

121 FERC ¶ 61,089
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

PJM Interconnection, L.L.C.

Docket Nos. ER07-1036-000
ER07-1036-001

ORDER ACCEPTING IN PART AND REJECTING IN PART TARIFF REVISIONS

(Issued October 26, 2007)

1. On June 14, 2007, PJM Interconnection, L.L.C. (PJM) filed revisions to its Credit Policy, Attachment Q of its Open Access Transmission Tariff (OATT). The revisions primarily address credit requirements for counterflow positions taken in the Financial Transmission Rights (FTR) markets administered by PJM. PJM requests an effective date of June 15, 2007. This order accepts PJM's proposed tariff revisions with respect to credit responsibility for traded FTRs, subject to conditions, as described below, to become effective as of the date of the issuance of this order. The Commission will reject PJM's other proposed tariff revisions.

Background

2. On February 1, 2006, PJM filed proposed revisions to its Credit Policy to incorporate credit requirements for FTR auction products. PJM explained that FTR credit requirements had previously been a part of its business rules, but it believed that the potential default risk required mandatory and clearly enforceable FTR credit requirements. Therefore, PJM established a separate section in its Credit Policy, *Financial Transmission Right Auctions*, including newly defined terms. The Commission accepted PJM's proposed Credit Policy revisions, effective April 1, 2006.¹

3. PJM's Credit Policy allows for two types of FTR positions: concurrent flow FTRs and counterflow FTRs. Each FTR specifies a direction along a path from a specified source to a specified sink. Holders of FTRs receive positive congestion revenues whenever congestion in the physical market occurs in the same direction as the direction specified in the FTRs, which is the case for most FTRs. Since these concurrent flow

¹ *PJM Interconnection, L.L.C.*, Docket No. ER06-594-000 (March 22, 2006) (unpublished letter order).

FTRs are valuable, market participants pay a positive price to purchase them. However, counterflow FTRs specify a path where congestion in the physical market is in the opposite direction from the FTRs. Holders of counterflow FTRs *pay* congestion revenues to the ISO. Because counterflow FTRs impose a payment liability, the price of counterflow FTRs are typically negative, which means that the ISO pays market participants to acquire them.

Notice of Filings and Responsive Pleadings

4. Notice of PJM's June 14, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 35,457 (2007), with interventions, comments and protests due on or before July 5, 2007. A timely motion to intervene was filed by American Municipal Power-Ohio, Inc. A timely motion to intervene and protest was filed by EPIC Merchant Energy, LP (EPIC) and SESCO Enterprises, LLC (collectively Financial Marketers). On July 16, 2007, a motion for leave to answer and answer was filed by PJM.

5. Commission Staff sent PJM a deficiency letter on August 9, 2007, asking for additional information.² On August 29, 2007, PJM amended its initial filing with responses to the Commission's information requests. Notice of the amendment was published in the *Federal Register*, 72 Fed. Reg. 51,428 (2007), with interventions, comments and protests due on or before September 19, 2007. EPIC filed a protest one day out of time.

Filings and Protests

A. PJM's June 14, 2007 Filing

6. In its June 14, 2007 filing, PJM proposes revisions to its Credit Policy with respect to counterflow FTRs, arguing that the current tariff provisions unnecessarily expose the PJM membership to significant credit risks that must be reduced as soon as possible. PJM states that a circumstance that it confronted earlier this year revealed the significant credit risks, and because a similar (or worse) circumstance could again arise as soon as the next FTR auction, urgent action is necessary to revise the PJM Credit Policy. Accordingly, PJM requests a June 15, 2007 effective date for its proposed revisions.

7. PJM explains that under its current credit rules, each market participant is allowed to pay the price for its FTRs in approximately equal monthly installments over the year, beginning in June.³ Similarly, PJM pays the price of counterflow FTRs to their holders in approximately equal monthly installments over the year, beginning in June. According

² The Commission issued an Erratum to the deficiency letter on August 10, 2007.

³ PJM's FTR Planning Year runs from June 1st to May 31st.

to PJM, a purchaser of a concurrent flow FTR over the full Planning Year typically receives the bulk of the congestion payments up front – during the summer months, when congestion is highest – while making fixed equal payments over the whole year. PJM states that because the FTR holder receives the bulk of the congestion-payment benefits early in the Planning Year and faces liability for the remaining payments going forward, there is a credit risk that an FTR purchaser may attempt to prematurely exit the arrangement subsequent to receiving the bulk of the revenues but prior to paying the bulk of the costs. To address this risk, the PJM Credit Policy imposes a credit requirement on purchasers of concurrent flow FTRs equal to a portion of FTR bid price. Specifically, the portion is equal to the FTR bid price minus a revenue offset. The revenue offset is currently equal to the historical congestion revenues (known as the “Expected LMP Value”⁴) over the FTR path minus 30 percent.

8. However, PJM’s proposed revisions in the instant filing only cover counterflow FTR positions, which have negative Expected LMP Values. PJM explains that counterflow FTRs present a different credit risk than concurrent flow FTR positions because the counterflow FTR holder typically would have a huge liability up front when paying the payments for summer congestion, but would receive most of the monthly payments from PJM later in the FTR Planning Year. Thus, PJM argues, the credit risk in the case of counterflow FTR positions is not a party’s flight from a future obligation (as is the case for concurrent flow FTRs), but rather default in the face of an immediate and potentially significant liability. To address this risk, PJM currently imposes a credit requirement for holders of counterflow FTRs that is equal to the bid price minus the full Expected LMP Value. However, PJM does not provide a 30 percent discount of the Expected LMP Value under its current credit requirement calculation (as it does for regular flow FTRs). PJM argues that dropping the 30 percent discount was not enough to cover the credit risk exposure recently where a thinly capitalized member holding a large counterflow FTR position defaulted on a call for additional financial security. Therefore, PJM claims that it must modify its credit requirement calculation in order to ensure that those assuming counterflow positions can handle an up front and possibly large net negative cash flow before benefits may materialize later in the Planning Year.

9. According to PJM’s analysis, in cases of negative Expected LMP Value, the Revenue Offset for a year-long FTR whose cost equals its Expected LMP Value should equal the Expected LMP Value plus a 30 percent adder instead of a 30 percent discount. PJM proposes a new formula for year-long counterflow FTR Obligations that would

⁴ Expected LMP Value is defined as the historical weighted average value over three years for the FTR path using the following weightings: 50 percent - most recent year; 30 percent - second year; 20 percent - third year. Expected LMP values are to be calculated separately for on-peak, off-peak, and 24-hour FTRs. Section VII, Attachment Q, PJM OATT, Sixth Revised Volume No. 1.

calculate the credit requirement at 25 percent of the FTR price less 55 percent of the FTR's Expected LMP Value. According to PJM, this formula exactly equals the 30 percent adder when price and value are equal, but adjusts better to the exposures that arise when price does not equal Expected LMP Value. PJM explains that its analysis established that the FTR exposure due to the timing difference between auction payments and congestion value typically peaked after the summer months, at a level of 30 percent or more of the Expected LMP Value. Further, PJM states that the adders must rise to 100 percent for shorter-term FTR products limited to periods where significant congestion payments are expected, including the months of June, July, August, and September and the quarterly product covering June-August. PJM states that its proposed revisions thus far are reflected in the definitions of "Revenue Offset" and "Individual FTR Credit Requirements."

10. In addition, PJM also proposes a number of procedural changes that would empower it to more readily address default situations should they arise. First, PJM proposes revisions that would clarify that a party subject to a call for additional Financial Security must provide such security within the three-day cure period currently established for parties in default, and thereby become subject to the actions available to PJM in such circumstances. Second, PJM proposes revisions that it asserts would provide PJM with the authority to require transfers of credit obligations if a defaulting party finds another more creditworthy party to assume its position. Finally, PJM proposes a clarification that would allow it to retain a defaulting Member's Financial Security for as long as necessary to protect its other Members.

11. PJM states that the PJM Members Committee met and endorsed the proposed revisions overwhelmingly, with only three opposed and five abstaining. PJM requests an effective date of June 15, 2007 (one day after it made the instant filing), insisting that urgent action is necessary to revise its Credit Policy to protect the PJM membership from significant credit risk.

B. Protest

12. The Financial Marketers argue that the proposed increase of 60 to 100 percent in upfront collateral required to participate in the FTR market is an onerous new burden on participants and is unnecessary to reasonably protect PJM from the risk of default. The Financial Marketers explain that PJM's proposal would raise credit requirements for all FTR participants along all FTR paths based on the mistaken assumption that all year-long FTR paths are front loaded, even though not all FTR paths are front loaded.⁵ According

⁵ "Front loaded" means that the bulk of the congestion revenues accrue to the FTR holder early in the FTR term during the peak season while the costs accrue later in the off-peak months. Protest at 3.

to the Financial Marketers, this failure to distinguish between front loaded and non-front loaded FTR paths means that market participants trading across the non-front loaded FTR paths would bear additional collateral costs even though their trades result in no increased risk of default. The Financial Marketers believe that PJM can identify which FTR paths are front loaded and which are not and can impose appropriate, path-specific, credit requirements for each FTR product.

13. The Financial Marketers also protest PJM's proposal to increase the upfront collateral required for all participants in monthly and quarterly FTR trading. The Financial Marketers assert that PJM's current system of pricing short term FTR products can lead to large variations between the Expected LMP Values and the actual value of a particular FTR path because PJM ignores seasonal variability in determining the Expected LMP Value for a particular FTR path, and instead prices all monthly FTRs along a particular path identically.⁶ The Financial Marketers state that in reality the value of an FTR for a given month is not equal to 1/12th of the total yearly revenues, but instead depends on when in the year the particular month falls, as congestion along most paths is highest during the summer months. Financial Marketers also claim that PJM's proposal does not differentiate between FTR paths where the Expected LMP Value diverges from the actual value, and those paths for which the Expected LMP Value is close to the actual value. Instead, PJM proposes to increase by between 60 and 100 percent the collateral required for all FTR paths, regardless of whether there is a legitimate need for additional collateral.

14. Further, the Financial Marketers state that PJM's proposal does not balance the goals of "allowing the ISOs and RTOs to reduce their risk exposure in the event of default while at the same time ensuring that the credit or collateral requirements are not so stringent that they unnecessarily inhibit access to the marketplace."⁷ The Financial Marketers go on to argue that PJM proposes large increases in collateral requirements along all FTR paths, even though not all FTR paths result in a greater risk of default. The Financial Marketers encourage the Commission to require PJM to explore alternative means of reducing the risk of default. The Financial Marketers provide an example in which PJM could easily lower the potential risks of default by calculating its Expected LMP Value for each month by taking a weighted average of the value of the FTR for the

⁶ The Financial Marketers state that PJM determines the Expected LMP Value of each FTR path by calculating the weighted average of the yearly value of the FTR and then taking 1/12th of that amount, slightly adjusted for variability in the number of days in any particular month.

⁷ *Citing PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,309 at P 19 (2003).

same month over the past three years. According to the Financial Marketers, this would avoid requiring all participants with FTR positions to increase their Revenue Offset payments in order to respond to a concern that only applies to some FTR positions.

15. The Financial Marketers argue that the Commission should reject the proposed tariff changes outright. At a minimum, the Financial Marketers request that the Commission reject PJM's request for a June 15, 2007 effective date and deny waiver of the 60-day prior notice requirements. The Financial Marketers state that it would be unjust and unreasonable to retroactively alter the credit requirements for purchases that EPIC and other Market Participants already made in the June, 2007 FTR auction. In addition, the Financial Marketers state that the instant filing did not provide FTR auction participants reasonable notice of any impending change, and participants thus reasonably relied on the existing tariff in submitting their bids. Finally, the Financial Marketers argue that the next yearly FTR auction does not take place until April, 2008, and PJM has not demonstrated that there is any need to immediately increase its credit requirements.

C. PJM's Answer

16. PJM argues that the Commission should reject the Financial Marketers arguments because they rest on a fundamental misunderstanding of the emergency revisions PJM proposes to its credit policy, include alternative proposals that cannot be timely developed and implemented, and misrepresent the notice PJM provided to its membership concerning the proposed changes. PJM explains that the Financial Marketers confuse PJM's rationale for its existing and unchanged credit policy for concurrent flow FTR positions with the proposed revisions that are limited to counterflow FTR positions. PJM explains that a counterflow FTR position commences during the summer season with a negative Expected LMP Value, creating a liability that is typically front loaded while the benefits are back loaded.

17. PJM states that it sees value in attempting to implement changes that would more closely calibrate particular risks associated with particular contract paths that could afford equal or greater security while freeing up members' resources in appropriate circumstances. PJM maintains that it will soon initiate a stakeholder process to consider possible reforms. PJM claims that the process will include evaluation of a proposal similar to that advocated by the Financial Marketers and PJM is favorably inclined towards this proposal in theory. However, PJM argues that the key issue to resolve is technical feasibility, but systems to resolve this issue will not be developed and implemented overnight and so will not be available to protect the integrity of PJM's FTR markets during the Summer 2007 months.

18. PJM explains that it recently revised its FTR auction process to include Planning-Period Balance FTRs during its monthly auctions. Thus, according to PJM, market participants can create new counterflow FTR positions during the Planning Period with

similar risk profiles to those created in the May 2007 annual FTR auctions. In addition, PJM states that there will be additional auctions during the remainder of the Planning Period, but the financial risks to the membership that relate to counterflow FTR summer month positions create the most concern. PJM maintains that its proposal can be implemented immediately without posing any hardship or burden greater than PJM's existing credit policy and will protect the membership from the risks associated with counterflow positions.

19. PJM objects to the Financial Marketers claim that they failed to receive adequate notice of the filing because the filing was developed and approved in its stakeholder process where the protesters were represented. PJM argues that the Financial Marketers had an adequate opportunity to adjust business plans in conformity with PJM staff's repeated statements of intentions.

D. Deficiency Letter Response and Protest

20. On August 9, 2007, the Commission issued a Deficiency Letter requesting further information and support for PJM's proposal, including, (1) clarification of the definitions of "Individual FTR Credit Requirements" and "Revenue Offset"; (2) examples of annual counterflow and normal flow FTRs; (3) clarification of the apparent inconsistency to the reference of a three-day cure period; (4) an explanation of the transfer of credit obligations provisions; (5) examples of the use of the provision for holding a defaulting member's security; (6) an explanation of the requirement for additional collateral for the current FTR year; and (7) quantitative estimates of PJM's likely risk exposure if the collateral requirements are not applied retroactively.

21. PJM states that the term "Individual FTR Credit Requirements" cross-references to the term "Revenue Offset," which establishes the 100 percent level adder for shorter-term FTR products with negative Expected LMP Values. In its explanation, PJM states that the formulas for normal (i.e., concurrent flow) FTRs, whether annual or quarterly/monthly, are the same, as they both use Revenue Offset and a 30 percent discount. The formula for quarterly and monthly FTRs with negative Expected LMP Values (i.e., counterflow FTRs) is also similar, but it uses a 30 percent adder instead of a discount. For annual FTRs with negative Expected LMP Values, PJM explains that 55 percent of the Expected LMP Value is subtracted from 25 percent of the price, which yields the same result as "bid price less revenue offset" when bid price equals Expected LMP Value. PJM argues that this new formula for negative Expected LMP Values matches actual exposure better when Bid Price differs from Expected LMP Value. While PJM recognizes that the proposal is somewhat complicated, it is a result of PJM's desire to address the immediate exposure issue with a minimum number of changes to the tariff and the underlying system coding. PJM provides an example of an annual counterflow FTR as well as a normal flow FTR.

22. PJM states that its proposed revisions establish that additional collateral is due upon notification for a party subject to a call for additional Financial Security. PJM explains that once an amount of collateral is deemed due, a three-day period to cure commences, and if there is no cure within those three days, a default occurs. PJM acknowledges that a cross-reference in its original filing to section V was incorrect and proposes to revise the applicable tariff sheet to indicate section VI, Events of Default, instead. PJM's response includes examples regarding its authority to hold a defaulting member's security for as long as PJM deems appropriate. PJM explains that this would apply for true-ups due to the meter-read cycle for retail customers, which can take up to three or more months after a member has ceased serving load. Also, PJM explains the authority would apply when a defaulting member goes bankrupt and PJM cannot apply collateral due to rules regarding stay of normal process during bankruptcy. PJM states that its proposed rules would allow it to hold any collateral for as long as needed to cover not only the defaulted value itself, but also interest and legal fees incurred or potentially incurred while addressing the bankruptcy issue.

23. PJM further explains its proposed revision is intended to provide it with the ability to require transfers of credit obligations when a defaulting party sells its FTRs to another party. PJM states that its current FTR rules appropriately retained the credit requirement with the original party unless the purchasing party established its creditworthiness and agreed to accept the responsibility and PJM concurred. This protected the PJM membership from the risk involved if a creditworthy party sold its FTR to a non-creditworthy party. However, the provision does not authorize a transfer of risk unless and until the purchasing party agrees to assume the risk. PJM states that recent events have demonstrated that this default result is not optimal if a creditworthy party becomes non-creditworthy. In that situation, PJM states that it needs the authority to require that the purchasing party assume full responsibility for the FTR. Accordingly, PJM is proposing a revision to allow it to transfer the risk, where the circumstances warrant, without needing to receive the consent of the purchasing party or any other affirmative action on its part.

24. With respect to whether PJM would need additional collateral for this current FTR Planning Year since any defaults during the summer congestion months will already have occurred prior to the implementation of the proposed revisions, PJM states that although the largest payment exposure occurs during the summer months for negative Expected LMP Values, it has experienced historical volatility during the remainder of the year as well. Thus, PJM maintains that there is a need for the proposed revisions to its credit policy throughout the FTR Planning Period and not just for the critical summer period. In response to the Commission Staff's request to quantify the additional collateral requirement that would be required of FTR holders if a June 15, 2007 effective date was accepted, PJM states that it is impossible to estimate the impact on additional collateral

requirements before an auction occurs, but the increase in credit requirement under the proposed formula compared with the current formula is \$6 million for the July auction and \$1.6 million for the August auction.

25. In response to the Commission Staff's request for quantitative estimates of PJM's likely risk exposure based on historical information and statistical analysis, PJM states that it requested waiver of the 60-day notice requirement in order to ensure coverage for the critical summer period, but does not propose retroactive implementation of the proposed new requirements. PJM also states that the recent incident involving an FTR trader created an exposure risk because the trader's credit could not adequately support the trader's large counterflow position. PJM adds that this was the first such incident of which PJM is aware; consequently there is no historical information available. PJM notes that its proposed revised credit requirement would have made it impossible for the trader to amass such a large portfolio without a commensurate amount of collateral as well.

26. In its protest to PJM's August 28, 2007 filing, EPIC continues to oppose what it characterizes as the unnecessary and large increase in collateral requirements proposed by PJM. EPIC contends that reasonable FTR collateral requirements should be path-specific and vary seasonally, since the obligations and benefits associated with FTR ownership also vary between different paths and at different times during the year. EPIC notes that nothing in PJM's amendment addresses the issues raised by EPIC in its initial protest. EPIC states that it appreciates the fact that PJM is moving forward at the stakeholder level with a proposal to calculate FTR credit requirements on a monthly instead of a yearly basis. However, EPIC asserts the proposed revisions represent a step in the wrong direction and would increase the collateral requirements paid by Market Participants taking counterflow FTR positions by approximately \$118 million per year, with no showing that such a large increase is necessary to protect PJM members. EPIC maintains that basing a market participant's collateral requirements on the actual monthly Expected LMP Value of an FTR position would both limit the risk of default to PJM members and keep collateral requirements at a reasonable level. Further, EPIC argues that as the PJM response notes, even in the case of a default, it is likely, though not certain, that the PJM membership would have eventually been made whole, as even LMPs with an initial negative expected value will be profitable over the course of the entire year. EPIC goes on to state that even if a participant were to default on its short-term obligations, the risk to PJM members remains small. Finally, EPIC asserts that PJM should not be allowed to greatly increase its collateral requirements without showing that it has considered other, less onerous options.

Discussion

A. Procedural Matters

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the notices of intervention and 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, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to an answer or protest unless otherwise ordered by the decisional authority. We will accept the answer filed by PJM as it has assisted us in the decision-making process. Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.211 (2007), the Commission will accept EPIC's late filed protest given its interest in the proceeding, the early stage of the proceeding and the absence of undue prejudice or delay.

B. Commission Determination

28. The Commission will accept, subject to conditions, PJM's proposed tariff revisions with respect to credit responsibility for traded FTRs, as described below, to become effective as of the date of the issuance of this order. The Commission will reject PJM's other proposed tariff revisions.

1. Counterflow Positions

29. PJM runs an FTR auction for each Planning Year. PJM has proposed revisions to its collateral requirements primarily to cover the possible situation in which customers holding counterflow FTRs fail to meet large payment obligations during the summer congestion period (June – September). PJM is concerned that customers may default on their obligations to pay, leaving PJM without sufficient collateral to cover its payments to other parties.

30. While we appreciate the potential credit risk that PJM may face in the future from this situation, it has not justified the adoption of its proposal in this case on an emergency basis, particularly since, with the passage of the summer congestion period, the credit risk identified by PJM for this year has essentially passed. Although PJM stated in its Answer that it may experience volatility outside of the summer months, it provided no data to support this statement and its principal justification for filing these tariff provisions is based on a customer's failure to pay for summer congestion. PJM also recognizes that retroactive application of these tariff provisions is not appropriate. Therefore, we cannot find that PJM has justified acceptance of the tariff provisions to cover its expected risk in the June 2007-2008 FTR Planning Year.

31. Moreover, PJM has not shown that the tariff provisions it has filed are just and reasonable. The Financial Marketers provided a well-considered example of how PJM

should consider seasonal variations and be path-specific when determining its collateral requirements, as these factors would better reflect the risks faced by PJM. PJM acknowledges that these proposals may have merit and that it will soon initiate a stakeholder process to consider possible reforms. Since the key summer period has passed and PJM has failed to show that the filing is just and reasonable, we will reject these proposed revisions without prejudice to PJM making another filing in time for the next FTR Planning Year.

2. Timeline for Payment of Financial Security

32. The Commission will reject PJM's proposed revision to Attachment Q § II.B that requires payment of additional Financial Security immediately. The proposed revision states "Payment of additional Financial Security is due immediately upon notification of such modification and subject to the provisions of section VI below." When read literally, this language would require payment immediately rather than within three days as is the stated intent of the revision.⁸ We find the requirement to provide payment immediately unjust and unreasonable. Customers need to be given some reasonable time period in which to provide additional Financial Security.

33. PJM seems to argue that the three day time period set out in section VI, titled "Events of Default" would apply to the payment of additional Financial Security. But the tariff provision filed by PJM does not include even the three day period. Moreover, PJM has not shown the provision in section VI dealing with default is analogous, because an event in which PJM determines additional financial security is required by a party is not equivalent to an event of default. Therefore, the Commission rejects the proposed language without prejudice to PJM filing of revisions that would establish a reasonable period for customers to put up additional Financial Security.

3. Defaulting Party's Financial Security

34. The Commission will reject PJM's proposed revision to Attachment Q § VI that would provide PJM with the ability to retain a defaulting Member's Financial Security for as long as such party's positions exist and for any residual period that PJM may deem appropriate. PJM states that this provision would apply for true-ups that occur due to the meter-read cycle for retail customers and for a less frequently but potentially greater risk situation when a defaulting member goes bankrupt. However, these situations are not specified in the proposed tariff language. As drafted, the proposed revision is not just and reasonable because it affords PJM unlimited discretion in determining which events and for what period PJM may hold a defaulting member's security. Therefore, the

⁸ See PJM's June 14, 2007 filing at p. 3 and PJM's August 29, 2007 filing at p. 7.

Commission rejects the proposed revision without prejudice to PJM filing fully justified revisions that specifically state the conditions under which and the periods for which PJM would hold security of defaulting members.

4. Payment of Additional Financial Security

35. The Commission accepts the proposed revisions regarding the transfer of credit obligations at Attachment Q § V.I.H, subject to condition. In its transmittal letter and response to the Commission staff's deficiency letter, PJM asserts that the proposed provision authorizes it to require a transfer of credit risk, where circumstances warrant, without having to receive the consent or any other affirmative action on the part of the purchasing party. However, the actual language of the proposed revisions does not provide PJM with the ability to transfer credit, but continues to require that the purchasing party agree to assume the risk before a transfer of credit risk may occur and otherwise keeps the credit risk with the party selling the FTRs.⁹ We find that the tariff provision, as filed, is just and reasonable subject to the condition that PJM remove the phrase "to PJM's satisfaction." The proposed revision would allow PJM to determine "to PJM's satisfaction and consistent with the PJM credit policy" that the purchasing party has sufficient credit, before the credit responsibility could be transferred. The phrase "to PJM's satisfaction" is too ambiguous and allows PJM too much discretion in determining whether a purchasing party is creditworthy; it should be sufficient that the purchaser comply with PJM's credit policy. Therefore, we find the proposed revision acceptable subject to the condition PJM file within 30 days to remove the words "to PJM's satisfaction."

36. PJM proposed an effective date of June 15, 2007 for this proposed tariff sheet, but as PJM has recognized, a retroactive effective date is not appropriate and we will make the tariff sheet effective as of the date of issuance of this order. When PJM makes a compliance filing, it will need to reflect the revised effective date.

The Commission orders:

(A) PJM's First Revised Sheet No. 523I.05b is accepted, subject to conditions, as discussed above in the body of the order, to become effective as of the date of issuance of this order.

⁹ Based on the arguments offered in this filing, PJM did not provide sufficient justification for allowing it to require the transfer of credit risk without the consent of the purchaser.

(B) PJM's other proposed tariff revisions are rejected.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.