127 FERC ¶ 61,104
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C. — Docket Nos. ER05-1410-013, EL05-148-013, ER09-412-002

ORDER ON CLARIFICATION

(Issued May 1, 2009)

1. In this order, the Commission clarifies its March 26, 2009 order[1] with respect to the applicability of the new entry pricing adjustment provisions of its Reliability Pricing Model (RPM) to energy efficiency providers and generation upgrades.

I. **Background**

2. RPM is a capacity market under which PJM purchases capacity on a three-year forward basis through an auction mechanism,[2] and the prices for capacity are determined by these forward auctions. PJM's next Base Residual Auction will be conducted in May 2009, and will procure capacity for the 2012-2013 delivery year.

3. Under the current RPM rules, the New Entry Price Adjustment (NEPA) allows a planned generation capacity resource[3] that clears an RPM auction to receive assurance of payment of the price that it receives in its first year of operation (i.e., its "new entry price") for two additional years under certain conditions (for a total of three years).[4] One

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[1] *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 (2009) (March 26 Order).

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

[3] PJM's Reliability Assurance Agreement defines a Planned Generation Capacity Resource as "a Generation Capacity Resource participating in the generation interconnection process . . . for which a System Impact Study Agreement has been executed prior to the Base Residual Auction for such Delivery Year."

[4] PJM Open Access Transmission Tariff, Attachment DD, section 5.14(c).

of the conditions is that entry of the new resource would result in a reduction in price in that resource's Locational Deliverability Area (LDA) from a level higher than 112.5 percent of Net Cost of New Entry (CONE) to a level no greater than 40 percent of Net CONE. Such a resource is then required to offer its capacity in the two subsequent Base Residual Auctions at a price that is either equal to the first year’s sell offer or equal to 90 percent of the then-current Net CONE.

4. On December 12, 2008, PJM made a filing under section 205 of the Federal Power Act (FPA), as amended on February 9, 2009, proposing changes to the PJM Open Access Transmission Tariff (Tariff) and the Reliability Assurance Agreement (RAA) among its Load-Serving Entities (LSEs). As relevant here, PJM proposed to extend the price-assurance period from three years to up to seven years, to relax the pre-condition for use of NEPA for new entry offers in a LDA, and to require market sellers electing the NEPA option to submit offers in the subsequent years at either a price of zero or at their avoidable cost rate.

5. Since the existing NEPA rules apply only to new (planned) generators, and not all upgrades to existing generators, PJM also included a proposed Multi-Year Pricing Option for large capital investments in existing generators, available to projects with an investment of at least $450/kW.[5] PJM stated that the terms and conditions for such a project were essentially the same as those available to new entry projects under NEPA, including pricing assurance for up to seven years. PJM also proposed, for the first time, to enable energy efficiency resources to participate in the RPM capacity market and proposed to apply the NEPA provision to energy efficiency resources.

6. In the March 26 Order addressing PJM’s proposed RPM provisions, the Commission rejected the proposal to change the existing NEPA provisions. The Commission order, however, did not explicitly address how its rejection of the NEPA revisions affected the proposed energy efficiency provisions relating to NEPA or the Multi-Year Pricing Option.

7. On April 3, PJM filed a request for expedited clarification or, in the alternative, rehearing of the March 26 Order seeking clarification of how the rejection of the proposed NEPA rules affect the provisions regarding energy efficiency and multi-year pricing for generation improvements. NRG Companies (NRG) filed an answer to PJM's filing.

8. In its request for clarification, PJM states that the March 26 Order did not expressly state the Commission’s disposition of PJM's filing with regard to the Multi-Year Pricing Option for upgrades to existing generating plants, and does not make clear

[5] December 12 Filing, Proposed Tariff Revisions, Third Revised Sheet No. 616, et seq.

how its ruling on the proposed changes to NEPA for new generating plants is consistent with the Multi-Year Pricing Option for upgrades to existing generating plants and the NEPA rules for energy efficiency resources.[6]

9. PJM states that, if three years of price assurance are sufficient for new entry, then no showing has been made to support more than three years of price assurance to induce capital investments at existing plants, or to induce energy efficiency investments. PJM further states that, given the Commission's concern regarding price discrimination between existing resources and new resources,[7] it appears unlikely that the Commission intended price-assurance terms that were rejected for new entrants (i.e., the changes to NEPA) to be allowed for upgrades to existing resources through the Multi-Year Pricing Option.

10. PJM urges the Commission to eliminate this uncertainty before the final deadline for capacity market sellers to submit offers in the upcoming Base Residual Auction. The offer window for that auction is open from Monday, May 4, 2009 through Friday, May 8, 2009. PJM therefore requests the Commission to resolve this issue by Friday, May 1, 2009.

11. NRG asserts that the March 26 Order errs in not ruling on whether eligible generators electing the Multi-Year Pricing Option qualify to lock in clearing prices for five years (as provided in the December 12 filing) or seven years (as provided in the February 9 amendment). NRG asks the Commission to clarify that existing eligible generators may elect to lock-in a first year clearing price for either five or seven years under the Multi-Year Pricing Option.

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[6] Specifically, under the NEPA provisions at section 5.14(c) of Attachment DD of PJM's Tariff, parties electing NEPA treatment for new resources receive price assurances for up to three years, while, pursuant to PJM's filing, parties electing the Multi-Year Pricing Option for upgrades may receive price assurances for up to five years. Additionally, under section 5.14(c) parties electing NEPA may offer in subsequent years at up to the lesser of the first-year offer or 90 percent of Net CONE. By contrast, under the conditions of the Multi-Year Pricing Option as filed by PJM, sellers electing this option must offer in subsequent years at a price of zero or their avoided-cost rate (*see* PJM request for clarification at 7).

[7] *Id*. at 8, *citing* March 26 Order at P 149.

II. Discussion

A. Procedural issues

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a request for rehearing unless otherwise ordered by the decisional authority. We will accept NRG's answer because it has provided information that has assisted us in our decision-making process.

B. Commission Determination

13. We will clarify our prior order. In our March 26 Order, we rejected only the proposed changes to the current tariff as it relates to NEPA for new generators. We agree with PJM's proposal to extend the price assurances available to new generation investment to investment in energy efficiency and major generation upgrades. Extending the tariff provisions to investments in energy efficiency and generation upgrades is reasonable because it provides for these types of investments to receive price assurances that are comparable to new generation resources. Therefore, we clarify our prior order to provide for such comparable treatment.

14. Sheet No. 634H states with respect to energy efficiency providers that:

> a Capacity Market Seller that offers and clears an Energy Efficiency Resource in a BRA may elect a New Entry Price Adjustment on the same terms as set forth in section 5.14(c) of this Attachment DD, except that the Commitment Period may not exceed three consecutive Delivery Years following the Delivery Year associated with the first BRA in which such resource was offered and cleared.[8]

15. Because this provision states that the energy efficiency provider may elect a New Entry Price Adjustment "on the same terms as set forth in section 5.14(c) (the existing provision for New Entry Pricing)," no modification to this provision is necessary, and we clarify that this provision is accepted.[9]

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[8] *See* Reliability Assurance Agreement, Original Sheet No. 634H, section M.4 (emphasis added).

[9] Section 5.14(c) provides that a Planned Capacity Resource may elect price assurances for the two immediately succeeding Delivery Years. Under the terms approved in the March 26 Order, an EE resource may only receive capacity payments for four years; thus, the provision approved at Sheet No. 634H will enable EE resources to receive price assurances for three of those four years.

16. Similarly, with regard to the Multi-Year Pricing Option, we will accept the proposal in Third Revised Sheet No. 616, subject to the condition that PJM file, within 30 days of this order, to modify the provision to provide that large capital investments in generation upgrades may elect the Multi-Year Pricing Option on the same terms and under the same conditions as are available to new planned generation resources under the NEPA provisions in section 5.14(c) of Attachment DD to the PJM Tariff.

17. As to the arguments made by NRG in its answer, although NRG styles its pleading as a response to PJM's request for clarification, in part NRG reiterates the arguments contained in its protest to PJM's December 12 filing that evidence exists to grant a 5-year or 7-year period of price assurances for upgrades under the Multi-Year Pricing Option. Given the clarification provided here, NRG may file a request for rehearing of this order if it continues to take issue with the Commission's determinations.

<u>The Commission orders</u>:

(A) Clarification is provided as discussed in the body of this order.

(B) Sheet No. 634-A is accepted and Third Revised Sheet No. 616 is accepted, subject to PJM making a compliance filing within 30 days of the date of this order, as discussed in the body of the order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.