

183 FERC ¶ 61,010
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

PJM Interconnection, L.L.C.

Docket Nos. ER23-1058-000
ER23-1058-001

ORDER ACCEPTING PROPOSED TARIFF AND OPERATING
AGREEMENT REVISIONS

(Issued April 7, 2023)

1. On February 6, 2023, as amended March 23, 2023, pursuant to section 205 of the Federal Power Act (FPA),¹ PJM Interconnection, L.L.C. (PJM) filed revisions to its Open Access Transmission Tariff (Tariff) and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) to revise certain provisions relating to remedies in response to a default of a Market Participant.² In this order, we accept the proposed Tariff and Operating Agreement revisions, effective April 8, 2023, as discussed below.

I. PJM's Proposal

2. First, PJM proposes to reconcile the Operating Agreement and Tariff by modifying section 15.1.5(i) of the Operating Agreement to be consistent with Attachment Q, section IX of the Tariff to provide flexibility and clarity regarding the remedies available to PJM in the event of default³ by a Market Participant. PJM explains that Attachment Q,

¹ 16 U.S.C. § 824d.

² “Market Participant” shall mean a Market Buyer, a Market Seller, an Economic Load Response Participant, or all three. *See* PJM Interconnection, L.L.C., Intra-PJM Tariffs, § I.1, OATT Definitions – L – M – N (35.0.0).

³ The Tariff, Attachment Q defines “Event of Default” to mean a Financial Default, Credit Breach, or Credit Support Default. *See* PJM Interconnection, L.L.C., Intra-PJM Tariffs, § I.1, OATT Definitions – E – F (35.0.0).

section IX of PJM's Tariff uses permissive language to describe the actions that PJM may take when a Market Participant is in Credit Breach, Financial Default, or Credit Support Default. In contrast, PJM states that, under the Operating Agreement, section 15.1.5, an event of default is automatically declared under comparable circumstances and participation in PJM markets is automatically suspended. PJM states that its proposed change makes the Operating Agreement consistent with the Tariff and should reduce the need for PJM or other parties to seek waiver from the Commission.⁴

3. Second, PJM proposes to revise both the Operating Agreement and Tariff to include four circumstances where PJM may permit a Market Participant's continued participation in PJM's markets in the event of default when: (1) the Market Participant's continued participation supports grid reliability; (2) the Market Participant is a net market seller; (3) the Market Participant has the ability to post sufficient collateral; and (4) continued participation, particularly in the case of certain load serving entities, enables them to continue receiving service prior to PJM receiving regulatory approval to terminate where required.⁵ PJM states that the explicit identification of these four circumstances will provide a legal avenue through which physically available resources can continue to operate, thereby promoting grid reliability and enhancing resilience during grid emergencies and extreme weather events.

4. PJM states that these four circumstances are just and reasonable under FPA section 205 because they promote safe and reliable operation of the transmission system and protect PJM members by allowing continued operation for Market Participants in default under certain limited circumstances.⁶ More specifically, with respect to the first circumstance, support of grid reliability, PJM explains that this circumstance would enable PJM to maintain resources needed for resource adequacy, locational energy needs,

⁴ Transmittal at 6 (citing *PJM Interconnection, L.L.C.*, 174 FERC ¶ 61,083 (2021) (Order Granting Waiver Subject to Condition of Panda Stonewall); *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,069 (2011) (Order Granting Request for Limited Tariff Waiver of York Generation)).

⁵ *Id.* at 7.

⁶ PJM also states the Commission has previously granted waiver for to allow continued participation in PJM markets after a generator default. *Id.* at 10-11. See *PJM Interconnection, L.L.C.*, 174 FERC ¶ 61,083 (the Commission granted PJM waiver to allow Panda Stonewall to sell capacity, energy, and ancillary services in PJM's markets to produce revenue that can satisfy its collateral call), and *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,069 (the Commission granted PJM waiver to allow continued market participation by York Generation to remedy a default that arose due to a billing error).

ancillary services, black start, or other grid operational reliability concerns. With respect to the second circumstance, net market seller, PJM states that this circumstance would allow an impacted Market Participant to pay their obligations while they generate revenue as a net market seller and promote reliability within the PJM region. PJM states that the third circumstance, ability to post sufficient collateral, would allow a Market Participant that can pay PJM obligations to do so when that participant has filed for bankruptcy or made an inadvertent error when posting collateral. Lastly, PJM states that the fourth circumstance, regarding certain load serving entities, would allow Market Participants that default and are generation and transmission cooperatives, vertically integrated utilities, and municipalities to provide service that can only be terminated with regulatory approval.

5. PJM asserts that any risk posed by these four circumstances can be adequately managed within PJM's existing risk management policies under the Tariff. PJM states that it proposes "identical revisions" to the Operating Agreement and Tariff.⁷ PJM requests that the Commission issue its order accepting the enclosed revisions by no later than April 7, 2023, with an effective date of April 8, 2023.

II. Notices and Responsive Pleadings

6. Notice of the February 6, 2023 filing was published in the *Federal Register*, 88 Fed. Reg. 9272 (Feb. 13, 2023), with interventions or protests due on or before February 27, 2023. Timely motions to intervene were filed by: American Electric Power Service Corporation; Boston Energy Trading and Marketing LLC; Constellation Energy Generation, LLC (Constellation); Delaware Division of the Public Advocate; Dominion Energy Services, Inc.; Duquesne Light Company; FirstEnergy Service Company, et. al.; Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (IMM); New Jersey Division of Rate Counsel; NRG Power Marketing LLC, et. al.; Old Dominion Electric Cooperative; Public Service Electric and Gas; and Rockland Electric Company.

7. Comments were filed by Constellation and the IMM.

8. PJM and the IMM filed answers.

9. Constellation submitted comments in support of PJM's filing. Constellation states that it understands that PJM has committed to Constellation that it will provide information on continued participation by Market Participants in default to PJM's Risk Management Committee and that PJM will codify these transparency practices in the

⁷ *Id.* at 8.

PJM Credit Overview Supplement.⁸ Specifically, Constellation states it understands PJM will notify other members of the default and report details of the market participants continuation plan to the Risk Management Committee.⁹

10. In its comments, the IMM initially argued that PJM's filing should be rejected as insufficient and introducing new conflict, arguing for proposed additional reporting requirements, changes to the criteria under which PJM may permit a Market Participant's continued participation in PJM's markets in the event of default, and further harmonization between other default provisions in the Tariff and Operating Agreement. Specifically, the IMM first asserts that the proposed revisions would include one provision that affords unlimited discretion to PJM to allow defaulting participants to continue to participate in its markets while at the same time including another provision that affords limited discretion based on certain criteria. The IMM states that, because the Tariff does not include the same provision for unlimited discretion included in the Operating Agreement, conflict and confusion would continue to exist between the provisions. Second, the IMM states that it supports the first and fourth criterion PJM proposes. However, the IMM proposes an additional criterion that would allow continued market participation in all circumstances under which a defaulting, physical Market Participant can resolve the short-term issues that led to the default. Third, the IMM proposes that PJM should be required to identify and explain to members why allowing a particular defaulting participant to continue to participate is appropriate. The IMM asserts that such a reporting requirement would enable members who would assume the financial risks associated with continued market participation to raise objections. Fourth, the IMM states that PJM should also further clarify several other Operating Agreement and Tariff provisions that apply to defaults.

11. In its answer, PJM asserts that it will work collaboratively with the IMM in the stakeholder process to address the IMM's concerns rather than through the instant proceeding. PJM commits to a comprehensive review of default and remedy provisions in PJM's governing documents. PJM also states that it will provide information to its

⁸ See PJM Credit Overview & Supplement to the PJM Credit Risk Management Policy (Aug. 9, 2022). The PJM Credit Overview Supplement explains that "this document, when posted on OASIS, also serves as a supplement to Attachment Q of the Tariff, also known as the Credit Risk Management Policy. As a supplement, it describes practices and procedures, such as the credit scoring algorithm, which are not part of the filed tariff. Such descriptions are intended to document PJM's implementation of the PJM Agreements."

⁹ Constellation explains this would include the market participant's name, the nature and expected duration of the default, and when the impacted period ends. Constellation Comments at 1-3.

members through stakeholder committees when it utilizes the proposed Tariff and Operating Agreement revisions. In response to Constellation, PJM confirmed its commitment to provide information on continued participation by Market Participants in default to PJM's Risk Management Committee.¹⁰

12. On March 14, 2023, the IMM filed an answer to PJM's answer. In its answer and in response to PJM's commitments, the IMM withdraws its request that the Commission reject PJM's filing in this proceeding. However, the IMM clarifies that it does not "withdraw its comments, or otherwise modify its arguments in any way, and it reserves its ability to raise these arguments in future proceedings."

13. On March 21, 2023, Commission staff issued a deficiency letter (Deficiency Letter) requesting additional information regarding PJM's filing. PJM submitted its response on March 23, 2023 (Deficiency Letter Response). Notice of the Deficiency Letter Response was published in the *Federal Register*, 88 Fed. Reg. 19,129 (Mar. 30, 2023), with interventions and protests due on or before March 28, 2023. No interventions or protests were filed.

14. The Deficiency Letter asked PJM (1) why the phrase "in a limited manner" was included in PJM's proposed Operating Agreement revisions but was not included in its proposed Tariff revisions, and (2) whether PJM's proposed four circumstances were intended to be an exhaustive list of the circumstances under which PJM may permit a defaulting Market Participant to continue to participate in PJM markets. In its Deficiency Letter Response, PJM clarifies that it inadvertently included the phrase "in a limited manner" in the Operating Agreement revisions describing the four circumstances under which PJM may permit a Market Participant's continued participation in PJM's markets in the event of default.¹¹

15. On March 23, 2023, at the same time it submitted its Deficiency Letter Response, PJM amended the proposed Operating Agreement revisions with the phrase "in a limited manner" omitted. PJM also clarifies that these four circumstances are intended to be an exhaustive list of the circumstances under which PJM may permit a Market Participant's continued participation in PJM's markets in the event of default under both the Operating Agreement and Tariff.¹² PJM states that the exercise of PJM's discretion in any of these four circumstances would be for a limited period of time as circumstances warrant, or until the Market Participant has satisfied its obligations to PJM, and these revisions would not be limited to a single event of default. Last, in its Deficiency Letter Response,

¹⁰ PJM Answer at 3.

¹¹ Deficiency Letter Response, attach. A at 1.

¹² *Id.* at 2

PJM requests that the Commission act by date April 7, 2023 in order to provide flexibility for its March monthly bill issuance by April 7, 2023, which will include Winter Storm Elliott Non-Performance Charges, so as to preserve the availability of resources needed to maintain reliability.

III. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2022), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2022), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept the answers filed by PJM and the IMM because they provide information that assisted us in our decision-making process.

B. Substantive Matters

18. As discussed below, we find that PJM's proposed revisions, as amended, to PJM's Tariff and Operating Agreement are just and reasonable and not unduly discriminatory or preferential. Accordingly, we accept the proposed revisions to become effective on April 8, 2023, as requested.

19. PJM's proposed revisions revise the Operating Agreement, so that the Operating Agreement is consistent with the Tariff, and revise the Tariff and Operating Agreement to specify four circumstances where PJM may permit a Market Participant's continued participation in PJM's markets in the event of default. These four circumstances cover situations where continued market participation could minimize relative risk to the PJM markets and provide PJM an opportunity to recover funds on behalf of the PJM membership.¹³ Additionally, these four circumstances are narrowly tailored and promote transmission system reliability, potentially during transmission system emergencies and extreme weather events. The Tariff continues to mitigate risk associated with defaults through other Tariff provisions, and PJM retains the ability to suspend Market Participants.

¹³ PJM states that the exercise of PJM's discretion in any of these four circumstances would be for a limited period of time as circumstances warrant, or until the Market Participant has satisfied its obligations to PJM, and these revisions would not be limited to a single event of default.

20. The IMM states¹⁴ that PJM should include an additional criterion that would allow continued market participation in all circumstances in which a physical Market Participant has the ability to resolve the short-term issues that led to a default. As PJM explains, three of the four proposed circumstances where PJM may permit a Market Participant's continued participation in PJM's markets in the event of default (i.e., system reliability, net Market sellers, and load serving entities) address the circumstances of physical participants. We find PJM's proposal to be just and reasonable. Having found PJM's proposal to be just and reasonable, the Commission is not required to determine whether the IMM's proposal is more or less reasonable.¹⁵

21. Constellation and the IMM request transparency measures regarding PJM's use of these proposed revisions. PJM commits in its answer that it will provide information to

¹⁴ We recognize that PJM and the IMM have committed to discussing the issues raised by the IMM's comments in this matter. PJM Answer at 3-4 ("PJM and the IMM have agreed to work collaboratively, and discuss options with stakeholders, to address the issues (described below) raised in the IMM Comments. The IMM Comments raise several issues including: (1) the presence of default provisions and remedies in both the Operating Agreement and Tariff and how the provisions may potentially lead to conflict and confusion; (2) an additional circumstance for potential continued participation following default for physical participants; (3) identification of the conditions under which PJM would want the ability to allow a defaulting participant to continue to participate in its markets; and (4) a comprehensive review of default provisions among the various PJM Governing Documents."), IMM Answer at 1 ("The Market Monitor looks forward to working with PJM and with stakeholders, to develop revisions to the rules to better coordinate, clarify, make consistent, and otherwise improve the rules for defaults."). While the IMM withdrew its request that the Commission reject PJM's filing in this docket, it did not withdraw its comments. IMM Answer at 1. As a result, the Commission addresses those comments in this order. By addressing the IMM's comments, the Commission does not seek to detract from the commitment by PJM and IMM to have continued discussion, along with the stakeholders, on these topics and encourages such discussion.

¹⁵ We need only determine, under FPA section 205, whether the proposed filing is just and reasonable; the Commission need not consider the justness and reasonableness of alternative proposals. *See, e.g., Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (when determining whether a rate was just and reasonable, the Commission properly did not consider "whether a proposed rate schedule is more or less reasonable than alternative rate designs"). As we note in footnote 14, PJM and the IMM intend to, along with stakeholders, continue discussion of the IMM's comments and suggestions, as well as generally, on this issue. Our finding here is not meant to limit or otherwise impede those discussions on this topic or others.

PJM members when it allows a Market Participant to continue participating in PJM markets pursuant to the four circumstances included in its Tariff, specifically stating it will provide information in its Risk Management Committee stakeholder meetings and codify these transparency provisions in the PJM Credit Overview Supplement.¹⁶ We agree that PJM's commitment to share information with PJM members will provide transparency when PJM permits continued market participation, consistent with the Tariff.

22. Additionally, we find that PJM's amended Operating Agreement revisions provide clarity and resolve any wording inconsistencies, which the IMM states could create conflict and confusion. Further, PJM confirms in its Deficiency Letter Response that the list of circumstances under which PJM may allow a defaulting Market Participant to participate in its markets is exhaustive, which applies to both the Operating Agreement and Tariff provisions.¹⁷

23. Finally, the IMM asserts that PJM should undertake a review of other default provisions to consider clarifying those provisions as well. The IMM's request is beyond the scope of this proceeding. Further, we recognize that PJM and the IMM commit to address these concerns in the stakeholder process.

The Commission orders:

PJM's proposed revisions are hereby accepted, to become effective April 8, 2023, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

¹⁶ PJM Answer at 3-4.

¹⁷ Deficiency Letter Response, attach. A at 1-3.