

134 FERC ¶ 61,040
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER11-2074-000

ORDER ON COMPLIANCE FILING

(Issued January 20, 2011)

1. On November 10, 2010, PJM Interconnection, L.L.C. (PJM) submitted a compliance filing in response to a Commission order issued August 12, 2010, in Docket No. ER09-1063-003.¹ In the August 12 Order, the Commission addressed PJM's ongoing market reform compliance initiatives, as required by Order No. 719,² including PJM's response to the Commission's order addressing PJM's initial Order No. 719 compliance filing.³ Among other things, the August 12 Order established compliance directives regarding the posting of capacity market bid and offer data and exemptions regarding the obligation of PJM's independent market monitor (IMM) to refer suspected market violations to the Commission.⁴ For the reasons discussed below, we accept, subject to the conditions discussed herein, PJM's compliance filing and require PJM to make an additional compliance filing within 90 days of the date of this order.

¹ *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,123 (2010) (August 12 Order).

² *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 FR 64100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008), *order on reh'g*, Order No. 719-A, 74 FR 37776 (Jul. 29, 2009), FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

³ *PJM Interconnection, L.L.C.*, 129 FERC ¶ 61,250 (2009) (December 18 Order).

⁴ PJM's IMM is Monitoring Analytics, LLC.

Background

2. Order No. 719 required Regional Transmission Organizations (RTO) and Independent System Operators (ISO) to include, in their tariffs, protocols addressing the referral by IMM to the Commission of suspected market violations and perceived market design flaws.⁵ Under these protocols, all information and documents obtained during the course of an investigation are non-public, and may not be released, except to the extent the Commission directs or authorizes in a given instance, unless the material is already made public during an adjudicatory proceeding or disclosure is required by the Freedom of Information Act.⁶

3. In the December 18 Order, the Commission explained that PJM's IMM may also correct certain behavior without a referral to the Commission if it meets the following criteria: (i) the activity must be expressly set forth in the tariff; (ii) the activity must involve objectively identifiable behavior; and (iii) the activity does not subject the actor to sanctions or consequences other than those expressly approved by the Commission and set forth in the tariff, with the right of appeal to the Commission. The Commission stated that the type of "traffic ticket" behavior that would be exempt from referrals would include activities such as late payments and failure to notify PJM of an outage and the like.

4. However, the Commission found that it is insufficient for the PJM Open Access Transmission Tariff (OATT) to state generally that PJM's IMM will not refer to the Commission matters that fall within this category because that would leave the determination of whether a particular type of activity qualified for exclusion up to the IMM, rather than to the Commission. The Commission noted that, consistent with 18 C.F.R. §§ 35.28(g)(iv) and (v), if PJM's IMM has reason to believe that a market violation has occurred, it should make a referral to the Commission. As a result, in the December 18 Order, the Commission required PJM to submit revisions to Attachment M of its OATT regarding the type of "traffic ticket" behavior that would be exempt from referrals.

5. With respect to PJM's IMM's referrals of suspected market violations to the Commission, the August 12 Order noted that, under Order No. 719, PJM had been required to include, in its OATT, protocols addressing these referrals.⁷ The August 12

⁵ See 18 C.F.R. §§ 35.28(g)(iv) and (v) (2010).

⁶ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 465 (citing 18 C.F.R 1b.9).

⁷ See 18 C.F.R. §§ 35.28(g)(iv) and (v) (2010). These obligations are set forth in the PJM OATT at Attachment M, Sections IV.1.1 and IV.1.2.

Order further noted that, as an exception to PJM's IMM's referral obligations, PJM would be permitted to take certain enforcement actions on its own, as PJM had proposed, if the action at issue: (i) is expressly set forth in the tariff; (ii) involves objectively identifiable behavior; and (iii) does not subject the actor to sanctions or consequences other than those expressly approved by the Commission and set forth in the tariff, with the right of appeal to Commission.⁸ The August 12 Order found, however, that PJM had failed to provide the necessary guidance in its OATT regarding the specific types of traffic ticket behavior that would be subject to correction by PJM without a referral by its IMM to the Commission.⁹ The Commission therefore required PJM to either add a new provision to its OATT listing the specific OATT provisions qualifying for this referral exemption, or add an express clarification to its OATT stating that referrals must be made in all instances where the PJM IMM has reason to believe that a market violation has occurred, without exception.

6. Finally, the August 12 Order required PJM to make additional tariff revisions to: (i) clarify the specific criteria used for automatic denial of an economic load response participant's daily settlement submissions due to uneconomic behavior; (ii) further clarify the PJM IMM's code of ethics; (iii) specify the standards that must be applied in determining if a resource is subject to the Reliability Pricing Model (RPM) must-offer requirement; (iv) adopt a posting methodology using an algorithm that presents price and MW pairs that would correspond to points on the line segments that make up the actual base residual auction curve and are spaced to prevent the calculation of specific slope inflection points (which correspond to actual offers) in the line segments of the supply curve without disclosing individual company data; (v) describe explicitly the posting methodology for energy and capacity bids and offers; (vi) include a 13-month delay in posting the base residual auction information or develop and propose an appropriate alternative methodology to further limit the market sensitivity of these data; and (vii) remove from PJM's website within five days the base residual auction aggregated supply curve data as posted on March 19, 2010, and forego any additional data postings for all PJM markets.

⁸ August 12 Order, 132 FERC ¶ 61,123 at P 82. *See also Market Monitoring Units in Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,267, at P 5 (2005). The August 12 Order labeled these exempted actions as the enforcement of "traffic ticket" violations.

⁹ *Id.* P 83, (citing *New York Independent System Operator Inc.*, 129 FERC ¶ 61,164, at P 98 (2009) (*NYISO Traffic Ticket Order*)).

PJM's Compliance Filing

7. PJM states that it removed the tabular RPM data from its web site, as required by the August 12 Order. In addition, PJM proposes to adopt a formulaic posting methodology for RPM data that smoothes the curves *vis a vis* the underlying data points.¹⁰ PJM also proposes a posting of its RPM data without delay.¹¹ PJM asserts that this approach is appropriate given the determination made by PJM's stakeholders and the IMM that PJM's proposed methodology sufficiently masks market sensitive data. Accordingly, PJM proposes that this RPM data be issued, when available, without delay.

8. With respect to exemptions from the Order No. 719 referral requirements, PJM proposes that five of its tariff provisions be recognized as exempt.¹² PJM adds that its list of proposed traffic ticket exemptions does not include matters of ordinary tariff administration, or provisions that do not constitute sanctions or are not intended to operate as a punishment for a tariff violation.¹³ PJM further states that its list does not

¹⁰ See proposed section 5.11 (e) of Attachment DD (RPM) of the OATT, which describes, in redline/strikeout, the data posting methodology for capacity bids.

¹¹ The August 12 Order, as noted above, required that PJM's RPM posting methodology either delay posting for 13 months or develop and propose an alternative methodology to the extent that an alternative approach will provide more accurate data without unmasking the bid data of individual participants. See August 12 Order, 132 FERC ¶ 61,123 at P 78.

¹² These five provisions address: (i) defaults, as prescribed by the PJM OATT at Attachment K – Appendix, Section 1.7.10(a)(v); (ii) defaults, as prescribed by the PJM OATT at Attachment K – Appendix, Section 1.7.19B(e); (iii) failure to obtain replacement unforced capacity, as prescribed by the PJM OATT at Attachment DD, Section 9(b); (iv) failure of an electric distributor to maintain underfrequency relays, as prescribed by the PJM Operating Agreement at Schedule 7, Section 2; and (v) failure to submit data as prescribed by the PJM Reliability Assurance Agreement at Schedule 11.

¹³ PJM cites, as examples of these excluded matters: (i) unreserved use penalties and similar charges on transmission customers that take more service, or service at different points, than previously arranged pursuant to their service agreements (*see* PJM OATT, Sections 13.7(c) and 14.5); (ii) loss of queue position for interconnection request customers that fail to meet various interconnect process obligations or deadlines (*id.* at Sections 201, 204.2, and 204.3); (iii) loss of capacity or deliverability rights when customers fail to meet operational standards on which the grant of such rights was premised (*id.* at Section 230.3.2 and 232.7.2); (iv) loss or forfeiture of revenues by black-start units that fail to honor their black-start service commitments (*id.* at Schedule 6A,

include provisions under which PJM may impose a sanction or penalty, or which already provide for referral to the Commission. PJM cites as one such example Schedule 1, Section 3.3A.7(a) of the PJM Operating Agreement.

9. PJM states that its OATT also includes several compliance charges related to PJM's RPM protocols, but that the actions, or omissions, underlying these charges should not be characterized as market violations.¹⁴ PJM states that, with one exception, it has excluded these items from its proposed "traffic ticket" list. PJM states that the exception is the RPM provision that assesses a penalty on a resource provider that committed its generator to PJM as capacity and then takes a maintenance or scheduled outage on that generator during the peak season, when capacity is needed most, without PJM's prior approval and without arranging replacement capacity.¹⁵ PJM asserts that because the prescribed conduct and resultant consequences are clearly and specifically set forth in the OATT, no referral to the Commission is needed. PJM states that, as such, this provision is properly included on its traffic ticket list.

10. Finally, PJM states that its compliance filing addresses the requirements of the August 12 Order regarding the clarification for uneconomic hours, the PJM IMM's code of conduct, the RPM must-offer requirement, adopting the PJM IMM's formulaic methodology for masking capacity bid data and describes the posting methodology for non-aggregated bid and offer data. As noted above, PJM requests waiver of the 13-month posting delay for base residual auction supply curve data. PJM requests that its proposed tariff revisions be made effective November 11, 2010.

Notice of Filing and Responsive Pleadings

11. Notice of PJM's filing was published in the *Federal Register*, 75 Fed. Reg. 71,114 (2010), with protests and interventions due on or before December 1, 2010. Motions to

Section 5); and (v) failures of market participants to meet their obligations with respect to providing energy, reserves resulting in charges based on the cost of obtaining replacement energy, regulation, or reserves (*see* PJM Operating Agreement, Schedule 1, Sections 1.10.4(k), 1.10.5(a), 3.2.2(a), and 3.2.3A(a)).

¹⁴ PJM notes that these provisions typically provide that if a party that committed generation or demand resources to meet PJM's capacity needs fails to honor its forward commitment (through a failure to timely deliver or successfully test the resource, or through a failure to perform when called upon), it will pay a charge that offsets its associated RPM revenues, plus an additional charge of approximately 20 percent.

¹⁵ *See* PJM OATT at Attachment DD, Section 9(b).

intervene were timely-filed by the PJM IMM; Old Dominion Electric Cooperative; American Municipal Power, Inc.; Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (Constellation); North Carolina Electric Membership Corporation; and NextEra Energy Generators. Comments were filed by Constellation.

12. In its comments, Constellation states that it supports PJM's proposed formulaic posting methodology, consistent with the recommendation made by the PJM IMM. Constellation asserts that the statistically smoothed supply curves proposed by PJM are an appropriate means to protect the confidentiality of market participant offers, especially in smaller locational deliverability areas, while conveying critical market supply information to market participants. Constellation also supports PJM's proposed RPM data release date. Constellation states that the timing of these postings does not raise a competitive concern, unlike energy market offer data which must be delayed in order to conceal the daily supply positions of market participants that could otherwise be acted on the following day. Constellation argues that it is both reasonable and beneficial for PJM to release statistically smoothed supply curves as soon as possible after a capacity auction. Finally, Constellation supports PJM's request to immediately post the aggregate supply curves for the May 2010 capacity auction using PJM's proposed statistically smoothed format.

Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Analysis

14. We accept PJM's compliance filing, subject to the conditions discussed below. The Commission's regulations require ISOs and RTOs and their respective IMMs to refer to the Commission any suspected market violation.¹⁶ Penalties may be imposed by ISOs and RTOs, without referrals, only for "traffic ticket" violations, *i.e.*, for violations of tariff provisions that meet three specified criteria.¹⁷ All tariff requirements, moreover,

¹⁶ 18 C.F.R. § 35.28(g)(3)(ii)(C).

¹⁷ *See supra* P 3 ((i) the activity must be expressly set forth in the tariff; (ii) the activity must involve objectively identifiable behavior; and (iii) the activity does not subject the actor to sanctions or consequences other than those expressly approved by the Commission and set forth in the tariff, with the right of appeal to the Commission.).

must be clearly stated so as to place participants on notice regarding a prohibited act. The Commission has also required ISOs and RTOs that seek to adopt a “traffic ticket” penalty regime to include within their tariffs a separate section identifying all provisions subject to this authority.¹⁸ ISO and RTO IMMs should not refer violations of traffic ticket provisions to the Commission unless the wrongful behavior also constitutes a non-traffic ticket market violation.¹⁹

15. In the December 18 Order, the Commission directed PJM to conduct a review of its OATT to ensure that it complied with these policies. Specifically, the Commission found that it was insufficient for PJM to state generally that its IMM would not refer to the Commission matters that fall within the category of “traffic ticket” behavior. In the August 12 Order, the Commission found that PJM had failed to provide sufficient guidance in its OATT regarding specific “traffic ticket” provisions under which PJM would be authorized to impose a penalty.²⁰

16. In its compliance filing, PJM identifies five provisions that qualify for “traffic ticket” status and lists these provisions at Section IV.I.1 of Attachment M of its tariff. We agree that these provisions qualify as traffic ticket provisions as they meet the three criteria described in our prior orders. For example, Section 1.2 of Schedule 7 of the PJM Operating Agreement penalizes electric distributors for a failure to maintain specified underfrequency relays. This provision qualifies as a traffic ticket because: (i) the activity is expressly set forth in the tariff; (ii) the activity involves objectively identifiable behavior; and (iii) the activity does not subject the actor to sanctions or consequences other than those approved by the Commission and set forth in the tariff, with the right of appeal to the Commission.

17. While PJM explains that it has reviewed its OATT, Operating Agreement and Reliability Assurance Agreement to identify provisions representing traffic ticket

¹⁸ See, e.g., *NYISO Traffic Ticket Order*, 129 FERC ¶ 61,164 at P 99.

¹⁹ We emphasize that only tariff violations may be traffic ticket violations. If the ISO or RTO suspects that an activity violates any Commission order, rule, or regulation, constitutes market manipulation, or is an inappropriate dispatch that creates substantial concerns regarding unnecessary market inefficiencies, it must refer the matter to the Commission even if the activity may also be concurrently sanctioned as a “traffic ticket.” In such circumstances, the ISO or RTO should impose its own, objective traffic ticket penalty and refer other market violations to the Commission for action.

²⁰ August 12 Order, 132 FERC ¶ 61,123 at P 82.

violations,²¹ it appears that PJM may not have included some penalty provisions from these operating agreements that should have been identified and listed as a traffic ticket. Specifically, PJM states that: “consistent with the three criteria and the Commission’s guidance in NYISO,²² PJM also excluded provisions under which PJM ‘may’ impose a sanction or penalty, or which already provide for referrals to the Commission.”²³ PJM also states that it “will continue to exercise any and all explicit remedies and apply any and all sanctions and remedies specifically permitted by the provisions of its Tariff.”²⁴ These statements imply that PJM tariff may contain provisions (in addition to those provisions it has identified on its traffic ticket list) under which PJM can impose penalties. As discussed above, however, PJM’s tariff should not contain any penalties other than those in provisions that qualify for traffic ticket status and are listed as such. Accordingly, we direct PJM to confirm its compliance with our traffic ticket policies and, if necessary, propose revisions to its tariff in a subsequent compliance filing, including: (i) the listing of additional traffic ticket provisions in Section IV.I.1 of Attachment M; (ii) revisions of existing penalty provisions to comply with the three requirements necessary to be a traffic ticket; and (iii) revisions of existing penalty provisions to remove penalties. Should PJM determine that further revisions are unnecessary, it should so state in its compliance filing, and support its position.

18. To assist PJM, we provide the following additional guidance regarding provisions involving administrative charges. First, provisions that address matters of ordinary tariff administration or mitigation and are not intended to punish a market participant should not be listed as traffic ticket provisions.²⁵ PJM lists a number of such provisions in its

²¹ PJM transmittal at 9.

²² *New York Independent System Operator Inc.*, 131 FERC ¶ 61,225, at P 18 (2010) (“NYISO”).

²³ PJM filing at 10. PJM further explains, in its filing, that while the Tariff and other filed agreements contain numerous provisions specifying consequences for a wide variety of actions (or failures to act) by customers or market participants, many of these provisions are best viewed as requirements addressing “matter[s] of ordinary tariff administration,” or that are “not a sanction” or “not intended to function as ‘punishment’ for a tariff violation.” PJM states that it has therefore excluded these provisions from its proposed “traffic ticket” list.” *Id.* at 9.

²⁴ *Id.* at 13-14.

²⁵ *See, e.g., New York Independent System Operator Inc.*, 131 FERC ¶ 61,225 at P 18 and 23 (2010).

compliance filing and we agree that these provisions are consistent with our policies and need not be listed as traffic tickets. Although some of these provisions may be styled as “penalties” or “sanctions” in the PJM OATT, they are in fact administrative charges. Thus, to the extent that the compliance filing’s statements about existing sanctions and penalties in the PJM tariff apply solely to administrative charges, further revision of the PJM tariff is not necessary.

19. Finally, we direct PJM to remove the final paragraph of its proposed modifications to Section IV.I.1 (a provision stating that PJM’s IMM may refer violations of the enumerated traffic ticket provisions to the Commission). PJM’s IMM should not refer to the Commission any violation of a traffic ticket provision unless the wrongful behavior also constitutes a non-traffic ticket violation.²⁶

The Commission orders:

(A) PJM’s compliance filing is hereby conditionally accepted, as discussed in the body of this order.

(B) PJM is hereby directed to make a compliance filing within 90 days of the date of this order, as discussed in the body of this order

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁶ For example, behavior that violates a traffic ticket provision might also involve false statements or market manipulation. In such circumstances, PJM should impose its traffic ticket sanction while PJM’s market monitor refers these other suspected Market Violations to the Commission.