

138 FERC ¶ 61,194
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 No. ER11-2875-004

PJM Power Providers Group

Docket No. EL11-20-002

v.

(Unconsolidated)

PJM Interconnection, L.L.C.

ORDER ON REHEARING

(Issued March 15, 2012)

1. Rehearing and/or clarification of the Commission's November 17, 2011 order on compliance, rehearing, and technical conference,¹ is timely sought by three petitioner coalitions.² Petitioners seek rehearing regarding only those aspects of the November 17 Order addressing the Commission's acceptance, in part, of a compliance filing, submitted by PJM Interconnection, L.L.C. (PJM) in response to a Commission order issued April 12, 2011.³ For the reasons discussed below, we deny rehearing of the Commission's compliance rulings.

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

² The three petitioner coalitions are: (i) Calpine Corp., Electric Power Supply Assn., GenOn Parties, NextEra Energy Generators, and PPL Parties (collectively, Calpine, *et al.*); (ii) Old Dominion Electric Coop. (ODEC), American Municipal Power, Inc., North Carolina Electric Membership Corp., and PJM Industrial Customer Coalition (collectively, ODEC, *et al.*); and (iii) ODEC, *et al.* joined by American Public Power Assn., Chambersburg, PA, Delaware Municipal Electric Corp., and National Rural Electric Cooperative Assn. (collectively, APPA, *et al.*).

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

I. Background

2. On February 1, 2011, the PJM Power Providers Group (P3) filed a complaint against PJM, seeking revisions to PJM's minimum offer price rule (MOPR).⁴ P3 alleged that the MOPR screen, absent revision, would be unable to deter the threat of buyer market power in PJM's capacity market given certain state-sponsored, out-of-market payment initiatives to promote new generation entry.⁵ In a related filing, submitted February 11, 2011, PJM submitted proposed MOPR changes adopting, in part, P3'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.⁶ PJM proposed to clarify that such a review would be made pursuant to Federal Power Act (FPA) section 206. PJM also proposed to clarify that it would participate in any such proceeding and submit written comments addressing a seller's representations regarding its costs. PJM's February 11, 2011 filing also proposed to clarify that resources designated as self-supply are not exempt from the MOPR.

⁴ See PJM Open Access Transmission Tariff (OATT), Attachment DD at Section 5.14(h). The MOPR was adopted by PJM, in 2006, to address the concern that some market participants might have an incentive to depress market clearing prices in PJM's capacity market by offering supply from a new resource at a less than competitive level. The MOPR, by imposing a minimum offer screen to such an offer, is intended to prevent the exercise of buyer market power. See *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 (2006).

⁵ See S. 2381, 214th Leg. (N.J. 2011) (authorizing the establishment of a Long-Term Capacity Agreement Pilot Program); see also *In re Whether New Generating Facilities are Needed to Meet Long-Term Demand for Standard Offer Service*, No. 9214, Request for Proposals for Generation Capacity Resources Under Long-Term Contract (M.P.S.C. Dec. 29, 2010).

⁶ Under PJM's then-existing rule, a sell offer that had been rejected as outside the bounds of PJM's generically-determined costs for a particular asset class, i.e., a sell offer subject to mitigation, could be justified on review, subject to a showing made to the Commission that the sell offer is consistent with the real levelized (year one) competitive, cost-based, fixed, net cost of new entry for that unit, assuming that the unit was relying solely on revenues from PJM-administered markets.

A. April 12 Order

3. In the April 12 Order, the Commission accepted, in part, and rejected, in part, PJM's proposed tariff revisions, subject to conditions. 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 206.⁷ The Commission found that this proposed review process could result in complex and lengthy litigation and that such a procedure could 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 review any proposed cost justification, upon request.⁸ The Commission also directed that PJM's proposed tariff revisions include an explanation of the information that will need to be submitted to PJM and/or the IMM and the objective standards by which such submittals would be evaluated.⁹

B. PJM's Compliance Filing

4. On May 12, 2011, PJM submitted a compliance filing in response to the April 12 Order. With respect to the review of sell offers, PJM stated that it had complied with the requirement that its tariff identify the information that will be considered as part of this review process. PJM stated that, consistent with the April 12 Order, a sell offer falling below the MOPR screen will nonetheless be permissible if the seller can show that the offer is consistent with the competitive, cost-based, fixed, nominal levelized, net cost of new entry.

5. PJM also proposed to clarify that a sell offer below the MOPR screen can be justified based on competitive cost advantages relative to the costs estimated for the MOPR screen, including costs resulting from the capacity market seller's business model, financial condition, tax status, access to capital or other similar conditions affecting the

⁷ April 12 Order, 135 FERC ¶ 61,022 at P 118.

⁸ *Id.* P 122.

⁹ *Id.* Numerous parties sought rehearing of the April 12 Order, with respect to these findings. On June 13, 2011, the Commission, in response, granted rehearing, for further consideration. With respect to a related holding, in the April 12 Order, regarding the applicability of the MOPR to self-supply resources, the Commission established a technical conference proceeding. *See PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,228 (2011). The technical conference was held July 28, 2011.

applicant's costs.¹⁰ PJM stated that, in addition (or in the alternative), offers below the MOPR screen can be justified based on net revenues that are reasonably demonstrated to be higher than estimated for the MOPR screen.¹¹ PJM noted that the review process will place the burden of demonstrating the appropriateness of cost advantages and revenues on the seller, and that the reviewing entities (i.e. the IMM and PJM) would be alert to claimed cost savings, or revenue sources, that appear irregular or anomalous, that do not reflect arm's-length transactions, or that are not in the ordinary course of the seller's business.¹²

6. PJM stated that, to implement these requirements, it was proposing to further revise its tariff to allow a capacity market seller to request a MOPR exception up to 60 days before the auction in which the review applicant seeks to submit its sell offer. PJM stated that this proposed time allowance corresponded to the current deadline for sellers to provide data to the IMM to support their proposed offer ceilings. PJM noted, however, that those sellers contemplating new entry who may wish to obtain assurance on their

¹⁰ PJM's proposed tariff revision, at PJM OATT, section 5.14(h)(5)(iii), provided as follows:

A Sell Offer evaluated hereunder shall be permitted if the information provided reasonably demonstrates that the Sell Offer's competitive, cost-based, fixed, nominal levelized, net cost of new entry is below the minimum offer level prescribed by [section 5.14(h)(4)], based on competitive cost advantages relative to the costs estimated for [section 5.14(h)(4)], including, without limitation, competitive cost advantages resulting from the Capacity Market Seller's business model, financial condition, tax status, access to capital or other similar conditions affecting the applicant's costs, or based on net revenues that are reasonably demonstrated hereunder to be higher than estimated for [section 5.14(h)(4)]. Capacity Market Sellers shall be asked to demonstrate that claimed cost advantages or sources of net revenue that are irregular or anomalous, that do not reflect arm's-length transactions, or that are not in the ordinary course of the Capacity Market Seller's business are consistent with the standards of this subsection. Failure to adequately support such costs or revenues so as to enable [PJM] to make the determination required in this section will result in denial of an exception hereunder by [PJM].

¹¹ *Id.*

¹² *Id.*

contemplated sell offers on a more expedited basis, could request an exception even before the minimum offer level is established under the MOPR for a delivery year. PJM also proposed to clarify that if a seller submits an early request and PJM subsequently announces a minimum offer level for the delivery year that is lower than the seller's contemplated offer, then its offer would be permitted and the seller would need no exception.

7. PJM stated that the seller would initiate the review process by submitting its request simultaneously to both PJM and the IMM. PJM added that the IMM would be required to provide its findings both to PJM and the seller within 30 days of receipt of the request. PJM further proposed that if the seller is adversely affected by the IMM's findings, it be permitted to request review by PJM, and that PJM be authorized to elect to review the IMM's determination on its own initiative. PJM stated that, under its proposal, it would be required to provide its determination no later than 45 days after receipt of the request.

8. With respect to required information, PJM proposed that a seller, in its review request, be required to include documentation to support the fixed development, construction, operation, and maintenance costs of the planned resource, as well as estimates of off-setting net revenues. PJM proposed, however, that a seller not be required to comply with this checklist, provided that the seller's submissions are adequately supported.

9. In addition to cost verification, PJM proposed that a review request be required to identify all revenue sources relied upon in the sell offer to offset the claimed fixed costs. PJM stated that consistent with the April 12 Order's assurance that rate-base, or other self-supply new entry projects, are permissible, so long as they show that the project is viable under a competitive revenue scenario, sellers would be required to demonstrate that such off-setting revenues are consistent over a reasonable time period identified by the seller, with the standard prescribed by the Commission for review of MOPR exceptions.¹³

¹³ PJM proposed that such a demonstration be allowed to include forecasts of competitive electricity prices in the PJM region, based on well-defined models that include fully documented estimates of future fuel prices, variable operation and maintenance expenses, energy demand, emissions allowance prices, and expected environmental or energy policies that affect the seller's forecast of electricity prices in such region, employing input data from sources readily available to PJM and the IMM.

C. November 17 Order

10. In the November 17 Order, the Commission addressed requests for rehearing of the April 12 Order¹⁴ and, as relevant here, separately addressed PJM's compliance filing, summarized above. With respect to review of sell offers, the November 17 Order granted partial rehearing of the April 12 Order regarding the standard of review applicable to the unit-specific review process.¹⁵ Specifically, the Commission granted rehearing of the April 12 Order's holding that a unit-specific review must utilize a nominal leveled methodology.¹⁶ The Commission otherwise denied rehearing on this issue.

11. The November 17 also accepted, subject to a further compliance filing, PJM's compliance filing, as relevant to the issues raised here on rehearing. Specifically, the Commission found that PJM's compliance filing proposal appropriately addressed concerns from load serving entities developing resources through arrangements outside of PJM's capacity market.¹⁷ The Commission also found that PJM's proposal would accommodate reasonable estimates of the costs and revenues of specific projects and would recognize business practices that may vary from the model embedded in the MOPR.

II. Requests for Rehearing

12. Calpine, *et al.* request that the Commission reconsider the grounds on which PJM's proposed unit-specific review provision was accepted. First, Calpine, *et al.* renew

¹⁴ Petitions for review of the April 12 Order and the November 17 Order were filed by: (i) P3 and PSEG Energy Resources & Trade LLC, in the United States Court of Appeals for the District of Columbia Circuit (in Case Nos. 11-1455 and 11-1456, respectively); and (ii) the New Jersey Board of Public Utilities and New Jersey Division of Rate Counsel (filing jointly), and the Maryland Public Service Commission, in the United States Court of Appeals for the Third Circuit (in Case Nos. 11-4245 and 11-4405, respectively).

¹⁵ November 17 Order, 137 FERC ¶ 61,145 at P 73.

¹⁶ The Commission found that the April 12 Order's implication that it would always be irrational for a new entrant to offer at a price based on the real leveled method was not justified. The Commission added that the case-by-case nature of the unit-specific exception process should allow for the IMM, PJM, and the Commission to consider more carefully the different circumstances of individual sellers. *Id.* P 74.

¹⁷ *Id.* P 242.

the argument made by the IMM, P3, and Hess Corporation, below, that PJM's unit-specific review provision fails to include language that was clearly and unambiguously required by the April 12 Order. Specifically, Calpine, *et al.* argue that PJM omitted, in its compliance filing, language clarifying that a PJM/IMM review of a unit-specific sell offer would be limited to a consideration of costs "were the resource to rely solely on revenues from PJM-administered markets."¹⁸

13. Calpine, *et al.* further argue that the tariff language approved in the November 17 Order, on compliance, was not required by the April 12 Order, including new review standards that cannot be regarded as just and reasonable. Specifically, Calpine, *et al.* argue that PJM's unit-specific review process standards provide no objective criteria by which a review applicant's submission of evidence will be assessed. Calpine, *et al.* note, for example, that a review applicant is permitted to demonstrate that irregular, or anomalous revenue sources, cost advantages not negotiated at arm's-length, or that are not available in the ordinary course of the entity's business, are nonetheless consistent with the standards of PJM's tariff. Calpine, *et al.* assert that the unit-specific review process will allow the IMM or PJM to decide whether the applicant has met its required demonstration, while providing no means for any other interested party to assess the accuracy of, or otherwise challenge, such a determination.¹⁹

14. ODEC, *et al.* argue that the Commission erred in accepting PJM's unit-specific review provision, on compliance, without requiring language obligating PJM to consider a multi-year cost/revenue analysis, if presented.²⁰ ODEC, *et al.* asserts that a multi-year

¹⁸ Calpine, *et al.* Rehearing Request at 8 citing April 12 Order, 135 FERC ¶ 61,022 at P 122:

In conducting an individualized generation review, PJM proposes that: a sell offer would be permissible when such offer is consistent with the competitive, cost-based, fixed, nominal levelized, net cost of new entry were the resource to rely solely on revenues from PJM-administered markets. We find that this standard is appropriate for reviewing such cost estimates and that PJM must include this language in its revised tariff.

¹⁹ Calpine, *et al.* add that the filing of a complaint with the Commission will offer little solace, following such a determination, given that an uncompetitive bid, once allowed, may establish the market clearing price before the complaint can be heard. Calpine, *et al.* assert that, regardless, market participants are unlikely to be equipped with the applicant's cost justification data.

²⁰ See also APPA, *et al.* Rehearing Request at 14-15 ("[T]he PJM [unit-specific review] analysis . . . is an unrealistic and narrow test for whether a resource is economic

(continued...)

view to a new supply addition represents a critical piece in the underlying investment decision and should be a mandatory part of any review analysis undertaken by the IMM or PJM. Accordingly, ODEC, *et al.* argue that the Commission should have adopted language, as proposed at the technical conference, permitting a demonstration that the sell offer “is consistent with the Capacity Market Seller’s business model and is economic over a reasonable period of time identified by the Capacity Market Seller, which can include a multi-year view that is consistent with the duration of the investment in the planned generation resource, considering real or nominal levelized project specific non-sunk costs and forward looking energy, ancillary services, and capacity revenues.”

15. ODEC, *et al.* also argue that the Commission erred in accepting a review provision that does not assure that a self-supply sell offer, if granted an adjusted, unit-specific offer floor upon review by the IMM, or PJM, will be guaranteed to clear the auction. ODEC, *et al.* assert that the guarantee of clearing is the critical element that has been lost with the elimination of the self-apply exemption.

16. ODEC, *et al.* also seek clarification that the individual sell offer should not be compared to a generic net CONE, but instead should be consistent with the competitive, cost-based fixed, nominal levelized, net cost of new entry for the reference resource that is the subject of the sell offer.

17. APPA, *et al.* concur with ODEC, *et al.* that the Commission erred in accepting a unit-specific review provision, on compliance, that does not guarantee that a self-supply sell offer will clear. APPA, *et al.* argue that the loss of a self-supply clearing assurance and its replacement with a unit-specific review process may impede the ability to bring new gas-fired generation on line. APPA, *et al.* further argue that, by adopting a unit-specific review process that places the onus on load serving entities to demonstrate the legitimacy of their bids, on a case-by-case basis, and exposing load serving entities to the risk that their self-supply transactions may not clear in PJM’s capacity auctions, the Commission has failed to engage in reasoned decision-making. APPA, *et al.* add that by limiting a unit-specific review to a consideration of the planned resource’s fixed development, construction, operation, and maintenance costs and off-setting net revenues, such a review does not capture all of the factors and benefits that may contribute to a final management decision as to whether a specific self-supply resource investment is economic.

because it does not allow for the type of multi-year analysis that is undertaken by [load serving entities], which can include reliability benefits and other benefits[.]”).

III. Discussion

18. For the reasons discussed below, we deny rehearing of the November 17 Order.

19. We reject both Calpine, *et al.*'s argument that the unit-specific review process is too broad, resulting in the possible thwarting of the MOPR, and ODEC, *et al.* and APPA, *et al.*'s argument that the review process is too narrow, resulting in disproportionate protection against monopsony power at the expense of price competition. We continue to find that a blanket, across-the-board MOPR exemption for resources designated as self-supply would allow for an "unacceptable opportunity to exercise buyer market power" and could "inhibit competitive investment."²¹ For a competitive market like RPM to function as intended, "offers submitted into PJM's capacity auctions must accurately reflect avoidable net costs."²² We further affirm our holding that certain advantages associated with long-standing and well-recognized business models should not be deemed "automatically suspect" when determining whether a particular sell offer accurately reflects a resource's net costs.²³ We therefore reaffirm the Commission's finding in the November 17 Order that this unit-specific review process appropriately balances the need to protect against uneconomic entry while also mitigating concerns about placing an undue burden on resources choosing to procure or build capacity under long-standing business models.

20. We dismiss Calpine, *et al.*'s assertion of error that PJM's unit-specific review provision, as accepted by the November 17 Order, fails to comply with the April 12 Order because it allows a deviation from the requirement that the consideration of costs would be limited to those costs "were the resource to rely solely on revenues from PJM-administered markets."²⁴ Calpine, *et al.* points to language accepted in the compliance filing that permits consideration of cost advantages outside of the PJM market²⁵ as being

²¹ November 17 Order, 137 FERC ¶ 61,145 at P 255.

²² *Id.*

²³ *Id.* P 208.

²⁴ Calpine, *et al.*'s corollary argument is that PJM submitted review criteria that, because it was not limited to the standard supported by Calpine, *et al.*'s reading of the April 12 Order, was not required by that order.

²⁵ The language states that sellers can include "without limitation, competitive cost advantages resulting from the Capacity Market Seller's business model, financial condition, tax status, access to capital or other similar conditions affecting the applicant's costs." OATT Attachment DD § 5.14(h)(5)(iii).

inconsistent with, and thus beyond the scope of, the compliance obligation. They further argue that PJM failed to comply with the April 12 Order by omitting from section 5.15(h)(5)(iii) the required phrase “were the resource to rely solely on revenues from PJM-administered markets.”

21. As we found in the November 17 Order, we find that PJM’s compliance filing was in accord with the requirements of the April 12 Order. As an initial matter, we note that the tariff does in fact include the language in question. In particular, PJM proposed in its May 12, 2011 compliance filing to retain its existing tariff provision in section 5.14(h)(5) containing the standard that a resource will be permitted if it is consistent with the competitive, cost-based, fixed, net cost of new entry “were the resource to rely solely on revenues from PJM-administered markets.” Furthermore, the April 12 Order found only that sell offers were required to be “consistent with” the competitive, cost-based cost of new entry were the resource to rely on PJM market revenues.²⁶ The April 12 order did not require that such offers be “equal to” that standard or dictate that no cost advantages or revenues outside of the PJM markets can be included in a sell offer.²⁷ As we found in the November 17 Order, PJM’s compliance filing “appropriately recognizes varying long-standing business structures and practices while also protecting against attempts to exercise buyer market power.”²⁸ Accordingly, we find that the Commission appropriately accepted PJM’s compliance filing on this issue.

22. We also dismiss Calpine, *et al.*’s assertion of error that the compliance filing tariff language accepted in the November 17 Order fails to satisfy the April 12 Order’s compliance requirement because it lacks objective criteria by which to evaluate unit-specific review requests and thus provides inappropriate discretion to the IMM and PJM that could thwart the purpose of the MOPR. Without sufficiently objective, reviewable criteria, Calpine, *et al.* argue that third parties will have no means to assess the accuracy or otherwise challenge the determination of the IMM or PJM. In a footnote, Calpine, *et al.* further argue that the section 206 complaint process provides little solace to market

²⁶ April 12 Order, 135 FERC ¶ 61,022 at P 122 (“PJM proposes that: a sell offer would be permissible when such offer is consistent with the competitive, cost-based, fixed, nominal levelized, net cost of new entry were the resource to rely solely on revenues from PJM-administered markets. We find that this standard is appropriate for reviewing such cost estimates and that PJM must include this language in its revised tariff.”).

²⁷ November 17 Order, 137 FERC ¶ 61,145 at P 244.

²⁸ *Id.*

participants because an allegedly uncompetitive bid could set the market clearing price before any complaint proceeding runs its course.

23. We disagree that the review standards proposed by PJM and accepted in the November 17 Order failed to comply with the April 12 Order in this regard. The April 12 Order, in requiring PJM to submit a revised review provision, including the objective standards by which a review would be undertaken, did not specify the precise manner in which this requirement must be satisfied. Nonetheless, we reaffirm here that the accepted tariff language is sufficiently objective, as contemplated by the April 12 Order, and appropriately balances the need to protect against uneconomic entry while also minimizing any burden placed on resources choosing to procure or build capacity under long-standing business models. As the Commission found in the November 17 Order, determining whether sell offers contain “irregular or anomalous” revenues or costs, among other things, “will obviously involve the exercise of judgment and discretion on the part of the IMM and PJM.”²⁹ The Commission went on to note that “some amount of discretion is unavoidable and perhaps even necessary when making the types of determinations” at issue in a unit-specific review.³⁰ Further, Calpine, *et al.* provide no support for the assertion in a footnote that, should a complaint be filed with the Commission, no remedies would be available. We therefore deny Calpine’s request for rehearing.

24. We also dismiss ODEC, *et al.*’s and APPA, *et al.*’s assertions of error that, in accepting PJM’s unit-specific review provision, the Commission was required to condition its acceptance on the requirement that PJM add language to its tariff expressly obligating PJM to consider a multi-year cost/revenue analysis, if presented in a review proceeding. This issue was raised by these same parties on rehearing of the April 12 Order.³¹ The November 17 Order noted that that the allowance requested was embodied in PJM’s compliance proposal.³² On compliance, the Commission found that PJM’s review standard “will accommodate reasonable estimates of the costs and revenues of specific projects *and will recognize business practices that may vary from the model*

²⁹ *Id.* P 245.

³⁰ *Id.*

³¹ Specifically, this rehearing argument was raised by the PJM Load Group, a coalition including, among others, ODEC, *et al.* and APPA, *et al.*, non-inclusive of the National Rural Electric Cooperative Assn.

³² November 17 Order, 137 FERC ¶ 61,145 at P 76, n.32.

embedded in the MOPR's [cost of new entry] estimate."³³ We find here that an explicit mention of multi-year costs and revenues is not necessary for PJM's proposal to be found just and reasonable. The tariff language accepted by the Commission does not preclude the submission of data reflecting a multi-year cost/revenue analysis.³⁴

25. ODEC further requests clarification with respect to whether the "consistent with" standard of review in the unit-specific review process requires the individual resource at issue to be consistent with the generic asset-class Net CONE or the unit-specific Net CONE. We agree that the tariff provides for the justification of sell offers reasonably based on unit-specific costs³⁵ and unit-specific revenues.³⁶ Parties claiming to rely on

³³ *Id.* P 242 (emphasis added).

³⁴ In fact, the tariff language explicitly states that: "The request also shall identify all revenue sources relied upon in the Sell Offer to offset the claimed fixed costs, including, without limitation, long-term power supply contracts, tolling agreements, or tariffs on file with state regulatory agencies, and shall demonstrate that such offsetting revenues are consistent, *over a reasonable time period identified by the Capacity Market Seller*, with the standard prescribed above." OATT Attachment DD §5.14(h)(5)(ii) (emphasis added).

³⁵ *See, e.g.*, OATT Attachment DD § 5.14(h)(5)(ii) ("[S]upporting documentation for project costs may include, as applicable and available, a complete project description; environmental permits; vendor quotes for plant or equipment; evidence of actual costs of recent comparable projects; bases for electric and gas interconnection costs and any cost contingencies; bases and support for property taxes, insurance, operations and maintenance ("O&M") contractor costs, and other fixed O&M and administrative or general costs; financing documents for construction-period and permanent financing or evidence of recent debt costs of the seller for comparable investments; and the bases and support for the claimed capitalization ratio, rate of return, cost-recovery period, inflation rate, or other parameters used in financial modeling.").

³⁶ *See, e.g., id.* ("The request also shall identify all revenue sources relied upon in the Sell Offer to offset the claimed fixed costs, including, without limitation, long-term power supply contracts, tolling agreements, or tariffs on file with state regulatory agencies, and shall demonstrate that such offsetting revenues are consistent, over a reasonable time period identified by the Capacity Market Seller, with the standard prescribed above. In making such demonstration, the Capacity Market Seller may rely upon forecasts of competitive electricity prices in the PJM Region based on well defined models that include fully documented estimates of future fuel prices, variable operation and maintenance expenses, energy demand, emissions allowance prices, and expected

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unit-specific revenues are required to justify their revenues based on the requirements of the tariff.³⁷ We further clarify that the seller needs to demonstrate that any unit-specific costs or revenues are consistent with a “competitive” bid, but not necessarily the generic Net CONE.

26. APPA, *et al.* contend that the unit-specific cost justification process renders self-supply “automatically suspect” and unreasonably impedes traditional business models in a way that will chill new capacity development and threaten reliability. We disagree. We do not find that requiring a self-supply unit seeking a unit-specific price floor to submit cost justification information unfairly burdens such resources, and we continue to find such a process reasonable. This process is necessary for PJM to ensure that a self-supply bid does not reflect the exercise of market power or an attempt to lower the capacity price below a competitive level. PJM’s tariff treats self-supply sell offers identically to all other seller offers. They will be subject to the MOPR only if the relevant resource is a new-entry combustion turbine or combined cycle generating plant in a capacity constrained Locational Deliverability Area. Moreover, a self-supplied resource will have the same opportunity as any other resource subject to the MOPR to demonstrate that its offer is reasonably based on the costs of the resource and the revenues that the resource would expect to receive under competitive terms.

27. APPA, *et al.* argue that, by finding in the November 17 Order that the purpose of the MOPR is not to impede long-standing business practices, the Commission erred by failing to conclude that a blanket exemption from MOPR for self-supply is therefore required. We dismiss this argument, and we further dismiss ODEC *et al.*’s assertion that the Commission erred by not guaranteeing clearance for all self-supply sell offers that receive an adjusted, unit-specific offer floor. By arguing that all such offers must be

environmental or energy policies that affect the seller’s forecast of electricity prices in such region, employing input data from sources readily available to the Office of the Interconnection and the Market Monitoring Unit. Documentation for net revenues also may include, as available and applicable, plant performance and capability information, including heat rate, start-up times and costs, forced outage rates, planned outage schedules, maintenance cycle, fuel costs and other variable operations and maintenance expenses, and ancillary service capabilities.”).

³⁷ See, e.g., OATT Attachment DD § 5.14(h)(5)(iii) (“Capacity Market Sellers shall be asked to demonstrate that claimed cost advantages or sources of net revenue that are irregular or anomalous, that do not reflect arm’s-length transactions, or that are not in the ordinary course of the Capacity Market Seller’s business are consistent with the standards of this subsection”).

guaranteed to clear, either generally or after receiving a unit-specific offer floor, these parties are arguing that such offers should be treated as price takers. As mentioned above, however, the April 12 Order specifically rejected an argument that such offers can be treated as price takers.³⁸ As such, we consider APPA, *et al.*'s argument to be a late-filed rehearing request of the April 12 Order and dismiss it.

28. Moreover, we affirm our determination that no such offers should be treated as price takers. Each competitive offer must be considered along with other offers to determine if it clears the market regardless of which MOPR process the seller uses. Simply receiving an adjusted unit-specific floor does not mean that the market requires that unit at the adjusted floor bid. Assuring every unit with an adjusted unit-specific floor that it will clear the market could result in PJM rejecting the offer from a less expensive unit that otherwise would have cleared. For this reason, we also disagree with APPA, *et al.*'s assertion that the unit-specific review process improperly burdens competition.

The Commission orders:

Rehearing and clarification of the November 17 Order are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³⁸ November 17 Order, 137 FERC ¶ 61,145 at P 205.

Document Content(s)

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