

129 FERC ¶ 61,081
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER09-1673-000

ORDER ON PROPOSED TARIFF REVISIONS

(Issued October 29, 2009)

1. On September 1, 2009, PJM Interconnection, L.L.C. (PJM) submitted, pursuant to section 205 of the Federal Power Act (FPA),¹ proposed revisions to its open access transmission tariff (OATT) and Reliability Assurance Agreement among load-serving entities in the PJM region (Agreement). The proposed revisions are intended to enhance PJM's Reliability Pricing Model (RPM). The Commission will accept the proposed revisions for filing, to become effective November 1, 2009, as requested, subject to condition and PJM submitting a compliance filing, as discussed below.

Background

2. RPM is a forward capacity market under which PJM purchases capacity it requires for reliability on a multi-year forward basis through an auction mechanism.² The prices for capacity are determined by these forward auctions. The RPM is designed to create long-term price signals to attract needed reliability investments in the PJM region.

3. By order issued March 26, 2009,³ which addressed proposed revisions to the RPM submitted in Docket Nos. ER09-412-000, *et al.*, the Commission encouraged PJM to work with its stakeholders on several issues. In this filing, PJM has proposed tariff revisions affecting various aspects of the RPM, including: the New Entry Pricing Adjustment (NEPA); demand response participation in RPM; Incremental Auction

¹ 16 U.S.C. § 824d (2006).

² *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 (2006).

³ *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 (March 26 Order), *order on reh'g*, *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,157 (2009) (August 14 Order).

changes; default avoidable cost rates for use in the Base Residual and Incremental Auctions; and recognition of load forecast reductions for fixed resource requirement capacity obligations. Each proposal is detailed below, along with relevant comments.

4. PJM states that the Capacity Market Evolution Committee, charged with developing improvements and enhancements to the RPM, met several times during the summer of 2009 for the purpose of developing the proposed tariff changes. Further, according to PJM, the Markets and Reliability Committee and the Members Committee voted on the revisions and approved them by acclamation. According to PJM, the proposed revisions obtained wide support. However, PJM notes that the proposed NEPA rule change was the only item that required a formal vote by both Committees.

Notice of the Filing and Responsive Pleadings

5. Notice of PJM's filing was published in the *Federal Register*,⁴ with interventions and comments due on or before September 22, 2009. The Illinois Commerce Commission filed a notice of intervention. Timely motions to intervene were filed by Edison Mission Energy, Inc.; Shell Energy North America (US), L.P.; American Municipal Power, Inc.; Exelon Corporation; Allegheny Energy Companies⁵; jointly, Consolidated Edison Energy, Inc. and Consolidated Energy Solutions, Inc.; Mirant Parties⁶; Dynegy Power Marketing, Inc.; NRG Companies⁷; IPA Central, LLC; PJM Power Providers Group; jointly, PPL EnergyPlus, LLC, PPL Electric Utilities Corporation, PPL Holtwood, LLC, PPL University Park, LLC, PPL Brunner Island, LLC, PPL Montour, LLC, PPL Susquehanna, LLC, PPL Martins Creek, LLC, and PPL Lower Mount Bethel Energy, LLC; JP Morgan Ventures Energy Corporation; North Carolina Electric Membership Corporation; the Borough of Chambersburg, Pennsylvania; NextEra Energy Generators; and Southern Maryland Electric Cooperative, Inc.

⁴ 74 Fed. Reg. 46765 (Sept. 11, 2009).

⁵ Allegheny Energy Companies include Allegheny Power and Allegheny Energy Supply Company, LLC.

⁶ Mirant Parties include Mirant Energy Trading, LLC; Mirant Chalk Point, LLC; Mirant Mid-Atlantic, LLC; and Mirant Potomac River, LLC.

⁷ NRG Companies include NRG Power Marketing LLC, Conemaugh Power LLC, Indian River Power LLC, Keystone Power LLC, NRG Energy Center Dover LLC, NRG Energy Center Paxton LLC, NRG Rockford LLC, NRG Rockford II LLC, and Vienna Power LLC.

6. Timely motions to intervene and comments were filed by the Independent Market Monitor for PJM (Market Monitor); Dayton Power and Light Company (Dayton); jointly, the Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC (PSEG Companies); Pepco Holdings, Inc., and its subsidiaries, Potomac Electric Power Company, Delmarva Power & Light Company, Atlantic Electric Company, Conectiv Energy Supply, Inc. and Pepco Energy Services, Inc. (Pepco); American Electric Power Service Corporation (AEP); RRI Energy, Inc. (RRI); and Old Dominion Electric Cooperative (Old Dominion). The New Jersey Board of Public Utilities (New Jersey Commission) filed a notice of intervention and comments.

7. On October 7, 2009, PJM filed an answer to the comments.

Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

9. Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PJM's answer because it has provided information that has assisted us in our decision-making process.

Discussion

A. New Entry Pricing Adjustment

1. PJM's Filing

10. PJM's proposed revisions include enhancements to the New Entry Pricing Adjustment (NEPA). Currently, NEPA provides assurances, under certain conditions, of up to three years of capacity market revenues to qualifying new-entry projects. Similar assurances are available on the same terms and conditions to qualifying major investments in existing capacity. These pricing rules were created to address the concern that even when new entry into a small locational delivery area is necessary and prices would support new entry in the first year of entry, the efficient scale of entry may provide more than the needed capacity in the area. In that case, the extra capacity price would result in much lower prices in the following years. Because this effect may deter needed new entry, the NEPA rules were developed to provide new entrants with guaranteed higher prices beyond the first year. Under the current tariff, the provision guarantees the new entrant the first year price in the second and third years. The guarantee applies only

if the seller clears⁸ the Base Residual Auction for those years. However, the tariff also requires the new entrant to submit bids in the second and third years at a specified minimum offer price.⁹ Thus, if the specified minimum offer price does not clear in years two and three, the bid will not clear, and the seller will not receive the guaranteed price.

11. Faced with stakeholder concerns that the current NEPA fails to provide adequate assurance of annual investment recovery to promote new entry, PJM seeks to revise section 5.14(c) of its tariff to provide a greater assurance of payment. Its proposal establishes two scenarios for the second and third years: (1) if the resource clears; and (2) if it does not clear. If a resource clears, it is paid the capacity resource clearing price. If a resource does not clear, it is deemed resubmitted at the highest price per MW that allows the amount of capacity it cleared in the first year to clear in the subsequent year.¹⁰ The NEPA resource may displace one or more other resources in the supply stack that otherwise would have cleared, but it will do so at a price that is just low enough to displace those other resources.

12. The amount that must be reinserted in the supply stack when a NEPA resource fails to clear through its initial offer in a subsequent year auction is only the amount cleared from the first year. The resource will then receive a make-whole payment for the price difference between the clearing price and the resource's prescribed sell offer price, i.e., the lower of its first-year offer price or 90 percent of net CONE. Further, a NEPA resource may submit a minimum block offer in the second or third years, but the extra amount that may be committed and compensated in the second or third year cannot be more than any minimum block increment that was committed in the first year and compensated with a make-whole payment.

⁸ A seller "clears" an auction when its bid is accepted. The highest clearing price in an auction is the highest bid accepted among a group of accepted bids.

⁹ The minimum prescribed offer price is the lower of the seller's first-year offer price or 90 percent of the net cost of new entry.

¹⁰ For this purpose, the amount cleared in the first year does not include any increment the resource committed in the first year solely as a result of a minimum block offer, i.e., an offer that must be wholly accepted at the full MWh offered. When a minimum-block offer is accepted at the margin, it is the lowest price offer needed to satisfy all reliability requirements, but it provides somewhat more capacity than is needed. The additional increment of capacity committed as a result of a minimum block offer is compensated through a make-whole payment that is socialized across the loads in the affected locational delivery areas.

2. Comments

13. PSEG supports PJM's filing and states that, while NEPA was intended to give developers the option to receive three years of price persistence, the qualifying criteria under NEPA are too restrictive. PSEG cites, as an example, the current NEPA provision that pays the new-entry seller in the second and third years only if the developer clears the Base Residual Auction for those years. PSEG opines that the risk of not clearing at minimum offer level creates a significant disincentive against utilizing NEPA. PSEG believes PJM's proposed revisions will better assure that a resource will receive a price at or near the level of its new entry bid.

14. Dayton generally supports PJM's filing, and concurs with PJM's statements that the proposed revisions were widely supported by stakeholders. Dayton further asserts, however, that PJM's proposal carves out an exception to the rule requiring a relatively high minimum prescribed offer to set the market clearing price, whereas elimination or modification of the rule itself should be considered. Dayton expresses concerns about offering new entrants a guaranteed locked-in price, irrespective of market conditions and suggests that any provision on this issue should provide all supply resources with the option of a multi-year locked-in price. Alternatively, Dayton suggests no specific provision on this issue.

15. Dayton further sees no benefit from allowing an existing resource that would otherwise clear the market to be circumvented by a predetermined price set by PJM -- a situation that PJM admits is possible under the revisions proposed here. Dayton does agree, however, as PJM's proposal provides, that the locational delivery areas requiring additional increment of capacity committed should be charged their appropriate uplift cost through a make-whole payment that is socialized across the loads in the locational delivery area.

16. The New Jersey Commission generally supports PJM's proposed enhancements to NEPA but seeks exploration of even longer-term revenue certainty (i.e., beyond three years) for new generating capacity. The New Jersey Commission posits that, since December 2006,¹¹ when the Commission found that NEPA would support sufficient entry by providing additional revenue guarantees for the new entrant, there has been nearly a complete lack of new generation in New Jersey in any of the first six RPM Base Residual Auctions. This suggests, according to the New Jersey Commission, that NEPA has not supported new entry. The New Jersey Commission claims that the derating of generation, the potential for further retirements, and the likelihood of exports to New

¹¹ *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 (2006).

York City,¹² all coupled with the relative lack of new generating capacity clearing the first six Base Residual Auctions, indicate that exploration of further revisions to RPM is in order.

17. The Market Monitor generally welcomes PJM's proposed revisions on this issue, but believes that PJM's tariff should further require a cleared NEPA resource to submit an offer in the two subsequent Base Residual Auctions at a price no greater than its original offer, which is the assured minimum price that the NEPA resource would receive in any case. The Market Monitor states that where, as in the revisions at issue here, a NEPA resource is guaranteed to clear, there should not be a riskless opportunity for that resource to receive a higher price.

18. In its answer, PJM responds to the Market Monitor and Dayton, stating that their concerns regarding current NEPA rules are unchanged by the proposed revisions. Moreover, PJM adds that the Market Monitor's concerns are unwarranted, because existing NEPA rules already prescribe that offers in years two and three of the price assurance may not exceed the original offer, and PJM proposes no revisions to that criteria.

3. Commission Determination

19. We will accept PJM's proposed revisions concerning NEPA. We find that the revisions will reasonably enhance the current rules, as the three years of revenue assurance should incentivize new capacity resources to locate in small locational delivery areas in the PJM region. In making this determination, we note that most stakeholders support the proposed revisions to NEPA, and no party wholly protests them.

20. While not opposing the filing, Dayton expresses concern about the possibility that a new resource may displace an existing resource off the list of cleared resources, stating that there is no benefit from such a consequence. We note, however, that the existing generators that will be bumped will be those that have submitted the highest bids and

¹² The New Jersey Commission explains that lack of support for new entry is problematic because a large amount of existing capacity has left or is leaving New Jersey. In addition, the New Jersey Commission states that PJM and PSEG signed an interim interconnection agreement with a developer to link PSEG North with New York City, which would export additional capacity and energy from the locational delivery area. Further, the New Jersey Commission opines that New Jersey's efforts to comply with federal Clean Air Act mandates are likely to result in the retirement of still more capacity.

have the highest going forward costs.¹³ New generators typically have very low going-forward costs once they have entered the market. Nevertheless, the market rules require that they bid above their going-forward costs in years two and three.¹⁴ In instances where PJM lowers the new generator's initial required bid in years two and three (because its initial bid was not accepted at auction), the bid adjustment will be closer to, but still likely higher than, the generator's actual going forward costs. By contrast, existing generators are able to submit bids that reflect their actual going forward costs; existing generators that have bid the highest have the highest going forward costs. Thus, existing generators that would be displaced would typically have higher going forward costs than NEPA generators that are in only their second or third year in the market. As a result, it would be efficient for a newer NEPA generator to displace an older and more costly existing generator.

21. With respect to Dayton's concerns that the proposed revisions provide a guaranteed locked-in price, we note that the purpose of the NEPA provisions has always been to provide such a price assurance for a limited period, in order to encourage needed new entry in small locational delivery areas. Dayton's concerns regarding aspects of PJM's tariff which are unaltered by the proposed revisions are beyond the scope of this proceeding.

22. While the Market Monitor asserts that PJM's tariff should require a cleared NEPA resource to submit an offer in the two subsequent Base Residual Auctions at a price that is no greater than its original offer, we find that such a requirement already exists in PJM's tariff.¹⁵ Nothing in PJM's proposed revisions changes that requirement.

23. In response to the New Jersey Commission's call for exploration into ways to further improve RPM, PJM and its stakeholders are always free to discuss improvements to PJM's tariff. Our acceptance of PJM's proposed NEPA revisions here does not foreclose the possibility of any further enhancements that may incent new capacity resources to locate in the state of New Jersey and other areas in PJM.

¹³ Like older cars, older generation typically has higher going-forward costs (meaning more frequent maintenance, upgrade and replacement) than newer generation. Like newer cars, newer generation typically requires less upkeep and replacement than existing generation and often utilizes more efficient technology.

¹⁴ Generators are required to bid above their going-forward costs because, otherwise, net entry would have the effect of dramatically lowering the price in the locational delivery area.

¹⁵ PJM tariff at Attachment DD, section 5.14(c).

B. Existing Demand and Energy Efficiency Resource Eligibility to Set Prices

1. PJM's Filing

24. Under PJM's current tariff, only planned demand resources and existing and planned generation resources are eligible to set market clearing prices in RPM auctions.¹⁶ Existing demand¹⁷ and energy efficiency resources¹⁸ are not permitted to set market clearing prices. This prohibition, according to PJM, effectively limits existing demand resources to submitting only zero-price, or "price-taker," offers (price-taker rule); it precludes them from submitting offers with a positive price that reflects their marginal cost of providing the reduced demand. Consequently, PJM expresses concern that the current tariff creates barriers to participation and may provide an incentive for existing demand resource providers to artificially label their offer as a planned resource in an effort to avoid the price-taker rule.

25. In order to address concerns that the price-taker rule limits the ability of demand resource providers to accurately reflect their true cost of providing demand response in the auction (and thereby presents a possible barrier to demand response), PJM seeks to: (1) change the price-taker rule to allow all demand and energy efficiency resources to set clearing prices; (2) exclude all demand and energy efficiency resources from offer-price mitigation; and (3) specify that market power screens are applicable only to generation resources. More specifically, the rule that existing demand and energy efficiency resources may not set clearing prices would be deleted from PJM's tariff (at sections 5.6.3 and the last section of 6.5(b)). Section 6.5(b) would also be revised to provide that offer-price mitigation does not apply to any demand or energy efficiency resource, as opposed to the current provision which states only that such mitigation does not apply to

¹⁶ A demand resource is a resource capable of providing demand reductions that meets the set forth in Schedule 6 to the Agreement.

¹⁷ PJM tariff at Attachment DD, sections 5.6.3 and 6.5(b).

¹⁸ An energy efficiency resource, as defined in Schedule 6 to the Agreement, is a "project, including installation of more efficient devices or equipment or implementation of more efficient processes or systems, exceeding then-current building codes, appliance standards, or other relevant standards, designed to achieve a continuous (during peak periods as described herein) reduction in electric energy consumption that is not reflected in the peak load forecast prepared for the Delivery Year for which the Energy Efficiency Resource is proposed, and that is fully implemented at all times during such Delivery Year, without any requirement of notice, dispatch or operator intervention."

planned demand resources. In addition, sections 6.3(b)(ii) and 6.3(c) would be revised to provide that the market power screens apply only to the generation resources.

2. Comments

26. Dayton, RRI, and PSEG support this aspect of PJM's filing. They believe that changing the current rule that prevents demand resources from setting clearing prices will enhance participation of demand resource providers. PSEG and RRI explain that the price-taker rule limits demand resource providers' ability to accurately price their true cost of providing demand response and puts them at risk of having to supply capacity resources at prices below their cost of operation. This, in turn, can chill their willingness to offer demand resources into RPM auctions, if they believe they might not realize the value of the service they are providing. PSEG and RRI agree that the revisions will permit better price signaling and allow demand resources to submit bids truly reflective of their costs and set prices in RPM auctions. PSEG further believes that the proposed revisions appropriately reflect that when demand resources constitute the marginal cost of supply, their costs should set clearing prices.

27. The Market Monitor and Old Dominion agree with other commenters that, under current market conditions, it is reasonable to exclude demand-side resources from market power mitigation provisions.¹⁹ However, the Market Monitor is concerned that there may, in the future, be a lack of competition among demand resources. The Market Monitor requests that the Commission leave room for PJM to include demand resources under the mitigation rules if subsequent review and analysis show that it is necessary.

28. Similarly, Old Dominion expresses concern that, as more demand resources enter the PJM markets and the RPM auctions, they may present market behavior that could unduly affect market prices. Therefore, Old Dominion requests that PJM and the Market Monitor continue to monitor demand response and bidding behavior and propose market rules and market power screens as necessary to ensure that demand response resources are not able to engage in behavior that unduly affects the market.

29. The Market Monitor further states that section 6.3(c) of Attachment DD to PJM's tariff should be revised to identify the Office of the Interconnection and not the Market Monitor as the party that shall consider only such supply available from Generation

¹⁹ On this point, the Market Monitor states that the supply from generation resources limits the auction clearing price, except where there is a shortage, and therefore, the participation of demand-side resources can only decrease the clearing prices. Given this reliance on supply from generation resources, it is logical to exclude demand-side resources in applying the market power test of market structure to generation resources.

Capacity Resources. According to the Market Monitor, it is undisputed that the Office of the Interconnection applies the market structure test and that the Market Monitor's role is to monitor its application.²⁰

3. Commission Determination

30. We will accept PJM's proposal to allow all demand and energy efficiency resources to set market clearing prices in RPM auctions, for the purpose of ensuring that these resources are treated comparably to planned demand response and generation resources. Allowing all demand and energy efficiency resources to set market clearing prices will enable them to reflect the true cost of reducing demand through their RPM offer prices, enhance their incentive to participate, and thereby, improve market efficiency. Moreover, demand resources that clear RPM auctions are already eligible to set market clearing prices during emergency events, and therefore, it is logical to allow these resources to set market clearing prices in the RPM auctions as well.²¹ We find that the revisions on this point represent a just and reasonable improvement to the existing RPM rules.

31. We will further accept PJM's revisions that would exclude all demand and energy efficiency resources from the offer-price mitigation rules and apply market power screens only to generation resources. At this time no party has presented evidence that a demand or energy efficiency resource provider has exercised market power or is large enough to warrant market power concerns. We agree that the Market Monitor should continue to monitor demand and energy efficiency resources. The Market Monitor should report to the Commission any issues that arise as a result of demand and energy efficiency resources not being subject to the mitigation rules. We further note that nothing in this order prevents PJM from making a section 205 filing to make demand and energy efficiency resources subject to the mitigation rules if necessary.

²⁰ Specifically, the Market Monitor seeks the following correction to OATT Sheet No. 606: "In applying the market structure test, the Office of the Interconnection shall consider all incremental supply up to and including all such supply (provided, however, that the Office of the Interconnection [i.e., not the Market Monitor] shall consider only such supply available from Generation Capacity Resources)"

²¹ Selection of a demand resource in an RPM Auction results in commitment of capacity to the PJM Region. Demand resources that are so committed must be registered to participate in the Full Program Option of the Emergency Load Response program and thus be available for dispatch during PJM-declared emergency events. See Section 13.1.9 of PJM's tariff.

32. However, we agree that PJM should revise section 6.3(c) of Attachment DD to PJM's tariff to identify the Office of the Interconnection and not the Market Monitor as the party applying market power tests to Generation Capacity Resources. We therefore will accept the filing subject to the condition that PJM revise this provision within 30 days of the date of this order.

C. Allocation of Testing Penalty Revenues

1. PJM's Filing

33. PJM proposes new rules regarding allocation of the Load Management Test Failure Charge.²² PJM contends that similar performance penalty charges allocate the penalty revenues from capacity resource non-performance to the loads that are bearing the costs of such resources,²³ and that the current tariff fails to specify how the penalties from the Load Management Test Failure Charge will be allocated. Accordingly, PJM seeks to add to the following new subsection (e) to section 11A of Attachment DD of its tariff:

revenues collected from assessment of Load Management Test Failure charges shall be distributed to Load Serving Entities that were charged a Locational Reliability Charge for the Delivery Year for which the Load Management Test Failure Charge was assessed, pro-rata based on such Load Serving Entities' Daily Unforced Capacity Obligations.

34. PJM proposes to make new subsection (e) effective for all penalties collected for the current 2009-2010 RPM Delivery Year, which started on June 1, 2009. PJM contends that no current effective PJM tariff provision governs the disposition of those revenues.

2. Commission Determination

35. We will accept PJM's proposed tariff revisions regarding allocation of the Load Management Test Failure Charge effective as requested for the current 2009-2010 year. As noted by PJM,²⁴ the allocation is consistent with previously approved methods for

²² Load Management Test Failure Charges are assessed to a demand response provider that under-delivered required MWs during a performance test.

²³ PJM cites PJM tariff, Attachment DD, section 7(c) (addressing allocation of revenues from Generation Resource Rate Test Failure Charges).

²⁴ PJM September 1, 2009 transmittal letter at 7, n.9.

allocating revenues associated with other test failure charges in PJM's tariff (e.g., revenues from Generation Resource Rating Test Failure Charges). Additionally, we find the implementation of this rule removes any uncertainty and averts potential conflicts as to the treatment of any potential revenues that may arise from the testing that is currently underway. We note that no parties protested the filing.

D. Deadline for Documentation of Planned Demand Resources

1. PJM's Filing

36. PJM states that the current tariff and Agreement require capacity market sellers who intend to offer a planned demand resource into the RPM auction to provide information to PJM at least 45 days prior to the auction to demonstrate that the resource will be in service by the start of the delivery year addressed in the auction.²⁵ PJM has determined, however, that it does not require 45 days to review and approve that documentation and that 15 business days would be sufficient.

37. Accordingly, PJM seeks to revise section A.8 of the Agreement, Schedule 6, and identical tariff provisions in Attachment DD-1, to replace references to "45 days" with "15 business days."

2. Commission Determination

38. We will accept PJM's proposal to shorten the RPM auction information period from 45 days to 15 business days prior to the auction. PJM represents that 15 business days prior to an RPM auction is a sufficient amount of time for it to review and verify that a Planned Demand Resource will be in-service by the start of the auction Delivery Year, and no party contests this aspect of PJM's proposed tariff revisions.

E. Incremental Auction Changes

1. PJM's Filing

39. PJM states that, pursuant to the March 26 Order, its stakeholders approved several changes to clarify and make more consistent the RPM Incremental Auction rules. PJM states that it filed many of the changes concurrently with this filing as part of PJM's compliance filing in Docket Nos. ER09-412-006 and ER09-412-007. According to PJM, two additional changes received broad support but appear to go beyond the compliance directive in the March 26 Order, and, therefore, PJM submits them here.

²⁵ See Agreement, Schedule 6, section A.8 and PJM tariff, Attachment DD-1, section A.8.

40. First, PJM seeks to revise section 5.4(e) of Attachment DD to its tariff, to clarify that a Conditional Incremental Auction is held only as a result of a delay to the in-service date of a “Backbone Transmission Upgrade,”²⁶ as opposed to a delay in any planned transmission upgrade. A Conditional Incremental Auction is a supplemental, unscheduled auction to secure additional capacity, and, according to PJM, should be invoked only in response to a serious unexpected circumstance.

41. Second, PJM seeks to add a new “Excess Commitment Credit” to section 5.12(b)(vii) of Attachment DD to its tariff, for load-serving entities under certain circumstances. Under this provision, PJM would allocate to load-serving entities the megawatt quantity of any sell offers submitted by PJM in the Incremental Auctions which did not clear, i.e., excess capacity that PJM seeks, but is unable, to sell back in the Incremental Auction.²⁷ The load-serving entities can then use the excess capacity commitment credits to replace (or fulfill) their own capacity commitments and thereby mitigate their own risks of resource non-performance. Alternatively, the load-serving entities could sell the excess commitment to others.

2. Commission Determination

42. We will accept PJM’s proposal to revise its tariff to clarify that a Conditional Incremental Auction is to be held only as a result of a delay to the in-service date of a Backbone Transmission Upgrade, as opposed to a delay in any planned transmission upgrade. We also find PJM’s proposal to add a new Excess Commitment Credit to its tariff reasonable, because the credit attempts to offer alternative benefits to capacity resources that are unable to sell their excess capacity in the market. In making this determination, we note that no protests were filed in opposition to these revisions and every relevant comment supported them.

²⁶ A Backbone Transmission Upgrade is a transmission upgrade that includes transmission facilities at voltages of 500 kV or higher that is in an approved Regional Transmission Expansion Plan. See PJM tariff, Attachment DD, section 11A.

²⁷ This provision would be fully implemented along with the related Incremental Auction changes on June 1, 2012. During the transitional period, i.e., the 2010-11 and 2011-12 Delivery Years, excess capacity will be defined as a reduction from the reliability requirement used for the Base Residual Auction for either year to the reliability requirement that is based on the last updated load forecast prior to that delivery year. The difference will define the amount allocated to load-serving entities for their use as replacement capacity in those years.

F. Default Avoidable Cost Rates for Use in Incremental Auctions

1. PJM's Filing

43. Currently, Capacity Market Sellers that are subject to offer price mitigation may develop an avoidable cost rate (ACR) for their resources in accordance with standards enumerated in the PJM tariff. Alternately, as stated in PJM's tariff, section 6.7, Attachment DD, they may elect to use default ACRs developed by the Market Monitor for a variety of resource types.

44. In the March 26 Order, the Commission approved an increase to the stated ACRs, and the revised default ACRs were applied to offers submitted in the May 2009 Base Residual Auction conducted for the 2012-13 Delivery Year. Faced with the Market Monitor's concern that the revised default ACRs were overstated for use in connection with any Delivery Years earlier than 2012-13, the Capacity Market Evolution Committee reviewed and agreed to revise the default ACR table in the tariff to state different ACRs for the 2010-11, 2011-12, and 2012-13 Delivery Years. For the 2013-14 Delivery Year and subsequent Delivery Years, the Committee agreed to annual increases in those values based on the 10-year annual average rate of change in the applicable Handy-Whitman Index of Public Utility Construction Costs.

45. PJM seeks to revise section 6.7 of Attachment DD to its tariff accordingly. The ACR table would be expanded to include the default ACR values for the 2010-11 and 2011-12 Delivery Years, as provided by the Market Monitor, and the values approved by the Commission in the March 26 Order would be designated for use in connection with the 2012-13 Delivery Year. Proposed section 6.7 describes the Handy-Whitman indexing method for use beginning with the 2013-14 Delivery Year, and the three-year review of that method.

2. Comments

46. The Market Monitor supports PJM's proposed revisions on default ACR rates and the requested effective date of November 1, 2009, but requests a Commission determination on this aspect of PJM's proposal no later than October 29, 2009, in order to facilitate orderly application of the relevant changes. The Market Monitor notes that, on November 2, 2009, the ACR system opens for data entry in advance of the Incremental Auction scheduled for January 2010. Dayton also filed supportive comments.

3. Commission Determination

47. PJM has set forth the revised default ACR table developed by the Market Monitor for the 2010-11, 2011-12, and 2012-13 Delivery Years. No adverse comments or protests were filed on this issue. We find the revisions acceptable because they accurately state

the default rates for market sellers that are subject to offer price mitigation. Therefore, we will accept the proposed revisions to become effective on November 1, 2009.

G. Recognition of Load Forecast Reductions for Fixed Resource Requirement Capacity Obligations

1. PJM's Filing

48. While the March 26 Order approved tariff revisions that provide a means for reducing RPM capacity commitments when the load forecast for the Delivery Year is reduced, PJM's current tariff does not provide any similar relief for load-serving entities that have elected the fixed resource requirement (FRR)²⁸ alternative. Therefore, PJM seeks to add the following sentence to section D.2 of Schedule 8.1 to the Agreement:

To the extent the FRR Entity's allocated share of the Final Zonal Peak Load Forecast is less than the FRR Entity's allocated share of the Preliminary Zonal Peak Load Forecast, such FRR Entity's FRR Capacity Plan may be updated to release previously designated Capacity Resources in an amount no greater than the Forecast Pool Requirement times such decrease.

49. PJM notes that this FRR revision is not intended to change capacity obligations in the middle of the current Delivery Year. Accordingly, the first practical application of this change would occur for the 2010-11 Delivery Year, if there is a reduction in the final updated load forecast for any FRR zones for that year.

2. Comments

50. Dayton and AEP specifically support this aspect of PJM's filing. AEP adds that the proposal to permit downward load adjustments for FRR entities creates parity related to capacity obligation requirement methodologies between RPM and FRR. AEP states that this parity is essential for FRR entities and their customers due to changing economic circumstances.

²⁸ A fixed resource requirement alternative allows a load-serving entity (LSE) to submit a fixed capacity resource requirement plan and meet a fixed capacity resource requirement as an alternative to participating in the RPM auctions with a variable capacity resource requirement.

3. Commission Determination

51. We will accept PJM's proposed tariff revisions regarding recognition of load forecast reductions for FRR capacity obligations. It is reasonable for load serving entities that choose the FRR alternative to have available a provision to recognize load forecast reductions, similar to the provisions in RPM. This provision will not cause undue uncertainty to capacity sellers because it does not apply to partial delivery years and will not start until the 2010-11 Delivery Year. Therefore, the provision will allow ample time for capacity sellers to adjust accordingly.

The Commission orders:

PJM's proposed tariff revisions are hereby accepted for filing to become effective November 1, 2009, subject to condition, and to PJM submitting a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.