

144 FERC ¶ 61,119
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

PJM Interconnection, L.L.C. and
PJM Settlement, Inc.

Docket No. ER13-1659-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued August 8, 2013)

1. On June 11, 2013, PJM Interconnection, L.L.C. and PJM Settlement, Inc. (PJM Settlement) (collectively, PJM) filed revisions to the Open Access Transmission Tariff (Tariff) and the Amended and Restated Operating Agreement of PJM (Operating Agreement). The proposed revisions incorporate changes to PJM's governing agreements to allow it and its market participants to qualify for an exemption of specified market transactions from the provisions of the Commodities Exchange Act (CEA)¹ and Commodity Futures Trading Commission (CFTC) regulations. The proposal also contains clarifying revisions relating to the ability of PJM Settlement to enforce and pursue collection efforts against members in default. As discussed below, we accept the proposed tariff revisions, subject to a compliance filing, to be effective August 12, 2013, as requested.

I. Details of the Filing

2. PJM states that, on March 28, 2013, the CFTC issued an order² granting certain independent system operators (ISO) and regional transmission organizations (RTO) exemptive relief from CFTC regulation under the Dodd-Frank Wall Street Reform and

¹ 7 U.S.C. § 1 *et seq.* (2006), as amended by Pub. L. No. 111-203, 124 Stat. 1376 (2010).

² See Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations to Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in the Act, 78 Fed. Reg. 19,880 (April 2, 2013) (CFTC Final Order).

Consumer Protection Act (Dodd-Frank Act).³ PJM explains that the CFTC Final Order contained certain conditions that the ISOs/RTOs must meet in order to be eligible for the exemption, including that: (1) their tariffs authorize the sharing of market data and information with the CFTC without notice to market participants; and (2) the transactions be entered into by (i) “appropriate persons,” as defined in the CEA,⁴ (ii) “eligible contract participants,” as defined in the CEA,⁵ or (iii) persons who are in the business of either generating, transmitting, or distributing electric energy, or providing electric energy services that are necessary to support the reliable operation of the transmission system.⁶

3. PJM states that, while not explicitly required as a condition of the CFTC Final Order, PJM is proposing amendments to its governing agreements because it believes it is the most prudent approach to addressing the conditions in the CFTC Final Order. Accordingly, to satisfy these conditions, PJM proposes to amend section 18.17.3 of the Operating Agreement and section I.C of Attachment M – Appendix of the PJM Tariff⁷ to remove any requirement that PJM or its Market Monitoring Unit notify its members prior to providing information to the CFTC in response to a subpoena or other request for information. PJM also proposes to include the CFTC as a regulatory commission to which PJM must provide requested confidential information.

4. Additionally, PJM proposes to add section Ia.A to Attachment Q of the PJM Tariff⁸ to require that a market participant demonstrate, in accordance with PJM’s Risk Management and Verification processes, that it qualifies to participate, and is eligible to transact in PJM Markets, as: (1) an appropriate person; (2) an eligible contract participant; (3) a business entity or person who is in the business of generating, transmitting or distributing electric energy, or provides energy services that are necessary to support the reliable operation of the transmission system; (4) a market participant seeking eligibility as an appropriate person providing an unlimited corporate guaranty from an issuer that has at least \$1 million of total net worth or \$5 million of total assets

³ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

⁴ 7 U.S.C. § 6(c)(3) (2006).

⁵ 7 U.S.C. § 1a(18). *See also* Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant,” and “Eligible Contract Participant,” 77 Fed. Reg. 30,596 (May 23, 2012).

⁶ CFTC Final Order at 19,897.

⁷ PJM Operating Agreement, § 18.17.3, Confidentiality (3.0.0); PJM Tariff, Attachment M – Appendix, § I.C (5.1.0).

⁸ PJM Tariff, Attachment Q, PJM Credit Policy (12.0.0).

for each participant for which the issuer is issuing an unlimited corporate guaranty;⁹ or (5) a market participant providing a letter of credit of at least \$5 million to PJM Settlement, which the market participant understands and acknowledges is separate from, and cannot be applied to meet, its applicable credit requirements to PJM.¹⁰ PJM explains that market participants will be required to annually certify (due every April 30) that they continue to meet the eligibility criteria listed above, as part of the officer certification form such participants must already submit to PJM Settlement. For those entities for which PJM cannot determine, based upon available data and information, whether they meet the eligibility criteria, PJM proposes to require those entities to complete interim certification forms no later than September 30, 2013, to establish their eligibility. Proposed section Ia.A provides that PJM Settlement shall terminate a market participant's transaction rights in the PJM market if it becomes aware that the market participant does not meet these eligibility requirements.¹¹

5. Finally, PJM proposes clarifying revisions to sections 15.2, 15.2.1, and 15.3 of the Operating Agreement¹² relating to the ability of PJM Settlement to enforce and pursue collection efforts against members in default. PJM explains that these changes should have been made explicit when it submitted tariff revisions in response to the directives of Order Nos. 741 and 741-A,¹³ but that these revisions are relevant here because they substantiate PJM Settlement's legal standing to pursue collection efforts and strengthen PJM Settlement's claim to enforce set-offs and netting. Specifically, PJM proposes to remove the independent ability of a member that has paid a default allocation assessment to pursue collection efforts for that assessment against the defaulting member. PJM adds that, while a member will no longer have the ability to pursue collection efforts in its own name, it still will qualify for a return of any monies, *pro rata*, which PJM Settlement recovers in its collection efforts. PJM also proposes to remove the requirement that a

⁹ See definition of "appropriate person," 7 U.S.C. § 6(c)(3)(F) (2006)(as clarified by CFTC Final Order at 19,900).

¹⁰ *Id.*

¹¹ PJM states that it expects the vast majority of PJM members to be able to provide the proposed support of eligibility for the CFTC exemption. PJM Filing at 5, n.15.

¹² PJM Operating Agreement, § 15.2, Enforcement of Obligations, (2.0.0); PJM Operating Agreement, § 15.2.1, Collection by the Office of Interconnection, (2.0.0); PJM Operating Agreement, § 15.3, Obligations to a Member in Default, (0.0.0).

¹³ *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, FERC Stats. & Regs. ¶ 31,317 (2010), *order on reh'g*, Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 (2011), *order denying reh'g*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

majority of members explicitly authorize PJM Settlement to pursue and collect any amounts in default.

6. PJM requests that the revisions be made effective no later than August 12, 2013. PJM explains that this effective date will provide it with ample time to modify, send and receive the officer certification forms from those entities that it cannot determine meet the exemption criteria, before the expiration of the no-action relief issued by CFTC staff.

II. Notice of Filing and Responsive Pleadings

7. Notice of PJM's filing was published in the *Federal Register*, 78 Fed. Reg. 36,765 (2013), with interventions and protests due on or before July 2, 2013. Motions to intervene were filed by the NRG Companies,¹⁴ Green Bay Energy LLC, Monterey MA LLC, Solios Power LLC, Red Wolf Energy Trading, XO Energy MA, and DC Energy, LLC. Motions to intervene with comments in support were filed by American Municipal Power, Inc. and the Financial Marketers Coalition.¹⁵ No protests were filed.

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Commission Determination

9. As modified as specified below, we find PJM's proposed tariff revisions to be just and reasonable and not unduly discriminatory. In Order No. 741, the Commission gave each ISO and RTO discretion to develop minimum criteria through their individual stakeholder processes.¹⁶ Upon further consideration, the Commission finds that the minimum criteria for participation in the organized wholesale electric markets set forth in the CFTC Final Order are appropriate. The proposed tariff revisions are designed to

¹⁴ The NRG Companies include: NRG Power Marketing LLC; GenOn Energy Management, LLC; Conemaugh Power LLC; GenOn Chalk Point, LLC; GenOn Mid-Atlantic, LLC; GenOn Power Midwest, LP; GenOn REMA, LLC; GenOn Wholesale Generation, LP.; Indian River Power LLC; Keystone Power LLC; NRG Energy Center Dover LLC; NRG Energy Center Paxton LLC; NRG Rockford LLC; NRG Rockford II LLC; and Vienna Power LLC.

¹⁵ The Financial Marketers Coalition consists of: XO Energy MA, LLC; Red Wolf Energy Trading; Monterey MA, LLC; Solios Power, LLC; and Green Bay Energy, LLC.

¹⁶ Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 132.

address the requirements of the CFTC Final Order and strengthen the minimum criteria for participation in the PJM market. Therefore, the proposed tariff revisions are consistent with the requirements of Order No. 741. The proposed tariff revisions regarding information requests provide similar treatment to information requests by the CFTC and its staff as is provided to the Commission and its staff.¹⁷ Additionally, PJM's clarifying revisions regarding the ability of PJM Settlement to pursue collection efforts are consistent with PJM Settlement's role as the central counterparty to PJM market transactions and with the directives of Order Nos. 741, 741-A, and 741-B.¹⁸

10. However, the proposed tariff revisions contain certain typographical errors. Line 9 of proposed section I.C.1 of Attachment M – Appendix refers to the “Market Monitoring Unity” instead of “Market Monitoring Unit.” Line 13 of this section and of section 18.17.3 of the Operating Agreement refers to “FERC, CFTC or its staff” instead of “FERC, CFTC or their staff.” Finally, proposed item 6 in the officer certification form appended to Attachment Q contains an error in numbering. Accordingly, we accept PJM's proposed tariff revisions, subject to PJM correcting these errors by submitting a compliance filing within 30 days, to become effective August 12, 2013, as requested.

The Commission orders:

PJM's proposed revisions are hereby conditionally accepted, subject to a compliance filing due 30 days from the date of this order, to be effective August 12, 2013, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁷ The Commission has previously accepted a similar filing in *California Independent System Operator Corporation*, 142 FERC ¶ 61,069 (2013).

¹⁸ See *supra* note 8.