

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.)

Docket No. ER18-2068-000

**MOTION TO INTERVENE OUT-OF-TIME
AND COMMENTS OF
THE PJM POWER PROVIDERS GROUP**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or the "Commission"), 18 C.F.R. § 385.212 and 18 C.F.R. § 385.214, the PJM Power Providers Group ("P3")¹ respectfully moves to intervene out-of-time in the above-captioned proceeding and comment on the issues raised by the Commission's January 30, 2019 order ("January 30 Order")² denying PJM Interconnection, L.L.C.'s ("PJM") July 26, 2018 waiver of certain Financial Transmission Rights ("FTR") liquidation rules in the PJM Open Access Transmission Tariff ("Tariff"), Attachment K-Appendix, section 7.3.9, and the identical provisions of Amended and Restated Operating Agreement of PJM ("Operating Agreement"), Schedule I, section 7.3.9 ("PJM Waiver Request"). In support, P3 states as follows:

¹ P3 is a non-profit organization dedicated to advancing federal, state and regional policies that promote properly signed and well-functioning electricity markets in the PJM Interconnection, L.L.C. ("PJM") region. Combined, P3 members own over 84,000 MWs of generation assets, produce enough power to supply over 20 million homes and employ over 40,000 people in the PJM region covering 13 states and the District of Columbia. For more information on P3, visit www.p3powergroup.com. The comments contained in this filing represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue.

² *Order Denying Request For Waiver*, PJM Interconnection, L.L.C., Docket No. ER18-2068-000; 166 FERC ¶ 61,072, dated January 30, 2019 ("January 30 Order").

I. Background

On July 26, 2018, PJM requested, pursuant to section 205 of the Federal Power Act,³ a temporary waiver of certain FTR liquidation rules specified in its Tariff and Operating Agreement due to GreenHat Energy, LLC's ("GreenHat") payment default of its financial obligations. In part, PJM sought a waiver of then effective section 7.3.9 in order to permit it to sell in the July, August, September, and October 2018 monthly FTR auctions only the portion of GreenHat's FTR 2018/2019 Planning Period portfolio effective in the prompt month.

In its January 30 Order, the Commission denied PJM's Waiver Request, finding that it did not meet two of its four requirements for granting such a waiver. In particular, the Commission found that PJM had not shown that the proposed waiver is limited in scope, as it was seeking to change the rules governing an "already-commenced" auction, and that PJM proposed to waive four discrete elements of the Tariff in order to potentially substitute new rules that had neither been formed, nor included in the record. The Commission found that "[S]uch a significant change to multiple parameters of an already-commenced auction is not a remedy that is limited in scope."⁴

The Commission's January 30 Order also found that PJM did not demonstrate that its requested waiver would not have undesirable consequences, noting that ". . . all parties – including PJM – were aware before the auction of the Tariff requirement to liquidate the GreenHat portfolio 'at an offer price designed to maximize the likelihood of liquidation.' Under

³ 16 U.S.C. § 824d (2012).

⁴ January 30 Order, P. 33.

those circumstances, granting a waiver to change the rules after the auction commenced would be particularly disruptive to settled expectations.”⁵

The Commission’s January 30 Order, therefore, requires PJM to re-run the cleared July 2018 FTR auction and to replace the July 2018 results with the auction results that would have included the liquidation of a significant portion of the FTR positions from the GreenHat portfolio for September 2018 through May 2019 at premiums greater than the previous months’ FTR auction clearing prices for those positions. The order also directs PJM to unwind the default allocation and related settlements made for GreenHat FTRs that went to settlement during the period of September 2018 through January 2019.

While the Commission denied PJM’s Waiver Request, it stated that it was “cognizant of the significant impact that GreenHat’s default has had on other market participants and, ultimately, consumers.”⁶ Thus, the Commission noted that its Office of Enforcement has begun a non-public investigation under Part 1 B of the Commission’s regulations into whether GreenHat engaged in market manipulation or other potential violations of the Commission’s orders, rules, and regulations, and would determine what, if any, further action was needed at the conclusion of Commission Staff’s investigation.⁷

For the reasons as more fully explained below, P3 submits that its members, many of whom do not even trade FTRs, will be directly, and significantly, impacted by the Commission’s January 30 Order denying PJM’s Waiver Request. Although P3 recognizes that it is well beyond the Commission’s notice requirement for intervention in this proceeding, P3 respectfully requests

⁵ *Id.*, P. 34 (citations omitted).

⁶ *Id.*, P. 36.

⁷ *Id.*

that the Commission allow its out-of-time intervention and consider its comments, should the Commission grant any requested rehearing of its January 30 Order, as more fully explained below.

II. Motion to Intervene and Comments

Rule 214(b)(3) of the Commission's Rules of Practice and Procedures (18 C.F.R. § 385.214(b)(3)) requires that P3 show, in addition to interests that would be affected by the outcome of this proceeding, "good cause why the time limitation [for filing a motion to intervene] should be waived." Rule 214(d) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214(d)) identifies specific factors that the Commission "may consider" in deciding whether to grant leave to intervene out-of-time. These factors include whether: i) the movant had good cause for failing to file the motion within the time prescribed; ii) any disruption of the proceeding might result from permitting intervention; iii) the movant's interest is not adequately represented by other parties in the proceeding; and iv) any prejudice to, or additional burdens upon, the existing parties might result from permitting the intervention. P3 respectfully submits that its motion satisfies the requirements of Rule 214.

P3 submits that while it did not timely intervene in this proceeding, it did intervene and was an active party in several other dockets involving PJM's requested changes to its FTR default disposition revisions, bilateral transaction indemnification revisions, default allocation assessment clarifying revisions, and the conditional extension of time regarding default disposition made by PJM on October 2, 2018 in Docket Nos. ER19-19-000; ER19-23-000;

ER19-24-000 and ER19-25-000.⁸ While P3 understood the importance of PJM's Waiver Request in this proceeding, it none-the-less did not fully understand the ramifications of a denial of PJM's Waiver Request until most recently, following the January 30 Order, as PJM itself is further understanding the repercussions of the denial and discussing the implications with stakeholders. P3 and other PJM stakeholders are just now learning the likely effects of the Commission's January 30 Order, including:

- The total default allocation assessments to PJM members will likely materially and unnecessarily increase by a preliminarily estimated range of \$250 - \$300 million, resulting in a revised total default reference of at least \$430 million, based on comparing (a) the revised July 2018 auction results that would result from implementing the order with (b) the sum of the actual default charges for June 2018 through December 2018 plus the most recent auction prices for the January 2019 through May 2021 positions;
- Certain PJM members will likely be in breach of their collateral requirements of PJM's credit policy, requiring them to fulfill a collateral call within two business days based on the unanticipated changes in the positions in members' FTR portfolios that would result from changing the cleared results of the July 2018 FTR auction; and
- PJM will be required to resettle every FTR portfolio impacted by rerunning and revising prior cleared FTR auction results.⁹

P3 respectfully submits that these material and substantial implications, that will in all probability impact P3 member companies, many of whom do not even trade FTRs, have not been fully submitted to the Commission for its consideration prior to the issuance of its January 30 Order. Given the enormous and unanticipated impact of the Commission's decision to deny the

⁸ PJM Power Providers Group ("P3") doc-less Motion to Intervene, Docket Nos. ER19-19-000; ER19-23-000; ER19-24-000 and ER19-25-000, dated October 18, 2018. P3 Comments, Docket Nos. ER19-19-000; ER19-23-000; ER19-24-000 and ER19-25-000, dated October 22, 2018.

⁹ PJM Interconnection, L.L.C., Market Implementation Committee, *FERC Order Denying PJM's Request for Waiver re: Liquidating FTR Positions of Defaulted Member*, dated February 6, 2019. <https://www.pjm.com/-/media/committees-groups/committees/mic/20190206/20190206-item-01a-informational-update-ferc-order-denying-waiver-request.ashx>

waiver, many PJM market participants will be placed in virtually untenable financial positions that could lead to a further eroding of the PJM market. The Commission's January 30 Order, furthermore, essentially prohibits any potential mitigation efforts that market participants could have taken before being exposed to the gravity of this particular default. As P3 itself did not realize the magnitude of this result, good cause should be found for P3 to have not filed a timely motion to intervene. The Commission has recognized in other proceedings that where "(t)ariff revisions would disrupt settled expectations mid-course and harm market participants who relied on the existing Tariff in calculating prices and entering into contracts, the Commission has considered a "balancing of interests" or "balancing of equities" in determining the appropriate outcome."¹⁰

As an organization representing numerous PJM members, P3 is in a unique position in which its interests cannot be adequately represented by another party. Allowing P3 to participate would further the Commission's consideration in balancing interests.

Granting P3's out-of-time intervention will also not disrupt this proceeding, as P3 seeks no change in the proceeding's schedule and agrees to accept the current record as it stands. P3 and its jurisdictional members operating in PJM, however, will clearly be directly affected by the Commission's January 30 Order and any other determination stemming from this proceeding.

Therefore, P3 submits that good cause exists for this motion and thus respectfully requests that the Commission grant its out-of-time motion to intervene.

¹⁰ ISO-NE 165 FERC ¶ 61,088 at P 25.

III. Conclusion

For the foregoing reasons, P3 respectfully requests that the Commission grant its out-of-time motion to intervene and designate it as a party to this proceeding with all of the rights appropriate to that status, and consider its comments provided herein.

Respectfully submitted,

On behalf of the PJM Power Providers Group

By: Glen Thomas
Glen Thomas
Laura Chappelle
GT Power Group
101 Lindenwood Drive, Suite 225
Malvern, PA 19355
gthomas@gtpowergroup.com
610-768-8080

February 8, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington D.C., this 8th day of February, 2019.

On behalf of the PJM Power Providers Group

By: Laura Chappelle _____

Laura Chappelle
GT Power Group
101 Lindenwood Drive, Suite 225
Malvern, PA 19355
gthomas@gtpowergroup.com
610-768-8080