134 FERC ¶ 61,263
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.

PPL EnergyPlus, LLC Docket No. EL11-25-000

v.

PJM Interconnection, L.L.C.

ORDER DISMISSING COMPLAINT

(Issued March 31, 2011)

1. On March 2, 2011, pursuant to section 206 of the Federal Power Act (FPA),[1] PPL EnergyPlus, LLC (PPL) filed a complaint against PJM Interconnection, L.L.C. (PJM) alleging that PJM violated its Open Access Transmission Tariff (Tariff) by failing to model the Meadowbrook-Morrisville 500 kV construction-related transmission outage (the Outage) in the simultaneous feasibility tests conducted for the 2010/2011 Annual Financial Transmission Rights (FTR) Auction (Complaint). Complainants request that the Commission: 1) find that PJM violated its Tariff by failing to model all planned outages of two months or more in its simultaneous feasibility tests for the 2010/2011 FTR Auction and Auction Revenue Rights (ARR) allocation, 2) direct PJM to follow the Tariff in the upcoming Annual FTR Auction that begins April 5, 2011, and 3) require that market participants who were harmed by PJM's Tariff violations be made whole. As discussed below, the Commission will dismiss the Complaint.

I. Background

2. An FTR is a financial instrument that entitles its holder to receive compensation for Transmission Congestion Charges that arise when the transmission grid is congested in the Day-ahead Market and differences in Day-ahead congestion prices result from the dispatch of generators out of merit order to relieve the congestion.[2] Each FTR is defined

[1] 16 U.S.C. § 824e (2006).

[2] PJM Manual 6, sec. 1, p. 9.

from a point of receipt to a point of delivery.[3] For each hour in which congestion exists on the transmission system between the receipt and delivery points specified in the FTR, the holder of the FTR is awarded a share of the Transmission Congestion Charges collected from the market participants.[4] FTRs can be acquired in four market mechanisms: the Long-term FTR Auction, Annual FTR Auction, Monthly FTR Auction, or the FTR Secondary market.[5]

3. ARRs are the mechanism by which the proceeds from the Annual FTR Auction are allocated.[6] ARRs are entitlements allocated annually to Firm Transmission Service Customers that entitle the holder to receive an allocation of the revenues from the Annual FTR Auction.[7]

4. The Tariff provides that all FTRs and ARRs awarded must be simultaneously feasible.[8] The Tariff states that PJM shall make simultaneous feasibility determinations using appropriate power flow models of contingency-constrained dispatch.[9] The goal of the simultaneous feasibility determination is to ensure that there are sufficient revenues from Transmission Congestion Charges to satisfy all FTR obligations for the auction period under expected conditions and to ensure that there are sufficient revenues from the annual FTR auction to satisfy all ARR obligations.[10] The Tariff provides that simultaneous feasibility determinations "shall be based on reasonable assumptions about the configuration and availability of transmission capability during the period covered by the auction…."[11] If all ARR requests made during the annual allocation process are not feasible, then ARRs are prorated, subject to exceptions for Stage 1A ARRs.[12] Any

[3] *Id*.

[4] *Id*.

[5] *Id*.

[6] PJM Manual 6, sec. 2, p. 12.

[7] *Id*.

[8] PJM Tariff, Attachment K-Appendix §§ 7.1.1(a), 7.4.2(h).

[9] PJM Tariff, Attachment K-Appendix § 7.5(a).

[10] *Id*.

[11] *Id*.

[12] PJM Tariff, Attachment K-Appendix § 7.4.2(h).

revenue deficient ARRs or FTRs remaining at the end of the Planning Period are satisfied through a transmission rights uplift charge which is allocated to FTR holders on a *pro rata* basis according to their net FTR target allocation position, relative to the total net allocation positions of all FTR holders.[13]

II. Complaint

5. PPL EnergyPlus is a Pennsylvania limited liability company that is a member of PJM. PPL EnergyPlus actively participates in PJM's FTR markets, including the Annual FTR Auction for the 2010/2011 planning period. In its Complaint, PPL asserts that PJM acted in an unjust, unreasonable, and unduly discriminatory manner and in violation of its Tariff when it failed to model the Outage in the simultaneous feasibility tests conducted for the 2010/2011 Annual FTR Auction and ARR allocation.

6. PPL states that the Tariff provides that FTRs shall be simultaneously feasible and that PJM shall make a simultaneous feasibility determination in each stage of the ARR allocation to determine how many ARRs feasibly can be awarded. PPL asserts that the Tariff's stated goal of doing so is to ensure revenue adequacy under expected conditions. PPL contends that the Tariff provides that the FTR auctions and ARR allocation process will be conducted in accordance with sections 7.4 and 7.5 of the PJM Tariff and with the PJM Manuals. PPL asserts that PJM Manual 6 requires that "transmission line outage schedules…that are expected to last 2 months or more will be included in the determination of simultaneous feasibility for the Annual FTR Auction."[14]

7. PPL contends that PJM caused a revenue insufficiency and violated its Tariff when it did not include the Outage, which was expected to last more than 121 days, in its simultaneous feasibility determination conducted for the 2010/2011 Planning Period. PPL states that PJM has indicated that the Outage was not modeled because a similar outage on the same transmission line took place in the 2009/2010 planning period and that outage did not result in major revenue inadequacy for the entire planning period. PPL contends that this failure resulted in the incorrect allocation of an extra 2,500 MWs-worth of ARRs and a total FTR revenue adequacy of only 87.53 percent and an FTR revenue deficit of $174.7 million, for the 2010/2011 planning period as of January 2011. PPL states that, as a result, market participants suffered: 1) reduced ARR revenues due to over-allocation of ARRs and therefore dilution of ARR revenues, and 2) increased uplift costs to pay for the resulting underfunding of FTRs associated with the over allocation of ARRs. PPL estimates its losses at approximately $13 million as of January 2011.

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[13] PJM Manual 6, sec. 8, p. 53.

[14] Complaint at 8 (citing PJM Manual 6, sec. 9, p. 54).

8. PPL argues that PJM's recent presentations to its Market Implementation Committee demonstrate that PJM is exercising and planning to continue to exercise discretion to decide whether to model outages expected to last for two months or more in its simultaneous feasibility tests conducted for the ARR allocation and FTR auction process. PPL asserts that the Tariff provides no such discretion. Specifically, PPL contends that PJM has indicated that it does not plan to model two of five outages scheduled for at least two months in the upcoming Annual FTR Auction, the Burches Hill – Chalk Point and Burches Hill – Possum Point outages.

9. PPL also alleges that PJM is pursuing a goal of allocating as many ARRs as possible, instead of the Tariff's stated goal of revenue adequacy. PPL argues that PJM is taking actions with regard to the outages that it models in its simultaneous feasibility test that directly benefit certain market participants at the expense of other market participants.

10. PPL maintains that not modeling these outages results in certain market participants receiving ARRs they would not have otherwise received. PPL submits that the excessive allocation leads to revenue inadequacy. PPL argues the costs associated with the excessive allocation of ARRs are allocated among all market participants, including those who did not benefit from the allocation or the congestion associated with the outage. By comparison, PPL asserts that all holders of FTRs benefit equally from the allocation of the overfunding of FTRs.

11. PPL requests that the Commission find that PJM violated its Tariff in the 2010/2011 Annual FTR Auction and ARR allocation, direct PJM to follow the PJM Tariff in the upcoming Annual FTR Auction, and require that market participants harmed by PJM's Tariff violations be made whole. PPL urges the Commission to set for hearing the issue of how to make market participants whole. PPL's proposed options include: 1) using any ARR revenues associated with the 2,500 MW of ARRs that were allocated but were not feasible be used to fund the 2010/2011 shortfall, 2) collecting the remaining shortfall from holders of FTRs resulting from the self-scheduling of infeasible ARRs based on the FTR target allocation method associated with those FTRs, 3) allocating any future excess funding of FTRs to those with FTR Target Allocation deficiencies pro rated in a manner similar to the uplift allocations, and 4) paying from marginal loss surpluses or stated rate surplus any remaining amounts required to make market participants whole. PPL argues that the Commission has made market participants whole in similar situations.

12. PPL requests that the Commission issue an order by March 31, 2011 because Round 1 of the Annual FTR Auction will begin on April 5, 2011.

III. <u>Notice and Responsive Pleadings</u>

13. Notice of the Complaint was published in the *Federal Register*, 76 Fed. Reg. 12,954 (2011), with protests and interventions due on or before March 16, 2011. Motions to intervene were filed by JPMorgan Ventures Energy Corporation; Invenergy Wind Development LLC and Invenergy Thermal Development LLC; Consolidated Edison Energy, Inc. and Consolidated Edison Solutions, Inc.; Edison Mission Energy; Macquarie Energy LLC; American Electric Power Service Corporation;[15] American Municipal Power, Inc.; PJM Industrial Consumer Coalition; Direct Energy Business, LLC, Direct Energy Services, LLC, and Energy America, LLC; Electric Power Supply Association; Old Dominion Electric Cooperative (ODEC); Exelon Corporation (Exelon); Duke Energy Corporation;[16] Pepco Holdings, Inc., Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; North Carolina Electric Membership Corporation (NCEMC); Cargill Power Markets, LLC; Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.; GenOn Parties;[17] Illinois Municipal Electric Agency; and Calpine Corporation. Protests were submitted by NCEMC and ODEC; Exelon; and American Municipal Power, Inc. (AMP). Motions to intervene and comments were filed by PSEG Companies;[18] Morgan Stanley Capital Group Inc. (MSCG); DC Energy Mid-Atlantic, LLC (DC Energy); Shell Energy North America (US), L.P. (Shell Energy); and Virginia Electric and Power Company (Dominion). Motions to intervene and protest were filed by Hess Corporation (Hess);

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[15] American Electric Power Service Corporation represents Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company, AEP Appalachian Transmission Company Inc., AEP Indiana Michigan Transmission Company Inc., AEP Kentucky Transmission Company Inc., AEP Ohio Transmission Company Inc., and AEP West Virginia Transmission Company.

[16] Duke Energy Corporation represents Duke Energy Ohio, Inc.; Duke Energy Indiana, Inc.; Duke Energy Kentucky, Inc.; Duke Energy Carolinas, LLC; and Duke Energy Business Services, LLC.

[17] The GenOn Parties represent GenOn Energy Management, LLC; GenOn Chalk Point, LLC; GenOn Mid-Atlantic, LLC; GenOn Potomac River, LLC; GenOn REMA, LLC; and GenOn Wholesale Generation, LP.

[18] PSEG Companies consists of Public Service Electric and Gas Company and PSEG Energy Resources & Trade LLC.

NextEra Energy Generators;[19] Borough of Chambersburg, Pennsylvania (Chambersburg); and First Energy Companies.[20] A motion to intervene out-of-time was filed by NRG Companies.[21] A motion to intervene out-of-time and protest was filed by the Dayton Power and Light Company (DP&L).

14. On March 16, 2011, PJM filed an answer to the Complaint. On March 21, 2011, PPL filed an answer to the pleadings. On March 23, 2011, Dominion filed an answer to PPL's answer. On March 24, 2011, PJM filed an answer to PPL's answer. On March 29, 2011, AMP filed an answer to PPL's answer.

A. PJM's March 16, 2011 Answer

15. In its response to the Complaint, PJM asserts that it fully complied with the requirements of its Tariff and Manual 6 in conducting its simultaneous feasibility test for the annual ARR allocations and FTR auction processes at issue. PJM disagrees with PPL's assertion that the Tariff requires PJM to model all transmission outages expected to last for two months or more. PJM maintains that this cannot be the intent of the Tariff because it is not technically possible to model all such outages simultaneously in a single annual power flow case. PJM states that the power flow model element of the simultaneous feasibility test determines the physical capability of the system to flow power at a single point in time, and that each ARR is necessarily allocated for the entire year—the full Planning Period. Therefore, PJM states, any outage included in the power flow model will result in diminishing the system's capability for the entire Planning Period, even though in reality most outages do not occur for a full year. PJM states that if all outages of two months or longer were incorporated into the optimization program, the optimization program would fail because of a power imbalance—the program would be unable to produce a base model with which to begin the technical assessments necessary

[19] NextEra Energy Generators consists of FPL Energy Marcus Hook, L.P.; North Jersey Energy Associates, L.P.; Doswell Limited Partnership; Backbone Mountain Windpower LLC; Mill Run Windpower LLC; Somerset Windpower LLC; Meyersdale Windpower LLC; Waymart Wind Farm, LP; and Pennsylvania Windfarms, Inc.

[20] First Energy Companies consist of FirstEnergy Solutions Corp., Allegheny Energy Supply Company, LLC, Monongahela Power Company, The Potomac Edison Company, Pennsylvania Electric Company, Metropolitan Edison Company, Jersey Central Power & Light Company, and West Penn Power Company.

[21] The NRG Companies consist of 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.

to evaluate transmission rights feasibility. In addition, modeling all outages of two months or longer would significantly understate the available transmission capability expected to be available given the actual, sequential nature of transmission outages and would severely limit the allocation and availability of transmission rights. PJM asserts that in order for the power flow model to reasonably reflect actual operations, some judgment must be applied in considering whether to model major outages.

16. PJM explains that the simultaneous feasibility determination process for the Annual FTR Auction and ARR allocation spans approximately five months and consists of three phases: the pre-Auction stage, execution of the optimization engine (the DC power flow model used to clear FTRs and allocate ARRs), and rendering of results. PJM states that, as required by Manual 6, the inputs that PJM includes in its determination of simultaneous feasibility include transmission line outages that are expected to last longer than two months. However, PJM states that its execution of the simultaneous feasibility test includes determining whether and the extent to which each of the referenced inputs should be included or excluded from the pre-auction phase of the determination and/or the computer optimization program that PJM uses to determine the proper allocation of ARRs and auctioning of FTRs. PJM states that it: 1) develops an initial outage list based on the outages posted by PJM transmission owners on the PJM OASIS, 2) analyzes this initial outage list based on whether the outages are scheduled to occur simultaneously or at different times, in order to make the most reasonable assumptions as to the best representation of the expected system conditions for the relevant Planning Period, 3) reviews transmission outages of interest with PJM System Operations and PJM Interconnection Coordination to determine if they have been approved and if not, whether and when they are expected to be approved, 4) conducts a simultaneous feasibility analysis on the initial OASIS outage list and determines which outages, if any, should be incorporated in the optimization program, and 5) posts a separate outage list to the separate FTR web page for all Members along with the actual DC power flow model to be utilized in the optimization phase of the simultaneous feasibility analysis a minimum of one week before the bidding window opens for the annual ARR allocation and Annual FTR Auction.

17. PJM states that it took the Outage into account in its determination of simultaneous feasibility but determined that it would not incorporate the Outage in the optimization program. PJM asserts that its analysis is based on many factors, including that: 1) the line was going to be in-service for more than eight months of the 12 month Planning Period, 2) there was an outage on the same line in the prior year that had little to no effect on FTR revenue adequacy, and 3) PJM's simultaneous feasibility analysis determined that the outage would not cause significant FTR revenue inadequacy based on the data available to PJM at the time of its analysis. PJM states that the 2010/2011 Planning Period wasn't the first time that PJM did not include a major outage in its optimization program; in fact, PJM states that it has never included major outages of 500 kV or larger in the optimization program although they have all been included in the

simultaneous feasibility analysis. PJM submits that it conducted an extensive analysis to determine the cause of the revenue inadequacy for the 2010/2011 Planning Period and engaged stakeholders in this process. From this, PJM states that it has concluded that the Outage was only one of the causes of the FTR revenue inadequacy experienced for the 2010/2011 Planning Period.

18. PJM states that it incorporated four major outages into the optimization program for the 2011/2012 Planning Period. However, PJM acknowledges that it did not incorporate the Burches Hill – Chalk Point and Burches Hill – Possum Point outages into the optimization program for the 2011/2012 Planning Period. PJM argues that neither was necessary to generate the best representation of the expected system conditions because taking these outages simultaneously would unrealistically reduce transfer capability and such conditions could not occur in the actual operations without putting the reliability of the electric power grid at risk.

19. PJM states that in conducting its simultaneous feasibility test, it attempts to strike the appropriate balance between meeting its responsibility to ensure FTR revenue adequacy and its responsibility to maximize the use of its transmission system. PJM argues that to strike this balance PJM must have the ability to exercise its expert and independent judgment to make determinations of simultaneous feasibility based on the reasonable bounds of the Tariff, historical data, and experience. PJM argues that the requirement in the Tariff that PJM's determinations "be based on reasonable assumptions about the configuration and availability of transmission capability" reflects the intent that PJM use common sense in determining which outages to incorporate into the optimization program.[22]

20. PJM responds to PPL's contention that PJM has given undue preference to certain market participants by arguing that it has not acted in a discriminatory way and that it has simply made its best effort to strike the appropriate balance between meeting its responsibility to ensure FTR revenue adequacy and its responsibility to maximize the use of its transmission system. PJM states that the scale does not always tip in favor of under-funding of FTRs and the simultaneous feasibility test does not bias on interest at the expense of the other.

21. PJM asserts that granting the relief that PPL seeks would violate the doctrine against retroactive ratemaking and disrupt the expectations of Market Participants who legitimately relied on the ARR allocations and FTR auctions. Accordingly, PJM asserts that any required changes to the Tariff or Manual 6 should be directed on a prospective

[22] PJM March 16, 2011 Answer at 25 (citing PJM Tariff, Attachment K-Appendix § 7.5(a)).

basis. PJM asserts that the Commission should dismiss the Complaint because PPL cannot demonstrate that PJM violated its Tariff or engaged in unreasonable or discriminatory conduct.

B. **Protests**

22. Various protestors assert that the Commission should deny the Complaint because PJM's Tariff allows PJM to exercise discretion in performing simultaneous feasibility determinations for the FTR auctions and ARR allocations. Protestors generally contend that Manual 6 only instructs PJM to consider outages of two months or longer, as one of many factors, in its determination of what to include in the test. Various protestors maintain that the Tariff requires PJM to consider all outages when performing its simultaneous feasibility test analysis, but does not require PJM to include all of them in its system model for the actual allocation of ARRs. Multiple protestors also state that, unlike the Tariff, PJM Manuals are not filed rate schedules and therefore are not controlling. FirstEnergy asserts that the Tariff does not specify that the simultaneous feasibility determination should be conducted in accordance with PJM Manuals or Manual 6, and that PPL only identifies references to the Manuals with respect to the FTR auction and ARR allocation process generally.

23. Multiple protestors maintain that PJM must exercise discretion in modeling its transmission system in order to match allocation of ARRs and FTRs to collected transmission congestion charges. Protestors generally state that if PJM were to model all lines with scheduled transmission outages of two months or more as out of service for the entire year, it would result in a substantial understatement of the transmission capability of the PJM system and in an underallocation of ARRs and FTRs. Dominion asserts that, rather than matching congestion charges to FTRs and ARRs, this would result in the diversion of revenues from certain load serving entities (LSE) who pay for the transmission system to other market participants, who may or may not have responsibility for the costs of the transmission system. MSCG states that it is in the market's interest that PJM retain this discretion, particularly because there is no other entity with the expertise needed to balance the many factors that are a necessary part of the ARR/FTR allocation mechanism. FirstEnergy argues that requiring PJM to systematically under-allocate ARRs and FTRs in order to guarantee that there will never be underfunding unnecessarily diminishes the value of ARRs and FTRs as hedging tools and, in the long run, increases the overall cost of serving load in PJM.

24. Hess states that proper FTR modeling requires that PJM retain some discretion to deviate from the two month rule in instances where the outcome of the simultaneous outage modeling would result in a severe, unnecessary reduction in FTR capacity. Hess contends that PJM should be ordered to abide by its Tariff and model outages expected to be two months or more as required by simultaneous feasibility procedures, except in

special, highly discrete circumstances and after notice to market participants of the reason for the exception.

25. MSCG states that PJM has recently experienced an increase in planned major transmission projects, which has made ARR/FTR planning more challenging than in prior years. MSCG asserts that the fact that recent results have been less than perfect does not mean that the Commission should second guess how PJM used its discretion. MSCG states that the market is better served by applying remedies that cure the underfunding on a prospective basis without limiting PJM's flexibility. MSCG therefore proposes that, going forward, when an FTR is underfunded due to an approved major transmission project outage, then the amount of underfunding would be charged to the project.

26. DC Energy states that PJM's current annual transmission outage modeling approach is unjust and unreasonable, is unduly discriminatory, and results in improper price signals for PJM market participants. However, DC Energy opposes PPL's proposed changes because they will not adequately resolve the issue and are likely to cause significant harm to the market. Instead, DC Energy contends that the Commission should require PJM to implement quarterly/seasonal modeling beginning with the 2012/2013 Planning Period and include extended outages in its quarterly/seasonal modeling. DC Energy argues that annual transmission outage modeling is no longer appropriate because PJM must either model an outage as out-of-service for the entire Planning Year or model the transmission capacity as in-service for the entire period, resulting in either over-funding or under-funding whenever there is a known extended outage that will not last for the entire annual period.

27. Protestors generally oppose PPL's assertion that FTR holders harmed by PJM's alleged Tariff violations should be made whole. Various protestors assert that the Complaint's request for certain market participants to be made whole is a request for retroactive adjustment that should be denied. Multiple protestors argue that the Complaint's "make whole" relief would result in punishing one group of market participants and rewarding another, without regard to all of the transactions entered into in reliance on PJM's allocation and auction, and would degrade confidence in the markets. AMP argues that some of the FTR holders who were "harmed" might not have received those FTRs but for the alleged modeling error. NCEMC and ODEC assert that the annual ARR allocation process for the 2011/2012 planning period has already begun and changes should not be made in the middle of that process. Hess asserts that losses suffered as a result of PJM's modeling failures should not be passed onto other market participants. AMP disagrees with PPL's proposal to use the marginal loss surplus or stated rate surplus to reimburse market participants because these surpluses are not "general purpose" funds that PJM can draw upon to satisfy any corporate need. DP&L argues that the Commission has determined that the marginal loss surplus should be allocated to LSEs across PJM, and that PPL's proposal would seize a portion of the surplus currently allocated to the west and redirect it to eastern LSEs.

28. Various protestors assert that the issues raised by PPL should be addressed through the PJM stakeholder process. Chambersburg argues that the Complaint seeks to circumvent the PJM stakeholder process, and the Commission should reject the Complaint and permit a reasonable amount of time for the PJM stakeholders to evaluate the situation and propose a solution. NCEMC and ODEC state that the Commission should hold the Complaint in abeyance pending the outcome of stakeholder discussions and set a reasonable deadline for PJM to submit a report or a Tariff filing reflecting changes. Hess states that it plans to propose the formulation of a task force to work on PJM's systemic FTR modeling problems. Hess states that the Commission should require a report from PJM on its findings and proposed changes to the modeling process as determined through the task force effort no later than the fourth quarter of 2011. Hess also states that PJM should submit a compliance filing to the Commission proposing necessary tariff changes, or if tariff changes are unnecessary, then notice to the Commission of the implementation date of changes to the Manual. Dominion states that if the Commission determines that PJM violated the Tariff, it should deny PPL's request for refunds and require that any changes to PJM Manual 6 be made on a prospective basis only and through the stakeholder process.

29. Exelon disagrees with PPL that PJM violated its Tariff because Exelon states that the Tariff contains discretionary language. However, Exelon agrees with PPL that Manual 6 explicitly states that PJM will model outages expected to last longer than two months, even though, as a practical matter, this expectation cannot always be met without absurd or harmful results. Exelon states that while the terms of PJM's Tariff give PJM room to exercise discretion, the Commission should require PJM to initiate a stakeholder process to align the terms of the Manual with the Tariff to give PJM the flexibility it needs. Exelon asserts that there was no discrimination against some market participants in favor of others—all parties were on the same footing with the same information in making their choices for ARRs and FTRs.

C. <u>PPL's Answer</u>

30. In its answer, PPL argues that PJM's discretion is limited to determining which set of simultaneously occurring outages would support the fewest ARRs and relying on that one, and that any discretion that the Tariff permits must be reasonable. PPL asserts that it is unreasonable for PJM to model lines as if they will be in service throughout the planning period when they are approved to be out of service for an extended part of the planning period. PPL argues that there is no reason for PJM to make assumptions about the availability of transmission when PJM is already aware of an extended planned outage. PPL suggests that to avoid an infeasible representation of the transmission system, PJM should run a test of each extended serial outage containing all concurrently occurring outages and rely on the one that better promotes revenue adequacy. PPL also suggests that PJM should be granting monthly rights over transmission lines during the months they will be in service instead of annual rights. PPL reiterates that PJM violated

its Tariff because the Tariff requires PJM to pursue the goal of revenue adequacy and PJM took actions that caused revenue inadequacy. PPL also asserts that the Commission has previously found a violation of a manual to constitute a tariff violation.[23] Finally, PPL asserts that its requested relief does not constitute retroactive ratemaking and states that it seeks to enforce the Tariff, not make a change that requires a stakeholder process.

D. Dominion's Answer

31. In its answer, Dominion argues that, because the Tariff and Manuals provide for allocation of annual transmission rights, switching to a monthly allocation procedure, as PPL suggests, would require changes to the Tariff or Manuals. Dominion argues that any such potential changes are best left to the stakeholder process. Dominion also argues that PPL's suggestion that LSEs such as Dominion are the beneficiaries of "free" and "excessive" ARRs at the expense of other market participants is not correct.

E. PJM's March 24, 2011 Answer

32. In its answer to PPL's answer, PJM contends that PPL mischaracterizes PJM's allocation of ARRs as "giving annual rights away for free," when they instead represent the right that transmission customers obtain by paying for firm transmission service. PJM asserts that the option that PPL offers in its answer to allocate ARRs monthly is not supported by the tariff and is unworkable. Finally, PJM responds to PPL's assertion that, where an annual right is granted over a line that won't be in service for an extended period, it will predictably lead to underfunding, by arguing that depending on the size and criticality of a line to the pathway[24] associated with individual ARRs, an outage may or may not warrant a reduction in the number of ARRs.

F. AMP's Answer

33. In its answer, AMP states that it does not oppose PPL's suggestion that a remedy should be determined through hearing or settlement procedures. However, AMP states that it would assist the parties if the Commission provided guidance on the permissible avenues of possible relief, including by stating whether it would consider unjust and unreasonable any remedy that uses PJM accounts earmarked for other purposes to fund any compensation that might be due to FTR/ARR holders as a result of PJM's modeling.

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[23] PPL Answer at 19 (citing *PPL EnergyPlus, LLC v. New York Independent System Operator, Inc.*, 115 FERC ¶ 61,383 (2006) (*PPL EnergyPlus v. NYISO*)).

[24] PJM states that ARRs and FTRs conform to a "pathway" between one point and the next, and that a "pathway" reflects multiple interconnected transmission lines.

AMP reiterates that market participants should not be made whole through use of the marginal loss and stated rate surpluses.

G. Comments

34. Shell Energy and PSEG Companies state that they support the relief requested by PPL and that the Commission should direct PJM to adjust its simultaneous feasibility test for FTRs and ARRs for the 2011/2012 planning period to reflect all outages of two months or more. PSEG Companies request that the Commission should issue an order by March 31, 2011.

IV. Discussion

A. Procedural Matters

35. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[25] the timely, unopposed motions to intervene serve to make the parties that filed them parties to this proceeding.

36. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,[26] the Commission will grant NRG Companies' late-filed motion to intervene and DP&L's late-filed motion to intervene and protest given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

37. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[27] prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept PPL's, Dominion's, PJM's, and AMP's answers because they have aided us in our decision-making.

B. Substantive Matters

38. We find that PJM did not violate its Tariff or act in an unjust, unreasonable, and unduly discriminatory manner by not including the Outage in its simultaneous feasibility determination conducted for the 2010/2011 FTR Auction and ARR allocation. Accordingly, we dismiss the Complaint, as discussed below.

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[25] 18 C.F.R. § 385.214 (2010).

[26] 18 C.F.R. § 385.214(d) (2010).

[27] 18 C.F.R. § 385.213(a)(2) (2010).

39. The Tariff provides that all FTRs and ARRs awarded must be simultaneously feasible.[28] The Tariff states that the "goal of the simultaneous feasibility determination shall be to ensure that there are sufficient revenues" to satisfy all FTR obligations under expected conditions and that the FTR auction provides enough revenues to satisfy all ARR obligations. To this end, the PJM Tariff states that: [simultaneous feasibility] determinations shall take into account outages of both individual generation units and transmission facilities and shall be based on reasonable assumptions about the configuration and availability of transmission capability during the period covered by the auction…." [29]

40. PPL contends that PJM is required to model all transmission line outages expected to last two months or longer in simultaneous feasibility tests for Annual FTR Auctions and ARR allocations without exception or exercise of discretion. PPL states that the Tariff requires FTR Auctions and the ARR allocation process to be conducted in accordance with the PJM Manuals,[30] and cites section 9 of Manual 6, which states:

> [i]nputs to the [simultaneous feasibility test] include: …transmission line outage schedules, thermal operating limits for transmission lines, that are expected to last for 2 months or more will be included in the determination of simultaneous feasibility for the Annual PJM FTR Auction…."[31]

41. We find that PJM's modeling of the Outage does not conflict with its Tariff. While the Tariff states that simultaneous feasibility determinations shall take outages into account, it does not specify how PJM should take them into account, or impose any requirements as to which outages should be taken into account. The Tariff, in fact, provides that simultaneous feasibility determinations "shall be based on reasonable assumptions about the configuration and availability of transmission capability," which provides that PJM may exercise a degree of judgment and discretion in conducting the simultaneous feasibility determination.

42. PPL relies exclusively on PJM's Manual 6 to argue that PJM has undertaken an obligation to model transmission outages of longer than two months under any and all circumstances. We do not find that the PJM Manual imposes such an absolute obligation,

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[28] PJM Tariff, Attachment K-Appendix §§ 7.1.1(a), 7.4.2(h).

[29] PJM Tariff, Attachment K-Appendix § 7.5(a).

[30] PJM Tariff, Attachment K-Appendix § 7.3.1, 7.4.2 (a).

[31] PJM Manual 6, section 9, p. 54.

particularly given the level of discretion provided by the Tariff. Under PJM's Commission-approved Operating Agreement, PJM prepares, maintains, updates and disseminates the PJM Manuals.[32] While Manuals cannot override the terms of PJM's Tariff, we may look at Manuals in interpreting the Tariff.[33] In the circumstances presented here, we do not find that PJM violated its Tariff in determining not to include the Outage in question. First, the Manual is not entirely clear on the obligation. The Manual, as PJM points out, provides that the inclusion of outages of greater than two months is only one of the inputs into the simultaneous feasibility test. As PJM points out, it did include the Outage as part of its consideration of the simultaneous feasibility test, but it simply found that based on its considerations, the particular two month outage did not warrant a denial of ARRs for the entire year. Manual 6 also refers to a multiple stage process, rather than a specific sub-part, the DC power flow model. Since PJM's Tariff, while requiring PJM to take into account outages of both individual generation units and transmission facilities, also provides PJM the discretion to use "reasonable assumptions about the configuration and availability of transmission capability during the period covered by the auction," we do not interpret the Manual as imposing a more absolute requirement than the Tariff.

43. Our interpretation that the Tariff provides for PJM to exercise discretion in modeling is supported by the purpose for which the simultaneous feasibility test is conducted. This analysis is not used to determine the physical capability of the system to flow power at a single point in time, but rather is being used in this case to determine the ARRs to be allocated for the entire yearly Planning Period. As a result, any outage included in the power flow model will result in diminishing the system's capability for the entire Planning Period, even if the outage does not occur for the full year. In order for PJM to provide an accurate model of the system for the year, it needs to determine whether a short-term outage of two months is sufficient to warrant the denial of ARRs for an entire year, and that determination requires the exercise of reasonable discretion as provided in the Tariff.[34] Further support for this interpretation of the Tariff is provided by the fact that imposing the absolute interpretation of the Manual, as proposed by PPL,

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[32] *See* Definitions Section 1.35 (PJM Manuals), Office of the Interconnection Section 10.4 (Duties and Responsibilities), and Schedule 1 Section 1.6.4 (PJM Manuals) of the PJM Operating Agreement.

[33] *See New York Independent System Operator, Inc. v. Astoria Energy LLC*, 118 FERC ¶ 61,216, at n.17 (2007) (finding no statutory obligation to enforce its terms).

[34] For example, if the two-month outage is planned for a period in which congestion is not likely based on historic experience, imposing an absolutist test to model that outage would result in a denial of ARRs for an entire year.

would result in the failure of the optimization program due to a power imbalance. Without the use of some reasonable discretion in modeling, PJM would be unable to determine the available ARRs to allocate for an entire year.

44. PPL cites to *PPL EnergyPlus v. NYISO*[35] to support its contention that a violation of a manual can constitute a tariff violation. In *PPL EnergyPlus v. NYISO*, the Commission required the NYISO to abide by specific provisions of its manual in the absence of more specific guidance from the tariff. However, the Commission analyzed both the tariff and the manual and found that the NYISO's interpretation of its obligations was not supported by the manual or the tariff.[36] In contrast, here, the Tariff provides PJM with the ability to use "reasonable assumptions about the configuration and availability of transmission capability" in determining simultaneous feasibility and the PJM Manual itself does not explicitly provide that all outages of two months or more must be modeled; it provides only that such outages must be considered as "inputs" in the determination. While the Manual may not be as clearly worded as would be optimal, we conclude, based on an interpretation of the Tariff language, the Manual as informed by the Tariff, and the realities of the modeling process, that PJM does have discretion to determine which outages should be treated as applicable to the entire year for the purpose of the simultaneous feasibility test.

45. In addition, the modeling of the Outage in question was not the sole factor contributing to the FTR revenue inadequacy for the 2010/2011 planning period. PJM points out that other contributing factors to FTR inadequacy were other construction outages, external flowgates/constraints, loop flow, other transmission outages, unforeseen de-ratings and forced outages.[37] In fact, according to PJM, major construction outages only account for 17 percent of the FTR revenue inadequacy for the 2010/2011 planning period, the other contributing factors account for the remaining 83 percent. For example, in the 2010 State of the Market Report, the PJM's Market Monitoring Unit states that loop flows can have negative impacts on the efficiency of markets with explicit locational pricing, including impacts on locational prices, on FTR adequacy and on system operations.[38]

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[35] 115 FERC ¶ 61,383.

[36] *Id.* P 28.

[37] *See* PJM's March 16, 2011 Answer, Affidavit at PP 32-33.

[38] *See* The 2010 PJM MMU State of the Market Report at 318, http://www.pjm.com/documents/reports/~/media/documents/reports/state-of-market/2010/2010-som-pjm-volume2.ashx

46. We reject PPL's assertion that PJM violated its Tariff because the Tariff requires PJM to pursue the goal of revenue adequacy and PJM took actions that caused revenue inadequacy. If PJM does not meet its goal of revenue adequacy in a particular instance, that does not mean that a Tariff violation has necessarily occurred. In fact, the Tariff contemplates the possibility of underfunding FTRs in a planning period.[39]

47. We further find that PPL has not demonstrated that PJM acted in a discriminatory manner by giving undue preference to certain market participants. For example, PPL alleges that PJM appears to be pursuing the goal of allocating as many ARRs as possible even when this requires ignoring certain expected system conditions. PJM states that it merely attempted to strike the appropriate balance between meeting its responsibility to ensure FTR revenue adequacy and its responsibility to maximize the use of the transmission system. PJM's choice not to model the Outage is consistent with its past decisions.[40] PJM regularly conducted the simultaneous feasibility determination process in the same manner and previously excluded outages lasting more than two months. As PJM points out, its process compares a planned outage to the historical effects of the same or similar outage, and PJM makes a posting prior to the auctions showing which outages are to be included and excluded in the simultaneous feasibility test.

48. We find that PJM did not violate the Tariff by choosing not to include the Outage in its simultaneous feasibility tests for the 2010/2011 Annual FTR Auction and ARR allocation. For all of the above reasons, we dismiss the Complaint, including the argument that PPL and customers like PPL should be made whole.

49. We note that commenters and stakeholders in the PJM stakeholder process have raised concerns regarding the modeling of extended transmission outages, and that such concerns are being vetted through the PJM stakeholder process.

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[39] *See* PJM Tariff, Attachment K-Appendix § 5.2.5(c).

[40] We note that PJM will exclude in the network topology element of the DC power flow model the Burches Hill-Chalk Point and Burches Hill-Possum Point line outages from the upcoming 2011/2012 Planning Period. We also note that PJM is including the Mt. Storm-Doubs 500 kV line outage in the network topology for the 2011/2012 Planning Period.

<u>The Commission orders</u>:

The Complaint is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.