FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:
PJM Interconnection, L.L.C.
Docket No. ER19-24-000

Issued: 11/30/18

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Reference: Bilateral Transaction Indemnification Revisions

On October 1, 2018, PJM Interconnection, L.L.C. (PJM) filed revisions to its Open Access Transmission Tariff (Tariff), Attachment K-Appendix, section 7.3.9 and identical provision in its Amended and Restated Operating Agreement (Operating Agreement), Schedule 1, section 7.3.9. These revisions permit indemnifying sellers of Financial Transmission Rights (FTRs) in bilateral contracts to assume ownership of negatively-valued FTRs in the event of a default by the buyer.

As described in further detail below, please be advised that your submittal is deficient and that additional information is required by the Commission in order to process the filing. Please provide the information requested below:

1) According to the existing Tariff, "PJMSettlement shall not be the counterparty with respect to bilateral transfers of Financial Transmission Rights," "all payments and related charges associated with such a bilateral contract shall be arranged between the parties to such bilateral contract," and "all claims regarding a default of a buyer to a seller under such a bilateral contract shall be resolved solely between the buyer and the seller."[1]

    a. Please explain the interaction of these Tariff sections with the indemnification provision.[2]

[1] Operating Agreement, Schedule 1, §§ section 7.11 (b) and 5.2.2(d)(v) & (vi).

[2] Operating Agreement, Schedule 1, section 5.2.2(d)(iv).

b. Please explain how PJM would address a bilateral contract provision requiring that, upon default, the bilateral seller would have the right to terminate the contract and net and offset all charges and credits arising from the contract. Provide all Tariff sections and other references, as necessary, in support.

2) In situations in which credits and charges exist in a defaulting buyer's FTR portfolio, does the term "charges" in the indemnification provision reflect the net amount the buyer failed to pay? Or does it reflect only the charges and not credits? Please specify the current Tariff provisions that support your response.

3) PJM states that the indemnification provision[3] "does not grant an indemnifying seller any right to the positive gains from an FTR it sells on the bilateral market, as Shell suggests."[4] PJM explains that the proposed revisions would provide the seller the opportunity to assume ownership of negatively-valued FTRs, and would no longer allocate any potential future gains from those FTR positions to other PJM members.[5]

a. What is the step-by-step process by which PJM handles a default with respect to FTRs acquired in bilateral contracts? How is this different than a default for FTRs acquired either solely within an auction or through a combination of an auction and bilaterally? Under the proposed Tariff revisions, what other changes does PJM believe will occur to the step-by-step process, by which PJM handles default with respect to FTRs acquired in bilateral contracts?

b. Does the Tariff or Operating Agreement specify that PJM, rather than the indemnifying seller, maintains the right to any positively-valued FTR positions within a defaulting member's FTR portfolio acquired via bilateral contract, as implied by PJM's proposal in ER19-24-000? If so, please describe the Tariff or Operating Agreement provision(s).

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[3] Operating Agreement, Schedule 1, section 5.2.2(d)(iv). ("A seller under such a bilateral contract shall guarantee and indemnify the Office of the Interconnection, PJMSettlement, and the Members for the buyer's obligation to *pay any charges* associated with the transferred Financial Transmission Right and for which payment is not made to PJMSettlement by the buyer under such a bilateral transaction.") (emphasis added).

[4] PJM Answer at 3.

[5] PJM Answer at 5.

c. Under the proposed revisions in ER19-24-000, if a buyer defaults on its FTR portfolio and all the buyer's FTRs were acquired under a single bilateral contract, what would happen to the buyer's collateral? Would the buyer's collateral be used to offset the seller's obligations? If not, how does PJM allocate the buyer's collateral?

4) PJM states that under the existing Tariff, pursuant to the indemnification provision, sellers under bilateral FTR contracts are responsible for indemnifying any charges associated with the transferred FTRs.[6] In the event of default, please explain whether, and if so how, charges and/or credits associated with FTRs acquired in bilateral contracts are currently incorporated as part of the Default Allocation Assessment? If they are not, how does PJM address these charges and credits?

This letter is issued pursuant to 18 C.F.R. § 375.307 and is interlocutory. This letter is not subject to rehearing under 18 C.F.R. § 385.713. A response to this letter must be filed with the Secretary of the Commission within 30 days of the date of this letter by making a deficiency filing in accordance with the Commission's electronic tariff requirements. For your response, use Type of Filing Code 170 if your company is registered under program code "M" (Electric Market Based Rate Public Utilities) or Type of Filing Code 180 if your company is registered under program code "E" (Electric Traditional Cost of Service and Market Based Rates Public Utilities).[7] In addition, submit an electronic version of your response to Scotiana Collins at scotiana.collins@ferc.gov. The information requested in this letter order will constitute an amendment to your filing and a new filing date will be established.[8] A notice will be issued upon receipt of your filing.

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[6] PJM Transmittal at 2; PJM Answer at 2-3 (citing Operating Agreement, Schedule 1, section 5.2.2(d)(iv)).

[7] The filing must include at least one tariff record to restart the statutory timeframe for Commission action even though a tariff revision might not otherwise be needed. *See generally Electronic Tariff Filings*, 130 FERC ¶ 61,047, at PP 3-8 (2010) (explaining that the Commission uses the data elements resulting from the tariff filing process to establish statutory filing and other procedural dates).

[8] *See Duke Power Co.*, 57 FERC ¶ 61,215, at 61,713 (1991) ("the Commission will consider any amendment or supplemental filing filed after a utility's initial filing . . . to establish a new filing date for the filing in question").

Pending receipt of the above information, a filing date will not be assigned to your filing. Failure to respond to this letter order within the time period specified may result in a further order rejecting your filing.

Issued by: Kurt M. Longo, Director, Division of Electric Power Regulation - East

Document Content(s)