

149 FERC ¶ 61,060
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

PJM Interconnection, L.L.C.

Docket No. ER14-1145-001

ORDER DISMISSING REHEARING

(Issued October 21, 2014)

1. This order addresses a request for rehearing of the Commission's February 11, 2014 order on PJM Interconnection, L.L.C.'s (PJM) request for temporary waiver of certain provisions of the Amended and Restated Operating Agreement (Operating Agreement) and the PJM Open Access Transmission Tariff (Tariff) to permit the submission of cost-based offers from Generation Capacity Resources into the PJM energy markets at prices that exceed the \$1,000/MWh offer cap.¹ A coalition of consumer representatives (Consumer Representatives) jointly filed a request for rehearing of the February 11 Order.² In this order, we dismiss the Consumer Representatives' request for rehearing.

I. Background

2. On January 23, 2014, PJM filed a request for temporary waiver of provisions of the Operating Agreement and the Tariff in response to unprecedented spikes in fuel costs caused by recurring extreme cold weather events, to be effective from the date the

¹ *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,078 (2014) (February 11 Order).

² Consumer Representatives include the PJM Industrial Customer Coalition, Consumer Advocate Division of West Virginia, Delaware Division of the Public Advocate, Illinois Citizens Utility Board, Indiana Office of Utility Consumer Counsel, Maryland Office of People's Counsel, New Jersey Division of Rate Counsel, Office of the Peoples Counsel of the District of Columbia, and the Pennsylvania Office of Consumer Advocate.

Commission granted the waiver through March 31, 2014.³ PJM requested the temporary waiver in order to permit sellers that submit cost-based offers from Generation Capacity Resources to base those offers on their marginal costs, even if that caused their offer price to exceed the offer cap, changing how PJM clears the market.⁴

3. PJM explained that, under the Operating Agreement, resources that have been committed as capacity are required to submit offers into the day-ahead energy market for the available capacity of their resources, but the Operating Agreement also requires that those energy offers not exceed \$1,000/MWh. PJM explained that unprecedented high gas prices could equate to a marginal energy cost for a simple-cycle combustion turbine generator of approximately \$1,200/MWh. PJM also noted that, on January 21, 2014, market participants submitted approximately 5,000 MW of energy market offers in the day-ahead market at a price of \$999/MWh, implying that the costs for these resources was above the \$1,000/MWh, but their offers were constrained by the offer cap.

4. PJM stated that the situation was untenable because affected generators did not have an opportunity to recover their costs of generating energy, which they are required to offer into the PJM market. Specifically, PJM requested a waiver of Operating Agreement, Schedule 1, sections 1.10.1A(d) (the \$1,000/MWh offer cap), the equivalent Tariff sections of Attachment K-Appendix, and any other related Operating Agreement and Tariff provisions, as necessary, to allow Generation Capacity Resources to submit their energy market offers based on their marginal costs. PJM noted that the seller's marginal costs must be as determined and documented in accordance with the cost development guidelines and procedures in PJM's Manual 15.⁵ PJM requested expedited relief to ensure that, for a substantial part of the remaining winter season, the prices in PJM's energy market reflected the marginal costs of producing energy. On February 11, 2014, the Commission found good cause to grant the requested waiver. In doing so, the Commission directed the Independent Market Monitor for PJM (IMM) to submit an informational filing within 30 days of the waiver's expiration, identifying: (1) the

³ In Docket No. ER14-1144-000, PJM concurrently submitted a waiver request to permit sellers that submit cost-based offers from Generation Capacity Resources into the PJM energy markets, and whose costs exceed the applicable energy market clearing price, to receive a make-whole payment. The Commission issued an order granting the waiver request in Docket No. ER14-1144-000 on January 24, 2014. *See PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,041 (2014) (January 24 Order). PJM requested that the waiver in the instant proceeding supersede the relief the Commission granted in the January 24 Order.

⁴ Capitalized terms used but not defined herein are intended to have the meaning given to such terms in the Operating Agreement and the Tariff, as applicable.

⁵ *Id.* at 7.

number of hours when clearing prices exceed \$1,000 as a result of the waiver; (2) the associated prices by zone; and (3) total energy costs.

II. Request for Rehearing

5. On March 13, 2014, Consumer Representatives timely sought rehearing of the February 11 Order.⁶ Consumer Representatives assert that the February 11 Order constitutes retroactive ratemaking because the Commission changed the obligations that attached to Generation Capacity Resources at the time those resources cleared in the Base Residual Auction. Consumer Representatives state that such *post hoc* changes unjustly and unreasonably raise prices for consumers by restructuring Generation Capacity Resources' obligations to the market. Consumer Representatives also argue that the February 11 Order did not identify substantial evidence that PJM's filing met the Commission's standards for granting a tariff waiver, where: (1) the waiver is limited in scope; (2) a concrete problem must be remedied; and (3) the waiver does not have undesirable consequences such as harming third parties.

6. Consumer Representatives allege that the waiver request was not limited in scope, because PJM's waiver request was not limited to certain zones within PJM, but rather applied region-wide. Therefore, Consumer Representatives argue that waiving the \$1,000/MWh offer cap "will have significant and potentially long-lasting adverse impacts on customers," which cannot meet the Commission's limited-in-scope standard.⁷ Consumer Representatives also argue that simply because generators did not appropriately hedge against their exposure to potential price spikes in the natural gas market does not mean that a concrete problem exists. Finally, Consumer Representatives assert that the February 11 Order harms third parties by forcing wholesale and retail customers to pay higher prices due to poor decision-making by natural gas-fired generators.

III. Commission Determination

7. We dismiss as moot the Consumer Representatives' request for rehearing. On April 30, 2014, the IMM submitted its informational filing, in accordance with the Commission's directive in the February 11 Order.⁸ The IMM explained that no energy offers were submitted with incremental curve offer components above \$1,000/MWh, and, therefore, that there were no locational marginal prices above \$1,000/MWh as a direct

⁶ Consumer Representatives March 13, 2014, Request for Rehearing at 3.

⁷ Consumer Representatives Request for Rehearing at 8.

⁸ See IMM April 30, 2014 Informational Report.

result of the February 11 Order.⁹ The IMM also explained that, while some resources submitted offers with operating rates above \$1,000/MWh, none of those units ran during the period when those offers were active and, therefore, none of those offers directly affected energy market prices.¹⁰ Because the waiver granted in the February 11 Order did not directly affect energy market prices, and we have no evidence that the waiver indirectly affected prices, no party was adversely affected by the February 11 Order. Therefore, we dismiss as moot Consumer Representatives' request for rehearing.

The Commission orders:

Consumer Representatives' request for rehearing is hereby dismissed as moot, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁹ *Id.* at 3. As the IMM correctly explains, when a resource is the marginal unit, the incremental curve component of that resource's energy offer is the basis for incremental unit dispatch and the locational marginal price.

¹⁰ *See* IMM April 30, 2014 Informational Report at 2-3.