

139 FERC ¶ 61,011
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

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

PJM Interconnection, L.L.C.

Docket Nos. ER11-2875-001
ER11-2875-002
ER11-2875-005

ORDER ON COMPLIANCE FILING
AND REQUEST TO SUPPLEMENT THE RECORD

(Issued April 4, 2012)

1. In this order, we address a compliance filing, submitted by PJM Interconnection, L.L.C. (PJM) on January 27, 2012, in response to a Commission order issued November 17, 2011.¹ For the reasons discussed below, we accept PJM's compliance filing, in part, and require PJM to submit an additional compliance filing within 30 days of the date of this order.

2. We also address a request, submitted by the Maryland Public Service Commission (Maryland Commission) on March 13, 2012, to include in the record a recording of the July 28, 2011 technical conference held in this proceeding along with a transcript of that recording. For the reasons discussed below, we deny the Maryland Commission's request.

I. Background

3. On February 1, 2011, the PJM Power Providers Group (P3) filed a complaint seeking expedited revisions to PJM's Minimum Offer Price Rule (MOPR).² P3 asserted that, absent revision of PJM's MOPR, certain state-sponsored initiatives would promote price suppression and the exercise of buyer market power. On February 11, 2011, PJM

¹ *PJM, Interconnection, L.L.C.*, 137 FERC ¶ 61,145 (2011) (November 17 Order).

² See PJM Open Access Transmission Tariff (OATT) at Attachment DD, section 5.14(h).

submitted proposed tariff changes, adopting, in part, PJM's requests. As relevant here, PJM proposed to clarify the right of market participants to seek review of a mitigated sell offer, based on PJM's claim that its then-effective review procedures failed to specify how the review determination would be made. PJM proposed to clarify that such a review would be made pursuant to Federal Power Act (FPA) section 206.

4. In an order issued April 12, 2011, the Commission accepted, in part, and rejected, in part, PJM's proposed tariff revisions, subject to conditions.³ With respect to the review of mitigated sell offers, the April 12 Order rejected PJM's proposal to permit an aggrieved party to seek immediate recourse from the Commission pursuant to FPA section 206.⁴ The Commission found that this proposed process, with a section 206 filing at the outset, could result in complex and lengthy litigation and could well be avoided if such determinations are made, in the first instance, by PJM's independent market monitor (IMM) and PJM. Accordingly, the Commission directed PJM to submit proposed tariff revisions in a compliance filing, providing that the IMM and/or PJM will conduct unit-specific review of any proposed cost justification, upon request.⁵

5. In the November 17 Order, the Commission addressed requests for rehearing and clarification of the April 12 Order, including those requests for which additional procedures, including a technical conference, had been established. The Commission also addressed a compliance filing submitted by PJM on May 12, 2011. The Commission, in the November 17 Order, largely denied rehearing of the April 12 Order and largely accepted PJM's compliance filing. The November 17 Order also granted rehearing in one respect and required PJM to make further tariff revisions. In particular, the Commission granted rehearing so that parties would not be limited to the nominal levelized financial modeling methodology during the unit-specific review process authorized by the April 12 Order.⁶

6. The Commission, acting pursuant to its FPA section 206 authority, required a change in PJM's tariff to make clear that the duration of mitigation lasts until a resource clears in a PJM capacity auction. The Commission was concerned with the interplay of

³ *PJM, Interconnection, L.L.C.*, 135 FERC ¶ 61,022 (2011) (April 12 Order).

⁴ *Id.* P 118.

⁵ *Id.* PP 121-22. On June 13, 2011, the Commission issued an order granting rehearing of the April 12 Order for purposes of further consideration and establishing a Staff-led technical conference to address a subset of arguments raised on reading. *See PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,228 (2011) (Procedural Order). The technical conference was held on July 28, 2011.

⁶ November 17 Order, 137 FERC ¶ 61,145 at PP 73-74.

PJM's proposed tariff provisions and its definitions. Under PJM's proposed tariff, the MOPR would apply to a Planned Generation Capacity Resource located in the PJM region that is bid into an RPM auction for a delivery year unless a sell Offer based on that resource has cleared an RPM Auction for that or any prior delivery year. While, on its face, this provision seemed to require a generation capacity resource to clear at least one RPM auction, we found that the resource could, under PJM's tariff, avoid the MOPR. PJM's definition of a Planned Generation Capacity Resource states that a resource ceases to be a Planned Generation Capacity Resource once it receives interconnection service.⁷ Thus, the interplay of the provision and the definition would have meant that a resource that applied for and received interconnection service would be exempt from the MOPR even if it failed to clear an RPM auction.⁸

7. The Commission was also concerned with the application of the MOPR to imports. The Commission ruled that the MOPR should not apply to external resources except where a specific, new, external resource is identified as the sole support for the import and where a significant investment is made to provide capacity to the importing regional transmission organization (RTO).⁹

8. In addition, the Commission required PJM and the Independent Market Monitor for PJM (IMM) to limit their requests for information, during the unit-specific review process, to "reasonable" supporting information needed to evaluate the sell offer.¹⁰ The Commission also found that the MOPR applies to incremental auctions "immediately."¹¹

II. Compliance Filing

A. PJM's Proposal

9. To comply with the issue on which the Commission granted rehearing, PJM proposes to strike the words "nominal levelized" from sections 5.14(h)(5) and 5.14(h)(5)(iii) of the OATT.

⁷ Under PJM's OATT, a resource becomes an "existing" resource when it receives interconnection service. *See* Reliability Assurance Agreement 3.0.0 ("[A] Generation Resource shall cease to be considered a Planned Generation Capacity Resource as of the earlier of (i) the date that Interconnection Service commences as to such resource[.]").

⁸ November 17 Order, 137 FERC ¶ 61,145 at P 128.

⁹ *Id.* P 129.

¹⁰ *Id.* P 252.

¹¹ *Id.* P 256.

10. On the issue of duration of mitigation for internal resources, PJM proposes, in its transmittal letter, to revise section 5.14(h)(4)(i)¹² to remove the reference to “Planned” resources.¹³ For external resources, PJM explains that its changes will apply the MOPR to any “Planned” external resource “that requires sufficient transmission investment for delivery to the PJM Region to indicate a long-term commitment to providing capacity to the PJM Region.”¹⁴

11. PJM further proposes to revise section 5.14(h)(4) to indicate that the MOPR will apply immediately to any incremental auction conducted after December 19, 2011.

B. Notice of Filing and Responsive Pleadings

12. Notice of PJM’s filing was published in the *Federal Register*, 77 Fed. Reg. 1578 (2012), with interventions and protests due on or before February 17, 2012. The IMM filed comments. On February 27, 2012, PJM submitted an answer.

13. The IMM, in its comments, notes that PJM has failed to delete the reference to “Planned” resources in section 5.14(h)(4)(i), notwithstanding PJM’s statement to the contrary in its transmittal letter. The IMM further argues that PJM erroneously inserted the word “Planned” in the related section 5.14(h)(4)(ii) addressing external resources. The IMM contends that no resource should have the ability to avoid the MOPR simply by receiving interconnection service.

¹² This provision provides, in relevant part: “[a]ny Sell Offer that is based on (i) a Planned Generation Capacity Resource located in the PJM Region that is submitted in an RPM Auction for a Delivery Year unless a Sell Offer based on that resource has cleared an RPM Auction for that or any prior Delivery Year, or until a Sell Offer based on that resource clears an RPM auction for that or any subsequent Delivery Year.”

¹³ As discussed below, however, PJM’s filed tariff sheets fail to remove this reference.

¹⁴ The proposed tariff language for external resources reads as follows:

(ii) a Planned External Generation Capacity Resource that requires sufficient transmission investment for delivery to the PJM Region to indicate a long-term commitment to providing capacity to the PJM Region, for the first Delivery Year in which such resource qualifies as a Planned External Generation Capacity Resource, or submitted in any RPM Auction for that or any subsequent Delivery Year until the an offer based on that resource first clears an RPM Auction[.]

14. PJM, in its answer, acknowledges that it erroneously neglected to remove the word “Planned” in section 5.14(h)(4)(i), the provision governing mitigation for internal resources. PJM agrees to make this correction in a future compliance filing. PJM disagrees, however, with the IMM’s position on external resources in section 5.14(h)(4)(ii). PJM states that, consistent with the Commission’s language in the November 17 Order that the MOPR should only apply to “new” external resources, PJM’s compliance filing correctly uses the tariff-defined term, “Planned External Generation Capacity Resource,” to implement this directive.

C. Procedural Matters

15. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We will accept PJM’s February 27, 2012 answer, because it has provided information that assisted us in our decision making process.

D. Commission Determination

16. For the reasons discussed below, we accept PJM’s compliance filing, subject to the submission of an additional compliance filing, within 30 days of the date of this order.

17. First, we note that PJM’s compliance filing fails to revise its tariff, as required by the November 17 Order,¹⁵ to ensure that PJM and the IMM will limit their requests for information during the unit-specific review process to “reasonable” information. Accordingly, we accept the filing subject to PJM incorporating this change in its compliance filing.

18. Second, we direct PJM to remove the reference to “Planned” resources in section 5.14(h)(4)(i) referring to internal resources, as directed by the November 17 Order and as PJM agrees to do in its answer. Removal of the term “Planned” results in the MOPR applying to any applicable¹⁶ generation capacity resource located in the PJM region that is submitted in an RPM auction for a delivery year unless a sell offer based on that resource has cleared an RPM auction for that or any prior delivery year.

¹⁵ November 17 Order, 137 FERC ¶ 61,145 at P 252.

¹⁶ PJM’s tariff restricts the application of the MOPR to certain resource types and to resources in locational deliverability areas for which a separate Variable Resource Requirement (VRR) curve has been established for the base residual auction. *See* PJM OATT, Attachment DD, §§ 5.14(h)(1) and 5.14(h)(4).

19. Third, we direct PJM to make additional edits to the section of the tariff that deals with duration of mitigation for external resources. In the November 17 Order, the Commission responded to a request for clarification from North Carolina Municipal Electric Cooperative (NCMEC). In response to the Commission's holding in the April 12 Order that certain resources will be considered "new," and thus subject to the MOPR, until clearing in a PJM auction, NCMEC pointed out that a load serving entity may seek to use an existing resource from an external control area and that such a resource may have never before been offered into a PJM auction. For example, NCMEC stated that a resource may have been in full commercial operation for several years, injecting power exclusively into an external control area. NCMEC noted that investment in such a resource is sunk and should not be subject to a bid floor. In response to this concern, the Commission granted clarification, finding that exempting capacity imports from the MOPR offer floor was reasonable, "except where a specific new external resource is identified as the sole support for the import and where a significant investment, such as a new transmission line, is made to provide capacity to the importing RTO."¹⁷

20. PJM responds that it must include the word "Planned" in its OATT provision governing external resources in order to comply with the Commission's directive to apply the MOPR only to "new" external resources. We find that the retention of the word "Planned" falls prey to the same definition problem inherent in limiting the MOPR's application to "Planned" internal resources. For example, a newly constructed resource in an adjoining area may receive interconnection service prior to the first year in which it seeks capacity payments, and thereby evade the MOPR.¹⁸

21. We therefore accept PJM's filing on condition that PJM revise its tariff to make clear that, however it chooses to describe the new external capacity resource, the external resource must not be able to avoid the MOPR before clearing an RPM auction simply by receiving interconnection service.

¹⁷ November 17 Order, 137 FERC ¶ 61,145 at P 129.

¹⁸ PJM's RAA provides that an External Generation Capacity Resource "shall cease to be considered a Planned External Generation Capacity Resource as of the earlier of (i) the date that interconnection service commences as to such resource; or (ii) the resource has cleared an RPM Auction, in which case it shall become an Existing Generation Capacity Resource for purposes of the mitigation of offers for any RPM Auction for all subsequent Delivery Years." *See* RAA Article 1 -- Definitions, 6.0.0. Thus, a new energy-only resource could be electrically interconnected prior to the first delivery year as an energy only resource and thereby avoid the MOPR requirements in subsequent years.

III. Request to Supplement the Record

22. We will deny the Maryland Commission's request to supplement the record. The Maryland Commission states that the April 12 Order and the November 17 Order are currently on appeal before the United States Court of Appeals for the Third Circuit and that the court, in that proceeding, has ordered the Commission to submit a certified index to the record.¹⁹ The Maryland Commission requests that, as part of that record, the Commission include the webcast of the technical conference, along with a transcript of that webcast. The Maryland Commission states that no entries for this webcast, or for this transcript, exist in the Commission's e-library docket, even though parties to the technical conference presented testimony. The Maryland Commission adds that Chairman Wellinghoff and other Commissioners attended the technical conference and that the Commission considered the parties' technical conference testimony prior to issuing the November 17 Order.

23. We deny the Maryland Commission's request. The Maryland Commission makes no mention of relying on the webcast in its post-technical conference written comments and has not otherwise explained why the webcast, therefore, would be relevant to its appeal. Moreover, the webcast is not part of the record in this case. The Commission directed its staff to convene a technical conference and to provide appropriate post-technical conference comment procedures.²⁰ It did not require an official transcript be created for the record, to ensure a free and frank discussion of the issues between Commission staff and the parties.

24. In accord with Commission practice, the free webcast was arranged by Commission staff solely as a convenience for those parties that could not attend the conference,²¹ and, as such, is not considered a part of the record of the proceeding.²² No transcript was made of the webcast. However, a post-technical conference comment period was established for parties to formalize any comments they wanted to make part of the record.²³ The record solely consists of the written comments submitted by the parties, and the Commission's November 17 Order is based on that record.

¹⁹ See *New Jersey BPU v. FERC*, Case No. 11-4245.

²⁰ Procedural Order, 135 FERC ¶ 61,228 at P 6.

²¹ June 29, 2011 Notice.

²² See *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Services Into Markets Operated by the Cal. Independent System Operator & the Cal. Power Exchange*, 112 FERC ¶ 61,222, at P 1 (2005).

²³ July 28, 2011 Notice.

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The Commission orders:

(A) PJM's compliance filing is hereby accepted, subject to conditions, as discussed in the body of this order, and subject to PJM's submittal of a compliance filing, within 30 days of the date of this order.

(B) The Maryland Commission's request to supplement the record is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Document Content(s)

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