

152 FERC ¶ 61,152
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Indicated Market Participants

Docket No. EL15-88-000

v.

PJM Interconnection, L.L.C.

ORDER DENYING COMPLAINT

(Issued August 25, 2015)

1. On August 6, 2015, Direct Energy Business Marketing, LLC and NextEra Energy Resources, LLC (collectively, Indicated Market Participants, or Complainants), filed a complaint, pursuant to section 206 of the Federal Power Act (FPA),¹ seeking a determination regarding the clearing mechanism established by PJM Interconnection, L.L.C. (PJM), in Docket No. ER15-623-000, *et al.*, for the procurement of Capacity Performance Resources,² in PJM's Capacity Performance Transition Incremental Auctions (Transition Auctions).³ Complainants assert that PJM's Transition Auction clearing methodology violates PJM's OATT and is inconsistent with the *Capacity Performance Order*. Complainants also argue that to the extent that PJM's clearing methodology is found to be consistent with the OATT, PJM's OATT is unjust and unreasonable because it fails to clear the Transition Auctions in a manner that minimizes

¹ 16 U.S.C. § 824(e) (2012).

² See PJM Open Access Transmission Tariff (OATT) at Attachment DD, section 5.5A(a).

³ See *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (2015) (*Capacity Performance Order*). Complainants also style their request as a motion for clarification of the *Capacity Performance Order*. However, because Complainants' motion is, in effect, an inadmissible late-filed request for rehearing of the *Capacity Performance Order*, we address it here as a complaint.

capacity procurement costs. Complainants explain that PJM's Transition Auction clearing methodology will select resources based on the "absolute" price of sellers' offers without reference to sellers' existing capacity commitments for the relevant delivery year, as established in PJM's Base Residual Auctions (BRAs). Complainants seek an order requiring PJM's clearing algorithm to consider the "incremental" cost of providing Capacity Performance, i.e., the difference between the absolute price and the price of the seller's existing capacity commitments for the relevant delivery year.

2. For the reasons discussed below, we deny the complaint. We find that Complainants have failed to demonstrate that PJM's Transition Auction clearing methodology is inconsistent with its OATT or that proceeding with the Transition Auctions as currently structured cause the rates to be unjust and unreasonable, as required under section 206. Therefore, we need not address Complainants' proposed alternative clearing methodology. Nonetheless, we note that Complainants' proposed design has not been shown to be just and reasonable. Moreover, implementing an alternative design at this juncture may require other changes to either PJM's market design or OATT. Delaying these auctions while PJM develops a new clearing methodology would reduce the amount of time that resources have to install improved equipment or make fuel supply arrangements in order to meet the more stringent requirements of the Capacity Performance product.

I. Background

A. Transition Auctions

3. In the *Capacity Performance Order*, the Commission accepted PJM's transition from its current capacity product to a new capacity product, a Capacity Performance Resource. The Commission explained that Capacity Performance Resources are subject to enhanced incentives that will improve resource performance and better meet PJM's reliability requirements.⁴ PJM is scheduled to conduct Transition Auctions to procure Capacity Performance Resource commitments for the 2016-17 and 2017-18 delivery years.⁵ In accepting PJM's transition the Commission found that the provisions

⁴ *Id.* P 48 (finding that PJM's "existing payment features not only inadequately incent resource performance, but may perversely select less reliable resources over more reliable resources because a capacity seller's decision to forego investments that would improve resource performance allows it to offer in PJM's capacity market at a lower price and be paid the clearing price while providing less reliable service.")

⁵ *Id.* P 253. The provisions governing PJM's Transition Auctions are established at Attachment DD, section 5.14D of PJM's OATT. PJM's first Transition Auction for

(continued ...)

“appropriate[ly] balance [] the costs associated with procuring Capacity Performance Resources throughout the transition period with the needed reliability improvements over that same time period.”⁶

4. In its Transition Auctions, PJM will procure Capacity Performance Resources covering 60 percent of its reliability requirement, as applicable to the 2016-17 delivery year, and 70 percent of its reliability requirement, as applicable to the 2017-18 delivery year. Offers submitted into the Transition Auctions will also be subject to an offer cap.⁷ A resource with existing capacity commitments may voluntarily offer part, or all, of its existing capacity commitments as Capacity Performance into the Transition Auctions. If cleared, the resource’s existing commitment will be replaced with a Capacity Performance commitment. In addition, PJM’s Transition Auctions will not be modeled based on any locational constraints, such that PJM will procure its specified capacity commitments without regard to where the resource is located.⁸

B. Complaint

5. Complainants assert that the *Capacity Performance Order* rejected a protester’s request to clear resources with existing capacity commitments before resources without such commitments.⁹ The Commission, in doing so, was explicit in its expectation that the auction clearing mechanism would procure resources by solving for the lowest overall cost solution.¹⁰ Complainants assert that PJM’s approach to clearing its Transition Auctions, which was only recently made known by PJM, and following the issuance of

the 2016-17 delivery year is scheduled to begin on August 26, 2015. A second Transition Auction for the 2017-18 delivery year is scheduled to begin on September 3, 2015. *Id.*

⁶ *Id.*

⁷ *Id.* P 221. The offer cap applicable to the 2016-17 delivery year is 50 percent of the Net Cost of New Entry (Net CONE); The offer cap applicable to the 2017-18 delivery year is 60 percent of Net CONE.

⁸ *Id.* P 220.

⁹ *Id.* P 259.

¹⁰ *Id.* (“[PJM’s] auction clearing algorithm is appropriately designed to attain the lowest overall cost solution to meet PJM’s capacity needs [with no showing made by intervenors] that the algorithm fails in this regard, or [that there is] a compelling reason for the algorithm to move away from the least cost solution.”)

the *Capacity Performance Order*, does not live up to this expectation. With respect to the development of PJM's approach, Complainants note that, on June 17, 2015 and June 23, 2015, PJM posted updated business rules that provided, without elaboration, that clearing prices would be set by marginal resource offers. Complainants assert that this announcement left unaddressed how any given sell offer would be determined to be marginal.

6. Complainants add that, on July 8, 2015, PJM addressed its proposed approach to clearing the Transition Auctions, in a training manual, noting again, without elaboration, that it would stack offers based on the value of the offer price. Complainants assert that PJM's intent to clear resources based on absolute sell offers, without reference to sellers' existing capacity commitments, only became apparent in a subsequent question-and-answer session among PJM and market participants. Complainants add that the precise manner in which PJM intended to clear resources in its Transition Auctions was not made known by PJM until July 28, 2015, in an email response to Complainants' follow-up request for additional guidance.

7. Complainants note that, under PJM's OATT, PJM's Transition Auction optimization algorithm is required to consider two factors: (i) the target resource quantity; and (ii) the sell offers submitted.¹¹ Complainants assert that while the OATT leaves unaddressed the manner in which PJM is to consider sell offers, the objective, consistent with related OATT requirements, and the *Capacity Performance Order*, should be to minimize the cost of procuring the target quantity relative to total capacity costs.

8. Complainants state that failure to optimize sell offers, in this manner, could result in excessive costs, or inefficient resource selection. Complainants offer an illustration, based on the following assumptions:

- a PJM procurement target equal to 100 MW for the first Transition Auction;
- the submission of three sell offers for 50 MW -- one each for the "Rest of RTO" Locational Deliverability Area (Resource A); the "ATSI" Locational Deliverability Area (Resource B); and the "MAAC" Locational Deliverability Area (Resource C); and
- price separations, based on locational constraints, in the prior BRA for the relevant delivery year, equal to \$119.13/MW-Day in MAAC; \$114.23/MW-Day in ATSI; and \$59.37/MW-Day in Rest of RTO.

¹¹ See PJM OATT at Attachment DD, section 5.14D.

- The resources submit sell offers in the first Transition Auction as reflected in the following table:

	<u>Location</u>	<u>Quantity</u>	<u>Capacity Performance Offer Price</u>	<u>Existing Cost</u>	<u>Incremental Cost</u>
A	Rest of RTO	50 MW	\$140/MW-Day	\$59.37/MW- Day	\$80.63/MW- Day
B	ATSI	50 MW	\$160/MW-Day	\$114.23/MW- Day	\$45.77/MW- Day
C	MAAC	50 MW	\$165/MW-Day	\$119.13/MW- Day	\$45.87/MW- Day

9. Complainants assert that, under PJM's approach to clearing the Transition Auctions, the offers submitted by the Resources A and B would be selected at a clearing price of \$160/MW-Day,¹² resulting in a total cost of \$8.01 million. Complainants assert that their approach results in selecting Resources B and C, reducing total costs to \$7.11 million, even though the clearing price reflected in the selection of Resources B and C would be slightly higher (i.e., \$165/MW-Day as opposed to \$160/MW-Day). Complainants assert that the actual dollar impact of PJM's decision cannot be known until sell offers are submitted, but that by extrapolating from its example, the cost differential could be significant.

10. Complainants assert that because the locational constraints in place in PJM's prior BRAs produced different clearing prices, these cost differences will be carried forward in the Transition Auctions. Complainants add that, given the higher relative payment some resources will receive for their existing commitments, these resources will be starting from a higher offer price in the Transition Auctions and will thus be less likely to clear relative to other resources, absent the relief Complainants seek. Complainants emphasize that resources located in the MAAC and ATSI Locational Deliverability Areas, where locational constraints have produced higher relative values for capacity in the BRA, are less likely to clear in the Transition Auctions under a methodology that fails to allow resources from any area to compete on a level playing field.

11. Complainants request that the Commission find that PJM's OATT is unjust and unreasonable to the extent it requires PJM to clear resources based only on their absolute offer prices without taking into account sellers' existing capacity commitments.

¹² The value is beneath the \$165.27/MW-Day price cap. See PJM OATT at Attachment DD, section 5.14D(B)(2).

Complainants argue that PJM's optimization algorithm should take into account not only the seller's offer price and the applicable caps, as to both quantity and price, but also the quantity and price of the seller's existing commitment for the relevant delivery year. Complainants conclude that, as such, PJM should be required to clear sell offers in its Transition Auctions based on the incremental cost presented by each sell offer, over and above the BRA clearing price for which the underlying resource had been previously committed.

12. Complainants assert that, to guarantee that PJM has adequate information to ensure that it is procuring Capacity Performance Resources in the Transition Auctions in a least-cost manner, sellers should be required to reflect in their sell offers not only the total payment required in order to accept an obligation, but also the price and quantity of any existing obligation. Complainants request that the Commission issue its order, herein, on or before August 25, 2015.

II. Notice of Filing and Responsive Pleadings

13. Notice of the complaint was published in the *Federal Register*, 80 Fed. Reg. 48517 (2015), with answers, interventions and protests due on or before August 17, 2015. PJM submitted a timely answer. In addition, notices of intervention and timely-filed motions to intervene were submitted by the entities noted in the Appendix to this order. Motions to intervene out-of-time were submitted on August 18, 2015, by American Municipal Power, Inc. (AMP), New Jersey Division of Rate Counsel (New Jersey Counsel), the Southern Maryland Electric Cooperative, Inc. (SMECO), and the New Jersey Board of Public Utilities (New Jersey Board), and on August 20, 2015, by Rockland Electric Company (Rockland) and the Pennsylvania Public Utility Commission (Pennsylvania Commission).

14. Protests and/or comments were submitted by Exelon Corporation (Exelon); the PJM Utilities Coalition;¹³ Calpine Corporation and Essential Power Companies (collectively, Joint Commenters); the Consumers/State Commission Coalition;¹⁴ NRG

¹³ The PJM Utilities Coalition is comprised of the following entities: American Electric Power Service Corporation, The Dayton Power and Light Company, FirstEnergy Service Company, Buckeye Power, Inc., and East Kentucky Power Cooperative, Inc.

¹⁴ The Consumers/State Commission Coalition is comprised of the following entities: the PJM Industrial Customer Coalition, the New Jersey Board of Public Utilities, the New Jersey Division of Rate Counsel, Maryland Office of People's Counsel, the Delaware Public Service Commission, the Delaware Division of the Public Advocate, the West Virginia Consumer Advocate Division, the Public Power Association of New

Companies and Dynegy Companies (collectively, Indicated Suppliers); and the Retail Energy Supply Association (RESA). Answers were filed on August 19, 2015 by Dominion Resources Services, Inc. (Dominion) and the Public Utilities Commission of Ohio (Ohio Commission), on August 20, 2015 by Complainants, on August 21, 2015 by PJM, and on August 24, 2015 by PSEG Companies.

A. PJM's Answer

15. PJM asserts that nothing in its OATT, including the relevant provisions of Attachment DD, section 5.14D(B)(1), provides that the clearing algorithm must consider sell offers minus the BRA clearing price. PJM further argues that Complainants' request to select resources in its Transition Auctions in a way that will not disadvantage the MAAC and ATSI Locational Deliverability Areas would disadvantage other market participants, including new entry generation, existing resources that did not clear in the relevant BRA, and demand response resources. PJM further asserts that Complainants proposed approach would be contrary to the underlying objective of PJM's Transition Auctions, to price Capacity Performance Resources in a way that reflects the costs and risks attributable to this new product.

16. PJM also disputes Complainants' assertion that PJM's clearing methodology remained unknown prior to July 28, 2015. PJM asserts that its Transition Auctions will be cleared using the same approach PJM has used in all other auctions. PJM argues that any objection to this methodology can and should have been raised in the Capacity Performance Proceeding. PJM notes that, in its Transition Auctions, sellers will be incented to develop an entirely new capacity product and, in so doing, will relinquish any prior BRA commitments. PJM adds that the pricing for this new product should not be based on a preference of any kind applicable to previously cleared resources.

17. PJM asserts that Complainants' request for relief would in effect require that locational constraints be recognized in clearing resources in PJM's Transition Auction. PJM asserts that this outcome is inconsistent with the provisions of PJM's Transition Auction mechanism that intentionally omit consideration of locational constraints. PJM also challenges Complainants' assertion that PJM's OATT, as applicable to the clearance of PJM's BRAs and Incremental Auctions, supports Complainants' request for relief. PJM responds that the provisions to which Complainants cite simply reflect that these other auctions clear the lowest-priced offer submitted, subject to any specified

Jersey, Illinois Citizens Utility Board, American Municipal Power, Inc., American Public Power Association, and the Office of the Ohio Consumers' Counsel.

constraints.¹⁵ PJM adds that the Transition Auctions will do likewise, albeit not subject to any locational constraint.

18. PJM adds that, in the *Capacity Performance Order*, the Commission rejected a request by Invenergy Wind Development LLC (Invenergy) to provide preferential treatment to previously cleared resources in PJM's Transition Auction clearing methodology.¹⁶ PJM asserts that Complainants' attempt to distinguish their own request, by claiming that they are not seeking to have PJM prioritize one category of resource over another, must be rejected because of the undue preference Complainants seek to confer on previously-cleared resources.¹⁷

19. PJM argues that while Complainants identify as their objective the minimization of incremental costs attributable to the Transition Auctions, their solution does not achieve the auctions' desired purpose or function. PJM argues that its Transition Auctions were designed and approved to facilitate the procurement of a more reliable portfolio of capacity resources and to incent sellers to begin investing as needed to complete the migration to PJM's new capacity product construct. PJM contends that the single-clearing price method provides sellers the incentive to invest and develop this new product.

20. Finally, PJM asserts that implementation of Complainants' request for relief would require OATT changes that will further delay PJM's Transition Auctions. PJM argues that any such delay to implement or consider Complainants' proposal will undermine the design and purpose of the Transition Auctions because it gives resources less time to improve their facilities or negotiate better fuel supply arrangements.

B. Comments and Protests

21. Comments generally supportive of the complaint were submitted by Joint Commenters, the Consumers/State Commission Coalition, and RESA. Joint Commenters agree with Complainants' position and suggest that they have identified a flaw in PJM's

¹⁵ Section 5.12(a) of Attachment DD of PJM's OATT.

¹⁶ PJM answer at 18 (citing *Capacity Performance Order*, 151 FERC ¶ 61,208 at P 259).

¹⁷ PJM answer at 19 (citing *PJM Interconnection, L.L.C.*, 152 FERC ¶ 61,064 at P 41 (finding that it would be unduly discriminatory to limit demand resource participation in the Transition Auctions to only those demand resources that previously cleared for the delivery year)).

Transition Auction clearing methodology.¹⁸ RESA adds that PJM's current clearing approach will be unduly discriminatory by favoring resources located outside the MAAC and ATSI Locational Deliverability Areas.

22. The Consumers/State Commission Coalition argues that while Complainants' Transition Auction clearing methodology will lower procurement costs relative to PJM's approach, setting the auction clearing price based on total offer prices and ignoring locational capacity needs and price differentials will create inappropriate windfalls for certain resources and unjust and unreasonable overall customer costs. The Consumers/State Commission Coalition argues that the impact of such an approach could exceed \$1 billion.¹⁹ Accordingly, the Consumers/State Commission Coalition recommends that: (i) sellers be required to submit a total offer price and an incremental offer price (reflecting any prior BRA commitment), and (ii) the applicable offer caps be relaxed for resources located in the PSEG Locational Deliverability Area, given that the clearing prices in this Locational Deliverability Area, for the relevant delivery years, were in excess of the Transition Auction offer caps.²⁰

23. Protests were filed by Indicated Suppliers, Exelon, and the PJM Utilities Coalition. These intervenors argue that the complaint should be summarily rejected as an untimely request for rehearing of the *Capacity Performance Order* and an improper collateral attack of that order.²¹ The PJM Utilities Coalition argues that the complaint seeks to argue, again, the same issues Complainants raised in the Capacity Performance Proceeding, or variations on those arguments that could have been raised.

¹⁸ Joint Commenters comments at 3 (citing *Capacity Performance Order*, 151 FERC ¶ 61,208 at P 259). See also Consumers/State Commission Coalition comments at 3; RESA comments at 5.

¹⁹ Consumers/State Commission Coalition comments at 3 (noting that if 60,000 MW of resources located in PJM's "Rest of RTO" region clears, in PJM's upcoming Transition Auction, at a total offer price reflecting the MAAC locational price differential, the windfall would be 60,000 MW x (\$119.13/MW-day - \$59.37/MW-day) x 365 days = \$1.3 billion).

²⁰ Specifically, the Consumers/State Commission Coalition proposes relaxation of the total offer caps in the PSEG Locational Deliverability Area to a level equal to \$265.14/MW-day for first Transition Auction and \$305.83/MW-day for the second.

²¹ See Indicated Suppliers protest at 4; PJM Utilities Coalition protest at 24; Exelon protest at 9 (citing *Central Vermont Pub. Serv. Corp.*, 123 FERC ¶ 61,128, at P 35 (2008)).

24. Intervenors also argue that the complaint, if granted, will prejudice other PJM suppliers at the eleventh hour. Exelon argues that such an action would create significant commercial uncertainty. Indicated Suppliers add that market participants, in reliance on the *Capacity Performance Order*, have undertaken development efforts, which will be thrown into disarray if PJM's Transition Auction clearing methodology is modified. Indicated Suppliers add that the OATT language accepted by the Commission in the *Capacity Performance Order* cannot be read to suggest that PJM would consider clearing prices in past auctions for a different product when clearing the Transition Auctions, or consider anything other than the amount of Capacity Performance Resources to be procured and the sell offers submitted.²²

25. Intervenors also argue that Complainants' proposal will establish undue preference. Exelon notes that Complainants' approach to clearing the Transition Auctions will disadvantage all resources that did not clear in the relevant BRA by effectively precluding these resources from clearing in the Transition Auctions. Indicated Suppliers add that MAAC and ATSI resources will know how much headroom they have prior to competing with Rest of RTO resources. Indicated Suppliers assert that such an allowance will likely promote gaming and inefficient bidding behavior where parties could be incented to consider factors other than cost and risk in their bids. The PJM Utilities Coalition agrees that, under Complainants' proposal, resources in historically higher-priced areas will be more likely to clear than resources in lower-priced areas, even though their sell offers are higher. The PJM Utilities Coalition adds that Complainants seek to tilt the playing field in favor of resources in higher-priced areas and, in so doing, discriminate against resources that are able to provide Capacity Performance capacity on a least cost basis.

26. Indicated Suppliers argue that if PJM were to disproportionately procure Capacity Performance Resources from Locational Deliverability Areas that had higher clearing prices in past BRAs, the goals of PJM's Capacity Performance initiative would not be achieved. Specifically, Indicated Suppliers state that a significant portion of the PJM fleet outside of these Locational Deliverability Areas could be precluded from earning the revenues needed to undertake reliability initiatives to ensure Capacity Performance compliance in future years.

27. Exelon argues that Complainants seek to carry forward into the transition years the flawed pricing under PJM's prior capacity construct. Exelon asserts that, by doing so, Complainants' requested relief, if granted, could potentially lead to the premature

²² Indicated Suppliers protest at 4-7 (citing sections 5.12(b) and 5.14D(B) of Attachment DD of PJM's OATT, and *Capacity Performance Order*, 151 FERC ¶ 61,208 at PP 239, 259, and 261).

retirement of precisely the type of resources that PJM's Capacity Performance construct is designed to reward, merely because these resources failed to clear in the relevant BRA, or are located in Locational Deliverability Areas that cleared at lower prices. Exelon adds that Complainants' proposed clearing approach would thus encourage investments by higher cost resources.

28. Exelon challenges Complainants' assumption that "cost minimization," as relevant here, necessarily refers to the total payments made by load. Exelon asserts that PJM's algorithm appropriately minimizes costs, subject to a demand curve, based on the economic principle that selecting the most efficient suppliers, i.e., those suppliers capable of delivering capacity at the least cost, will maximize overall economic efficiency. Exelon adds that PJM appropriately minimizes the sum of capacity offer prices multiplied by offer quantities, as reflected by the area below and to the left of the intersection of the supply and demand curve.

29. Finally, Intervenors argue that Complainants' proposal to collapse Transition Auction sell offers into the prices reflected in prior BRAs will mute the necessary price signals underlying PJM's Capacity Performance construct and thus fail to provide Capacity Performance Resources with the revenues they will need to perform, as required. The PJM Utilities Coalition argues that to provide the enhanced performance that PJM requires, to ensure system reliability, the Transition Auction clearing price must accurately reflect the value of the service provided. Exelon adds that the Transition Auctions should provide the price signals needed to encourage a generating fleet that, at the end of the transition period, can provide Capacity Performance Resource service at least cost.

III. Procedural Matters

30. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, given their interest in the proceedings, the early stage of the proceedings, and the absence of undue prejudice or delay, we grant the unopposed, late-filed interventions submitted by AMP, New Jersey Counsel, SMECO, the New Jersey Board, Rockland, and the Pennsylvania Commission.

31. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest and an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed by Dominion, the Ohio Commission, Complainants, and PSEG Companies and therefore reject them.

IV. Discussion

32. We deny the complaint. Complainants have neither demonstrated that PJM's Transition Auction clearing methodology fails to follow its OATT, nor demonstrated that the methodology is unjust and unreasonable, as required under section 206.

33. As an initial matter, we find that section 5.14D of Attachment DD of PJM's OATT remains just and reasonable. That section requires that the Transition Auction clearing methodology will: 1) acquire resources up to the target quantities of Capacity Performance Resources specified; 2) select resources based on Sell Offers submitted in such auction; and 3) calculate a clearing price to be paid for each megawatt-day of capacity that clears in such auction. PJM's methodology properly considers all the offers made to provide Capacity Performance and clears the market at a price that meets the quantity requirement or a quantity determined by clearing at the offer cap. Section 5.14D does not require PJM to consider Sell Offers *minus* the relevant BRA clearing price, as Complainants assert. PJM's pleadings in the proceedings leading up to the *Capacity Performance Order* made clear that it intended to assess offers, select resources, and set clearing prices in the same way it does in the BRA,²³ and the Commission accepted PJM's proposal, notwithstanding arguments similar to the complaint.²⁴ Moreover, PJM notes that it will clear its Transition Auctions using the same approach PJM has used in all other auctions. As PJM notes, its Transition Auctions were designed and approved to facilitate the procurement of a more reliable portfolio of capacity resources and to incent sellers to begin investing as needed to complete the migration to PJM's new capacity product construct. We find that PJM's single-clearing price method provides sellers the incentive to invest and develop this new product.

34. We further find that PJM's clearing methodology is consistent with its OATT. Complainants' argue that PJM's clearing methodology violates sections 5.12(a) and 5.12(b) of Attachment DD of the OATT, which require the BRA and Incremental Auctions, respectively, to minimize cost when procuring resources. They argue that in order to minimize costs, PJM's clearing methodology must consider revenues from existing capacity commitments for the relevant delivery year. We disagree. Neither section 5.12(a) nor section 5.12(b) require PJM to minimize costs by taking into account existing capacity revenues for the delivery year or other savings in determining the lowest price at which to clear an auction for Capacity Performance products. And, as noted above, we find that PJM's clearing methodology is consistent with section 5.14D.

²³ PJM's December 12, 2014 Transmittal in Docket No. ER15-623-000 at 30-31.

²⁴ *Capacity Performance Order*, 151 FERC ¶ 61,208 at P 259.

35. Because we find that Complainants failed to show that PJM's OATT is unjust and unreasonable, or that PJM's clearing methodology is inconsistent with its OATT, we need not address Complainants' and Joint Consumers' proposed alternative clearing methodologies. Nonetheless, we find that their alternatives do not support a finding that PJM's proposed methodology is unjust and unreasonable. Both Complainants and Joint Consumers offer alternative clearing methodologies that they argue may result in further cost minimization while complying with OATT requirements. As an initial matter, we agree with PJM that Complainants' design may not allow for the marginal resource to set the auction clearing price. We also agree with PJM that Joint Consumers' approach relies on a complicated and untested algorithm to clear the capacity markets. Finally, we agree with Exelon and PJM that these alternative clearing methodologies do not guarantee a lower overall cost of capacity for the delivery year.²⁵ Moreover, implementing an untested alternative proposal would require other changes to either PJM's market design or OATT in order to be justly and reasonably implemented, and therefore Complainants' alternative clearing methodology cannot be said to conform to the OATT itself.

36. In addition, acting under section 206 to revisit PJM's clearing methodology at this late date would significantly delay the Transition Auctions, and potentially undermine their purpose. The Transition Auctions are designed to procure more reliable capacity for the 2016-17 and 2017-18 delivery years. Delaying these auctions while PJM develops a new clearing methodology would reduce the amount of time that resources have to install improved equipment or make fuel supply arrangements in order to meet the more stringent requirements of the Capacity Performance product. Because we find that PJM's OATT and the Transition Auction clearing methodology are just and reasonable, as previously approved, we deny the complaint.

²⁵ While a cost comparison of the proposed NextEra methodology to the PJM approach would not be dispositive here, we reject the suggestion that the Commission can accurately evaluate and compare the costs of these approaches based on the record. Moreover, we believe that the market rules put in place by PJM are just and reasonable, and their operation will determine a just and reasonable outcome.

The Commission orders:

The complaint is hereby denied.

By the Commission. Chairman Bay is dissenting with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

List of Intervenors

American Electric Power Service Corporation
American Municipal Power, Inc. *
American Public Power Association
Buckeye Power, Inc.
Calpine Corporation
Dayton Power and Light Company
Dominion Resources Services, Inc.
Dynergy Marketing and Trade, LLC, *et al.*
East Kentucky Power Cooperative, Inc.
Electric Power Supply Association
Essential Power Companies
Exelon Corporation
FirstEnergy Service Company
Illinois Commerce Commission
Independent Market Monitor for PJM
Maryland Public Service Commission
New Jersey Board of Public Utilities *
New Jersey Division of Rate Counsel *
North Carolina Electric Membership Corporation
NRG Companies
Old Dominion Electric Cooperative
Ohio Consumers Counsel
PJM Industrial Customer Coalition
PJM Power Providers Group
PSEG Companies
Pennsylvania Public Utilities Commission *
Public Citizen, Inc.
Public Power Association of New Jersey
Public Utilities Commission of Ohio
Retail Energy Supply Association
Rockland Electric Company *
Southern Maryland Electric Cooperative *
Talen PJM Companies
Virginia Municipal Electric Association No. 1

* late-filed intervention

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Indicated Market Participants

Docket No. EL15-88-000

v.

PJM Interconnection, L.L.C.

(Issued August 25, 2015)

BAY, Chairman, *dissenting*:

Today the Commission denies a complaint challenging PJM's method for conducting its transitional capacity auction. The Commission often confronts complicated questions about costs and benefits. This case does not present such complexity. Today's order authorizes PJM to impose costs on consumers with no corresponding benefits. These costs could be significant – in excess of a billion dollars. The complaint we reject today demonstrates that PJM's auction rules do not comply with the obligation in its tariff to minimize the cost of the auction. I would grant the complaint and provide PJM the opportunity to propose an alternative pricing mechanism.

PJM, like other Commission-approved organized markets, needs to prevent blackouts and to ensure the reliability of the electric grid. As part of this obligation, PJM oversees markets for a product called "capacity." In these markets, the sellers are the generators of electric power and other resources like energy efficiency and demand response. In exchange for capacity payments, sellers agree to be available in future years to provide electric power or load reductions if PJM calls upon them. PJM then passes the cost of capacity onto the buyers. These buyers are load-serving entities -- the market participants who resell electric power at retail to consumers. In essence, consumers pay for capacity in order to ensure that the lights stay on. Of course, PJM is required to achieve its reliability goals in a just and reasonable way. Under its tariff, PJM must minimize the costs of meeting its reliability needs in conducting the auction.¹

¹ See PJM Open Access Transmission Tariff at Attachment DD, section 5.12(a) (mandating that the auction "minimize the cost of satisfying the reliability requirements across the PJM region").

Today's order involves two "transitional" capacity auctions. PJM handles capacity sales on an annual basis with the year beginning in June. These auctions cover the years 2016/2017 and 2017/18. Notably, capacity sales for these years have already occurred in PJM. Sellers have committed their resources and buyers are already required to pay. However, after the winter of 2014, PJM became concerned about its ability to ensure reliability during emergency conditions. As a result, PJM proposed, and the Commission approved, a set of changes to its capacity market. The changes at issue here authorized new payments by consumers in exchange for a modified set of promises by capacity suppliers.

The changes include transitional auctions for the 2016/17 and 2017/18 years. Resources that had previously sold capacity for those years can, if they choose, reoffer their capacity in the new auction. If the offer is accepted, they take on the additional obligations and receive the new, higher price. If the offer is refused (or they do not offer their capacity), the resources are still paid, and they retain their preexisting obligations at the preexisting price. In other words, if PJM buys capacity from a resource that is already entitled to a payment, it can eliminate that payment and save consumers money. If PJM buys capacity from someone else, it cannot avoid that preexisting cost. The transitional auction, then, provides PJM the valuable opportunity of avoiding payments that it is otherwise required to make.

PJM's methodology ignores the value of this opportunity. Consider an example. Imagine that there are two generators, A and B, equal in every way in their ability to provide capacity. As a result of the previous auction, A is currently entitled to receive \$120/MW-day and B is entitled to receive \$60/MW-day. Notably, they receive these payments even if they do not offer capacity in the transitional auction or their offer is rejected. If their offer is accepted, they are only entitled to the revenues from the new auction. Assume A bids in the transitional auction at \$140/MW-day and B bids at \$100/MW-day. PJM proposes to accept the bid from B because \$100 is lower than \$140. However, accepting A's bid would only add \$20 in additional costs (\$140 minus the \$120 they are already entitled to receive) while taking B's bid adds \$40 in costs (\$100 minus \$60). In this example, PJM's approach adds \$20 in costs to consumers. In all, PJM's approach could impose significant costs on consumers.

In return for these costs, consumers get very little indeed. Selecting B's bid does not produce a greater quantity of capacity or a higher quality of capacity. A and B are both offering the same enhanced capacity performance product. As a result, PJM's approach does not ensure greater system reliability. It simply permits consumers to be charged more in exchange for no additional benefit. PJM's Commission-approved tariff

is clear. PJM must “minimize the cost of satisfying the reliability requirements”² when it purchases capacity. Today’s order is not consistent with the June 9th order approving PJM’s tariff. It directly conflicts with it. Moreover, our obligation to ensure that the auction rules are just and reasonable continues after we have approved the tariff provisions. If a complaint identifies an unjust and unreasonable flaw in the market design, we must correct it, regardless of when the design was approved.³ While correcting the flaw in this case might delay the auctions, neither today’s order nor the record establishes the costs of such delay.

I dissented from the Commission’s order in June approving PJM’s Capacity Performance Proposal. I would not have agreed to transitional auctions at all, but having created them it is the Commission’s responsibility to ensure that they result in just and reasonable rates. Unfortunately, that has not happened here. This auction will impose a considerable cost on consumers for no additional reliability benefit. When carefully considered and designed well, markets are an effective means for the Commission to ensure that consumers pay just and reasonable rates and that reliability is maintained. In contrast, today’s outcome demonstrates the problems inherent in a complex, flawed design. For these reasons, I respectfully dissent.

Norman C. Bay
Chairman

² *Id.*

³ To the extent that today’s order rejects the complaint based on perceived weaknesses in its proposed alternative to PJM’s approach, it places the burden on the wrong party. A Section 206 complaint should be granted whenever it demonstrates that a tariff provision is not just and reasonable. The complaint need not propose a just and reasonable alternative. *See FirstEnergy Service Co. v. FERC*, 758 F.3d 346, 353 (D.C. Cir. 2014). In any event, I would provide PJM the opportunity to propose an alternative pricing mechanism.