[1] PJM Transmittal Letter at 1.

[2] *Id.* at 2, 32-33.

[3] *Id.* at 2, 33-41; PJM, Intra-PJM Tariffs, OATT, Definitions C-D (28.0.0), attach. Q (44.0.0).

sheet or contingent liabilities; and (3) may be available to smaller entities that would not be able to obtain a letter of credit meeting PJM's requirements. PJM states that for smaller market participants, an advantage of using surety bonds as collateral is that they can be less expensive than letters of credit if the market participant has a low credit and risk profile, eliminating potential barriers to entry.[4]

3. PJM explains that many features of a traditional surety bond may be contractually modified through waivers and consents, including by agreeing to an absolute and unconditional payment obligation by the surety on the obligee's demand.[5] PJM further states that it incorporated provisions into its acceptable form of surety bond to make its pro forma surety bond comparable with, or nearly equivalent to, letters of credit for purposes of providing collateral, which are designed to approximate the financial assurance of payment that a letter of credit would provide PJM and its stakeholders.[6] PJM states that the provisions of its draft acceptable form of surety bond indicate that the surety (1) agrees it will not assert defenses to a PJM demand for payment on the bond; (2) agrees that its obligation to pay on the bond on demand by PJM is unconditional and absolute under all circumstances; (3) waives its right to investigate or verify any matter, including factual matters, related to a demand for payment under the bond that would delay payment or delivery of funds; and (4) requires the surety to pay out on the surety bond within one business day of the demand for payment.[7] PJM states that its acceptable form of surety bond includes "pay now/fight later" provisions that require a surety to pay on demand and not assert defenses to such payments.[8] Additionally, PJM states that it is

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[4] PJM Transmittal Letter at 2-3, 5-6.

[5] *Id.* at 6. PJM explains that there are three parties to a surety bond: (1) the principal (the entity that has the obligation to pay or perform, purchases the bond to guarantee future performance or payment, and for whom the guarantee is being made); (2) the obligee (the beneficiary or the entity that is owed the obligation, which requires that the surety bond be provided by the principal to assure the principal's performance of an underlying contract or other future performance, and the entity to whom the guarantee is being made); and (3) the surety (the insurance company or entity that issues the surety bond to the obligee on behalf of the principal and that assures payment or performance of the principal's obligation to the obligee for an underlying contract). *Id.* at 4.

[6] *Id.* at 6, 12. PJM states that its acceptable form of surety bond will be posted on its website and is attached as Exhibit A to PJM's Filing. *Id.* at 12.

[7] *Id.* at 12-13.

[8] *Id.* at 7, 9, 32-33 (citing *N.Y. Indep. Sys. Operator, Inc.*, 104 FERC ¶ 61,311, at P 58 (2003)). PJM states that it patterned its acceptable form of surety bond on the form used by Electric Reliability of Texas, Inc. (ERCOT). *Id.* at 10.

placing a $10 million cap per surety issuer for each member and a $50 million aggregate cap per surety issuer to further limit risk to PJM and PJM members.[9]

4. PJM notes that its proposal does not allow for the use of surety bonds for financial transmission right (FTR) market activity because (1) none of the regional transmission organizations and independent system operators have any significant experience with drawing down on surety bonds for financial assurance of market participants; (2) historically the size of the FTR defaults experienced in PJM have been significant; and (3) historically the vast majority of the significant defaults experienced by PJM members have been in the FTR market.[10]

5. PJM states that the substantive provisions of PJM's acceptable form of surety bond are non-negotiable, including: (1) waiver all of defenses; (2) agreement to the application of Pennsylvania law; (3) agreement to unconditional obligations under the surety bond; and (4) all other revisions that would affect the obligations, rights or responsibilities of PJM, the principal and/or the surety such that they would render the surety bond less protective of the interests of PJM.[11] PJM also states that it must approve all requests to make material revisions to the surety bond and will only agree to limited revisions. PJM explains that market participants always have the ability to provide PJM with cash or a letter of credit rather than a surety bond as a form of collateral if they are unable to find a surety that will agree to provide the form of surety bond that is acceptable to PJM.[12]

6. PJM states that it prefers to take the same approach as the New York Independent System Operator, Inc. (NYISO) by not incorporating a pro forma surety bond into the Tariff because doing so would require Commission action even on non-material revisions to the acceptable form of surety bond. PJM asserts that given the need for PJM and market participants to resolve credit and collateral issues quickly, building in a process for seeking Commission approval of any non-material revisions to the acceptable form of surety bond would carry with it more burden than benefit to all parties, including the Commission. However, PJM contends that, should the Commission wish to see more specificity incorporated into the Tariff regarding the required provisions of an acceptable

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[9] *Id.* at 32-33. PJM explains that these caps are based on PJM's conservative approach to introducing the use of surety bonds into its markets at least until PJM gains more experience with their use as collateral. *Id.* at 33-34.

[10] *Id.* at 30 & n.20.

[11] *Id.* at 37.

[12] *Id.*

surety bond, in a detailed descriptive form, PJM would be willing, on compliance, to embody those provisions in a revised Tariff, Attachment Q, section V.D.[13]

7. PJM requests that the Commission issue an order accepting the proposed Tariff revisions by April 28, 2021, with an effective date of May 1, 2021.[14]

II. Notice of Filing and Responsive Pleadings

8. Notice of PJM's filing was published in the *Federal Register*, 86 Fed. Reg. 12,931 (Mar. 5, 2021), with interventions and protests due on or before March 18, 2021. Delaware Division of the Public Advocate; Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM; LS Power Development, LLC; Exelon Corporation (Exelon); NRG Power Marketing LLC and Midwest Generation, LLC; Old Dominion Electric Cooperative; Dominion Energy Services, Inc. (Dominion); Vistra Corp. (Vistra) and Dynegy Marketing and Trade, LLC; and Boston Energy Trading and Marketing LLC each submitted a timely motion to intervene. Dominion, Exelon, NextEra Energy Resources, LLC (NextEra),[15] and Vistra (collectively, Joint Parties) jointly submitted comments supporting PJM's filing.

9. Joint Parties state that they support PJM's proposal and that surety bonds can provide protections similar to letters of credit.[16] Joint Parties state that accepting surety bonds as collateral will benefit market participants by bringing increased collateral optionality, cost efficiencies, and additional borrowing capacity. Joint Parties also explain that because surety bonds do not tie up a market participant's letter of credit facility and are generally considered to be contingent liabilities, use of surety bonds frees up liquidity, enabling additional borrowing and investment. Joint Parties also contend that, much like diversifying an individual's financial portfolio, diversifying PJM's collateral portfolio reduces the effect that potential upheavals in the banking industry could have on PJM.[17]

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[13] *Id.* at 36-37.

[14] *Id.* at 43.

[15] We note that NextEra has not submitted a motion to intervene in this proceeding.

[16] Joint Parties Comments at 3-4.

[17] *Id.* at 5-6.

10. Joint Parties state that PJM's proposal represents the most conservative elements of surety bond policies taken from ERCOT and NYISO, and it is even more restrictive in its application. Joint Parties further state that, of the two competing surety bond proposals that enjoyed very similar support among the PJM members at the Market Implementation Committee, PJM adopted the more conservative approach. Joint Parties also encourage PJM, after gaining experience with use of surety bonds, to assess increasing the proposed surety bond caps and expanding the applicability of surety bonds to the FTR market, providing further improvement to PJM's credit policies.[18]

III. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2020), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

12. We accept PJM's filing, effective May 1, 2021, as requested, subject to PJM submitting a compliance filing. We find that PJM's proposal to incorporate provisions allowing the use of surety bonds as a form of collateral is just and reasonable because the protections that PJM has incorporated into its acceptable form of surety bond make it a sufficiently reliable form of security to offer PJM adequate protection against customer nonpayment and may reduce barriers to entry for smaller market participants. As the Commission has previously explained, "surety bonds with a 'pay now/fight later' provision is [sic] a sufficiently reliable form of security" and such a provision "would seem to […] not increase costs or create unnecessary barriers to entry for smaller market participants."[19] Further, we agree with Joint Parties that accepting surety bonds as collateral will benefit market participants by bringing increased collateral optionality, cost efficiencies, and additional borrowing capacity.

13. PJM states in its transmittal letter that it would be willing, on compliance, to embody in its Tariff, Attachment Q, section V.D the required provisions of an acceptable surety bond, in a detailed descriptive form.[20] As PJM made clear that such provisions are

[18] *Id.* at 3, 6-7, 8.

[19] *N.Y. Indep. Sys. Operator, Inc.*, 104 FERC ¶ 61,311 at P 58.

[20] PJM Transmittal Letter at 37.

an integral part of PJM's proposal, we agree that they should be included in the Tariff.[21] This detailed description will provide market participants and others with specificity regarding the required provisions of PJM's acceptable form of surety bond. Therefore, we direct PJM to file a compliance filing, within 30 days of the date of this order, adding language describing in detail the required provisions of a PJM-acceptable surety bond to Attachment Q of the Tariff.

The Commission orders:

(A) PJM's filing is hereby accepted, to be effective May 1, 2021, as requested, subject to a compliance filing, as discussed in the body of this order.

(B) PJM is hereby directed to submit 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)

Kimberly D. Bose,
Secretary.

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[21] The degree of specificity required in a filed rate is a matter within the Commission's discretion in balancing considerations of providing a utility sufficient flexibility in conducting its operations and information to persons concerned with those operations and determining "those practices that affect rates and service *significantly*, that are realistically *susceptible* of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous." *See City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985).