

157 FERC ¶ 61,235
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER16-1336-001

ORDER DENYING REHEARING

(Issued December 22, 2016)

1. On May 31, 2016, the Commission rejected proposed revisions to section 10A(d) of Attachment DD to the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT).¹ The May 31 Order found that PJM had not met its burden under section 205 of the Federal Power Act (FPA)² to justify its proposal to excuse a Capacity Performance Resource from Non-Performance Charges, provided the resource is following PJM’s dispatch instructions and operating consistent with a ramp rate previously approved by PJM a “PJM-acceptable ramp rate”.³

2. The PJM Utilities Coalition (Coalition) and its individual members, American Electric Power Service Corporation, Buckeye Power, Inc., The Dayton Power and Light Company, Duke Energy Kentucky, Inc., East Kentucky Power Cooperative, Inc., and Virginia Electric and Power Company seek rehearing of the May 31 Order. For the reasons discussed below, we deny the Coalition’s request for rehearing.

I. Background

3. In PJM’s initial Capacity Performance filing, PJM established a penalty and financial structure for obtaining capacity designed to ensure that all generators should be exposed to financial and market consequences if they failed to perform when needed by

¹ *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,213 (2016) (May 31 Order).

² 16 U.S.C. § 824d (2012).

³ *See* May 31 Order, 155 FERC ¶ 61,213 at PP 22, 28.

PJM for reliability (Performance Assessment Hours).⁴ In its filing in this proceeding, PJM proposed to exempt resources that could not operate due to constraints on their ramp rates from the penalties established under the Capacity Performance regime. In order to implement the ramp rate exemption in time for the 2016/2017 Delivery Year, PJM proposed, on a temporary basis, to establish the “PJM-acceptable ramp rate” referenced in its proposed OATT revisions⁵ for Capacity Performance resources using the average historical actual demonstrated ramp rates over a three-month reference period, with review and verification by PJM and the Independent Market Monitor for PJM (Market Monitor).⁶ PJM maintained that subjecting certain units with long ramp rates to Non-Performance Charges could cause potential operational problems if those units chose to self-schedule to remain in operation and thereby avoid potential penalties.⁷ The PJM Market Monitor, among others, filed comments asserting that PJM’s proposal was not sufficiently supported and should not be accepted.⁸

4. In the May 31 Order, the Commission found that PJM had failed to establish the justness and reasonableness of this proposal. The Commission first determined that the proposed ramp rate exemption ran counter to the fundamental predicate of Capacity Performance design by exempting certain generators with particular operating characteristics from the consequences of failing to perform during the periods when PJM most needed all generators to be available.⁹ Notwithstanding this inconsistency with the design of Capacity Performance, the Commission considered whether the proposed ramp rate was justified by PJM’s claim that operational difficulties would occur because Capacity Performance resources might have an incentive to avoid non-performance penalties by self-scheduling in advance of an anticipated Performance

⁴ See *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (2015) (Capacity Performance Order).

⁵ We note that PJM did not propose to specify the actual “PJM-acceptable ramp rate” in its OATT, but instead described the proposed method for determining this ramp rate in its transmittal letter, which presumably would be set forth in a manual.

⁶ See PJM April 1, 2016 Transmittal Letter at 7-8 and n.12. PJM committed to discuss “more refined approaches to determine the PJM-acceptable ramp rate” with its stakeholders following filing of the proposal. *Id.* at 7 n.12.

⁷ *Id.* at 4-7.

⁸ See May 31 Order, 155 FERC ¶ 61,213 at PP 10-13.

⁹ *Id.* P 24.

Assessment Hour.¹⁰ The Commission determined that PJM had not met its burden of showing sufficient likelihood that such operational difficulties would occur or that the consequences of such occurrences were sufficient to warrant compromising the predicate of Capacity Performance. The Commission explained that PJM operators could either ramp down flexible units or reject self-scheduling requests to avoid a reliability problem, and that such resources already had an incentive to properly maintain their units and follow PJM dispatch.¹¹ Nevertheless, to the extent that PJM were to experience operational difficulties after experience with the Capacity Performance program, the Commission encouraged PJM to work with its stakeholders to develop solutions better aligned with the program's goals and design.

5. On rehearing, the Coalition argues that the Commission should not have rejected the proposal because PJM met its burden of proof by showing that the proposed exemption was needed on an interim basis to avoid reliability and administrative issues, as evidenced by events experienced during the 2014 polar vortex.¹² In addition, the Coalition contends that PJM's proposal would not, as the May 31 Order concluded, have a negative impact on performance incentives under the Capacity Performance program.¹³ The Coalition maintains that the Commission erred in: (1) finding that PJM failed to meet its burden of proof to justify its proposal;¹⁴ (2) finding that PJM's proposal would have a negative impact on performance incentives under the Capacity Performance program;¹⁵ (3) disregarding evidence that PJM's proposal is a necessary interim solution to a real problem identified by PJM;¹⁶ (4) concluding that existing elements of the Capacity Performance program and other market rules are sufficient to avoid the reliability and administrative issues identified by PJM in support of its proposal;¹⁷

¹⁰ *Id.* PP 23, 25.

¹¹ *Id.* PP 25, 27.

¹² Rehearing Request at 4-11.

¹³ *Id.* at 11-14.

¹⁴ *Id.* at 4, 5-7.

¹⁵ *Id.* at 4, 5, 11-14.

¹⁶ *Id.* at 4, 5-10.

¹⁷ *Id.* at 3, 4, 5-11.

(5) failing to implement the proposal on an interim basis;¹⁸ (6) rejecting evidence regarding events during the 2014 polar vortex intended to illustrate the potential for reliability issues due to over-generation;¹⁹ and (7) effectively establishing a burden of proof standard that cannot be met to present evidence today of events that have not yet occurred.²⁰

II. Commission Determination

A. Procedural Matters

6. On July 15, 2016, the Market Monitor submitted a motion to answer and answer to the request for rehearing. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2016), prohibits an answer to a request for rehearing. Accordingly, the Market Monitor's answer is hereby rejected.

B. Substantive Matters

7. The Coalition's rehearing request does not offer any information or arguments that are new to this proceeding, and primarily reiterates arguments advanced in PJM's prior pleadings.²¹ The Commission already considered and addressed each of the arguments made in the rehearing request in the May 31 Order. The Coalition has thus presented no reason to reverse the Commission's determination therein.

8. We continue to find that PJM failed to meet its burden of proof to justify its tariff proposal.²² The Coalition contends that the Commission improperly discounted evidence that PJM's proposed exemption from non-performance penalties for capacity resources following PJM's dispatch according to a PJM-approved ramp rate was a necessary solution to address potential operational issues in the hours leading up to a Performance Assessment Hour.²³ To the contrary, the May 31 Order considered PJM's concerns, "carefully weigh[ed] ... the operational concerns documented in the record" against the

¹⁸ *Id.* at 4, 11, 12.

¹⁹ *Id.* at 2-3, 4, 7-9.

²⁰ *Id.*

²¹ *See* PJM May 9, 2016 Answer at 3-7.

²² *See* May 31 Order, 155 FERC ¶ 61,213 at PP 22, 28.

²³ Rehearing Request at 4-10.

potential negative impact on the Capacity Performance incentive structure, and ultimately determined that the existing incentives in the threat of a Non-Performance Charge and risk of losses due to self-scheduling were robust enough for resource owners to both properly maintain their units and follow PJM dispatch.²⁴ While the Coalition may disagree with the Commission's determination, it has presented no evidence or new arguments demonstrating that the Commission was arbitrary and capricious in reaching this result.

9. We further confirm that the Commission neither rejected nor misunderstood PJM's use of the 2014 polar vortex as a purported illustration of how generators might respond in a future event.²⁵ The Commission addressed this example in the May 31 Order, and the Coalition's rehearing request does not change our assessment.²⁶ Furthermore, while the Coalition alleges that the May 31 Order "effectively established an impossible standard for PJM's burden of proof" by declining to consider any past performance problems as indicating potential future issues,²⁷ the May 31 Order established no such standard. PJM based its proposal on the incentives created by implementation of Capacity Performance. Events occurring prior to such implementation are not dispositive of the way resources will perform under Capacity Performance. Moreover, the Commission found that, under the particular circumstances of this proceeding, the problems presented in the past to which PJM alluded were, in fact, designed to be mitigated by the Commission's acceptance of the Capacity Performance construct.²⁸ The prior evidence therefore provides little basis for using such events as the predicate for changing Capacity Performance. In fact, as the Commission pointed out, the proposal itself is at odds with the concept of Capacity Performance as it would exempt resources from penalties designed to ensure that they are available during a crisis.

²⁴ May 31 Order, 155 FERC ¶ 61,213 at PP 23, 25.

²⁵ Rehearing Request at 2-3, 4, 7-9.

²⁶ May 31 Order, 155 FERC ¶ 61,213 at P 26 (finding that the Capacity Performance program "was intended to provide new performance incentives to address problems operators faced during the polar vortex and to incent resource owners to be able to respond when called upon during a Performance Assessment Hour," and that a potential increase in self-scheduling requests should be offset by additional resource availability and flexibility).

²⁷ Rehearing Request at 4-5, 7.

²⁸ May 31 Order, 155 FERC ¶ 61,213 at P 26.

10. The Coalition reiterates and elaborates on PJM's description of the potential operational concerns that prompted its filing,²⁹ but provides no support for its assertion that PJM's proposal offers a "narrowly tailored" solution to this purported problem.³⁰ Instead, the Coalition emphasizes the fact that the proposal was supported by a majority of stakeholders and is an "interim solution."³¹ Neither of these arguments compels acceptance of PJM's proposal. First, while the Commission's practice is to give weight to stakeholder voting in its consideration of any proposal, "stakeholder support alone cannot ultimately prove that a rate design is just and reasonable."³² In the May 31 Order, the Commission agreed with the Market Monitor that PJM did not provide sufficient evidence to justify the proposed OATT revisions.³³

11. With respect to the Coalition's assertion that the Commission should have accepted PJM's proposal as an interim solution, PJM did not file the ramp rate exemption from performance penalties as an interim solution. Nor did PJM specify a sunset date for its proposal. The only "interim proposal" PJM made was an approach to calculating the ramp rate for the upcoming delivery year since insufficient time remained to establish the correct ramp rate.³⁴ Since the proposal to exempt ramp rates from performance penalties was not an interim solution, the Commission did not err in failing to analyze the proposal as an interim solution. Moreover, even if the entire proposal were considered interim, the Commission has found that temporary solutions are not subject to a lower standard

²⁹ Rehearing Request at 6-10.

³⁰ *Id.* at 5, 10.

³¹ *Id.* at 10-11.

³² *ISO New England Inc.*, 153 FERC ¶ 61,223, at P 22 (2015) (quoting *Am. Elec. Power Serv. Corp. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,083, at P 172 (2008)). See also *Southwest Power Pool, Inc.*, 152 FERC ¶ 61,226, at P 116 (2015) ("While we accord an appropriate degree of deference to [regional transmission organization] stakeholder processes, our decisions are based on our review of the record to determine whether a proposal is just and reasonable.") (citations omitted).

³³ May 31 Order, 155 FERC ¶ 61,213 at P 25.

³⁴ PJM April 1, 2016 Transmittal Letter at 7-8 and n.12 (stating that the proposal is intended to be "an interim solution due to the complex nature of creating ramp rate as a parameter limited schedule value," and committing "to work further on this issue to discuss additional, more refined approaches to determine the PJM-acceptable ramp rate").

of evaluation.³⁵ PJM was still required to demonstrate that its proposal was just and reasonable. The May 31 Order examined the record, weighed the concerns, and found that this burden was not met.³⁶

12. Finally, we are not persuaded by the Coalition's contentions that PJM's proposal will not undercut the fundamental rationale of the Capacity Performance construct.³⁷ Consistent with the rationale PJM provided in its initial Capacity Performance filing, we continue to find that PJM has failed to justify its exemption from the financial and market consequences for generators with lengthy ramp rates, but not for resources with other parameter limitations.³⁸ The Commission's rationale on this point was explained in the May 31 Order, and the Coalition presents no compelling reason to revisit this determination.

The Commission orders:

The Coalition's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³⁵ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 154 FERC ¶ 61,073, at P 17 (2016) (clarifying that the interim nature of a proposal was not the Commission's basis for its acceptance, and confirming that the Commission found the interim proposal to be both just and reasonable and a reasonable solution to the issue at hand); *Westar Energy, Inc.*, 137 FERC ¶ 61,142, at P 30 (2011).

³⁶ See May 31 Order, 155 FERC ¶ 61,213 at P 25.

³⁷ Rehearing Request at 4, 5, 11-14.

³⁸ May 31 Order, 155 FERC ¶ 61,213 at P 24 (citing PJM Revisions re: Capacity Performance, Docket No. ER15-623-000, at 46 (filed Dec. 12, 2014)).