

165 FERC ¶ 61,188
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur and Richard Glick.

PJM Interconnection, L.L.C.

Docket Nos. ER19-19-000
ER19-25-000

ORDER ACCEPTING TARIFF REVISIONS SUBJECT TO CONDITION AND
REJECTING ALTERNATIVE TARIFF REVISIONS

(Issued November 29, 2018)

1. On October 1, 2018, PJM Interconnection, L.L.C. (PJM) made a series of filings related to its credit policies regarding defaults on Financial Transmission Rights (FTR) in Docket Nos. ER19-19-000, ER19-23-000, ER19-24-000, and ER19-25-000. In each of these cases, PJM stated, “Although these four filings are interrelated, each filing is a standalone filing and can and should be accepted on its own merits.”¹

2. As relevant to this order, in Docket No. ER19-19-000, PJM submitted, pursuant to section 205 of the Federal Power Act (FPA),² revisions to the PJM Open Access Transmission Tariff (Tariff), Attachment K-Appendix, sections 7.3.1 and 7.3.9, and Schedule 1, sections 7.3.1 and 7.3.9 as well as sections 15.1.2A and 15.1.2A(1) of the Amended and Restated Operating Agreement of PJM (Operating Agreement). PJM states that the revisions implement provisions that require defaulted FTR portfolios to go to settlement rather than being liquidated through auction.

3. In Docket No. ER19-25-000, PJM separately submitted, pursuant to FPA section 205, revisions to Attachment K-Appendix, section 7.3.9(g) of the Tariff and Schedule 1, section 7.3.9 of the Operating Agreement. PJM states that these revisions would extend the applicability of section 7.3.9(g)³ through the earlier of the effective date that the

¹ See PJM, Docket No. ER19-19-000, Transmittal Letter at 2 n.2.

² 16 U.S.C. § 824d (2012).

³ Section 7.3.9(g) states that, “For the period of August 24, 2018 *through November 30, 2018*, the liquidation process of a defaulting Member’s Financial Transmission Rights...shall not apply.” (emphasis added).

Commission accepts the revisions proposed in Docket No. ER19-19-000 or February 28, 2019.⁴

4. As discussed below, we accept PJM's proposed revisions in Docket No. ER19-19-000, effective December 1, 2018, as requested, subject to the condition that PJM revise Operating Agreement section 7.3.9(e) and the identical provision in Tariff Attachment K-Appendix, section 7.3.9(e) to remove language related to bilateral FTR transactions that is predicated on the Commission's acceptance of the filing in Docket No. ER19-24-000.⁵ Because we accept PJM's proposed revisions in Docket No. ER19-19-000 subject to condition, we reject as moot PJM's proposed alternative Tariff revisions in Docket No. ER19-25-000.

I. Background

5. PJM explains that FTRs are a financial product that allows market participants to hedge the costs of day-ahead transmission congestion, allowing market participants to offset potential charges related to the price risk of delivering energy to the grid. However, PJM notes that there is no requirement that FTRs be used only to hedge physical power flows, but rather, FTRs are financial contracts entitling the FTR holder to a stream of revenues or charges.⁶

6. On June 21, 2018, PJM declared GreenHat Energy, LLC (GreenHat) to be in payment default of its financial obligations associated with GreenHat's sizable FTR portfolio for the 2018/2019, 2019/2020, and 2020/2021 planning periods. As a result of this declaration, PJM initiated procedures to close out and liquidate GreenHat's FTRs in

⁴ PJM explains that its revisions in Docket No. ER19-25-000 serve *only* as a "backup solution" in the event the Commission does not accept, or delays the implementation of, the revisions in Docket No. ER19-19-000. PJM, Docket No. ER19-25-000, Transmittal Letter at 1-2; PJM, Docket Nos. ER19-19-000 and ER19-25-000, Letter to Clarify Filing, at 1-2.

⁵ A contemporaneous deficiency letter has been issued in Docket No. ER19-24-000 requiring PJM to provide more information related to bilateral FTR transactions.

⁶ The FTR serves as a benefit, or credit, to the holder if it represents a flow of energy in the same direction as the congested flow. The FTR serves as a liability, or charge, to the holder if it represents a flow of energy in the opposite direction as the congested flow.

accordance with Tariff, Attachment K-Appendix, section 7.3.9. According to PJM, the GreenHat default is, by its nature, ongoing.⁷

7. Section 7.3.9 of Attachment K-Appendix requires PJM, when a member default is declared, to close out and liquidate the member's FTR portfolio by, among other requirements: (1) "offer[ing] for sale all current Planning Period FTR positions within the defaulting member's portfolio in the next available monthly balance of Planning Period FTR auction at an offer price designed to maximize the likelihood of liquidation of those positions;"⁸ (2) offering any FTR positions that do not settle until the next or subsequent Planning Periods into the next available FTR auction where such positions would be expected to clear, and in that auction, offering the entire FTR portfolio of the defaulting member at an offer price designed to maximize the likelihood of liquidation of those positions;⁹ (3) where, based on the auction's preliminary solution, any of the closed-out FTR positions would set the market price, offering for sale only one-half of each FTR position and re-execute the auction, and then offering the FTR positions that were not liquidated in the next auction;¹⁰ and (4) treating the liquidation of the defaulting member's FTR portfolio "pursuant to the foregoing procedures" as the "final liquidated settlement amount" that is included in calculating a Default Allocation Assessment.¹¹ Section 7.3.7, Announcement of Winners and Prices, provides that within five business

⁷ PJM states that GreenHat has not met any of its obligations with regard to the FTR positions it held for periods that have since settled, and the positions it held that will settle in the future will continue to settle without payment from GreenHat in every hour of every day from now through May 31, 2021. As a result, the effects of GreenHat's payment default continue to accrue as time passes, and will not stop accruing until May 31, 2021, when the last of GreenHat's FTR positions will go to settlement. PJM, Docket No. ER19-19-000, Transmittal Letter at 5-6.

⁸ Tariff, Attachment K-Appendix, section 7.3.9(c).

⁹ See Tariff, Attachment K-Appendix, section 7.3.9(d).

¹⁰ See Tariff, Attachment K-Appendix, section 7.3.9(e). Under the current Tariff, if offering only one-half of each FTR position in the upcoming auction would still set the price, PJM would not offer the defaulted FTRs for liquidation in that month, with the goal being that FTRs being liquidated may not set the price in the FTR auction.

¹¹ Tariff, Attachment K-Appendix, section 7.3.9(f). The Default Allocation Assessment is allocated to all PJM Members. Operating Agreement, section 15.2.2.

days after the close of the bid and offer period for a monthly FTR auction, PJM shall post the winning bidders and the price at which each FTR was awarded.¹²

8. On July 26, 2018, in Docket No. ER18-2068-000, PJM filed under section 205 of the FPA to seek waiver of the liquidation process in section 7.3.9 to permit it to sell in the July, August, September, and October monthly FTR auctions, and the long-term FTR auction conducted in September 2018, only the portion of GreenHat's FTR 2018/2019 planning period portfolio effective in the prompt month (i.e., the portion of the portfolio that is to become effective for the next calendar month). PJM stated that waiver was necessary to provide time for PJM to engage with stakeholders to potentially develop an alternative approach to the liquidation process outlined in the Tariff.¹³ The waiver request is currently pending before the Commission.

9. PJM filed, and the Commission accepted, a filing in Docket No. ER18-2289-000 that added new Tariff section 7.3.9(g), which temporarily suspends PJM's current process in section 7.3.9 regarding liquidation of defaults, and required that defaulted FTR portfolios go directly to settlement for the period between August 24, 2018 and November 30, 2018.¹⁴ Once this interim period terminates, the liquidation process for defaulted FTR portfolio in section 7.3.9 would then again apply.

II. PJM's Filings

10. PJM submitted a FPA section 205 filing in Docket No. ER19-19-000 to revise its Tariff and Operating Agreement to implement provisions that require defaulted FTR portfolios to go directly to settlement¹⁵ rather than being liquidated through the FTR

¹² Tariff, Attachment K-Appendix, section 7.3.7.

¹³ PJM, Docket No. ER18-2068-000, Transmittal Letter at 2.

¹⁴ As noted above, section 7.3.9(g) states that, "For the period of August 24, 2018 through November 30, 2018, the liquidation process of a defaulting Member's Financial Transmission Rights...shall not apply." See *PJM Interconnection, L.L.C.*, Docket No. ER18-2289-000 (Oct. 19, 2018) (delegated order).

¹⁵ PJM states that by "go to settlement," PJM means the FTR positions of a defaulting member will accumulate all charges and credits associated with the position that would have accrued had the defaulting member not defaulted, including, but not limited to, applicable (a) congestion charges and credits; (b) daily FTR auction charges to which the defaulting member committed when acquiring the FTR positions on which the member defaulted; (c) administrative charges under Tariff, Schedule 9; and (d) any other charges or credits applicable to the FTR positions on which the member defaulted. PJM further states that the net amount of these charges and credits, after consideration of any

auction. PJM explains that the defaulting member's rights with respect to the FTR positions are terminated and the defaulting member's obligations remain unchanged, but the liquidation auctions do not occur.¹⁶ Alternatively, if the Commission were to reject this proposal or delay the implementation of this proposal, then PJM requests in Docket No. ER19-25-000 an extension of the interim provision accepted in Docket No. ER18-2289-000 for the period from December 1, 2018 to February 28, 2019. PJM states that the purpose of the extension is to consider an alternative long-term methodology for handling defaulted FTR portfolios.¹⁷ PJM asserts that if the Commission accepts PJM's filing in Docket No. ER19-19-000 then PJM's filing in Docket No. ER19-25-000 is rendered moot.¹⁸

11. In support of its filing to permanently require defaulted FTR portfolios to go directly to settlement, PJM explains that the proposed revisions are just and reasonable and have four features in particular that make them more desirable than the existing liquidation rules. First, the proposal will avoid distortions of the FTR market triggered by forced liquidations of FTR portfolios when there are not enough willing buyers to rationally absorb the supply in an economically efficient manner. Second, the proposal will avoid the need to pay potential FTR buyers high risk premiums associated with the liquidation of undesirable money-losing positions. Third, the proposal provides a simple, practical and transparent process for valuing a loss resulting from a member's ongoing default. Lastly, the proposal reflects an approach chosen by PJM members to address current member defaults as well as providing a resolution process for future member defaults in the FTR markets.¹⁹

12. PJM liquidated GreenHat's August FTR positions. PJM states that it paid approximately four times the settlement value to liquidate the GreenHat August FTR positions (\$24.1 million compared to \$6.1 million). PJM asserts that this transfer of

financial security held by PJM and any indemnification by any bilateral sellers to the extent any of the defaulting member's FTRs were acquired through any bilateral transactions, would be billed to PJM's non defaulting members in accordance with the Default Allocation Assessment provisions of the Operating Agreement. PJM, Docket No. ER19-19-000, Transmittal Letter at 2.

¹⁶ PJM notes that this proposal does not affect the allocation of the default among members. PJM, Docket No. ER19-19-000, Transmittal Letter at 2.

¹⁷ PJM, Docket No. ER19-25-000, Transmittal Letter at 2-3.

¹⁸ *Id.* at 1.

¹⁹ PJM, Docket No. ER19-19-000, Transmittal Letter at 3.

wealth was not anticipated when adopting the liquidation process, but must now be prevented from continuing.²⁰ PJM recognizes that the substantial risk premium of the August positions may or may not be experienced in the future. However, PJM states that it and its members agreed it is preferable to accept the risk to the members posed by unknown and variable future settlement charges and credits rather than accept the risk to the members posed by the unknown, but anecdotally extreme liquidation risk premiums charged in the liquidation process. Further, PJM claims that when the liquidation provisions were established in 2009, PJM members were interested in quantifying their total default exposure for the FTR positions of a defaulting member as soon as possible, but did not anticipate that such a large volume of positions might need to be liquidated. PJM states that the voting results for this filing illustrate that members would prefer to have FTR positions of defaulted members go to settlement rather than paying liquidation premiums, even if that means the members will not know the total default exposure as quickly.²¹

13. PJM proposes to implement its proposed revisions in Docket No. ER19-19-000 effective December 1, 2018.²² In the event the Commission does not accept PJM's filing in Docket No. ER19-19-000, PJM also requests December 1, 2018 as the effective date for its alternative filing in Docket No. ER19-25-000.

III. Notice of the Filings

14. Notice of PJM's filings in Docket No. ER19-19-000 and ER19-25-000 was published in the *Federal Register*, 83 Fed. Reg. 50,915 (2018), with interventions and protests due on or before October 22, 2018. Delaware Division of the Public Advocate, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (Market Monitor), Elliott Bay Energy Trading, LLC, the Office of the People's Counsel for the District of Columbia, Dominion Energy Services, Inc., the AES Corporation, EDF Trading North America, LLC and EDF Energy Services, LLC, PPL Electric Utilities Corporation, NRG Power Marketing LLC, Southern Maryland Electric Cooperative, Inc., LS Power Associates, L.P., Macquarie Energy LLC, North Carolina

²⁰ *Id.* at 6.

²¹ *Id.* at 7-8.

²² PJM notes that its requested effective date is two days before the beginning of PJM's December long-term FTR auction. *Id.* at 10.

Electric Membership Corporation, and Delaware Municipal Electric Corporation filed timely motions to intervene in both dockets.²³

15. In both Docket Nos. ER19-19-000 and ER19-25-000, Duke Energy Corporation (Duke Energy), PJM Power Providers Group (P3), FirstEnergy Service Company, American Electric Power Service Corporation, The Dayton Power and Light Company,²⁴ and East Kentucky Power Cooperative, Inc. (collectively, PJM Utilities Coalition), and Direct Energy Services, Exelon Corporation, Old Dominion Electric Cooperative, American Municipal Power, Inc., NextEra Energy Marketing, LLC, and the PJM Industrial Customer Coalition (collectively, Impacted Members) filed timely motions to intervene and comments in support. Additionally, in Docket No. ER19-25-000, DC Energy, LLC, Mercuria Energy America, Inc., Mercuria SJAK Trading, LLC, and TPC Energy, LLC (collectively, Joint Commenters) filed timely motions to intervene comments in support.²⁵

16. In Docket No. ER19-19-000, Shell Energy North America (US), L.P. (Shell Energy) and DC Energy, LLC, Mercuria Energy America, Inc., Mercuria SJAK Trading, LLC, and TPC Energy, LLC (collectively, Joint Protesters) filed timely motions to intervene and protests. PJM and the Market Monitor filed answers to protests.

IV. Responsive Pleadings

A. Comments and Protests

17. Comments in support and protests were filed in Docket No. ER19-19-000. There were no protests filed in opposition to PJM's alternative proposal in Docket No. ER19-25-000, only comments in support.

18. P3, PJM Utilities Coalition, Duke Energy and Impacted Members state that the proposals in Docket Nos. ER19-19-000 and ER19-25-000 are necessary reforms and will minimize the cost and risk of PJM members' collective obligation associated with the

²³ Elliott Bay Energy Trading, LLC and The Office of the People's Counsel for the District of Columbia filed motions to intervene in Docket No. ER19-19-000 only.

²⁴ The Dayton Power and Light Company did not file a motion to intervene in either docket.

²⁵ As noted below, DC Energy, LLC, Mercuria Energy America, Inc., Mercuria SJAK Trading, LLC, and TPC Energy, LLC collectively filed a protest in Docket No. ER19-19-000.

GreenHat default.²⁶ While P3 urges the Commission to accept the revisions in Docket No. ER19-19-000, P3 supports PJM's proposal in Docket No. ER19-25-000 as a backstop solution if the Commission rejects the former.²⁷ PJM Utilities Coalition and Duke Energy assert that while it is not certain that the proposals will minimize total costs associated with the GreenHat default, the proposals should minimize the risk to PJM members relative to the status quo.²⁸ Impacted Members note that there is evidence beyond the August auction results to support PJM's proposal.²⁹ PJM Utilities Coalition and Duke Energy urge the Commission to accept the proposals and to direct PJM to continue to evaluate the GreenHat FTR portfolio and identify further methods to reduce costs to members.³⁰

19. P3 and Impacted Members agree with PJM that the revisions proposed in Docket No. ER19-19-000 will improve the existing FTR liquidation rules and provide members who bear the burden of FTR defaults greater ability to manage the costs and risks associated with such defaults by, for example, providing them with the optionality to hedge their exposure.³¹ Impacted Members state that under PJM's proposal, members have options to fix their exposure to congestion price volatility risk; in addition, a subset of members bidding to buy and sell defaulting positions in individual auctions will engender competition and not overwhelm the auction with the entire GreenHat portfolio.³² In addition, PJM members engaging in hedging transactions would have increased flexibility and not be required to offer at a "price designed to maximize the likelihood of liquidation of those positions" as currently required under section 7.3.9 (c)

²⁶ P3 Comments at 1; PJM Utilities Coalition Comments at 1-2; Duke Energy Comments at 1-2; Impacted Members Comments at 3, 6. Impacted Members note that the results of the August auction indicate that the cost of liquidation of the GreenHat portfolio could be approximately \$289.2 million per year as opposed to \$73 million per year to settle the positions under PJM's proposal.

²⁷ P3 Comments at 3-4.

²⁸ PJM Utilities Coalition Comments at 2; Duke Energy Comments at 2.

²⁹ Impacted Members Comments at 7-9.

³⁰ PJM Utilities Coalition Comments at 2; Duke Energy Comments at 2.

³¹ P3 Comments at 2-3; Impacted Members Comments at 3-4.

³² Impacted Members Comments at 4-5.

of the Operating Agreement.³³ Impacted Members argue that the PJM FTR market cannot provide the necessary liquidity to provide an efficient price outcome, particularly when thousands of FTR paths are sent to auction with only a few participants able to purchase them.³⁴

20. Shell Energy and Joint Protesters oppose PJM's proposal in Docket No. ER19-19-000. They argue that PJM's proposal is a reaction to the GreenHat default, an exceptional circumstance that should not dictate a generally applicable policy change.³⁵ Shell Energy states that a default of similar magnitude should not occur again due to PJM's efforts to improve its credit requirements for FTR market participants.³⁶ Shell Energy states that, without the ability to liquidate a defaulting member's FTR positions, PJM will have no ability to mitigate losses associated with the default, and PJM members will be exposed to settlement risks associated with holding the positions.³⁷

21. Joint Protesters argue that PJM's proposal is unjust and unreasonable because it prolongs uncertainty, could increase the size of the default, inhibits liquidity by preventing the sale of valuable hedges, and disrupts the orderly unwinding or reorganization of the defaulting entity.³⁸ Joint Protesters contend that although rapid liquidation of the full GreenHat FTR portfolio may not have resulted in a just and reasonable outcome, for other, future defaults, full liquidation will likely be the best

³³ *Id.* at 5.

³⁴ *Id.* at 7.

³⁵ Joint Protesters Protest at 1-3; Shell Energy Protest at 2. Joint Protesters explain that for some settlement periods, the GreenHat FTR portfolio includes FTRs with a negative expected value in volumes greater than the typical liquidity in a PJM monthly auction. They state that because PJM's credit policy imposes a punitive adder to PJM's calculated collateral requirement in months where an FTR portfolio was acquired for a negative price, liquidation of the entire GreenHat FTR portfolio would have required hundreds of millions of dollars in additional collateral from the market participants willing to take on a portion of the GreenHat FTR portfolio, which would have seriously inhibited the liquidity in an auction to fully liquidate the large, negatively valued GreenHat FTR portfolio. Joint Protesters Protest at 2-3.

³⁶ Shell Energy Protest at 2.

³⁷ *Id.*

³⁸ Joint Protesters do not oppose the temporary proposed revisions in Docket No. ER19-25-000.

solution for all market participants. Joint Protesters explain that, because FTR settlements can deviate substantially from market expectations, leading to large losses, immediate liquidation has two benefits: (1) it immediately removes the forward risk exposure inherent in keeping the contracts open; and (2) it closes out the uncertainty associated with the otherwise unknown size of the default. They argue that PJM's proposal maintains an unknown risk, allowing the uncertainty regarding the ultimate size of the GreenHat default to continue for each month over the next few years and will similarly extend the uncertainty regarding the ultimate size of any future defaults. In contrast, Joint Protesters contend that liquidating FTRs by auction provides certainty regarding the liability that must be assumed by all non-defaulting market participants, shifting the ongoing settlement risk to willing FTR auction participants.³⁹

22. Joint Protesters also argue that PJM based its proposal on a limited data set, i.e., the results of the July 2018 auction, in which PJM liquidated the GreenHat August FTRs for less than their ultimate settlement value. Joint Protesters state that one month is an extremely small sample size for auction clearing and FTR settlement data and is an inadequate basis for the major policy reversal. Joint Protesters point out that, even with the GreenHat FTR portfolio (which includes FTRs settling through May 2021), there may be conditions in the next three years, such as weather, that result in settlement liabilities substantially larger than the sums paid at auction to the market participants willing to assume the risk premium. Further, Joint Protesters argue that in most circumstances, and particularly for future defaults subject to proposed credit and collateral requirement changes, the risk premium at a FTR liquidation auction would be less than that for GreenHat's August 2018 FTRs, or even non-existent, and auction prices would not result in a greater liability than holding a defaulting market participant's FTR portfolio open through settlement. Namely, they argue that smaller volumes of less risky FTRs could be easily absorbed into the wider FTR market upon liquidation. Joint Protesters state that in future defaults, some of the FTRs in the defaulting portfolio could have a positive value upon liquidation,⁴⁰ and preventing these positively valued FTRs from liquidating would delay an offset to current unfunded liabilities and could limit the capacity available for valuable hedges in future periods.⁴¹

23. Joint Protesters further assert that PJM's proposal is contrary to the treatment of analogous financial contracts, specifically in default or bankruptcy, where the portfolio is liquidated and does not remain open through settlement. Joint Protesters note that when

³⁹ Joint Protesters Protest at 8-9.

⁴⁰ For example, due to a deterioration in value of the FTR portfolio relative to its original purchase price, but still retaining a positive expected settlement value. *Id.* at 5-6.

⁴¹ *Id.* at 4-6.

an entity declares bankruptcy, there is an exception to the automatic stay that provides for the immediate liquidation of “any commodity contract,” including commodity futures contracts and cleared swaps that are analogous to FTRs. Accordingly, Joint Protesters argue that portfolios of financial contracts, like FTRs, should be liquidated to capture any value their component contracts may have and minimize the settlement risk to other market participants.⁴²

24. Joint Protesters assert that because PJM has not demonstrated that its proposal is a just and reasonable long-term policy, PJM should be required to maintain its current liquidation process and pursue limited exceptions or waivers to its policy when necessary due to exceptional circumstances. Joint Protesters argue that this approach provides PJM the flexibility and discretion to balance the costs and the risks of liquidating a defaulting party’s FTR portfolio at a potentially significant risk premium versus requiring the market participants to bear the settlement risk of the portfolio. Rather than providing flexibility, Joint Protesters argue that PJM’s proposal takes away the best tool PJM has available for capping and diffusing the risk associated with a defaulted FTR portfolio to willing parties.⁴³

B. Answers

25. PJM argues that the protestors argue for alternate approaches that fall outside of the applicable legal standard to section 205 filings.⁴⁴ PJM explains that its members considered more than twenty options for this proposal, including maintaining the status quo. PJM explains that since its members pay for the costs defaults such as GreenHat’s, deference should be given to its members’ preference, and this proposal was the preferred approach.⁴⁵ PJM supports its proposal provides a reliable method of settlement in which a market participant can plan a risk management strategy.⁴⁶

26. PJM states that it is true that GreenHat’s default is the impetus for its proposal, but this is for good reason because the default is ongoing through 2021.⁴⁷ PJM argues that

⁴² *Id.* at 6-7.

⁴³ *Id.* at 10.

⁴⁴ PJM Answer at 4.

⁴⁵ *Id.* at 5.

⁴⁶ *Id.* at 6.

⁴⁷ *Id.* at 6.

the protestors overlook several benefits to shifting from liquidation, including: (1) many FTR auctions lack liquidity making liquidation challenging; (2) settlement alleviates significant price divergence from the day-ahead market, as FTRs would not be offered at a price to maximize the probability of liquidation; (3) risk premiums for low or negatively valued FTRs are avoided; (4) settlement is more transparent; and (5) PJM members strongly support PJM's proposal.⁴⁸

27. PJM explains that its FTR market differs from commodity markets in several ways, in response to arguments that its proposal deviates from common treatment of similar financial contracts that are subject to default.⁴⁹ PJM states that this includes the fact that FTR markets have less frequent market reference prices, lower liquidity compared to exchange-traded products effects price formation under limited competition and ability to liquidate FTR positions, and have no additional risk management from intermediary brokers.⁵⁰ PJM continues to explain that FTR markets, unlike other financial markets, have lower barriers to entry as a result of electricity market regulation, have fewer layers of collateral available to cover defaults, and is tied to physical limitations of the electrical system.⁵¹

28. PJM explains that it would rather rely on a revised Tariff than seeking waivers while maintaining its status quo.⁵²

29. The Market Monitor states that it shares some of the concerns raised by protestors. The Market Monitor elaborates that the most general concern is that PJM not impose a long-term solution without further, in depth, discussions about the best options to address future defaults under a range of scenarios.⁵³

30. The Market Monitor asserts that during the stakeholder process the Market Monitor described a proposal that would contain FTR defaults within the Auction Revenue Rights (ARR)/FTR construct rather than distribute them to all PJM members. Specifically, the Market Monitor explains that PJM could eliminate FTR positions and

⁴⁸ *Id.* at 6-7.

⁴⁹ *Id.* at 7.

⁵⁰ *Id.* at 8.

⁵¹ *Id.*

⁵² *Id.* at 9.

⁵³ Market Monitor Answer at 2.

associated ARR obligations of the defaulting member and apply its existing rules and procedures that govern when revenues are less than target allocations.⁵⁴

V. Discussion

A. Procedural Matters

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

32. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018) prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We accept PJM's and the Market Monitor's answers because they provide information that assisted us in our decision-making process.

B. Substantive Matters

33. We find that PJM's proposal in Docket No. ER19-19-000 to permanently require defaulted FTR portfolios to go directly to settlement is just and reasonable. The revised proposal may prevent potentially large risk premiums that result from a lack of liquidity in the FTR auction in which an FTR default liquidation occurs. We acknowledge that inherent in these revisions, PJM stakeholders are exchanging one set of risks for another. By adopting an approach that may prevent a potential risk premium on liquidation, PJM stakeholders may in exchange experience increased periods of uncertainty associated with potential exposure to congestion risk. The Commission recognizes that PJM, on behalf of the stakeholders who ultimately bear the cost of default, assessed such trade-offs, including the risk tolerance of its stakeholders, and this proposal is the result of such an assessment. While we acknowledge that there are potential downsides to not liquidating defaulted portfolios through the FTR auctions, we cannot find that PJM's choice to allow FTR positions to go to settlement is unjust and unreasonable.

34. Joint Protesters and the Market Monitor argue that there may be better ways of handling defaulted portfolios. Joint Protesters also assert that PJM filed its proposal in response to an exceptional circumstance of the GreenHat default and based on a limited data set (i.e., the results of the July 2018 auction, in which PJM liquidated the GreenHat August FTRs for less than their ultimate settlement value), and it is an inadequate basis for a major policy reversal. However, we find that whether a proposal is just and reasonable is not solely determined by the set of circumstances that prompted PJM to file its proposal, and a party filing a proposal pursuant to FPA section 205 need not

⁵⁴ *Id.* at 9.

demonstrate that its proposal is the best option, but only that it is just and reasonable.⁵⁵ While the GreenHat default may prove to be an exceptional circumstance, in fashioning its revised proposal, it was reasonable for PJM to consider how its defaulted FTR liquidation provisions addressed that default.

35. Joint Protesters further argue that in future defaults, some of the FTRs in the defaulting portfolio could have a positive value upon liquidation, and preventing these positively-valued FTRs from liquidating would delay an offset to current unfunded liabilities and could limit the capacity available for valuable hedges in future periods. We agree that, as PJM explains, risk premiums may or may not be experienced in the future. However, if risk premiums are experienced, it could result in significant and unnecessary charges to PJM members.

36. Finally, Joint Protesters argue that PJM's proposal is contrary to the treatment of analogous financial contracts, specifically in default or bankruptcy, where the portfolio is liquidated and does not remain open through settlement. The treatment of defaults in other situations does not demonstrate that the choice made by PJM, and its members, to allow settlement of these positions is unjust and unreasonable.

37. As noted above, PJM made several related filings to reform its treatment of defaulted FTR positions, stating that each of those filings is a standalone filing that can be accepted regardless of the treatment of the other filings. However, section 7.3.9(e) as set forth in Docket No. ER19-19-000 does not stand alone. Rather, the language in that section related to bilateral FTR transactions is predicated on the Commission's acceptance of the filing in Docket No. ER19-24-000, in which a deficiency letter has been issued. In order to comply with PJM's stated intent to have each of these filings stand alone, we, therefore, will accept PJM's filing in Docket No. ER19-19-000 on the

⁵⁵ *Petal Gas Storage, L.L.C. v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007) ("FERC is not required to choose the best solution, only a reasonable one"); *see also Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) ("FERC has interpreted its authority to review rates under the FPA as limited to an inquiry into whether the rates proposed by a utility are reasonable – and not to extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs."); *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,282, at P 31 (2009) (finding that, because the Commission found the independent system operator's proposal to be just and reasonable, the Commission need not assess the justness and reasonableness of an alternative proposal).

condition⁵⁶ that PJM revise Operating Agreement section 7.3.9(e) and the identical provision in Tariff, Attachment K-Appendix, section 7.3.9(e) in the following manner:

~~For all Financial Transmission Right positions within the defaulting Member's Financial Transmission Right portfolio that have not been not assumed by bilateral seller pursuant to section (e), above, notwithstanding section 7.3.9(a) of this Schedule, the actual net charges or credits resulting from the defaulting Member's Financial Transmission Rights positions for which PJM Settlement acted as counterparty as calculated through the normal settlement processes shall be included in calculating the Default Allocation Assessment charges as described in Operating Agreement, section 15.1.2.2. [insert correct section]⁵⁷, with the obligation for net charges on positions in the defaulting Member's Financial Transmission Rights portfolio obtained through bilateral transactions remaining with the indemnifying seller. The resulting Default Allocation Assessments shall in no way relieve the defaulting Member of its obligations, including, without limitation, the defaulting Member's obligations arising from or associated with the full value of its default.~~

38. We direct PJM to make these revisions in a compliance filing within 30 days of the date of this order. Because we accept PJM's proposed revisions in Docket No. ER19-19-000 subject to condition, we reject as moot PJM's filing in Docket No. ER19-25-000.

The Commission orders:

(A) PJM's proposed Tariff revisions in Docket No. ER19-19-000 are hereby accepted, subject to condition, effective December 1, 2018, as requested, as discussed in the body of this order.

(B) PJM's proposed alternative Tariff revisions in Docket No. ER19-25-000 are hereby rejected, as discussed in the body of this order.

⁵⁶ The United States Court of Appeals for the District of Columbia Circuit has held that, in certain circumstances, the Commission has "authority to propose modifications to a utility's [FPA section 205] proposal *if the utility consents to the modifications.*" *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017).

⁵⁷ Operating Agreement, section 15.1.2.2 does not exist in this filing.

(C) 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.

By the Commission. Commissioner McIntyre is not voting on this order.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.