

134 FERC ¶ 61,065  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER11-2287-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued January 31, 2011)

1. In this order, the Commission accepts PJM Interconnection, L.L.C.'s (PJM) proposed revisions to its Reliability Pricing Model (RPM) and Market Monitoring Plan, found in the PJM open access transmission tariff (OATT), and Reliability Assurance Agreement (RAA) (Proposed RPM Revisions), effective January 31, 2011. The Proposed RPM Revisions clarify the RPM must-offer requirement, market power mitigation and related provisions of the OATT and RAA. In particular, the changes provide definitions for existing and planned capacity that treat new capacity from improvements to existing facilities (capacity modifications) similar to newly constructed units for market power mitigation purposes. In addition, the revisions apply the must-offer requirement to resources that come in-service mid year and clarify the role of PJM's market monitor in reviewing offers for consistency with the OATT, consistent with the requirements of Order No. 719.<sup>1</sup>

**I. Background**

2. The rules governing PJM's capacity market are provided in the RPM and related agreements.<sup>2</sup> PJM procures capacity through the RPM, with prices determined through

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<sup>1</sup> *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008), *as amended*, 126 FERC ¶ 61,261, *order on reh'g*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292, *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

<sup>2</sup> The RPM is designated PJM OATT, Attachment DD.

several auctions beginning three years in advance of the delivery date. To date, PJM has conducted seven Base Residual Auctions to determine the level of capacity and prices for delivery years 2007-2014. PJM's most recent Base Residual Auction was conducted in May 2010 to procure capacity for the 2013-2014 Delivery Year.

3. Under the current tariff, PJM applies a must-offer requirement that, in certain circumstances, requires a generation resource to submit an offer into the RPM market. PJM also applies market power mitigation when generating units fail to pass a market structure test. However, for Planned Generation Capacity Resources (currently, new generating plants), PJM does not apply the must-offer requirement and applies less stringent mitigation.<sup>3</sup>

4. On December 2, 2010, PJM filed the Proposed RPM Revisions to address concerns that it had identified in the course of administering the RPM. In particular, PJM states that the Proposed RPM Revisions clarify which types of Generation Capacity Resources are subject to the must-offer requirement and what form of mitigation should apply.<sup>4</sup> To this end, the Proposed RPM Revisions provide a new definition for Existing Generation Capacity Resource and revisions to ensure that new capacity from a new Generation Capacity Resource and a capacity modification to an Existing Generation Capacity Resource are treated similarly for mitigation purposes. PJM also clarifies the must-offer requirement so that it applies to a Generation Capacity Resource that is in service at the commencement of any RPM auction rather than just at the commencement of the Base Residual Auction for a particular delivery year.<sup>5</sup> In addition, PJM clarifies the market monitor's role in reviewing offers and reporting its determinations to PJM and this Commission, consistent with Order No. 719.

5. The Proposed RPM Revisions include substantial changes to the following: (1) the PJM Market Monitoring Plan, found in the OATT, Attachment M – Appendix, sections II.C and II.D, establishing the PJM market monitor's responsibilities; (2) the RPM, found in the OATT, Attachment DD, sections 5.6.6, 6.4, 6.5, and 6.6, setting forth

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<sup>3</sup> PJM Transmittal Letter at 14-15 (quoting Attachment DD, section 6.5(a)(ii), which specifies that "Sell Offers based on Planned Generation Capacity Resources . . . shall be presumed to be competitive and shall not be subject to market power mitigation in the Base Residual Auction or Incremental Auction for adjustment of committed capacity for the first Delivery Year").

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Id.*

the must-offer requirement and mitigation provisions; and (3) the PJM RAA, new section 1.20B and sections 1.69A and 1.70.<sup>6</sup>

6. PJM states that it proposes to define an Existing Generation Capacity Resource as capacity that is either: (a) in service; or (b) not yet in service but has cleared an RPM Auction for any prior Delivery Year.<sup>7</sup> PJM notes that, under the current tariff provisions, if a resource does not satisfy the definition of a Planned Generation Capacity Resource it is assumed to be an existing Generation Capacity Resource.<sup>8</sup> To clarify the application of the must-offer requirement and market power mitigation, PJM proposes to more clearly distinguish Existing Generation Capacity Resources from Planned Generation Capacity Resources.

7. PJM also revises the definition of a Planned Generation Capacity Resource.<sup>9</sup> PJM states that under the Proposed RPM Revisions, a Planned Generation Capacity Resource must be in service or clear an RPM auction at an unmitigated price to be an Existing Generation Capacity Resource.<sup>10</sup> PJM states that, under the current tariff, a Planned Generation Capacity Resource offered into an RPM auction is to be considered existing in all subsequent RPM auctions, even if it has not been accepted in an RPM auction. PJM notes that for some resources, the seller will not build a resource or increase the installed capacity until the resource has cleared an auction at a minimum, economically feasible price. PJM concludes that there is no reasonable expectation that the resource will be constructed or modified simply because it offers into an RPM auction. If a proposed resource or modification does not clear the auction at the unmitigated price, the generator is under no obligation to build that resource or construct the modification.<sup>11</sup>

8. PJM further proposes to revise the RPM and RAA to clarify that market power mitigation will not be applied to a resource for which construction has not commenced and that was only deemed to be an “existing Generation Capacity Resource” because it

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<sup>6</sup> The RAA is designated PJM Rate Schedule FERC No. 4, Reliability Assurance Agreement among Load Serving Entities in the PJM Region.

<sup>7</sup> PJM Transmittal Letter at 18-19. The proposed definitions are in the RAA.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 19-20. PJM proposes a corresponding change to the definition of Planned External Generation Capacity Resource.

<sup>10</sup> *See* Attachment DD, proposed section 6.5(a)(ii)(A).

<sup>11</sup> PJM Transmittal Letter at 15.

cleared an RPM auction as a result of being offer-capped.<sup>12</sup> According to PJM, currently market power mitigation is not applied to Planned Generation Capacity Resources for the first delivery year for which those resources were offered because their offers are “presumed to be competitive.” However, those same resources are treated as Existing Generation Capacity Resources and are therefore subject to market power mitigation in the auctions for any subsequent delivery year, irrespective of whether the resources actually cleared the auctions for the first delivery year into which they were offered.<sup>13</sup> PJM therefore proposes that a Generation Capacity Resource for which construction has not commenced, and which would otherwise have been treated as a Planned Generation Capacity Resource (under the new tariff provision), except that, due to the operation of the old provisions, it would be considered an existing resource shall be deemed to be a Planned Generation Capacity Resource.<sup>14</sup>

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<sup>12</sup> PJM Transmittal Letter at 16-17 (discussing revisions to Attachment DD, section 6.5(a)(ii); RAA, sections 1.20B (definition of Existing Generation Capacity Resource) and 1.70 (definition of Planned Generation Capacity Resource)).

<sup>13</sup> PJM provides the following example to illustrate the problem: a capacity owner offers a Planned Generation Capacity Resource into an RPM Auction for Delivery Year 1 at a price of \$200/MWh, but the resource does not clear that auction because the auction cleared at \$150/MWh. The capacity owner offers the same Planned Generation Capacity Resource into an RPM Auction for Delivery Year 2 at a price of \$200/MWh. However, in Delivery Year 2 the resource’s offer is not presumed to be competitive per section 6.5(a)(ii), therefore it is subject to market power mitigation. The resource is offer capped at \$100/MWh. The RPM Auction for Delivery Year 2 clears at \$150/MWh. The resource is cleared in the RPM Auction for Delivery Year 2, even though the auction cleared at \$150/MWh and it offered the resource into the auction at \$200/MWh, because market power mitigation was applied to that resource despite the fact that the resource does not yet exist and did not clear in the RPM Auction for Delivery Year 1. (The capitalized terms used in the example are defined in the RPM and RAA).

<sup>14</sup> Because the resource would have cleared a prior auction only at an offer-capped price, it would be deemed an existing resource under the Proposed RPM Revisions, absent this additional clarification. However, on a prospective basis such a resource is not considered existing. In order to ensure that all resources, those bidding in the future and those having bid in the past, are governed by the same set of rules, PJM is proposing to treat resources that cleared prior auctions only at an offer-capped price and for which construction has not commenced as planned resources.

9. According to PJM, this provision addresses any instances where application of the currently effective rules resulted in the clearing of offered Generation Capacity Resources because offer capping was applied when these resources had never before cleared in a previous RPM auction. PJM also notes that PJM, the independent market monitor and PJM stakeholders agree that resources committed under such circumstances should not be considered Existing Generation Capacity Resources because they would not have cleared under the revised rules being proposed with this filing.

10. PJM proposes several related changes to the RPM must-offer and mitigation provisions. To ensure that the must-offer requirement applies to all resources that are in service at the time of an RPM auction, whether a Base Residual Auction or a subsequent incremental auction, PJM proposes that an Existing Generation Capacity Resource will be subject to the must-offer requirement for every RPM auction after it commences service.<sup>15</sup> If, despite the must-offer requirement, an Existing Generation Capacity Resource is not offered in one RPM auction, it may not be offered in subsequent RPM auctions for that Delivery Year.<sup>16</sup> PJM characterizes additional mitigation-related Proposed RPM Revisions as clarifying: (a) when an Existing Generation Capacity Resource qualifies for an exception to the must-offer requirement;<sup>17</sup> and (b) that internal PJM capacity committed to serve PJM load, through an RPM auction or other means, can no longer be removed from capacity resource status.<sup>18</sup>

11. PJM states that the Proposed RPM Revisions treat new capacity similarly for purposes of the must-offer requirement and mitigation provisions, whether that capacity is a new Generation Capacity Resource or a capacity modification to an Existing Generation Capacity Resource. The Proposed RPM Revisions will treat new capacity as a Planned Generation Capacity Resource until it fulfills either of the criteria making it an Existing Generation Capacity Resource.

12. PJM notes that, during the PJM stakeholder process, Monitoring Analytics, LLC (Monitoring Analytics), PJM's independent market monitor, indicated its view that a capacity modification should be subject to offer capping as if it was an Existing

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<sup>15</sup> Revisions were made in Attachment DD, sections 6.6(a) and (g), and parallel revisions were made in section 5.6.6(a).

<sup>16</sup> PJM Transmittal Letter at 10; *see* revised PJM OATT, Attachment DD, section 6.6(h).

<sup>17</sup> *Id.* at 11; *see* revised PJM OATT, Attachment DD, section 6.6(g); Attachment M – Appendix, section II.C.4.

<sup>18</sup> *Id.* at 6-7; *see* revised PJM OATT, Attachment M – Appendix, section II.C.2.

Generation Capacity Resource, but not subject to the must-offer requirement, as is a Planned Generation Capacity Resource.<sup>19</sup> PJM disagrees and argues that it simply does not make sense that a capacity increase, in this case the capacity modification, is planned for one purpose but existing for another.

13. In addition, PJM revised its Market Monitoring Plan and RPM to clarify the Market Monitor's role to seek mitigation, but limit opportunities for a conflict of interest when the market monitor administers the tariff, consistent with Order No. 719.<sup>20</sup> To do so, PJM revised its offer review procedures to clarify the Market Monitor's role in approving such offers and reporting offers that are inconsistent with the OATT to PJM and the Commission. The Proposed RPM Revisions add a timeline for the market monitor to review requests for exceptions to the must-offer rule and establish specific criteria for granting requests for an exception to the must-offer requirement and removal from service.<sup>21</sup> PJM also proposes to revise its procedures for reviewing and acting on the market monitor's determinations. These changes specify that PJM is only required to apply to the Commission for an order to require a capacity seller to participate in an RPM auction when it agrees with the market monitor's determination that failure to participate would increase the capacity price by more than five percent in a locational delivery area.<sup>22</sup> Similarly, in RPM section 6.6(g), PJM proposes that it will implement the market monitors' determination whether a resource has satisfied the must-offer requirement or qualifies for an exception unless PJM disagrees with the determination. PJM states that the changes were made largely to comply with the Order No. 719 directives that PJM retain the ultimate responsibility for implementing its tariff and to limit the discretion of the market monitor.<sup>23</sup> PJM also clarifies the market monitor's authority to independently pursue its concerns with the Commission.<sup>24</sup> In addition, PJM proposes to remove the requirement to file the capacity resource list with the Commission for informational

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<sup>19</sup> *Id.* at 21 (citing Monitoring Analytics' Nov. 17, 2010 position paper on the proposed revisions, available in meeting materials at <http://www.pjm.com/committees-and-groups/committees/mc.aspx> ).

<sup>20</sup> *Id.* at 10. *See also* Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 373.

<sup>21</sup> PJM Transmittal Letter at 11. *See* revised PJM OATT, Attachment M – Appendix, section II.C.4 and Attachment DD, section 6.6(g).

<sup>22</sup> *Id.* at 8. *See* revised PJM OATT, Attachment DD, section 6.6(i).

<sup>23</sup> *Id.* at 9-10; Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 373.

<sup>24</sup> PJM Transmittal Letter at 8. *See* revised PJM OATT, Attachment M – Appendix, section II(C)(5).

purposes and will instead require the capacity resource list to be posted on the market monitor's website.<sup>25</sup>

## **II. Notice of Filing and Responsive Pleadings**

14. Notice of PJM's filing was published in the *Federal Register*, 75 Fed. Reg. 79,364 (2010), with protests and interventions due on or before December 23, 2010. Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.; Exelon Corporation; FirstEnergy Corporation;<sup>26</sup> GenOn Energy Management, LLC; Maryland Public Service Commission; Old Dominion Electric Cooperative; PJM Industrial Customer Coalition; and the PSEG Companies<sup>27</sup> filed motions to intervene. New Jersey Board of Public Utilities filed a notice of intervention. Monitoring Analytics, in its capacity as PJM's independent market monitor, filed a motion to intervene and a protest, and American Municipal Power, Inc. (AMP) filed an intervention and comments supporting PJM's filing.<sup>28</sup> Finally, Dominion Resources Services, Inc. (Dominion) filed a motion to intervene out-of-time,<sup>29</sup> and New Jersey Division of Rate Counsel (NJ Rate Counsel) filed a motion to intervene out of time with comments in support of Monitoring Analytics' protest. PJM filed an answer to the Monitoring Analytics protest on January 7, 2011, to which Monitoring Analytics responded on January 24, 2011.

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<sup>25</sup> *Id.* at 7.

<sup>26</sup> FirstEnergy Corp. moves to intervene for Jersey Central Power & Light Co., Metropolitan Edison Co., Pennsylvania Electric Co., American Transmission Systems, Inc., Pennsylvania Power Co., Ohio Edison Co., The Cleveland Electric Illuminating Co., The Toledo Edison Co., and FirstEnergy Solutions Corp.

<sup>27</sup> PSEG Companies consist of Public Service Electric and Gas Co., PSEG Power LLC and PSEG Energy Resources & Trade LLC.

<sup>28</sup> AMP states that its filing is made on its own behalf and on behalf of its members. Such members include eighty-two Ohio municipal electric member systems, two West Virginia systems, and thirty Pennsylvania systems, as well as six municipal systems in Michigan, five in Virginia and three in Kentucky.

<sup>29</sup> Dominion moves to intervene on behalf of Dominion Energy Marketing, Inc., Elwood Energy, LLC, Fairless Energy, LLC, State Line Energy, LLC, Kincaid Generation, LLC, and Virginia Electric and Power Co. d/b/a Dominion Virginia Power.

**A. Comments and Protest**

15. AMP supports the Proposed RPM Revisions and agrees that a capacity modification should be deemed a planned resource. AMP agrees with PJM's reasoning that if a capacity modification is deemed a Planned Generation Capacity Resource, it should be deemed as such for both the must-offer requirement and for the offer cap.

16. Monitoring Analytics urges the Commission to reject PJM's proposal to treat capacity modifications as planned generation because, in its view, such treatment would undermine market power mitigation. Monitoring Analytics contends that the relaxed market power mitigation rules for a Planned Generation Capacity Resource were designed under the assumption that only a new unit and not a capacity modification would qualify as a Planned Generation Capacity Resource. It further argues that, because the market structure tests were designed to apply to new generating units, if a capacity modification is deemed a Planned Generation Capacity Resource, then those tests are more likely to be passed. In that case, according to Monitoring Analytics, the result will be that not even the weaker market power mitigation rules for Planned Generation Capacity Resources would be applied to offers from capacity modifications. Monitoring Analytics contrasts PJM's proposed approach with the existing approach, claiming that it has identified multiple issues with the proposal, but claims that PJM has failed to identify any negative consequence with the current treatment of capacity modifications as existing resources.<sup>30</sup> Monitoring Analytics asserts that capacity modifications should be treated as existing resources, as has been the case since the introduction of the RPM in 2007.

17. Monitoring Analytics argues that, under the Proposed RPM Revisions, a generation owner could make a modification to decrease capacity and an offsetting capacity modification to increase capacity by the same amount elsewhere, and the increase will be exempt from must-offer rules and mitigation rules. Therefore, Monitoring Analytics argues, the generator owner could be in a position to significantly affect the market clearing price with exactly the same position in the market.

18. Monitoring Analytics states that, because capacity modifications occur more frequently than investments in entire new units, treating a capacity modification as a Planned Generation Capacity Resource can change offering behavior and the nature of market power mitigation. Monitoring Analytics states that if a capacity modification is treated as a Planned Generation Capacity Resource, a one megawatt capacity modification and a planned unit offered by an unaffiliated company can be used to help

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<sup>30</sup> Monitoring Analytics Protest at 9.

meet the two unaffiliated supplier market structure test.<sup>31</sup> Monitoring Analytics asserts that applying the mitigation rules for a Planned Generation Capacity Resource to capacity modifications could permit the use of “hockey stick” bidding (where a small portion of a resource is offered at a higher rate in hopes that the entire resource will be taken at a higher clearing price) and allow an unrestricted capacity modification offer that, if marginal, will set the market clearing price and “create a low risk mechanism to fine tune market power.”<sup>32</sup>

19. Monitoring Analytics notes that when a Planned Generation Capacity Unit’s offer fails the market structure tests, its offer is capped based on the offers for the same asset class. Monitoring Analytics states that there exists no comparable asset class for a capacity modification; thus, imposing an offer cap on a capacity modification will be meaningless because the costs of a capacity modification are not comparable to new unit costs that would otherwise form the basis for the offer cap.

20. According to Monitoring Analytics, PJM has neither offered any explanation of the impact of the proposed change of definition on market power mitigation nor has it explained whether it has even considered the issue.

21. Monitoring Analytics states that except for the treatment of a capacity modification as a Planned Generation Capacity Resource, it supports the other Proposed RPM Revisions. In particular, Monitoring Analytics states that it, along with PJM, has identified a number of problems with the must-offer rules, which were addressed to avoid future problems with the effective and appropriate implementation of the rules.<sup>33</sup>

22. NJ Rate Counsel states that it supports Monitoring Analytics’ efforts to preserve the application of current market power mitigation rules to offers from capacity modifications, arguing that such mitigation is critical. NJ Rate Counsel asserts that the PJM RPM capacity construct is acknowledged to be structurally non-competitive, and

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<sup>31</sup> *Id.* at 6-7 (quoting the PJM OATT, Attachment DD, section 6.5(a)(ii)(B) under which offers for Planned Generation Capacity Resources in their first year of eligibility for participation in the RPM auction are considered competitive if they are not pivotal and certain other conditions are met. One condition is that at least two unaffiliated suppliers have offered Generation Capacity Resources in the auction; another is that sell offers provide at least two times the amount of increased capacity needed). We refer to this second condition as the two unaffiliated supplier test.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 3.

that relaxing the mitigation rules would increase the likelihood that RPM auction price results would then be unjust and unreasonable.

**B. Answers**

23. In its answer, PJM asserts that its proposal to treat a capacity modification as a Planned Generation Capacity Resource protects against Monitoring Analytics' hypothetical capacity modification increase and decrease market manipulation scenario. Specifically, PJM states that market participants cannot convert a portion of an Existing Generation Capacity Resource to Planned Generation Capacity Resource. PJM explains that, under the Proposed RPM Revisions, once interconnection service has ever been provided for available installed capacity that is deemed an Existing Generation Capacity Resource, that capacity will forever be an Existing Generation Capacity Resource at the level for which interconnection service was provided.<sup>34</sup> Additionally, PJM asserts that the Proposed RPM Revisions would not allow a capacity seller to submit a one megawatt capacity modification in order to circumvent the two unaffiliated supplier market power test.

24. PJM objects to Monitoring Analytics' examples, which rely on a capacity modification of one megawatt. According to PJM, most capacity modifications are larger than one megawatt. PJM further argues that Monitoring Analytics provides an inadequate explanation as to why a one megawatt capacity modification should be treated fundamentally differently from a one megawatt new generation facility for purposes of the two unaffiliated supplier market structure test. Thus, PJM states that their proposal to treat a capacity modification and new generation capacity resources equivalently is just and reasonable with regard to the market structure tests.

25. In its answer, Monitoring Analytics reiterates its position that capacity modifications could be used to exercise market power or undermine market power mitigation for new entrants. Monitoring Analytics argues that PJM ignores the fundamental differences between capacity modifications and new unit entry from a market incentive, market behavior and market design perspective.<sup>35</sup> Monitoring Analytics asserts that an essential reason that market power mitigation was relaxed for new entrants was the assumption that new entrants would compete with incumbents to build new capacity and that competitive forces would be adequate to produce a competitive outcome.<sup>36</sup> Monitoring Analytics states also that such logic does not extend

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<sup>34</sup> PJM Answer at 3 (quoting the proposed definition of Existing Generation Capacity Resource in the RAA, section 1.20A).

<sup>35</sup> Monitoring Analytics Answer at 2.

<sup>36</sup> *Id.*

to relaxing market power mitigation for small additions to existing resources that could be used by incumbents to effectively exercise market power by leveraging the existing portfolio or that could undermine the market power mitigation applied to new entrants.<sup>37</sup> Monitoring Analytics notes that based on the capacity modifications to existing generation for the 2013/2014 Base Residual Auction compared to the 2012/2013 Base Residual Auction, about 21 percent of capacity modifications were one megawatt or less and about 62 percent were five megawatts or less.<sup>38</sup>

26. Monitoring Analytics states that even larger capacity modifications are less costly, less risky and easier to finance and implement than new entry because capacity modifications are associated with large existing assets that have a track record of operations and regulatory approvals. Monitoring Analytics asserts that capacity modifications can be abandoned more readily if they do not clear the market. Monitoring Analytics states further that although the capacity that results from capacity modifications and new plants is similar, the usefulness of capacity modifications for exercising market power is significantly enhanced, and that is a critical difference between capacity modifications and new entry.<sup>39</sup>

27. In addition, Monitoring Analytics states that, without directly addressing the independent market monitor's argument, PJM has asserted that the independent market monitor does not have the same concern with market power issues when a small planned unit coexists with a large planned unit. In such case, Monitoring Analytics argues that the appropriate response would be to tighten the rules, not to further relax them.<sup>40</sup>

### **III. Discussion**

#### **A. Procedural Matters**

28. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We also will grant Dominion's and NJ Rate Counsel's motions to intervene out-of-time given their interests in the proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay.

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 4.

<sup>39</sup> *Id.* at 3.

<sup>40</sup> *Id.*

29. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PJM's and Monitoring Analytics' answers because they have provided information that assisted us in our decision-making process.

**B. Commission Determination**

30. We find that the Proposed RPM Revisions are just and reasonable and accept them for filing. The Proposed RPM Revisions will treat all new capacity similarly for purposes of offer capping and market power mitigation. In addition, the Proposed RPM Revisions will clarify the applicability of the must-offer requirement to existing capacity resources in all auctions in a Delivery Year, not only the Base Residual Auction, and more clearly define the circumstances under which a Generation Capacity Resource can be withdrawn as a resource. These are important revisions to the RPM auction rules that will provide additional safeguards against manipulation in the PJM capacity market.

31. The Proposed RPM Revisions will now treat any capacity increase, whether a new Generation Capacity Resource or a capacity modification to an Existing Generation Capacity Resource, as a Planned Generation Capacity Resource. A capacity modification will neither be subject to the must-offer requirement, nor will it be as strictly mitigated as an Existing Generation Capacity Resource. We find that it is just and reasonable for PJM to treat increases in Generation Capacity Resources similarly to newly constructed resources and to create parity in the mitigation provisions that govern them. As Monitoring Analytics recognizes, a Planned Generation Capacity Resource's offer is already subject to rejection (with an opportunity to resubmit a conforming offer) if certain market power tests are satisfied or if it is a pivotal supplier.<sup>41</sup> These changes clarify the administration of the RPM market and permit all Planned Generation Capacity Resources to compete equally to develop new resources.

32. Furthermore, there is no requirement to build new capacity, whether as a new Generation Capacity Resource or a capacity modification to an Existing Generation Capacity Resource. Therefore, we agree that new capacity that has not been committed in an auction need not be subject to a must-offer requirement. As with the owner of a new, Planned Generation Capacity Resource, the owner of an Existing Generation Capacity Resource considering a capacity modification is under no obligation to build if it concludes the price that results from the mitigated offers is insufficient. We note also that if a capacity modification is treated as an Existing Generation Capacity Resource and new capacity is treated as a Planned Generation Capacity Resource, capacity owners may

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<sup>41</sup> PJM OATT, Attachment DD, section 6.5(a)(ii)(C).

prefer building new capacity, when a modification would be more efficient, simply because the mitigation for a Planned Generation Capacity Resource is less stringent.

33. Monitoring Analytics has failed to establish that the Proposed RPM Revisions are unjust, unreasonable, or unduly discriminatory or preferential. Monitoring Analytics does not support its protest with data or detailed analysis showing that capacity suppliers would be able to engage in the market manipulation it hypothesizes. Specifically, Monitoring Analytics has not provided sufficient information to demonstrate that a generator could manipulate the PJM capacity market by offsetting capacity modifications with decreases in capacity made elsewhere. According to PJM, such a scenario is not possible. In its answer, PJM explained that, under the proposed definition of Existing Generation Capacity Resource, despite a decrease in capacity, the full measure of capacity of an Existing Generation Capacity Resource that has ever qualified in an auction will be treated as an Existing Generation Capacity Resource in future auctions.<sup>42</sup> Likewise, Monitoring Analytics has not provided sufficient information, either in its protest or its answer, to demonstrate that a small capacity modification can be used to subvert market structure tests, such as the two unaffiliated supplier test, or that a capacity modification can be used to successfully manipulate the market through “hockey stick” bidding. Finally, Monitoring Analytics has not explained why it cannot address such practices through its powers to address market manipulation. We encourage Monitoring Analytics, in accordance with its role as PJM’s independent market monitor, to take appropriate action if it discovers that market participants are engaged in manipulative practices.

34. We do not agree that the concerns identified by Monitoring Analytics outweigh the potential benefits of permitting generators to offer capacity modifications on an equal basis with new construction. As for Monitoring Analytics’ suggestion that PJM has failed to identify any negative consequence of the current tariff’s treatment of a capacity modification, we disagree, since PJM points out that the current tariff treats capacity modifications differently from other construction. PJM is not required to demonstrate that other methods would not be just and reasonable, nor that its proposal is superior to alternative methodologies advocated by intervenors, only that its proposal is just and reasonable and not unduly discriminatory or preferential.<sup>43</sup> We find that PJM has met its burden.

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<sup>42</sup> PJM Answer at 3; RAA, section 1.20A (proposed definition of Existing Generation Capacity Resource).

<sup>43</sup> *Entergy Servs., Inc.*, 130 FERC ¶ 61,026, at P 42 (2010); *American Electric Power Service Corp.*, 116 FERC ¶ 61,179 (2006).

The Commission orders:

PJM's revisions to the Reliability Pricing Model, Market Monitoring Plan, Reliability Assurance Agreement and related changes are accepted for filing effective January 31, 2011, as discussed herein.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.