

137 FERC ¶ 61,017  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket Nos. ER11-3384-000  
ER11-3384-001

ORDER ON COMPLIANCE FILING

(Issued October 6, 2011)

1. On April 18, 2011, PJM Interconnection, L.L.C. (PJM) submitted for filing revised sections to Schedule 1 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement), as well as the parallel provisions of the Appendix to Attachment K of the PJM Open Access Transmission Tariff (Tariff), and Schedule 2 of the Operating Agreement to comply with the Commission's March 17, 2011 Order on Compliance Filing.<sup>1</sup> On May 24, 2011, PJM filed to amend its proposed revisions. In this order, we accept, in part, PJM's filing as amended, and require a compliance filing.

**Background**

2. On May 16, 2008, the Commission granted a Maryland Public Service Commission (Maryland PSC) complaint in part and eliminated market rule provisions that exempted certain generation resources from energy offer price mitigation.<sup>2</sup> Some of the protesting parties in that proceeding also raised questions about whether, if these exemptions were eliminated, PJM's existing market power screen, the three-pivotal-supplier test, should be retained as the test for determining whether to mitigate offers. On February 19, 2009, the Commission, in response to the Maryland PSC complaint, found insufficient evidence showing that the three-pivotal-supplier test is unjust and unreasonable as it relates to assessing the structural competitiveness of the PJM energy

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<sup>1</sup> *PJM Interconnection, L.L.C.*, 134 FERC ¶ 61,192 (2011) (March 17, 2011 Order).

<sup>2</sup> *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,169, *order on reh'g*, 125 FERC ¶ 61,340 (2008).

market.<sup>3</sup> However, based on the filings in the proceeding, the Commission found, under section 206 of the Federal Power Act (FPA),<sup>4</sup> that PJM's mitigation procedures were unjust and unreasonable insofar as they failed to include opportunity costs in the determination of mitigated offer prices. The Commission established procedures to determine the just and reasonable method for taking opportunity costs into account in setting mitigated offer prices. The Commission required PJM to make a compliance filing on or before July 31, 2009, that proposed an approach for addressing the incorporation of opportunity costs in mitigated offers. The Commission clarified that PJM's compliance filing was not limited to opportunity costs related to energy and environmental limitations.<sup>5</sup> The Commission also found that it was reasonable for PJM to focus on opportunity costs related to energy and environmental limitations in the July 31, 2009 compliance filing and to include a plan for developing additional market rules for other types of opportunity costs.

3. On July 31, 2009, PJM submitted revised sheets to Schedule 1 of the Operating Agreement, the parallel provisions of Attachment K - Appendix of the Tariff, and Schedule 2, in order to comply with the Commission's February 19, 2009 Order regarding opportunity costs related to energy and environmental limitations (Energy Market Opportunity Costs).<sup>6</sup> On October 25, 2010, the Commission accepted the provisions governing these regulatory opportunity costs.<sup>7</sup>

4. On July 1, 2010, PJM submitted a compliance filing containing revised Tariff sections intended to establish provisions for Non-Regulatory Opportunity Costs pursuant to a proceeding to establish just and reasonable tariff provisions for determining

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<sup>3</sup> *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,145 (2009) (February 19, 2009 Order).

<sup>4</sup> 16 U.S.C. § 824e (2006).

<sup>5</sup> *PJM Interconnection, L.L.C.*, 127 FERC ¶ 61,188, at P 7 (2009) (“... the references to these two types of cost in the order were by way of example, and PJM needs to consider all legitimate and verifiable opportunity costs as part of its stakeholder process and its compliance filing.”).

<sup>6</sup> In the July 31, 2009 filing, PJM stated that it planned to submit a filing for addressing the inclusion of other types of opportunity costs no later than July 1, 2010.

<sup>7</sup> *PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,081 (2010).

opportunity cost adders for mitigation.<sup>8</sup> On December 30, 2010, PJM submitted a supplemental filing to reflect further discussions with stakeholders related to these non-regulatory opportunity costs (December 30, 2010 Filing). In the March 17, 2011 Order, the Commission accepted PJM's filing, in part, and established the just and reasonable provisions for determining Non-Regulatory Opportunity Costs. PJM was directed to submit a compliance filing to revise its Tariff to address the Commission's concerns with start time limitations, short-term opportunity costs, and out of management control fuel limitations.

### **PJM's Compliance Filing**

5. In the March 17, 2011 Order, the Commission determined that there was a potential for confusion regarding a generating unit's operational limitations due to its limited number of starts or available run hours; therefore the Commission directed PJM to revise the language.<sup>9</sup> In the April 18 2011 compliance filing, PJM proposes to insert the words "because it only has a limited number of starts or available run hours" in subparagraph (a) of Schedule 2 of the Operating Agreement so that it reads as follows:

For a generating unit that is subject to operational limitations because it only has a limited number of starts or available run hours resulting from (i) the physical equipment limitations of the unit due to original equipment manufacturer recommendations or insurance carrier restrictions, . . . the Market Participant may include in the calculation of its "other incremental operating costs" an amount reflecting the unit-specific Non-Regulatory Opportunity Costs expected to be incurred.

PJM states that this revision makes consistent the definition of Non-Regulatory Opportunity Cost and the relevant portion of subsection (a) of Schedule 2 of the Operating Agreement, as directed by the Commission, and thereby removes the confusion resulting from the language originally proposed by PJM.

6. In the March 17, 2011 Order the Commission stated that, "Because the tariff does not currently include short-term opportunity costs as recoverable costs, we will require PJM to include such costs in its tariff. While implementation details are appropriate for inclusion in Manual 15, the Tariff must provide that short-term Non-Regulatory Costs are

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<sup>8</sup> PJM proposed the newly-defined term, Non-Regulatory Opportunity Cost, to distinguish opportunity costs for resources with limited run hours or start times due to non-regulatory limitations from other types of opportunity costs that Market Participants may recover.

<sup>9</sup> March 17, 2011 Order, 134 FERC ¶ 61,192, at P 20.

recoverable.”<sup>10</sup> To comply with the Commission’s directive, PJM proposes the following revisions to section (a) of Schedule 2 and section 1.3.17A of Schedule 1 of the Operating Agreement:

Section (a) of Schedule 2

For a generating unit that is subject to operational limitations resulting from (i) the physical equipment limitations of the unit, for any length of time, due to original equipment manufacturer recommendations or insurance carrier restrictions. . .

Section 1.3.17A of Schedule 1

“Non-Regulatory Opportunity Cost” shall mean the difference between (a) the forecasted cost to operate a specific generating unit when the unit only has a limited number of starts or available run hours resulting from (i) the physical equipment limitations of the unit, for any length of time, due to original equipment manufacturer recommendations or insurance carrier restrictions. . .

PJM states that the proposed revision clarifies that physical equipment limitations due to original equipment manufacturer recommendations and insurance carrier restrictions may be eligible to recover Non-Regulatory Opportunity Costs regardless of whether they are short in duration or last for a considerable length of time. In addition, PJM proposes to adopt a force majeure standard, as defined in section 18.9 of the PJM Operating Agreement, that would be applicable for the recovery of fuel supply limitations. PJM states that this force majeure standard meets the stated intent of the PJM stakeholders to allow the recovery of opportunity costs for a unit that has the ability to run but has a limited fuel supply under specific, limited circumstances.

7. In the April 18, 2011 compliance filing, PJM states that it has removed from the Operating Agreement the proposed provisions in section (a) of Schedule 2 and section 1.3.17A of Schedule 1 of the Operating Agreement that allowed for opportunity costs to be recoverable for “an Out of Management Control fuel supply limitation as defined in the PJM eGADS User Manual” and “a fuel supply limitation for which a disturbance report was filed pursuant to the requirements of NERC EOP-004 Disturbance Reporting,” as directed by the Commission.

8. PJM clarifies that it did not propose to limit the recovery of opportunity costs to no more than three times in five years. PJM agrees with the Commission that if a

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<sup>10</sup> *Id.* P 21.

generator has legitimate and verifiable opportunity costs, it should be permitted to recover those costs regardless of the number of times those costs are incurred. PJM states that PJM's stakeholders determined that it was appropriate to implement an automatic review of a market participants requests to recover Non-Regulatory Opportunity Costs if it makes three such requests for similar issues in a five year period; and the purpose of this review is to ensure that the market participant making the request to recover opportunity costs is not attempting to game the system or manipulate the markets. Therefore, PJM confirms that all legitimate and verifiable opportunity costs will be recoverable, regardless of the number of times they are incurred.

9. PJM proposes to revise the definitions of Non-Regulatory Opportunity Cost and Energy Market Opportunity Cost to address when outages of self-scheduled resources are taken into consideration in the calculation of an Energy Market Opportunity Cost and Non-Regulatory Opportunity Cost. PJM states that the revisions it proposes to the definitions of Energy Market Opportunity Cost and Non-Regulatory Opportunity Cost clarify that generating units that seek to recover an Energy Market Opportunity Cost or Non-Regulatory Opportunity Cost are not subject to reduced capacity payments if they are unable to run during unforeseen system conditions that occur following the exhaustion of available run hours for a given compliance period, when the generating unit has been self-scheduled to run at the generator owner's direction less than 50 percent of the available run hours during the compliance period, and the unit is unavailable during needed system conditions. PJM believes that this revision will prevent a generating unit from being self-scheduled in a manner which could preclude the same generating unit from being available when needed for power system reliability.

10. PJM proposes to make several clerical revisions to the Tariff and Operating Agreement to correct punctuation and formatting (section 1.3.11 of Schedule 1 of the Operating Agreement and sections 1.3.9B, 1.3.31A, and 1.3.31B of Attachment K-Appendix of the Tariff), correct typographical errors (sections 1.3.33B.02 and 1.3.37C of Attachment K-Appendix of the Tariff), and reorganize the definitions of Batch Load Demand Resources, Curtailment Service Provider, Congestion Price and Day-ahead Congestion Price in Attachment K-Appendix of the Tariff and the parallel provisions of Schedule 1 of the Operating Agreement to put them in the correct alpha-numeric order.

### **Notice of Filing, Comments, Protests, and Responsive Pleadings**

11. Notice of the April 18, 2011 compliance filing was published in the *Federal Register*, 76 Fed. Reg. 23,319 (2011), with interventions and protests due on May 9, 2011. American Municipal Power, Inc. filed a motion to intervene and comments opposing two aspects of the April 18, 2011 compliance filing were submitted by

Monitoring Analytics, LLC.<sup>11</sup> PJM filed an amendment to its compliance filing on May 24, 2011. Notice of the May 24, 2011 filing was published in the *Federal Register*, 76 Fed. Reg. 31,325 (2011), with interventions and protests due on June 14, 2011. No adverse comments were filed with regard to PJM's amendment.

### **Comments of the PJM IMM**

12. The PJM IMM states that PJM's compliance filing is flawed for two reasons. First, the PJM IMM opposes PJM's proposal to allow recovery of Non-Regulatory Opportunity Costs for units with physical equipment limitations for "any length of time." The IMM argues there has been no substantive discussion of calculating opportunity costs for a period longer than a year, and there has been no agreement that such a calculation is necessary or appropriate. The PJM IMM maintains there must be some limit on how far out into the future margins are forecast, and there is no reason to believe that any call on a resource today will affect its opportunity to generate more than a year in the future. The PJM IMM states that the current method for calculating opportunity costs is based on a period of a year, and the corresponding software was not designed to implement opportunity cost calculations for periods greater than one year.

13. Second, the PJM IMM objects to the part of the definition of Non-Regulatory Opportunity Cost in PJM's compliance filing that deals with whether a failure to run by a unit that has self-scheduled less than 50 percent of its run hours should be considered outside of management control. The PJM IMM states that PJM simply has re-submitted the same provision that the Commission determined in its March 17, 2011 Order was outside of the scope of this proceeding.<sup>12</sup>

### **PJM's Amendment**

14. PJM filed an amendment on May 24, 2011 to change its proposed revisions to section (a) of Schedule 2 and section 1.3.17A of Schedule 1 of the Operating Agreement to change the words "for any length of time" to "for up to one year" because PJM agrees with the PJM IMM on this issue.

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<sup>11</sup> Monitoring Analytics, LLC filing in its capacity as the PJM IMM.

<sup>12</sup> The PJM IMM previously had protested PJM's proposal to use the 50 percent cut-off. It argued that all outages of any self-scheduling generator utilizing opportunity costs for mitigated bids should be considered forced outages.

### **Procedural Matters**

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>13</sup> the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority.<sup>14</sup>

### **Commission Discussion**

16. We find that PJM has made changes in response to the Commission's March 17, 2011 Order which will avoid confusion between the language in the Tariff referring to operational limitations and the language in the definition referring to limited number of starts or available run hours and adopted a force majeure standard for the recovery of fuel supply limitations. We find these changes result in a just and reasonable rate for the recovery of non-regulatory opportunity costs. The Commission also required that short-term opportunity costs be included in PJM's Tariff as recoverable costs, and we agree with the PJM IMM and PJM that a one year limitation is just and reasonable.

17. The March 17, 2011 Order noted that the language in the proposed definition of Non-Regulatory Opportunity Cost is different from the language proposed for Schedule 2 of the Tariff since the definition refers to a limited number of starts or available run hours whereas the proposed language in Schedule 2 refers to operational limitations.<sup>15</sup> To avoid confusion, the Commission required that the language in the Tariff referring to operational limitations should include the language in the definition referring to limited number of starts or available run hours. The Commission accepts this revision since it makes consistent the definition of Non-Regulatory Opportunity Cost and the relevant portion of subsection (a) of Schedule 2 of the Operating Agreement.

18. The March 17, 2011 Order stated that PJM's Tariff must provide that short-term Non-Regulatory Opportunity Costs are recoverable.<sup>16</sup> PJM proposes revisions to section (a) of Schedule 2 and section 1.3.17A of Schedule 1 of the Operating Agreement to clarify that physical equipment limitations due to original equipment manufacturer recommendations and insurance carrier restrictions may be eligible to recover Non-

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<sup>13</sup> 18 C.F.R. § 385.214 (2011).

<sup>14</sup> 18 C.F.R. § 385.213(a)(2) (2011).

<sup>15</sup> March 17, 2011 Order, 134 FERC ¶ 61,192, at P 20.

<sup>16</sup> *Id.* P 21.

Regulatory Opportunity Costs for up to one year. The Commission accepts this revision since it complies with the Commission's requirement that short-term Non-Regulatory Opportunity Costs are recoverable.

19. PJM has removed the provisions that allowed for an out of management control fuel supply limitation and a fuel supply limitation for which a disturbance report was filed pursuant to the requirements of NERC EOP-004 Disturbance Reporting as directed by the Commission and, in this filing, proposes to adopt a force majeure standard, which is already defined in section 18.9 of the PJM Operating Agreement, for the recovery of fuel supply limitations. PJM states that this force majeure standard meets the stated intent of the PJM stakeholders to allow the recovery of opportunity costs for a unit that has the ability to run but has a limited fuel supply under specific, limited circumstances. In the March 17, 2011 Order, the Commission noted that the force majeure standard was proposed by the PJM IMM,<sup>17</sup> but had not been vetted with stakeholders. In the compliance filing, PJM states that no stakeholder has indicated any objection to this standard. The Commission finds that the force majeure standard is just and reasonable because it is consistent with the concept of a fuel limitation that is outside of the generation owner's control, no stakeholder has indicated any objection to this standard, and it uses the definition of force majeure.<sup>18</sup>

20. In its December 30, 2010 supplemental filing, PJM proposed a limitation to be included in its manuals on the maximum number of times (three) a resource can recover Non-Regulatory Opportunity Costs within a specified time period (five years). An automatic limitation on the number of times that a unit may seek to recover such opportunity costs had been objected to, and in the March 17, 2011 Order, the Commission stated: "PJM cannot enforce such a limitation through its manuals, and we find no basis for requiring PJM to include in its Tariff a limitation on the number of times opportunity costs claims are allowed. Generators should be able to include opportunity costs whenever such costs are legitimate." In this compliance filing, PJM has clarified that its proposed addition to its manuals was an automatic review of, not a limitation on, the maximum number of times a resource can recover Non-Regulatory Opportunity Costs. PJM states that all legitimate and verifiable opportunity costs will be recoverable, regardless of the number of times they are incurred. We agree with PJM that a provision for review of Non-Regulatory Opportunity Costs does not need to be

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<sup>17</sup> *Id.* P 30.

<sup>18</sup> The term force majeure is defined in section 18.9 of the PJM Operating Agreement.

included in the Tariff. However, if PJM wants to implement a limitation process, or take any other action, based on these reviews, it needs to make a properly justified filing under section 205 of the FPA .<sup>19</sup>

21. The IMM also objects to PJM's proposal to revise the definition of Non-Regulatory Opportunity Cost to provide: "Generation Capacity Resources recovering Non-Regulatory Opportunity Cost that self schedule generation run hours 50 percent or less of the total available run hours shall consider the generation unit outages when the limited number of available run hours are exhausted as an Outside Management Control (OMC) Outage."<sup>20</sup> The IMM states that this provision was outside the scope of the compliance obligation and has not been justified on its merits.

22. PJM previously included a similar statement of intention in the transmittal letter to its July 1, 2010 filing. In the March 17, 2011 Order, the Commission found that since this provision was not contained in its Tariff, then "PJM must apply its current Tariff, i.e., the filed rate, in determining Forced Outages. PJM has not shown whether this proposal is included in or even consistent with its current Tariff, and therefore this issue is not before us in this filing."<sup>21</sup> PJM's proposal therefore was not necessary to comply with the prior order.

23. We do not find that PJM has sufficiently justified the proposed use of a 50 percent cut-off for determining when self-scheduled generation qualifies as an Outside Management Control Outage, and we cannot find that such a provision is necessary to make the Tariff just and reasonable under section 206 of the FPA. PJM is required to make a compliance filing removing these provisions from the definition of Non-Regulatory Opportunity Cost and Energy Market Opportunity Cost in the currently proposed revisions, without prejudice to PJM making a properly justified filing under section 205 of the FPA.

24. The Commission accepts PJM's clerical revisions to the Tariff and Operating Agreement to correct punctuation and formatting, typographical errors, and reorganization of definitions to put them in the correct alpha-numeric order.

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<sup>19</sup> 16 U.S.C. § 824d (2006).

<sup>20</sup> PJM also proposes to add similar language to the definition of Energy Market Opportunity Cost. Comments of PJM IMM at P 2.

<sup>21</sup> March 17, 2011 Order, 134 FERC ¶ 61,192, at P 36.

The Commission orders:

PJM's April 18, 2011 compliance filing, as amended, is here by accepted, in part, subject to PJM submitting in a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.