127 FERC ¶ 61,101
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

PJM Interconnection, L.L.C. Docket No. ER09-369-000

ORDER ACCEPTING TARIFF SHEETS SUBJECT TO CONDITIONS

(Issued May 1, 2009)

1. On December 2, 2008, as amended March 2, 2009, PJM Interconnection, L.L.C. (PJM) submitted tariff sheets revising the PJM Open Access Transmission Tariff (OATT) and Amended and Restated Operating Agreement (Operating Agreement). PJM proposes to add a section 2.6A to Attachment K-Appendix of the OATT and Schedule 1 of the Operating Agreement that will clarify and specify PJM's authority[1] to calculate pricing points for external balancing authority areas. PJM's proposal would authorize two new methods to calculate external prices for organized markets and external balancing authority areas outside organized markets, adding High-Low Pricing and Marginal Cost Proxy Pricing. PJM proposes that its tariff sheets be effective as of February 1, 2009, with the exception of those involving Marginal Cost Proxy Pricing, for which PJM has failed to state a proposed effective date.

2. The Commission accepts the filing subject to conditions. While the Commission finds that the proposed pricing methodologies are just and reasonable, we find PJM's proposed mechanism for implementing congestion management agreements[2] to be unjust and unreasonable, and will condition our acceptance. PJM is ordered to submit a

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[1] PJM states that it already calculates external pricing points under a more general provision in its tariff, section 3.3.1(d). *See PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,166 (2009) (February 24 Order).

[2] *See* proposed section 2.6A(b)(2) of Attachment K-Appendix of the OATT and Schedule 1 of the Operating Agreement, proposed Fourth Revised Sheet No. 374A and First Revised Sheet No. 106B, respectively.

compliance filing within 30 days of the date of this order to provide, among other things, that it will negotiate in good faith with any balancing authority area requesting a congestion management agreement and that, if requested, it will file with the Commission an unexecuted congestion management agreement within 90 days of such a request.

I. Background

A. Proposed Interface Pricing Methods

3. PJM proposes that it shall define and revise, as appropriate, Interface Pricing Points for purposes of calculating locational marginal prices (LMPs) for imports from or exports to external balancing authority areas. Interface Pricing Points may represent individual or aggregates of external balancing authority areas or portions of external balancing authority areas. PJM states that the calculation of such prices must conform with other provisions of the Operating Agreement that require PJM to "determine the least costly means of obtaining energy to serve the next increment of load at each bus in the PJM Region represented in the State Estimator and each interface bus between PJM and an adjacent Balancing authority area, based on the system conditions described by the most recent power flow solution produced by the State Estimator program,"[3] as well as market participants' bids and offers in the Day-ahead and Real-time energy markets. Further, the definition of an Interface Pricing Point may vary depending on information such as unit costs, run status, and output. PJM emphasizes that nothing prevents dynamic scheduling of resources as contemplated by section 1.12 of Schedule 1 of the Operating Agreement.

4. For RTOs and ISOs[4], PJM states that the default method for establishing external pricing points will be to use standard power flow analysis tools to determine a set of nodes external to the PJM system to represent one or more external balancing authority areas. Each node in the interface definition will be assigned to a tie line. PJM notes that, in the price calculation for the indicated Interface Pricing Point, the

[3] PJM December 2, 2008 Transmittal at 2 (citing Operating Agreement, Schedule 1, section 2.5(a)).

[4] In the instant filing, the precise language is "external balancing authority areas that are Part of Larger Centrally Dispatched Organizations," examples of which are RTOs and ISOs.

sensitivity of each tie line to injections at each external pricing point shall determine the weight assigned to the node associated with the tie line.[5]

5. PJM's proposal replaces the current, unitary pricing system with a layered system in which PJM's neighbors that are not RTOs or ISOs may qualify for one of three external pricing methods, the existing proxy price method referred to as SOUTHIMP/SOUTHEXP,[6] as well as two new methods, High-Low Pricing, and Marginal Cost Proxy Pricing. PJM states that the first, default method is the current external interface pricing method, which includes the SOUTHIMP/SOUTHEXP interface. PJM states that this is generally similar to the default method to be used to calculate prices for RTOs and ISOs.[7]

6. The second proposed pricing method, which is available to directly connected external balancing authority areas, is High-Low Pricing. Under High-Low Pricing, PJM will establish import prices at the lowest external LMP in that balancing authority area, and export prices at the highest external LMP in that area. PJM explains that High-Low prices will be calculated every 5 minutes and averaged to obtain hourly prices. PJM further states that Day-ahead prices will be calculated in a similar manner.

7. To demonstrate the impact of High-Low Pricing, PJM provides an example of how the average external pricing method, as in PJM's recently terminated bilateral pricing agreements with Duke and Progress,[8] in a directly connected external balancing authority can cause or exacerbate congestion. When external congestion causes a split in wholesale power prices in an external balancing authority area, PJM contends that the resulting import and export prices at the average external price improperly incentivized directly connected external balancing authority areas to respond in a way that often increased congestion on the PJM system. PJM states that, under the recently cancelled contracts, it would buy from lower-price generators in the external balancing authority area instead of internal generators at the margin, while higher priced generators in the

[5] To the extent that adequate information is provided to PJM, this method is also made available to external balancing authority areas that are not part of a centrally dispatched organization.

[6] SOUTHIMP/SOUTHEXP external proxy prices were introduced in 2006 so that PJM's southern interface would receive one import price and one export price. This pricing method is a consolidation of 12 pricing nodes stretching from the Great Lakes in the Midwest ISO, through Kentucky, Tennessee and the North Carolina coast.

[7] Application at 6-7.

[8] Deficiency Letter Response at 4.

external balancing authority area were backed down and imports from PJM were higher than without the contracts. PJM states that the contracts increased congestion, because the higher-priced generators that were backed down were relieving congestion on the system. PJM concludes that the neighboring balancing authority area's "logical responses to the average import and export price would have been to increase congestion in PJM and the attendant higher costs borne by load-serving areas in PJM."[9] By contrast, PJM states that High-Low Pricing, by setting the lowest generator bus price in the external balancing authority area for imports into PJM, discourages imports that could cause congestion in PJM. Likewise, setting exports from PJM at the highest generator bus price in the external balancing authority area discourages exports from PJM and thus discourages the company in the external balancing authority area from backing down generators that are used to relieve congestion.

8. PJM notes for an external balancing authority area to participate in High-Low Pricing, it must provide information such as real-time telemetered load and generation that will allow PJM to identify the source or sink balancing authority areas of the transaction.[10] If the neighboring external balancing authority area does not supply the required information, or if PJM cannot otherwise identify the source or sink balancing authority area, PJM states that it will price the transaction at the applicable external price. For example, PJM states, if a transaction sources in PJM and sinks at an unknown point south, it will be priced at the SOUTHEXP node. In addition, if an external balancing authority area is importing or exporting electricity simultaneously with PJM and with one or more other external balancing authority areas, the applicable external price will apply instead of the High-Low price.[11]

9. PJM argues that, relative to average pricing, High-Low Pricing provides more accurate and rational pricing signals when interfaces are congested. It states that High-Low Pricing correctly reflects the effects of external transactions on congestion of the PJM system, given the sparse information available when this pricing method is applied.[12]

10. The third proposed pricing method available is Marginal Cost Proxy Pricing. PJM states that Marginal Cost Proxy Pricing depends on accurately determining the marginal

[9] *Id.* at 5.

[10] Transmittal at 7.

[11] Deficiency Letter Response at 3-4.

[12] *Id.* at 6.

units in a directly connected external balancing authority area.[13] Under this method, PJM states, prices will be determined based on comparisons of LMPs with the marginal cost of each unit on-line at the time of price determination. For imports into PJM, in the event an LMP is less than the marginal cost for any online unit with output of more than 0MW, the interface price will equal the minimum LMP of such unit(s). If there are no such units, the price shall be the average of the bus LMPs that PJM determines to be the marginal units. For exports from PJM to an external area, the interface price is the highest LMP is that is greater than marginal cost for units producing more than 0MW. If there are no such units, the interface price will equal the average of the LMPs at the marginal unit(s) producing more than 0MW in the external area. PJM states that Real-time prices will be calculated every five minutes and hourly Real-time prices will be the average of the five minute prices. Also, PJM states that Day-ahead prices will be calculated in the same manner as the Real-time prices.[14] In order to qualify for Marginal Cost Proxy Pricing, PJM proposes to require external balancing authority areas to enter into a congestion management agreement with PJM such that PJM is able to identify and manage power flows, loop flows, and congestion associated with these transactions. As an interim measure while the parties negotiate congestion management agreements, PJM proposes that prior to January 31, 2010 balancing authority areas may obtain Marginal Cost Proxy Pricing by providing PJM with specific data to allow PJM to perform the necessary price calculations.

B. <u>Proposed Implementation</u>

11. PJM has not specified an effective date for Marginal Cost Proxy Pricing. PJM states that it has yet to install the software necessary to manage this pricing method, which is more complex than its existing software can readily handle.

12. PJM proposes that Marginal Cost Proxy Pricing have a sunset date of January 31, 2010. The proposed tariff would "terminate" Marginal Cost Proxy Pricing "on January 31, 2010 for any external balancing authority area that has not executed an interregional congestion management agreement with the Office of Interconnection prior

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[13] "PJM shall determine the set of marginal units in the external area by summing the output of the units serving load in that area in ascending order of the units' marginal costs until such sum equals the real time load in such external area. Units in the external area with marginal costs at or above that of the last unit included in the sum shall be the marginal units for that area for that interval." *See* proposed Operating Agreement, Schedule 1, section 2.6A(b)(2)(A), First Revised Sheet No. 106B.

[14] *Id.*, Transmittal at 9.

to January 31, 2010."[15] PJM explains that the sunset date was meant to encourage the formation of congestion management agreements.[16] PJM maintains that interregional congestion management agreements are the best means establishing prices at external interfaces, because such agreements provide the efficiency and transparency of LMP pricing for all transmission constraints that significantly affect power flows across the interfaces between adjacent grid operators.[17] Nevertheless, PJM argues that it is just and reasonable for PJM to offer Marginal Cost Proxy Pricing to neighboring balancing authority areas without congestion management agreements on a temporary basis before January 31, 2010.[18]

13. According to PJM, its proposals for determining external interface pricing points and establishing LMPs at such points were fully vetted through the stakeholder process and have received overwhelming stakeholder support. The Markets and Reliability Committee initially considered the proposed revisions to the PJM Tariff and Operating Agreement, endorsing the pricing points but removing Marginal Cost Proxy Pricing, which was sent to the PJM Market Implementation Committee for further discussion. The Market Implementation Committee endorsed the Marginal Cost Proxy Pricing methodology with the caveat that it should terminate on January 31, 2010 for each adjacent balancing authority area unless that authority entered into a congestion management agreement with PJM. The revised proposal was presented to the PJM Members Committee on November 20, 2008, where it was endorsed by acclamation, with only one member voting against the proposal.[19]

II. Notice of Filings, Responsive Pleadings, and Procedural History

14. Notice of PJM's tariff filing was published in the *Federal Register* 73 Fed. Reg. 76,626 (2008). On January 30, 2009, Commission staff acting under delegated authority issued a deficiency letter to PJM. On March 2, 2009, PJM filed a response to the deficiency letter. PJM's filing was published in the *Federal Register* 74 Fed. Reg. 11,093

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[15] Proposed Operating Agreement, Schedule 1, section 2.6A(b)(2), proposed First Revised Sheet No. 106B.

[16] Transmittal at 8-9.

[17] Deficiency Letter Response at 2.

[18] *Id.*

[19] Transmittal at 10-11.

(2009). Interventions and comments were due on March 23, 2009, as provided in section 154.210 of the Commission's regulations.[20]

15. Allegheny Energy Companies; Ameren Services Company; American Municipal Power - Ohio, Inc.; Constellation Energy Commodities Group, Inc.; Constellation NewEnergy, Inc.; Duke Energy Carolinas, LLC (Duke); Duquesne Light Company, Long Island Power Authority; the North Carolina Public Utilities Commission and the Public Staff of the North Carolina Utilities Commission (North Carolina Agencies); Old Dominion Electric Cooperative (Old Dominion); Pepco Holdings, Inc., and Progress Energy Carolinas, Inc. (Progress) filed timely motions to intervene. The Commission received out-of-time motions to intervene from Cargill Power Markets LLC (Cargill); DTE Energy Trading Inc. (DTE Trading); Monitoring Analytics LLC (PJM Market Monitor); North Carolina Electric Membership Corporation, (NCEMC); the North Carolina Municipal Power Agency #1 (NCMPA #1), and American Electric Power Service Corporation.

16. The Commission received a timely joint protest from Duke and Progress and comments from Cargill, DTE Trading, NCEMC, North Carolina Agencies and Old Dominion.

17. PJM filed an answer to Duke and Progress's protest (January 7 Answer) and an answer to NCEMC and Cargill on April 7 (April 7 Answer). On January 21, PJM Market Monitor filed an answer to Duke's and Progress's protest and PJM's January 7 answer (PJM Market Monitor Answer). On January 30, Duke and Progress filed and answer to PJM Market Monitor's answer. On April 16, NCEMC filed an answer to PJM's April 7 Answer.

18. Duke and Progress filed a request on February 2, 2009 for expedited relief, requesting that the Commission restore recently cancelled separate bilateral agreements with PJM. Since 2007, bilateral agreements had established the protocol for determining import and export pricing between Duke and PJM and between Progress and PJM. Duke and Progress asserted that, some time prior to the institution of this docket, PJM provided each of them with 90 days' notice that it would terminate their existing bilateral agreements effective January 31, 2009. They conceded that "PJM has the contractual right to terminate the bilateral agreements" effective January 31.[21] In the February 24 Order, [22] the Commission held that PJM properly exercised its right to terminate the

[20] 18 C.F.R. § 154.210 (2008).

[21] Duke and Progress February 2, 2009 Request at 2.

[22] February 24 Order, 126 FERC ¶ 61,166 at P 16.

agreements and that section 3.3.1(d) of its existing tariff authorized PJM to use the SOUTHIMP/SOUTHEXP price that, as of this filing, PJM uses for external proxy pricing along the southern interface.

III. Discussion

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[23] the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d), the Commission will grant the late-filed motions to intervene, given the parties' interests the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[24] prohibits an answer to a protest or another answer unless otherwise ordered by the decisional authority. We will accept the answers filed prior to the issuance date of this order because they provided information that assisted us in our decision-making process.

B. Substantive Matters

20. We accept, subject to conditions, PJM's proposal to add new methods of calculating interface prices for external balancing authority areas, including both RTOs/ISOs, and external balancing authority areas that are not part of RTOs/ISOs. In particular, two new methods of calculating interface prices will be available for individual, directly connected, external balancing authority areas that are not part of RTOs. Previously, directly connected external balancing authority areas would pay or receive a general external price (e.g. SOUTHIMP/SOUTHEXP). PJM had also entered into separate pricing arrangements, which were unilaterally terminated by PJM, according to contract terms, in anticipation of making the instant filing;[25] however, these arrangements were not on file with the Commission and therefore the pricing arrangements were not known to all parties.

21. Under this filing, directly connected external balancing authority areas may avail themselves of High-Low Pricing and Marginal Cost Proxy Pricing in addition to the default method. The availability of these two new pricing methods is tied to an increase in information exchange between PJM and the external balancing authority area

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[23] 18 C.F.R. § 385.214 (2008).

[24] 18 C.F.R. § 385.213(a)(2) (2008).

[25] *See* February 24 Order, 126 FERC ¶ 61,166 at P 11.

consistent with Commission policy.[26] The new pricing methods will be available to all eligible entities that provide the required information.

22. Under the High-Low Pricing method PJM will calculate day-ahead and real-time prices that reflect the highest and lowest generator price in the external areas for PJM exports and imports respectively. This method is intended to discourage the sort of responses to pricing situations that tend to increase congestion in the PJM market.

23. The Marginal Cost Proxy Pricing method for directly connected non-RTO areas is an alternative to existing PJM external pricing or High-Low Pricing. Marginal Cost Proxy Pricing, unlike existing external pricing or High-Low Pricing, considers the marginal cost of each unit that is online when calculating external interface prices. When PJM can verify the specific location of an external transaction's source or sink, Marginal Cost Proxy Prices will provide for more accurate pricing than the external pricing currently available. In addition, Marginal Cost Proxy Pricing is less likely to lead to undesirable transmission events, such as loop flows. After January 31, 2010, a congestion management agreement will need to be in place in order for companies to be eligible for Marginal Cost Proxy Pricing.

24. PJM, however, has yet to establish procedures for obtaining a congestion management agreement. We therefore will condition our acceptance of the filing on PJM's compliance with the following provision, among other things.[27] PJM is ordered to submit a compliance filing within 30 days of the date of this order to revise its tariff to provide that it will negotiate in good faith with any balancing authority area requesting a congestion management agreement and that, if requested, it will file with the Commission an unexecuted congestion management agreement within 90 days of such a request. This will provide parties seeking Marginal Cost Proxy Pricing a reasonable period of time to negotiate a congestion management agreement and will also ensure that the requesting party can obtain a reasonable agreement.

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[26] *See generally California Independent System Operator, Corp*, 124 FERC ¶ 61,271, at P 42 (2008), *order on compliance*, 126 FERC ¶ 61,207 (2009) (CAISO Order).

[27] The Commission also notes a formatting error in the heading of proposed Sixth Revised Sheet No. 374. The heading for this sheet states that it is part of "Third Revised Rate Schedule FERC No. 24," but the correct designation for PJM's OATT should be "FERC Electric Tariff" followed by "Sixth Revised Volume No. 1." The Commission directs PJM to correct this formatting error when it makes its compliance filing.

1. Requirement for a Congestion Management Agreement

a) Comments

25. Duke and Progress express concern that Marginal Cost Proxy Pricing will not be available for several months, as PJM has stated that it has yet to implement the necessary software. Duke and Progress further assert that PJM provides no proof that a congestion management agreement is required to implement Marginal Cost Proxy Pricing. Duke and Progress state that if Marginal Cost Proxy Pricing is the only just and reasonable pricing option, a congestion management agreement should not be required if it is unnecessary for implementation. Duke and Progress request that the Commission strike the congestion management agreement requirement for Marginal Cost Proxy Pricing.

26. Duke and Progress also acknowledge that a congestion management agreement would allow PJM to dispatch in accordance with PJM's LMP protocols, but this may be incompatible with Duke's and Progress's regulatory obligation to dispatch in a least cost manner.[28]

27. North Carolina Agencies believe that there is little, if any, justification for linking access to Marginal Cost Proxy Pricing to the resolution of congestion management, which they describe as one of the most complex seams issues arising between an RTO and non-RTO transmission owners.[29] Congestion management raises the issue of whether and to what extent Duke and Progress, which are subject to regulation by the North Carolina Commission, would have to adjust their dispatch as a result of PJM congestion concerns.[30] North Carolina Agencies state that any new agreement must be carefully crafted to avoid disrupting the traditional production-cost paradigm on which the North Carolina utilities base their dispatch. North Carolina Agencies note that transmission upgrades are planned to the north, which should reduce loop flows along PJM's southern border, and that congestion management agreement negotiations will be complex and lengthy. Therefore, it believes it is inappropriate to require the North Carolina utilities to enter into congestion management agreements with PJM in order for the North Carolina utilities to receive access to Marginal Cost Proxy Pricing, and there is no persuasive reason to require such an agreement be reached by any particular date.[31]

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[28] Duke and Progress Comments to Deficiency Letter Response at 5.

[29] North Carolina Agencies Comments at 1-2.

[30] *Id.* at 2.

[31] *Id.* at 3-4.

28. Old Dominion and DTE Energy Trading support PJM's sunset provision for the Marginal Cost Proxy Pricing as a reasonable compromise to allow time for external balancing authority areas to enter into congestion management agreements with PJM.[32] Old Dominion notes that, as PJM states in its Answer, participation in the PJM market by external balancing authority areas is beneficial to PJM but is not mandatory for the external balancing authority areas. Old Dominion states that, if an external balancing authority area will not or cannot enter into a congestion management agreement, it does not, in and of itself, make PJM's proposal unjust and unreasonable. DTE adds that including a sunset date was intended to act as an incentive to quickly finalize congestion management agreements, which it characterizes as similar in nature to the agreement entered into between PJM and Midwest ISO as a part of their Joint Operating Agreement.

29. Old Dominion disagrees with Progress and Duke's contention that PJM has not shown a link between the congestion management agreement condition and Marginal Cost Proxy Pricing. It states that the congestion management agreement condition will ensure that external market participants will have time to and will move toward the optimal pricing mechanism, establishing prices at external interfaces through the use of congestion management agreements, by a certain date.[33]

b) <u>Answers</u>

30. In its January 7 Answer, PJM "agrees that Marginal Cost Proxy Pricing should provide greater transparency and accuracy in interface prices than will High/Low pricing or SOUTHIMP/SOUTHEXP."[34] PJM states that, nevertheless, it proposes the latter models as a stop-gap, because it is not yet ready to go forward with Marginal Cost Proxy Pricing,[35] and believes that the now-cancelled bilateral agreements were unfair to PJM market participants.

31. PJM urges the Commission to deny Progress and Duke's request to reject the sunset date. PJM states that the sunset provision on Marginal Cost Proxy Pricing "was suggested originally by PJM's Market Monitor, presumably in order to create a strong incentive for external balancing authorities to enter into congestion management agreements."[36] Duke and Progress, in their January 21 Answer, respond that since all

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[32] Old Dominion Comments at 2.

[33] *Id.* at 7.

[34] PJM January 7, 2009 Answer at 7.

[35] *Id.* at 8.

[36] *Id*.

sides already are obligated to negotiate in good faith, there is no justification for PJM depriving not only Duke and Progress but also PJM's own members of the pricing method that PJM concedes is the most accurate. PJM argues that a sunset date is sensible because it will lead to better management of congestion in both systems.[37]

32. PJM Market Monitor states that when first presented with Marginal Cost Proxy Pricing, it rejected the proposal until the congestion management agreement requirement was added. PJM Market Monitor states that, in the absence of a congestion management agreement, a lack of transparency leads to the opportunity for gaming. Participants could both be following the rules, yet also gaming the system. PJM Market Monitor adds that the significant, negative results of this approach have been demonstrated in the PJM market and have been recognized by the Commission.[38] PJM Market Monitor states that the failure to ensure that physical and financial incentives correspond exposes PJM not only to gaming through manipulative means, but also gaming that is permitted and even incented under the proposed rules. This could lead Duke and Progress to engage in profitable activity that bears no relationship to the actual impact of their activity on the PJM system, according to PJM Market Monitor. Absent a congestion management agreement, PJM Market Monitor states, PJM has no way to ensure that scheduled and actual flows match because neither the telemetered data provided for SOUTHIMP/SOUTHEXP, nor the cost date provided under High-Low Pricing is sufficient to do this.[39] The PJM Market Monitor urges that if the Commission should take any action other than approving Marginal Cost Proxy Pricing with the congestion management agreement and sunset requirements, it should instead strike Marginal Cost Proxy Pricing as unjust, unreasonable, and unduly discriminatory.

c) Commission Determination

33. The Commission will accept PJM's proposal that provides for interim Marginal Cost Proxy Pricing until January 31, 2010, but then requires that external balancing authority areas sign a congestion management agreement to continue Marginal Cost Proxy Pricing. We conclude that requiring a congestion management agreement is just and reasonable. While PJM's proposed interim provisions provide relevant information to PJM for implementing Marginal Cost Proxy Pricing, a congestion management agreement ultimately is needed to provide PJM with more complete information to identify potential adverse loop flows. The Commission has relied upon

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[37] *Id.*

[38] PJM Market Monitor Answer at 5 (citing *California Independent System Operator Corporation*, 124 FERC ¶ 61,271, at P 3 (2008)).

[39] *Id.* at 6.

such detailed congestion management agreements with respect to flow between other balancing authority areas.[40]

34. In the CAISO Order, the CAISO addressed the issue of scheduled contract path and actual flow impacts on the system with other balancing authority areas and the fact that entities schedule transactions via the contract path having the most favorable LMP.[41] As the Commission stated, "if external entities do not submit sufficient information about the location of specific resources supporting their transactions to enable accurate price modeling by the RTO, those entities are not entitled to receive the benefit of a location-specific price, particularly where their failure to supply such information may raise costs to other participants."[42] This is precisely the same issue raised by the PJM Market Monitor and articulated by PJM in its March 2 response. The PJM Market Monitor raises the concern that, absent a congestion management agreement, there is no way to ensure the effects of scheduled contract path flows in real time.[43] PJM in its response provides examples of situations and information sharing that is required to manage loop flows and congestion, including instances where transactions on neighboring systems are not actually scheduled on PJM facilities.[44]

35. Requiring a congestion management agreement will ensure that those external balancing authority areas that wish to take advantage of Marginal Cost Proxy Pricing account for the impact of their dispatch on PJM. This will result in a fairer allocation of costs and a more efficient market outcome. A congestion management agreement need not necessarily provide PJM with the ability to dispatch Duke's or Progress's system or disrupt any state mandates regarding pricing, and indeed the congestion management agreement between PJM and the Midwest ISO does not provide either RTO with the

[40] *See Midwest Independent Transmission System Operator*, 106 FERC ¶ 61,251 (2004) (Midwest ISO-PJM JOA Order) at P 23 ("Coordination of the sort formalized in the JOA can only lead to enhanced reliability and more efficient use of resources. Extensive information sharing, coordinated congestion management, coordinated TTC, ATC and AFC determinations, coordinated emergency procedures, and joint expansion planning are just some of the central accomplishments of the JOA."). *See also* CAISO Order, 124 FERC ¶ 61,271 at P 40.

[41] *See* CAISO Order 124 FERC ¶ 61,271 at P 36-38.

[42] *Id.* P 42.

[43] *See also 2008 State of the Market Report for PJM*, Volume 2, Monitoring Analytics, LLC, dated March 11, 2009 at 203-204.

[44] PJM March 2 Deficiency Response at 2, 7-8.

ability to dispatch the other's system. A congestion management agreement will provide PJM, however, with sufficient information to enable it to establish more accurate prices for the power that utilities in North Carolina are generating for PJM.

36. However, as noted above, we find that PJM's requirement for congestion management agreements is not just and reasonable because it fails to include a process under which parties can obtain such agreements from PJM within a reasonable time frame. Accordingly, the Commission conditions its acceptance of the proposed tariff, among other things, on PJM filing a revised provision establishing that it will negotiate in good faith with any balancing authority area requesting a congestion management agreement and that, if requested, it will file with the Commission an unexecuted Congestion Management Agreement within 90 days of such a request. In Order No. 890, the Commission made clear that in any situation in which a utility is unable to reach agreement on a transmission agreement, it has the obligation to file, at the behest of the counterparty, an unexecuted congestion management agreement.[45] Should PJM file an unexecuted agreement, it must ensure that the agreement addresses the individual circumstances, including the loop flow challenges posed by the applicant. Also, PJM must provide both the reason for the disputed provisions and the basis of the dispute.

37. Finally, the Commission conditions acceptance upon PJM submitting revised tariff sheets proposing an effective date for those tariff sheets for which it has failed to provide one.

2. Rights of Stakeholders that are Not the Balancing Authority

a) Comments

38. Some commenters are concerned that because they are not balancing authorities they will be held captive to the actions of their interconnection balancing authority area. For example, Cargill states that it should receive the same pricing treatment as Duke and Progress, to the extent that it can show that its sales have identical impacts on PJM's congestion at the southern interface. It is Cargill's understanding that real-time telemetry already provided by Duke and Progress is sufficient to show this and thereby makes Cargill eligible for the same pricing treatment.[46] Thus, if Cargill's

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[45] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, Appendix C §15.3, §29.1, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008) *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

[46] Cargill March 23 Comments at 4.

imports into PJM have the same effect as Duke's and Progress's, and Duke and Progress are providing the needed data to obtain a better price, Cargill believes that it is in the same position, in terms of impacts on the PJM system, and is due the same pricing.

39. NCEMC raises similar concerns about being excluded from preferential pricing because of actions or omissions outside of their control. NCEMC notes ambiguity in PJM's proposed tariff language for High-Low and Marginal Cost Proxy Pricing that could result in Duke and Progress selecting NCEMC's pricing method for it, instead of allowing NCEMC to qualify for pricing methods on its own merits, and choose from among PJM's allowable pricing methods of its own volition. In order to address this potential flaw in PJM's proposal, NCEMC proposes the addition of a new subsection to the proposed tariff:

> Notwithstanding any provision in this section to the contrary, a sub-area of a balancing authority area may elect pricing points and interface pricing methods different from the pricing points and interface pricing methods elected by the balancing authority area, and no action of the balancing authority area or any entity whose transactions do not source and/or sink within the sub-area shall affect the pricing points or interface pricing methods elected by such sub-area.[47]

40. NCEMC is also concerned that the proposed Tariff language implementing the High-Low interface pricing method would treat transactions from a sub-area in the same pricing manner as a transaction from the larger balancing authority area. That is, the balancing authority area's election of a pricing point under the High-Low approach would trump the sub-area's choice. Further, NCEMC is concerned that the language proposed in sections 2.6A(b)(1)(B) and 2.6(A)(b)(2)(B) identifies circumstances under which the transactions of an entity in a balancing authority area could cause the entire balancing authority area to be ineligible for its elected method of interface pricing, including a sub-area. The language in these sections does not explicitly indicate that such transactions will have no effect on a sub-area's elected pricing method if the entities involved are not engaged in transactions that source and/or sink in the sub-area. Because of these ambiguities, NCEMC seeks clarification that a sub-area will be treated independently of a balancing authority area in this regard and request that additional language be added to section 2.6A(b).[48]

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[47] NCEMC March 23, 2009 Comments at 5.

[48] *Id.* at 5.

b) Answers

41. PJM does not share NCEMC's view that the tariff provisions PJM has proposed in this docket are ambiguous with respect to the ability of a sub-area within an adjacent, external balancing authority area to obtain and maintain interface pricing. Rather, PJM believes its proposed tariff provisions state clearly that PJM may establish one or more Interface Pricing Points, and thus may implement High-Low Pricing or Marginal Cost Proxy Pricing, for either an external balancing authority area or a "sub-area within a directly connected balancing authority area." Similarly, PJM states that the proposed provisions of Sections 2.6A(b)(1)(B) and 2.6A(b)(2)(B) regarding reversion to SOUTHIMP/SOUTHEXP pricing similarly distinguish pricing in a sub-area from pricing applicable to the relevant, adjacent balancing authority area.[49]

42. PJM believes NCEMC's proposed language is unnecessary and objects to using the "Notwithstanding" clause because PJM believes it modifies instead of clarifies the other parts of section 2.6A. However, PJM states that it is willing to make this insertion to assuage NCEMC's concerns:

> Subject to the terms of this Section 2.6A, PJM may define Interface Pricing Points and interface pricing methods for a sub-area of a balancing authority area different from the pricing points and interface pricing methods applicable to the adjacent balancing authority area where the sub-area is located, and no action of the balancing authority area or any entity whose transactions do not source and/or sink within the sub-area shall affect the pricing points or interface pricing methods established for such sub-area.[50]

43. In its April 16 Answer, NCEMC stated its support of PJM's modification to its suggested tariff language in PJM's April 7 Answer. NCEMC requested that the Commission grant and its suggested tariff language as modified in PJM's April 7 Answer and condition the Commission's approval on a compliance filing reflecting such language.[51]

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[49] PJM April 7 Answer at 2.

[50] *Id.* at 3.

[51] NCEMC April 16 Answer at 4.

c) **Commission Determination**

44. The Commission agrees with NCEMC that the language proposed by PJM addresses the sub-area pricing point problem that NCEMC raised. The Commission therefore directs PJM, as a condition of acceptance, to make a compliance filing within 30 days that revises its tariff sheets to include the language PJM proposed in its answer.

45. Cargill is concerned about ensuring that it receives comparable treatment to that received by Duke and Progress. The tariff, section 2.6A(b)(1)(B) of the OATT, provides for treating all participants comparably: "[i]f such data is provided, any transaction, regardless of participant, sourcing or sinking in such area will be priced in accordance with section (A) above."[52] Therefore, whatever pricing method is used by Duke and Progress will be available to other market sellers active in that balancing authority area.

The Commission orders:

(A) The tariff sheets filed by PJM with a requested effective date of February 1, 2009, are accepted effective as of that date, as requested, subject to the conditions discussed in the body of the order.

(B) PJM shall make a compliance filing, within 30 days of the date of this order, addressing the conditions established by the order, including the filing of unexecuted congestion management agreements, the tariff revision it agreed to make related to NCEMC's concern, and the effective date for those tariff sheets for which it has failed to provide one.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[52] Under section 2.6A(b)(2), this provision is equally applicable to High Low and Marginal Cost pricing.