

142 FERC ¶ 61,244  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

March 28, 2013

In Reply Refer To:  
East Kentucky Power Cooperative, Inc.  
Docket No. ER13-793-000

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Attn: Alan I. Robbins, Esq.  
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Dear Mr. Robbins:

1. On January 23, 2013, East Kentucky Power Cooperative, Inc. (EKPC) filed a request that the Commission approve the framework of its Transitional Fixed Resource Requirements Plan (Transitional FRR Plan), as a necessary component of EKPC's full integration into PJM Interconnection, L.L.C. (PJM). EKPC states that its Transitional FRR Plan is an out-of-time Fixed Resource Requirements Plan (FRR Plan) that permits EKPC to transition into full participation in the PJM Reliability Pricing Model. EKPC also requests waivers of certain provisions of the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region (RAA)<sup>1</sup> and of the PJM Open Access Transmission Tariff (PJM OATT), as necessary, to permit EKPC's implementation of the Transitional FRR Plan. For the reasons discussed below, we grant EKPC's requested waivers, with the exception of its requested waiver of Schedule 8.1, Section E.2's limit on the sale of Capacity Resources above the Threshold Quantity into auctions conducted under Attachment DD to the PJM OATT; and allow the submission EKPC's Transitional FRR Plan to PJM out-of-time.

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<sup>1</sup> PJM Reliability Assurance Agreement, Rate Schedule FERC No. 44. The PJM Reliability Assurance Agreement is a PJM agreement intended to ensure that adequate capacity resources will be planned and made available to provide reliable service to loads within the PJM Region, to assist other parties during emergencies, and to coordinate planning of such resources.

2. This filing follows EKPC's previous request for waivers in preparation for its full integration into PJM in the summer of 2013. On November 15, 2012, EKPC filed in Docket No. ER13-414-000, among other things, a request for waiver to authorize its participation in the May 2013 PJM Base Residual Auction (Auction). EKPC stated that participation in the Auction would predate its actual full integration into PJM. However, EKPC stated that participation in the Auction is necessary for EKPC to satisfy PJM's capacity commitment protocols as they apply to future delivery years. Moreover, EKPC asserted that participation in the Auction is necessary because that auction will procure capacity for the 2016-17 Delivery Year that begins June 1, 2016.

3. Similarly, on November 30, 2012, EKPC filed in Docket No. ER13-478-000, a petition to submit an out-of-time Initial FRR Plan to PJM allowing EKPC to serve approximately 35 MW of EKPC's member load (EKPC DEOK Zone load). EKPC also requested waivers of certain provisions in Section 8.1 of the RAA and of obligations under the PJM OATT which, among other things, would allow EKPC to submit its FRR Plan out-of-time. EKPC requested that the Initial FRR Plan be effective from February 1, 2013 through May 31, 2013, at which time EKPC plans to complete its integration into PJM.<sup>2</sup>

4. On January 14, 2013, the Commission issued an order that, among other things: (1) granted EKPC's requested waiver in Docket No. ER13-414-000 so that it may participate in the Auction; and (2) granted EKPC's requested waivers in Docket No. ER13-478-000 and allowed the submission of an Initial FRR Plan to PJM out-of-time.<sup>3</sup>

5. In the instant filing, EKPC requests that the Commission grant waivers of certain provisions of the PJM OATT and PJM RAA and requests Commission approval of the framework of an Transitional FRR Plan that is an out-of-time FRR Plan, to cover capacity arrangements during the period from June 1, 2013 – when EKPC integrates into PJM – until June 1, 2016 – the earliest date on which PJM will begin procuring capacity for the EKPC Zone in the “normal course” of the PJM Reliability Pricing Model.<sup>4</sup> In support of its request, EKPC asserts that its Transitional FRR Plan is similar to the FRR

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<sup>2</sup> On January 16, 2013, EKPC submitted an informational filing notifying the Commission that EKPC would delay the start of the Initial FRR Plan to March 1, 2013 (instead of the requested February 1, 2013 date) to comply with the EKPC internal authorization matrix.

<sup>3</sup> *East Kentucky Power Coop., Inc.*, 142 FERC ¶ 61,028 (2013).

<sup>4</sup> This period, June 1, 2013 until June 1, 2016, is called the “Transition Period” by EKPC.

Plans submitted by Duquesne,<sup>5</sup> FirstEnergy<sup>6</sup> and Duke<sup>7</sup> as part of their integrations into PJM.<sup>8</sup>

6. To integrate into PJM by the summer of 2013, EKPC states that it intends to integrate its loads and resources fully into the PJM markets, including participation in the PJM Reliability Pricing Model capacity market. However, due to the three-year-forward nature of PJM's capacity market under the PJM Reliability Pricing Model, EKPC asserts that it requires waivers of certain provisions of the RAA and obligations under Attachment DD of the PJM OATT for the duration of the Transition Period. EKPC states that the waivers of certain provisions of the RAA and the PJM OATT proposed for the Transitional FRR Plan are limited to provisions affected by the out-of-time nature of EKPC's entry into the PJM Reliability Pricing Model. EKPC contends that the provisions for which EKPC is seeking waiver as part of the Transitional FRR Plan are included in the FRR Alternative provisions contained in Schedule 8.1 of the RAA, and that these provisions for which EKPC seeks waiver apply to the timing requirements for submitting an FRR filing and the duration of the Transitional FRR Plan.

7. As far as the requested waivers, EKPC states that it requires the following waivers to allow for implementation of the Transitional FRR Plan. Specifically, these waivers include:

- Section C.1 of Schedule 8.1 of the RAA, and the obligations under Attachment DD of the PJM OATT, along with any applicable corresponding or related provisions of any PJM manual, to the extent the provision(s) would have required EKPC to submit an FRR Plan prior to the Base Residual Auctions for the period including the interim period, or which would otherwise restrict EKPC's compliance with the RAA and the PJM OATT in implementing the Transitional FRR Plan.
- Section C.2 of Schedule 8.1 of the RAA regarding notice of termination, to the extent any such waiver is necessary due to the short duration and pre-determined termination date for the Transitional FRR Plan.

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<sup>5</sup> *Duquesne Light Co.*, 126 FERC ¶ 61,074 (2009) (Duquesne).

<sup>6</sup> FirstEnergy RTO Realignment and Integration Agreement; ER09-1589 (2009).

<sup>7</sup> Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc., FRR Plan Filing, Docket No. ER10-2254-000 (filed Aug. 16, 2010) (Duke).

<sup>8</sup> EKPC January 23, 2013 Filing at 5.

- Section D.1 of Schedule 8.1 of the RAA regarding updating the FRR Plan one month prior to the PJM Base Residual Auction, because these auctions for the years in question have already occurred.
- Section D.3 of Schedule 8.1 of the RAA regarding the Preliminary Zonal Peak Load Forecast used, so that EKPC can use a Preliminary Zonal Peak Load Forecast that is based on the preliminary forecast peak load of the EKPC Zone that takes into account summer 2012 peaks.
- Section E.2 of Schedule 8.1 limit on the sale of Capacity Resources above the Threshold Quantity into auctions conducted under Attachment DD to the PJM OATT in order to maximize the ability of EKPC to participate in the Reliability Pricing Model prior to full participation beginning with the May 2016 auction.

Although it requires waivers of the above provisions, EKPC proposes to adhere to all other applicable PJM RAA provisions governing FRR Plans.

8. EKPC states that there are no provisions for third-party supplies in EKPC's Transitional FRR Plan because no special provisions are required of EKPC to provide capacity for those loads, even though third-party loads are served over the EKPC transmission system. Moreover, EKPC asserts that the only load obligations included in the EKPC Transitional FRR Plan are for EKPC native loads.<sup>9</sup>

9. EKPC states that under the Transitional FRR Plan it will dedicate certain generating resources owned and operated by, or under firm contract to, EKPC that qualify as Capacity Resources as defined in the PJM RAA, to meet the EKPC Reliability Pricing Model obligations for the 2013-14, 2014-15 and 2015-16 Delivery Years. Specifically, EKPC states that it will designate qualified units for this purpose such that the total of the UCAP<sup>10</sup> values of the resources will satisfy the Forecast Pool Requirement for the EKPC Zone as calculated by PJM for each of the 2013-14, 2014-15 and 2015-16 Delivery Years. Further, EKPC asserts that it will comply with PJM commitment, scheduling, operational and metering requirements during the 2013-14,

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<sup>9</sup> EKPC January 23, 2013 Filing at 5.

<sup>10</sup> UCAP is the Unforced Capacity, which is defined in *PJM M35 – Acronyms and Abbreviations* as “Installed capacity rated at summer conditions that are not on average experiencing a forced outage or forced derating, calculated for each Capacity Resource on the 12-month period from October to September without regard to the ownership of or the contractual rights to the capacity of the unit.”

2014-15 and 2015-16 Delivery Years as if those resources had been offered into and accepted under the PJM Reliability Pricing Model.<sup>11</sup>

10. EKPC adds that all capacity resources owned by EKPC that are not used to meet EKPC's Reliability Pricing Model obligations, and that qualify to participate in an Incremental Auction, will be offered into the PJM Reliability Pricing Model auctions outside of the Transitional FRR Plan.

11. Finally, EKPC requests that the Commission issue an order by March 30, 2013, so that EKPC will be able to meet its target date of June 1, 2013 for integration into PJM as a Transmission Owning Member.<sup>12</sup>

12. Notice of EKPC's filing in Docket No. ER13-793-000 was issued on January 24, 2013, with interventions and protests due on or before February 13, 2013. No interventions, comments or protests were filed.

13. The Commission has typically granted waivers when: (1) the waiver is of limited scope; (2) a concrete problem needed to be remedied; and (3) the waiver does not have undesirable consequences, such as harming third parties.<sup>13</sup>

14. We grant EKPC's request for waivers of Sections C.1, C.2, D.1, and D.3 of Schedule 8.1 of the RAA and the obligations under Attachment DD of the PJM OATT, because we determine that EKPC has met the criteria for granting the above referenced waivers and allow the Transitional FRR Plan to PJM out-of-time. Specifically, we find that the requested waivers are limited in scope, as the waivers will only apply to EKPC's Transitional FRR Plan for the period June 1, 2013 through May 31, 2016. Second, granting the requested waivers will resolve a concrete problem because, as stated previously, the PJM Reliability Pricing Model Base Residual Auctions for commitments in the Delivery Years 2013-14, 2014-15, and 2015-16 occurred before EKPC sought to

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<sup>11</sup> EKPC January 23, 2013 Filing at 5-6.

<sup>12</sup> EKPC January 23, 2013 Filing at 8.

<sup>13</sup> See, e.g., *Demand Response Partners, Inc.*, 140 FERC ¶ 61,093 (2012); *New York Power Authority*, 139 FERC ¶ 61,157 (2012); *ISO New England, Inc.*, 134 FERC ¶ 61,182 (2011); *New York Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,119 (2008); *ISO New England, Inc.*, 117 FERC ¶ 61,171 (2006); *New York Indep. Sys. Operator, Inc.*, 112 FERC ¶ 61,347 (2005). The Commission notes that there can be a fourth factor appropriate for consideration, which is that "the underlying error was made in good faith." However, this factor is not applicable here since there is no error involved, and so we need not consider it in our analysis of EKPC's waiver requests.

integrate into PJM. Hence, granting the waiver will allow EKPC to serve the EKPC Zone Load, and allow EKPC to begin a phased-in process leading to full participation in the PJM Reliability Pricing Model. Finally, granting the requested waivers will not have undesirable consequences, such as harming third parties because, as EKPC argues, there are no provisions for third-party suppliers included in EKPC's Transitional FRR Plan. Accordingly, we will grant EKPC's request for waivers of Sections C.1, C.2, D.1, and D.3 of Schedule 8.1 of the RAA and the obligations under Attachment DD of the PJM OATT.

15. The Commission, however, denies EKPC's request for waiver of Schedule 8.1, Section E.2's limit on the sale of Capacity Resources above the Threshold Quantity into auctions conducted under Attachment DD to the PJM OATT because EKPC has not submitted sufficient information for approval of this waiver request. EKPC states that it has modeled its request on Duke's FRR Plan Filing in Docket No. ER10-2254-000. It is true that we granted Duke's request for waiver of Schedule 8.2, Section E.2's limit on the sale of Capacity Resources above the Threshold Quantity into PJM's Auction; however, the Commission granted this request because Duke established special circumstances relating to generation that already had been committed to the PJM Auction prior to Duke's integration,<sup>14</sup> which was not provided by EKPC in this instance. Therefore, absent this detailed explanation, the Commission has no basis for analyzing and granting such a request.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>14</sup> Specifically, Duke sought waiver of Section E.2 of Schedule 8.1 of the RAA, solely to the extent necessary, to exclude from calculation of that limit Capacity Resources of Duke Energy Ohio, Inc., or any Duke Energy Zone wholesale load choosing to enter its own Independent FRR Plan that have already cleared in an Reliability Pricing Model auction before its realignment was announced. *See* Duke Energy Ohio, Inc., and Duke Energy Kentucky, Inc., Compliance Filing at 6-7, Docket Nos. ER10-1562-000, ER10-2254-000 (filed November 22, 2010).

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