

154 FERC ¶ 61,095
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER16-532-000

ORDER ON PROPOSED TARIFF CHANGES

(Issued February 12, 2016)

1. On December 15, 2015, PJM Interconnection, L.L.C. (PJM) submitted proposed changes to its Open Access Transmission Tariff (OATT), pursuant to section 205 of the Federal Power Act (FPA),¹ to allow PJM's regularly scheduled Third Incremental Auction (Incremental Auction) for the 2016-17 delivery year to account for excess capacity procured through that year's Capacity Performance Transition Incremental Auction (Transition Auction).

2. For the reasons discussed below, we accept PJM's proposed tariff changes, effective February 15, 2016, as requested, subject to the condition that PJM submit revised tariff language within 30 days of the date of this order, clarifying that it will only sell back non-Capacity Performance Resource capacity in its February 29, 2016 Incremental Auction. We also require PJM to submit an informational report on or before November 15, 2016 to explain whether it intends to submit additional tariff revisions to sell back excess capacity for the 2017-18 delivery year resulting from the associated Transition Auction, and to explain why it does or does not intend to do so.

I. Background

3. In an order issued June 9, 2015, the Commission conditionally accepted PJM's proposal to establish a new capacity product, a Capacity Performance Resource, on a phased-in basis, to ensure that resources perform more reliably as the system approaches

¹ 16 U.S.C. § 824d (2012).

emergency conditions.² In the Capacity Performance Order, the Commission also conditionally accepted PJM's proposal to conduct two Transition Auctions to procure Capacity Performance commitments for the 2016-17 and 2017-18 delivery years, i.e., for the two delivery years for which PJM has already procured capacity commitments under its prior rules.³

4. Under PJM's Transition Auction rules, a seller seeking to participate as a Capacity Performance Resource was permitted to submit an offer into PJM's Transition Auctions to establish: (i) a superseding commitment for a resource that had previously cleared for the relevant delivery year; or (ii) a new commitment for a resource that had not previously been committed. PJM held the Transition Auction for the 2016-17 delivery year in August 2015. In doing so, it procured 95,097 MW of Capacity Performance Resources, including 4,246 MW of new, previously uncommitted capacity.

5. PJM states that, in designing the Transition Auctions, its intent was to release any excess capacity it might procure in an amount equal to the Transition Auction procurement of new, previously uncommitted capacity. PJM adds that, in addressing this issue in the Capacity Performance Order, the Commission agreed that load should not be required to pay for more capacity than it needed.⁴ PJM states, however, that its tariff authority in this area is limited. Specifically, PJM asserts that its current tariff only authorizes the release of capacity in an Incremental Auction based on the modification of its reliability requirement or changes to its load forecast for the relevant delivery year.⁵

² *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (2015) (Capacity Performance Order).

³ As discussed below, PJM's proposal in this proceeding is limited to the release of capacity for the 2016-17 delivery year. However, PJM also proposes to reconsider its need to release additional excess capacity, as applicable to the 2017-18 delivery year, pending: (i) review of updated data concerning its reliability requirement for that year, and/or (ii) the U.S. Supreme Court's ruling regarding the right of demand response resources to participate in PJM's capacity market – a ruling that issued subsequent to PJM's filing here. *See Federal Energy Regulatory Comm'n v. Electric Power Supply Association*, Case Nos. 14-840, slip op. (U.S. Jan. 25, 2016) (EPSA).

⁴ PJM filing at 3 (citing Capacity Performance Order, 151 FERC ¶ 61,208 at P 254).

⁵ *See* PJM OATT at Attachment DD, section 5.12(b).

II. Proposed Revisions

6. PJM proposes to revise its OATT to authorize PJM to release excess capacity in the Incremental Auction. Specifically, PJM proposes to revise Attachment DD, section 2.69B and 2.69C (addressing its Updated Variable Resource Requirement (VRR) Curve Increment and VRR Curve Decrement) and section 5.12(b) (addressing Incremental Auctions), to allow PJM to release excess capacity procured in the Transition Auction. PJM states that, with this authority, it intends to release, in its February 29, 2016 Incremental Auction, an amount equal to the 4,246 MW of new, previously uncommitted capacity that it procured in its August 2015 Transition Auction, in addition to any excess capacity resulting from modifications to its reliability requirement or changes to its load forecast for the 2016-17 delivery year. PJM proposes to release this capacity amount within the Locational Deliverability Areas in which this excess capacity was procured.

III. Notice of Filing and Responsive Pleadings

7. Notice of PJM's filing was published in the *Federal Register*, with interventions and protests due on or before January 5, 2016. Notices of intervention and timely-filed motions to intervene were submitted by Delaware Division of the Public Advocate, Illinois Commerce Commission, Old Dominion Electric Cooperative, NRG Power Marketing LLC, and GenOn Energy Management, LLC. In addition, motions to intervene out-of-time were submitted by the Pennsylvania Public Utility Commission (Pennsylvania Commission), American Municipal Power, Inc. (AMP), the North Carolina Electric Membership Corp. (NCEMC), Monitoring Analytics, LLC, acting as PJM's independent market monitor (Market Monitor), Public Power Association of New Jersey, the Maryland Public Service Commission (Maryland Commission), the Delaware Public Service Commission (Delaware Commission), the New Jersey Board of Public Utilities (New Jersey Board), and the Delaware Municipal Electric Corporation, Inc. (Delaware Municipal).

8. Direct Energy Business, LLC and the PJM Industrial Customer Coalition (Direct Energy/PJM-ICC) and NCEMC filed protests. Answers to protests and/or answers to answers were filed on January 14, 2016 and February 5, 2016, by the Public Power Association of New Jersey, Pennsylvania Public Utilities Commission, the Maryland Commission, and the New Jersey Board (Load Group and Interested State Commissions),⁶ on January 20, 2016, by PJM and AMP/Delaware Municipal, and on January 27, 2016, by Direct Energy/PJM-ICC.

⁶ The Delaware Commission was also a party to the January 14, 2016 answer.

A. Protests and Comments

9. Direct Energy/PJM-ICC argue that the sell offers submitted into the Incremental Auction under PJM's proposal will suppress market clearing prices and thus load will likely only realize pennies on the dollar in direct savings through the sell-back of this excess capacity.⁷ Direct Energy/PJM-ICC add that load will still be required to pay the difference, i.e., a substantial amount of the relevant Base Residual Auction clearing price, without receiving a proportionate, corresponding benefit.

10. Direct Energy/PJM-ICC further argue that PJM has failed to analyze whether the asserted savings attributed to the sell-back it proposes will produce a net benefit for load, given cost increases in interrelated markets. Direct Energy/PJM-ICC note that, were PJM to retain the excess capacity at issue here, load would likely reap at least an off-setting benefit in the form of lower energy and ancillary services costs, as produced by an increase in operating reserve capacity, in addition to a reliability benefit. Direct Energy/PJM-ICC add that PJM has recognized the existence of these pricing benefits in a November 2013 study analyzing the procurement of capacity in excess of its target reserve margin.⁸ Direct Energy/PJM-ICC assert that the existence of these benefits is not reflected in the design of PJM's capacity auction demand curve. Direct Energy/PJM-ICC assert that PJM's filing should be rejected, without prejudice, subject to the right of PJM to renew its request in a new filing, supported by an analysis that demonstrates that its proposed sell-back will produce a net benefit for PJM's customers.

11. Direct Energy/PJM-ICC also challenge PJM's reliance on the Capacity Performance Order, regarding the Commission's asserted expectation that the excess capacity at issue here would be released by PJM in the Incremental Auctions. Direct Energy/PJM-ICC argue that the Commission's finding on this issue addressed only PJM's existing authorization to sell back capacity "if the load forecast is adjusted downward."⁹ Finally, Direct Energy/PJM-ICC argue that, if the Commission accepts PJM's proposal, it should require PJM to use either (i) a price floor at a level representing the estimated benefits that the excess capacity would otherwise provide, along with a proration provision to apply when the floor price is reached, which Direct Energy/PJM-

⁷ NCEMC also filed a protest supporting the Direct Energy/PJM-ICC protest.

⁸ *Id.* at 5 (citing *Comparison of Proposals for Clearing DR Products in RPM Auctions*, PJM Markets and Reliability Committee (Nov. 4, 2013)).

⁹ Direct Energy/PJM-ICC protest at 12 (citing Capacity Performance Order, 151 FERC ¶ 61,208 at P 254).

ICC state is similar to that employed by ISO New England Inc.; or (ii) a fixed price at which PJM could offer the excess capacity into the Incremental Auction.

B. PJM's Answer

12. PJM responds to Direct Energy/PJM-ICC's argument regarding the asserted need for a cost/benefits analysis to support PJM's proposal. PJM argues that there is no study that could be conducted for the single delivery year at issue here that could definitively determine what impact, if any, the excess generation would have on energy market and/or ancillary service prices. PJM asserts that the issue presented – whether retaining such excess capacity would have greater value than selling it back – turns on numerous contingencies, including: (i) actual resource availability; (ii) actual interchange values with surrounding systems; (iii) weather conditions; (iv) load levels; and (v) the extent to which PJM's system faces stressed operating conditions during the relevant delivery year.

C. Additional Answers

13. The Load Group and Interested State Commissions, in their answers, reiterate and support Direct Energy/PJM-ICC's arguments. AMP/Delaware Municipal also respond to Direct Energy/PJM-ICC's argument that PJM must support its proposal with a cost/benefit analysis. AMP/Delaware Municipal argue that, if such an approach is not feasible in advance of PJM's Incremental Auction, the Commission should accept PJM's proposal.

14. Direct Energy/PJM-ICC respond to PJM's argument, in its answer, that PJM would be incapable of assessing whether its proposal will produce a net benefit for its customers. Direct Energy/PJM-ICC argue that such an inability supports a Commission ruling rejecting PJM's filing.

III. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, given their interests, the early stage of these proceedings, and the absence of undue prejudice or delay, we grant the unopposed, late-filed interventions submitted by the Pennsylvania Commission, AMP, NCEMC, the Market Monitor, Public Power Association of New Jersey, the Maryland Commission, the Delaware Commission, the New Jersey Board, and Delaware Municipal.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest and an answer to an answer unless otherwise ordered by the decisional authority. We accept the answers submitted by Load Group and Interested

State Commissions, PJM, AMP/Delaware Municipal, and Direct Energy/PJM-ICC because they have provided information that has assisted us in our decision-making process.

IV. Discussion

17. For the reasons discussed below, we accept PJM's proposed tariff changes, effective February 15, 2016, as requested, subject to the condition that PJM submit revised tariff language, within 30 days of the date of this order, clarifying that PJM will only sell back non-Capacity Performance Resource capacity in its February 29, 2016 Incremental Auction.¹⁰ We also require PJM submit an informational report on or before November 15, 2016 to explain whether it intends to submit additional tariff revisions to sell back excess capacity for the 2017-18 delivery year resulting from the associated Transition Auction, and to explain why it does or does not intend to do so.

18. PJM's proposal to account for previously uncommitted capacity procured in its August 2015 Transition Auction in its regularly scheduled Third Incremental Auction is consistent with PJM's Incremental Auction design, which already contemplates the release of excess capacity. According to PJM, it was always its intent to allow for the release of any excess capacity procured in the Transition Auction; however, upon closer review, it determined that its OATT only permits the release of capacity in limited circumstances. We find that PJM's proposed revisions, clarified as directed herein, are just and reasonable, because they will correct this oversight for the 2016-17 delivery year, and as a result, ensure that no more capacity is retained than necessary.

19. In accepting PJM's proposal as just and reasonable, subject to condition, we interpret the proposed tariff language as providing that, in the Incremental Auction for the 2016-17 delivery year, PJM will sell back only non-Capacity Performance Resource commitments. Our interpretation is based on proposed section 5.12(b) which provides that capacity releases for delivery years 2018-19 and 2019-20 will be limited by Base Capacity Demand Resource Constraints and Base Capacity Resource Constraints, such that PJM will only be permitted to release Capacity Performance commitments for those delivery years in an amount that recognizes these constraints.¹¹ Further, PJM's

¹⁰ The Commission can revise a proposal filed under section 205 of the Federal Power Act as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

¹¹ PJM OATT at Attachment DD, section 5.12(b).

transmittal letter and answer, including stakeholder presentation materials,¹² reflect that PJM's intent is to release capacity in the upcoming Third Incremental Auction in a quantity equal to the previously uncommitted capacity procured in the August 2015 Transition Auction.

20. We note, however, that subsection 5.12(b)(iii) refers to release of "the quantity of new Unforced Capacity commitments for the 2016/2017 Delivery Year associated with the transition provisions in section 5.14D[.]"¹³ We are concerned that subsection 5.12(b)(iii) could be read as allowing PJM to release commitments of any capacity product, which would be inconsistent with section 5.12(b) and the record evidence here. Accordingly, to better clarify the proposed tariff language and ensure that it is internally consistent, we accept PJM's filing subject to the condition that PJM submit revised tariff language, within 30 days of the date of this order, clarifying that, in the Incremental Auction for the 2016-17 delivery year, PJM will sell back only non-Capacity Performance Resource commitments.

21. PJM also proposes to defer its decision on selling back any excess capacity for the 2017-18 delivery year, pending PJM's preparation of an updated load forecast for that year and the Supreme Court's ruling in EPSA.¹⁴ To ensure sufficient market transparency on this matter on a timely basis, we accept PJM's filing subject to the further condition that PJM submit an informational filing on or before November 15, 2016 to explain whether it intends to submit additional tariff revisions to sell back excess capacity for the 2017-18 delivery year resulting from the associated Transition Auction, and to explain why it does or does not intend to do so.

22. Direct Energy/PJM-ICC assert that PJM's filing should be rejected absent the submission of an analysis demonstrating that the savings attributed to the proposed sell-back will produce a net benefit for load, given cost increases in interrelated

¹² In its answer, PJM cites to stakeholder presentation materials suggesting that its intent, with respect to 2016-17 delivery year, is to release only non-Capacity Performance Resource commitments. *See* PJM answer at 2 (citing PJM presentation at a November 19, 2015 meeting of the Members Committee, <http://pjm.com/~media/committees-groups/committees/mc/20151119/20151119-item-02-incremental-auction-tariff-cleanup-presentation.ashx>).

¹³ Proposed PJM OATT at Attachment DD, section 5.12(b)(iii).

¹⁴ On January 25, 2016, the U.S. Supreme Court issued a ruling in the EPSA proceeding, subsequent to PJM's filing. *See Federal Energy Regulatory Comm'n v. Electric Power Supply Association*, Case Nos. 14-840, slip op. (U.S. Jan. 25, 2016).

markets. However, we find that PJM's proposed revisions, with the clarification directed above, are just and reasonable, because they allow PJM to account for additional capacity commitments procured as part of the Transition Auction for the 2016-17 delivery year, consistent with PJM's current tariff. Direct Energy/PJM-ICC's request that PJM be required to use either a price floor or a fixed price is an issue currently pending in an FPA section 206 proceeding, in Docket No. EL14-48-000, *et al.*¹⁵ We will not prejudge these broader, long-term issues here in addressing PJM's limited section 205 proposal, which applies to only the 2016-17 delivery year.

The Commission orders:

(A) PJM's proposed tariff changes are hereby accepted subject to condition, as discussed in the body of this order.

(B) PJM is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

¹⁵ See *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,108 (2014). In that order, the Commission instituted a proceeding under section 206 of the FPA, 16 U.S.C. § 824e (2012), currently pending, based on its finding that "PJM's existing tariff provisions may be unjust and unreasonable in that they fail to promote long-term reliability in its capacity market by possibly permitting speculative sell offers to be submitted into PJM's capacity market auctions" and instituted a proceeding under section 206 of the FPA in Docket No. EL14-48-000. *Id.* P 73.

(C) PJM is hereby directed to submit an informational filing, on or before November 15, 2016, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.