

165 FERC ¶ 61,149  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur and Richard Glick.

PJM Interconnection, L.L.C.  
New York Independent System Operator, Inc.

Docket No. ER18-2442-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued November 19, 2018)

■ On September 17, 2018, PJM Interconnection, L.L.C. (PJM) and New York Independent System Operator, Inc. (NYISO) (collectively, the RTOs) submitted a request for temporary, limited waiver of sections 7.1.2, 8.1, and 8.2 of Schedule D to the Joint Operating Agreement Among and Between NYISO and PJM (JOA).<sup>1</sup> The RTOs state that the waiver is required to authorize redispatch of generation in PJM to mitigate post-contingency overload of transmission equipment on the NYISO side of the East Towanda - Hillside 230 kV transmission line (the East Towanda - Hillside Tie Line).<sup>2</sup> As discussed below, we grant the request for waiver, to become effective one day after the date of filing on September 18, 2018, and to expire on the earliest of: (1) the date on which the Commission approves JOA revisions proposed in a Federal Power Act (FPA) section 205<sup>3</sup> filing submitted by the RTOs to implement a long-term solution to address the concerns identified in the waiver request to become effective; (2) the date on which the RTOs jointly request the waiver to end; or (3) September 17, 2019. Additionally, we require the RTOs to submit quarterly reports regarding the status of JOA revisions to implement a long-term solution to address the concerns identified in the waiver request, as discussed below.

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<sup>1</sup> NYISO, Open Access Transmission Tariff (OATT), § 35, Attach. CC (0.0.0).

<sup>2</sup> RTOs Sept. 17, 2018 Waiver Request at 5.

<sup>3</sup> 16 U.S.C. § 824d (2012).

## **I. Background**

■ The JOA sets forth the rules for coordination between the RTOs to allow any transmission constraints that are significantly impacted by generation dispatch changes and/or phase angle regulator control actions in both markets to be jointly managed in the security-constrained economic dispatch models of both RTOs.<sup>4</sup> These transmission constraints may exist in either market and are designated in the JOA as Market-to-Market (M2M) Flowgates<sup>5</sup> for M2M coordination.<sup>6</sup> The RTOs are not authorized to enter into M2M coordination to manage congestion at transmission constraints that are not designated as M2M Flowgates. The JOA describes the study process that will be used to determine which constraints should be jointly coordinated as M2M Flowgates.<sup>7</sup> The studies determine if a generator located in the Non-Monitoring RTO<sup>8</sup> has a significant impact on a studied constraint located in the Monitoring RTO.<sup>9</sup> The RTOs must mutually agree to the introduction of each M2M Flowgate, and may mutually agree to add a M2M Flowgate that does not meet the specified study criteria.

■ The RTOs state that, as a result of the addition of the 850 MW combined cycle Liberty (Asylum) Unit (Liberty Asylum Unit) in PJM's footprint, contingency overloads on the East Towanda - Hillside Tie Line between PJM and NYISO have occurred, and will continue to occur, when the Liberty Asylum Unit is operating and there are transmission outages in the area.<sup>10</sup> According to the RTOs, the Limiting Element<sup>11</sup> is a

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<sup>4</sup> NYISO, OATT, § 35.23, Attach. CC, Schedule D, § 1 (6.0.0).

<sup>5</sup> M2M Flowgate is defined as a flowgate where constraints are jointly monitored and coordinated by the RTOs. *See* NYISO, OATT, § 35.2.1, Attach. CC (8.0.0).

<sup>6</sup> NYISO, OATT, § 35.23, Attach. CC, Schedule D, § 2 (6.0.0).

<sup>7</sup> NYISO, OATT, § 35.23, Attach. CC, Schedule D, § 3 (6.0.0).

<sup>8</sup> Non-Monitoring RTO is defined as the entity that does not have operational control of a M2M Flowgate. *See* NYISO, OATT, § 35.2.1, Attach. CC (8.0.0).

<sup>9</sup> Monitoring RTO is defined as the entity that has operational control of a M2M Flowgate. *See* NYISO, OATT, § 35.2.1, Attach. CC (8.0.0).

<sup>10</sup> RTOs Sept. 17, 2018 Waiver Request at 2.

<sup>11</sup> Limiting Element is defined as the element that is either operating at its appropriate rating, or would be after a limiting contingency, such as an unexpected failure or outage of a system component. "Thus, the Limiting Element establishes a

New York State Electric and Gas Corporation (NYSEG) wave trap at Hillside on the NYISO side of the East Towanda - Hillside Tie Line. The RTOs state that PJM has previously dispatched down the Liberty Asylum Unit to manage overloads on the line, but later determined that such actions violated PJM's Open Access Transmission Tariff (PJM Tariff), because the East Towanda - Hillside Tie Line is not a coordinated M2M Flowgate under the JOA.<sup>12</sup> The RTOs state that PJM self-reported this potential tariff violation to the Commission.<sup>13</sup>

■ The RTOs state that, while adding the East Towanda - Hillside Tie Line as a M2M Flowgate in the JOA would allow PJM to redispatch generation to address constraints on the NYISO side of the line, the current provisions of section 7.1.2 of Schedule D of the JOA would prevent the RTOs from consistently controlling the post-contingency overload.<sup>14</sup> This is because M2M coordination is limited to only those times when the Non-Monitoring RTO's<sup>15</sup> market flow is greater than its M2M Entitlement<sup>16</sup> for the constrained M2M Flowgate.<sup>17</sup>

## **II. Waiver Request**

■ The RTOs request waiver of three specific provisions of the JOA "and any other provisions of the JOA that may be necessary."<sup>18</sup> The RTOs contend that waiver of these

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system limit." NERC, Glossary of Terms Used in NERC Reliability Standards (July 2018), [http://www.nerc.com/files/glossary\\_of\\_terms.pdf](http://www.nerc.com/files/glossary_of_terms.pdf) (NERC Glossary).

<sup>12</sup> RTOs Sept. 17, 2018 Waiver Request at 3.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 4.

<sup>15</sup> Once the East Towanda - Hillside Tie Line is a M2M Flowgate and available for coordination, the RTOs expect that PJM will be the Monitoring RTO and NYISO will be the Non-Monitoring RTO for that flowgate. *Id.* at 5 n.8.

<sup>16</sup> M2M Entitlement is defined as the Non-Monitoring RTO's share of a M2M Flowgate's total capability to be used for settlement purposes. Pursuant to section 6 of Schedule D of the JOA, M2M Entitlements are calculated based on, among other things, historic dispatch patterns. *See* NYISO, OATT, § 35.2.1, Attach. CC (8.0.0).

<sup>17</sup> RTOs Sept. 17, 2018 Waiver Request at 2.

<sup>18</sup> *Id.* at 1.

provisions would allow the RTOs to add the East Towanda - Hillside Tie Line as a M2M Flowgate and protect the reliability of the bulk electric system (BES) by permitting PJM to conduct redispatch operations to control flows to the most restrictive rating on the NYISO side of the line without violating the PJM Tariff. Specifically, the RTOs request waiver of: (1) Section 7.1.2 of Schedule D of the JOA to allow the RTOs to invoke M2M coordination even when the Non-Monitoring RTO's market flow is less than its M2M Entitlement for the East Towanda - Hillside Tie Line when it is constrained; and (2) sections 8.1 and 8.2 of Schedule D of the JOA to temporarily exclude from M2M real-time redispatch settlements any redispatch events directly tied to the management of the East Towanda - Hillside Tie Line.<sup>19</sup>

■ The RTOs request that the Commission make the waiver effective September 17, 2018, and expire the earliest of: (1) the date on which the Commission approves JOA revisions proposed in an FPA section 205 filing submitted by the RTOs to implement a long-term solution to address the concerns identified in the waiver request to become effective; (2) the date on which the RTOs jointly request the waiver to end; or (3) September 17, 2019.<sup>20</sup>

■ The RTOs state that the requested waiver conforms to the Commission's applicable criteria and is in the public interest.<sup>21</sup> First, the RTOs state that the need for the waiver is based on a good faith objective to permit PJM to redispatch generation to control constraints on the NYISO side of the East Towanda - Hillside Tie Line and protect the reliability of the BES.<sup>22</sup> Second, the RTOs contend that the requested waiver

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<sup>19</sup> *Id.* at 5.

<sup>20</sup> *Id.* at 6.

<sup>21</sup> RTOs Sept. 17, 2018 Waiver Request at 7 & n.9 (citing *New York Independent System Operator, Inc.*, 139 FERC ¶ 61,108, at P14 (2012); *PJM Interconnection, LLC*, 137 FERC ¶ 61,184, at P 13 (2011); *PJM Interconnection, LLC*, 137 FERC ¶ 61,109, at P 11 (2011); *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,069, at P 8 (2011); *ISO-New England, Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *California Independent System Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010); *Hudson Transmission Partners, LLC*, 131 FERC ¶ 61,157, at P 10 (2010); *Pittsfield Generating Co., L.P.*, 130 FERC ¶ 61,182, at PP 9-10 (2010); *ISO New England Inc. - EnerNOC, Inc.*, 122 FERC ¶ 61,297 (2008); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008)).

<sup>22</sup> The RTOs additionally state that the redispatching actions are consistent with applicable reliability standards such as North American Electric Reliability Corporation (NERC) TOP-001-4, R18. RTOs Sept. 17, 2018 Waiver Request at 3.

is limited in scope because it is for a duration of no greater than 365 days, and limited to securing the East Towanda - Hillside Tie Line.<sup>23</sup> Third, the RTOs argue that the requested waiver will remedy the concrete problem of contingency overloads on the East Towanda - Hillside Tie Line resulting from operation of the Liberty Asylum Unit while there are transmission outages in the area.<sup>24</sup> Finally, the RTOs contend that granting the waiver will not harm third parties because it will enable them to more efficiently protect system reliability and at less cost by avoiding the use of less desirable and potentially harmful measures to protect the reliability of the BES.<sup>25</sup>

### **III. Notice of Filing and Responsive Pleadings**

■ Notice of the filing was published in the *Federal Register*, 83 Fed. Reg. 48,301 (2018), with interventions and protests due on or before October 9, 2018. Panda Power Generation Infrastructure Fund, LLC (Panda); NRG Power Marketing LLC; New York Transmission Owners;<sup>26</sup> FirstEnergy Service Company; and American Municipal Power, Inc. filed timely motions to intervene. Monitoring Analytics, LLC, in its capacity as the Independent Market Monitor for PJM (IMM), and Public Service Electric and Gas Company filed out-of-time motions to intervene. On October 9, 2018, Panda filed a protest. On October 25, 2018, the RTOs filed an answer to Panda's protest.

#### **A. Panda's Protest**

■ Panda contends that the RTOs have not satisfied three of the Commission's four conditions for granting waiver requests.<sup>27</sup>

■ First, with regard to the limited in scope condition, Panda asserts that the RTOs' request to waive "any other provisions of the JOA that may be necessary," in addition to

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 7-8.

<sup>25</sup> *Id.* at 8.

<sup>26</sup> New York Transmission Owners include Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Power Supply Long Island, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

<sup>27</sup> Panda Oct. 9, 2018 Protest at 2, 4-8.

sections 7.1.2, 8.1, and 8.2 of the JOA, is not limited in scope.<sup>28</sup> Panda argues that the RTOs' request would allow them the authority to ignore each provision of the JOA as they see fit.<sup>29</sup>

■ Second, as to addressing a concrete problem, Panda expresses concern that granting the waiver request will not be sufficient to correct what it believes to be the underlying concrete problem: poorly-designed transmission protocols between PJM and NYISO.<sup>30</sup> Panda argues that the transmission planning protocols between the Midcontinent Independent System Operator, Inc. (MISO) and PJM are an example of more effective transmission planning protocols that would allow for the identification and resolution of issues such as inadequately-sized wave traps.<sup>31</sup>

■ Third, Panda contends that the waiver request—and its preceding PJM Tariff violation—constitute harm to third parties in the form of increased electricity production costs and environmental damages.<sup>32</sup> However, Panda states, in the absence of a record of the time and duration of the PJM Tariff violation, it has been unable to quantify the harm it has experienced.<sup>33</sup> For this reason, Panda requests that the RTOs be required to notify the Commission and their stakeholders of any violation of provisions of the JOA for which the waiver applies by close of business on the day following the violation.<sup>34</sup> Panda also requests that the RTOs be required to submit a report within 15 days of a violation detailing the time, duration, and cost of any redispatch.<sup>35</sup>

■ Panda argues that the Commission should grant a waiver limited to sections 7.1.2, 8.1, and 8.2 of the JOA. In addition to the reporting requirements requested above, Panda

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<sup>28</sup> *Id.* at 5 (citing RTOs Sept. 17, 2018 Waiver Request at 1).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 5-6.

<sup>31</sup> *Id.* at 6 & n.10 (citing Midcontinent Indep. Sys. Operator, Inc., Rate Schedule 5, MISO-PJM Joint Operating Agreement, § 9.3 (40.0.0)).

<sup>32</sup> *Id.* at 8.

<sup>33</sup> *Id.* at 7-8.

<sup>34</sup> *Id.* at 9.

<sup>35</sup> *Id.* at 3-4, 9.

requests that the Commission use its authority under section 206 of the FPA<sup>36</sup> to direct the immediate replacement of the JOA's transmission planning protocols.<sup>37</sup> Panda states that in the absence of efficient market-to-market planning protocols, the harm to Panda, as well as to PJM and NYISO's customers, will only continue.<sup>38</sup>

## **B. RTOs' Answer**

■ In their answer, the RTOs argue that Panda mischaracterizes the waiver request as a "broad unlimited waiver" because the RTOs request waiver of only sections 7.1.2, 8.1, and 8.2 of Schedule D of the JOA.<sup>39</sup> The RTOs state that the catchall phrase "and any other provisions of the JOA that may be necessary" was included only to allow the Commission to grant further waivers as it deemed necessary. The RTOs formally withdraw the phrase to ensure that there is no further misunderstanding.<sup>40</sup>

■ The RTOs argue that Panda's requested reporting requirements are overly burdensome and unnecessary because Panda will be able to obtain the information requested in its protest through the normal course of business. The RTOs explain that any instance of M2M redispatch for any M2M Flowgate is already posted in real-time to both RTOs' limiting constraints postings located on their respective Open Access Same-Time Information System (OASIS) sites. The RTOs state that the OASIS postings describe the time, duration, and shadow price associated with M2M redispatch events.<sup>41</sup> Moreover, the RTOs explain that Panda, and any other owners of redispatched resources, will receive additional relevant information through the normal PJM Tariff settlements and billing procedures, allowing them to calculate their redispatch costs.<sup>42</sup> The RTOs detail a four-step procedure that Panda or other resource owners could use to calculate their redispatch costs.<sup>43</sup>

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<sup>36</sup> 16 U.S.C. § 824e (2012).

<sup>37</sup> Panda Oct. 9, 2018 Protest at 4, 10.

<sup>38</sup> *Id.* at 8.

<sup>39</sup> RTOs Oct. 24, 2018 Answer at 1, 4.

<sup>40</sup> *Id.* at 4.

<sup>41</sup> *Id.* at 5.

<sup>42</sup> *Id.* at 6.

<sup>43</sup> *Id.* at 6-7.

■ The RTOs contend that Panda's request for the Commission to use its authority under section 206 of the FPA to direct the RTOs to replace the JOA's transmission planning provisions is outside the scope of the instant proceeding because transmission planning provisions are distinct from M2M coordination provisions. Nevertheless, the RTOs state that they are committed to continually improving transmission planning coordination along their common border, and across other RTOs in the region, through the Amended and Restated Northeast ISO/RTO Planning Coordination Protocol between the RTOs and ISO New England Inc., and the Joint ISO/RTO Planning Committee and the Interregional Planning Stakeholder Advisory Committee (IPSAC).<sup>44</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

■ Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>45</sup> the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

■ Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,<sup>46</sup> the Commission will grant the IMM's and Public Service Electric and Gas Company's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

■ Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>47</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the RTOs' answer because it has provided information that assisted us in our decision-making process.

##### **B. Commission Determination**

■ For the reasons discussed below, we grant the request for waiver effective one day after the date of filing on September 18, 2018. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited

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<sup>44</sup> *Id.* at 7-8.

<sup>45</sup> 18 C.F.R. § 385.214 (2018).

<sup>46</sup> *Id.* § 385.214(d).

<sup>47</sup> *Id.* § 385.213(a)(2).



scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.<sup>48</sup>

■ We find that the RTOs' need for the waiver is based on a good faith objective to permit PJM to redispatch its generation to manage the overloaded wave trap on the NYISO side of the East Towanda - Hillside Tie Line and protect the reliability of the BES in real-time. Moreover, it appears that the RTOs did not anticipate the need to enter into M2M coordination when the Non-Monitoring RTO's market flow is less than its entitlement when they entered into the JOA, and thus have requested waiver of section 7.1.2 of Schedule D of the JOA in good faith while continuing to work toward a long-term solution.

■ We also find that the requested waiver is limited in scope. The RTOs request waiver of three specific sections of the JOA—sections 7.1.2, 8.1, and 8.2 of Schedule D—necessary to address the concrete problem discussed below.<sup>49</sup> Moreover, the RTOs request the waiver for a period of no longer than one year while they work toward a long-term solution.

■ In addition, we find that the requested waiver addresses a concrete problem by enabling M2M coordination to allow PJM to initiate redispatch operations to manage post-contingency overloads on the NYISO side of the East Towanda - Hillside Tie Line. We disagree with Panda's argument that the requested waiver only addresses a symptom of a problem, and not the underlying problem of transmission planning along the RTOs' common border. The specific M2M coordination issue that the RTOs identify is appropriately concrete and will be addressed by the requested waiver. The broader issue of coordinated transmission planning between the RTOs is outside the scope of the instant proceeding, which is limited to M2M coordination of transmission constraints on the East Towanda - Hillside Tie Line.

■ Finally, we find that the requested waiver will not have undesirable consequences, such as harming third parties. While any manual redispatch actions taken to manage transmission constraints within an RTO or between RTOs may result in additional operating costs, we find that, in balancing competing considerations, those costs are

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<sup>48</sup> See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

<sup>49</sup> We note that the RTOs withdrew their request for waiver of "any other provisions of the JOA that may be necessary," so we do not address Panda's protest on this point. RTOs Oct. 24, 2018 Answer at 4.

minimal when weighed against the costs of not executing the redispatch and continuing to jeopardize the reliability of the BES.<sup>50</sup>

■ Regarding Panda's request that the Commission require the RTOs to provide notice of JOA violations to which the waiver applies, and reports documenting the time, duration, and cost of redispatch events,<sup>51</sup> we are concerned that imposing this requirement would place undue burden on the RTOs and produce little additional valuable information. The procedure for calculating M2M coordination redispatch costs outlined by the RTOs in their answer<sup>52</sup> provides sufficient information to resource owners that are redispatched as part of the M2M coordination process, including Panda. However, because we agree that the RTOs have identified a problem that will continue absent revisions to the JOA, we require the RTOs to submit quarterly reports regarding the status of JOA revisions to implement a long-term solution to address the concerns identified in the waiver request.<sup>53</sup>

■ For the reasons discussed above, we grant the waiver request, effective one day after the date of filing on September 18, 2018, and to expire on the earliest of: (1) the date on which the Commission approves JOA revisions proposed in an FPA section 205 filing submitted by the RTOs to implement a long-term solution to address the concerns identified in the waiver request to become effective; (2) the date on which the RTOs jointly request the waiver to end; or (3) September 17, 2019.

The Commission orders:

(A) The RTOs' request for waiver of sections 7.1.2, 8.1, and 8.2 of Schedule D of the JOA is hereby granted, effective September 18, 2018, as discussed in the body of this order.

(B) The waiver granted in this order will expire on the earliest of: (a) the date on which the Commission approves JOA revisions proposed in an FPA section 205 filing submitted by the RTOs to implement a long-term solution to address the concerns

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<sup>50</sup> See, e.g., *Southwestern Public Service Company*, 153 FERC ¶ 61,020, at P (2015) ("It is true that where a waiver may potentially harm third parties, the Commission may consider whether there are beneficial considerations in granting the waiver that outweigh the harm.").

<sup>51</sup> Panda Oct. 9, 2018 Protest at 9-10.

<sup>52</sup> RTOs Oct. 24, 2018 Answer at 6-7.

<sup>53</sup> The reports will be for informational purposes and will not be noticed for comment or subject to Commission order.

identified in the waiver request to become effective; (b) the date on which the RTOs jointly request the waiver to end; or (c) September 17, 2019.

(C) The RTOs are directed to submit quarterly reports, starting three months from the date of this order and continuing while the waiver is in effect, regarding the status of JOA revisions to implement a long-term solution to address the concerns identified in the waiver request, as discussed in the body of this order.

By the Commission. Commissioner McIntyre is not voting on this order. ( S

E A L )

Kimberly D. Bose,  
Secretary.