

123 FERC ¶ 61,060
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.

Duquesne Light Company

Docket No. ER08-194-000

ORDER ON MOTION FOR
EMERGENCY CLARIFICATION

(Issued April 18, 2008)

1. On March 18, 2008, the PJM Power Providers Group (P3) filed a request for emergency clarification regarding the treatment of capacity resources in the PJM Interconnection, L.L.C. (PJM) May 2008 Base Residual Auction, as affected by the withdrawal request addressed by the Commission in this proceeding on January 17, 2008.¹ P3 requests clarification that given the authorizations granted to the Duquesne Light Company (Duquesne) regarding the removal of the Duquesne zone load from the May 2008 auction, capacity resources located in the Duquesne zone must be treated as external to PJM for purposes of the May 2008 auction. For the reasons discussed below, we will provide clarification regarding the treatment of capacity resources in the Duquesne zone. We find that the Duquesne zone capacity resources must be treated as external for the purposes of the May 2008 auction. However, we also find that when requested PJM may enter into point-to-point transmission service arrangements with the Duquesne zone generators satisfying the requirements applicable to the 2011-12 delivery year.

Background

2. In the January 17 Order, the Commission addressed Duquesne's conditional request to withdraw from the PJM regional transmission organization (RTO). The Commission found that Duquesne will satisfy the relevant withdrawal requirements set

¹ *Duquesne Light Company*, 122 FERC ¶ 61,039 (2008) (January 17 Order). The Base Residual Auction is utilized by PJM to secure the forward commitment of capacity resources and transmission upgrades as necessary. It is a feature of PJM's Reliability Pricing Model (RPM). See PJM Open Access Transmission Tariff (OATT) at Attachment DD.

forth in PJM's operating agreements, subject to conditions. With respect to Duquesne's capacity procurement obligations, the Commission held that, subject to submission of Duquesne's written commitment to withdraw from PJM prior to the delivery year applicable to the May 2008 auction (i.e., prior to the 2011-12 delivery year), PJM must remove the Duquesne zone load in its entirety from the May 2008 auction.² The January 17 Order did not otherwise address the implications of this withdrawal as it relates to the eligibility of capacity resources located in the Duquesne zone to participate in the May 2008 auction (or subsequent auctions).

3. P3, in its emergency motion, states that these issues were addressed in part by PJM, on February 26, 2008, in a notice provided by PJM to its stakeholders. P3 states that in its notice, PJM clarified that, given the withdrawal of the Duquesne zone load from the May 2008 auction, the RPM "must offer" requirement, under section 6.6 of Attachment DD of the PJM OATT, would not apply for this auction to Duquesne zone capacity resources.³ P3 states that PJM further clarified that absent an effective Duquesne withdrawal date approved by the Commission, these same Duquesne zone capacity resources cannot, as of this time, be treated as "external" to PJM and will therefore continue to be listed as PJM Duquesne zone resources.⁴

² *Id.* P 142. Duquesne submitted its notice, as required, on February 1, 2008 and PJM, in response, has removed the load at issue – approximately 3000 MW of capacity.

³ Attachment DD, section 6.6. states, in relevant part, that "[t]o avoid application of subsection (d) [addressing the consequences applicable to capacity not offered into the auction], all Unforced Capacity of all existing Generation Capacity Resources located in the PJM Region shall be offered (which may include submission as Self-Supply) in the Base Residual Auction for each Delivery Year, where Unforced Capacity is determined using an EFORd less than or equal to the EFORd for the 12 months ending on the September 30 that last precedes the submission of such offers."

⁴ PJM's notice stated, in its entirety, as follows:

The must offer requirement does not apply to the [Duquesne] zone resources included in the resource list because the Duquesne Zone load has been removed from the auction model. However, the units remain on the list because an official withdrawal date for Duquesne has not yet been approved by [the Commission], and as such the transmission and other requirements that would be required of external resources do not yet apply to the Duquesne zone generators. PJM will update the resource list appropriately when final disposition of the Duquesne withdrawal from PJM occurs.

(continued...)

4. P3 seeks clarification that in the May 2008 auction capacity resources located in the Duquesne zone will be treated as external to PJM, subject to all such requirements as apply to such resources. P3 argues that this characterization is consistent with PJM's clarification that the "must offer" requirement does not apply to these resources.

5. P3 also asserts that this treatment is consistent with PJM's RPM protocols. First, P3 relies on Attachment DD, section 5.5 of the PJM OATT (addressing eligibility for participation in PJM's RPM auctions). Section 5.5 specifies that capacity resources are required to satisfy the requirements of the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region (RA Agreement) regarding both capability (*see* RA Agreement at schedule 9) and deliverability (*see* RA Agreement at schedule 10). P3 adds that under schedule 10, deliverability is addressed with respect to both internal and external resources. Deliverability for internal resources may be established by obtaining or providing for PJM network service or for PJM firm point-to-point service, while external resources, i.e., resources located outside the metered boundaries of PJM, may establish deliverability by way of a firm transmission service. In addition, P3 argues that under PJM Manual 18, at p. 29, an external resource is required to identify its intended available transfer capability (ATC) path into PJM.

6. P3 argues that it is logically inconsistent to assume that the Duquesne load will have departed by June 1, 2011, but capacity resources located within Duquesne's control area will remain internal. P3 further argues that this imbalance will also give rise to market distortions. P3 suggests that because the Midwest Independent Transmission System Operator (Midwest ISO) has not posted an ATC path indicating what, if any, ATC will be available to deliver Duquesne zone generation during the 2011-12 delivery year, there can be no assurance that Duquesne zone capacity will be available to meet PJM's reliability needs in 2011-12.

Notice of P3's Motion and Answers

7. Notice of P3's motion was published in the *Federal Register* with interventions and protests due on or before March 26, 2008.⁵ Answers were timely filed by PJM,

See <http://www.pjm.com/markets/rpm/downloads/rpm-resource-model-2011-2012.xls>.

⁵ 73 Fed. Reg. 16,667 (2008).

FirstEnergy Service Company (FirstEnergy), Reliant Energy, Inc. (Reliant), and Allegheny Energy Companies (Allegheny).⁶

8. PJM disagrees with P3's assumption that the point-to-point transmission rights required by the Duquesne zone capacity resources in order to qualify as external resources for the May 2008 auction can only be acquired from the Midwest ISO. PJM submits that it can provide these rights. Specifically, PJM asserts that under its existing tariff authority the Duquesne zone generators should be permitted to participate in the May 2008 auction as internal resources while satisfying the requirements for external resources on a contingency basis. To accomplish this objective, PJM proposes that the Duquesne zone generators be permitted to reserve firm point-to-point service from PJM parallel to the network service that they are currently relying on to supply generation to load. PJM notes that it has developed this option in conjunction with the Duquesne zone generators.

9. PJM notes that if it grants requests for firm point-to-point transmission service in the Duquesne zone to the Duquesne zone generators, this service would presumably convert in the process of Duquesne's migration to the Midwest ISO, consistent with Commission precedent.⁷ PJM adds that it could grant this service without performing any reliability studies because no usage of the system would be contemplated beyond the current usage.

10. PJM notes that, alternatively, the Commission could make a determination, here, that network service held by transmission customers automatically includes conversion to firm point-to-point for generation resources that have been the historic beneficiaries of pre-transition network service. PJM asserts that this approach would yield the same result described above with less administrative burden to PJM or the Midwest ISO and less administrative and potential financial burden to the affected generation resources.

11. FirstEnergy and Reliant (both of whom are Duquesne zone generators) argue that P3's motion should be denied. Reliant argues that PJM has appropriately treated the Duquesne zone capacity resources as internal resources for purposes of the May 2008

⁶ Each of the respondents was previously granted intervention status in this proceeding.

⁷ PJM answer at 2, *citing Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (2000), FERC Stats. & Regs. ¶ 31,089, at p. 31,205 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd*, *Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

auction because, by contrast, external resources are described under schedule 10 of the RA Agreement as resources “located outside the metered boundaries of the PJM Region.” FirstEnergy concurs, noting that any generation currently committed to the PJM market will be within PJM when the May 2008 auction takes place. FirstEnergy asserts that the transmission rights relied upon to deliver this capacity will have the guarantee of comparable transmission rights sufficient to remain deliverable to these markets in the 2011-12 delivery year.

12. FirstEnergy and Reliant assert that imposing the requirements of an external resource on their generation would effectively exclude them from participating in the May auction. FirstEnergy and Reliant argue that this is so because until Duquesne actually withdraws from PJM there is no external transmission provider from whom Duquesne zone generators can obtain confirmation of the necessary firm point-to-point transmission service or ATC path. FirstEnergy and Reliant conclude that P3’s motion is motivated only by its desire to drive up prices in the May auction by excluding Duquesne zone generation from the May 2008 auction.

13. Allegheny, in its answer, addresses issues arising following Duquesne’s withdrawal from PJM.⁸

14. Answers to answers were submitted on March 26, 2008, by PPL Companies (PPL) and Exelon Corporation (Exelon), on April 1, 2008, by P3, on April 4, 2008, by Exelon, and on April 7, 2008, by Reliant. Rule 213(a) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a) (2007), prohibits an answer to an answer unless otherwise permitted by the decisional authority. We are not persuaded to accept PPL’s, Exelon’s, P3’s, or Reliant’s answers and therefore reject them.

Discussion

15. We agree with P3 that the Duquesne zone capacity resources, relative to the May 2008 auction, are external resources. However, for the reasons discussed below, we also find that when requested, PJM may enter into point-to-point transmission service arrangements with the Duquesne zone generators satisfying the requirements applicable to the 2011-12 delivery year.

16. In the January 17 Order, the Commission found that if Duquesne committed to withdraw from PJM prior to the 2011-12 delivery year, the Duquesne zone would not be

⁸ These issues are not before us here, i.e., this order addresses only issues applicable to the May 2008 auction and the pre-Duquesne/Midwest ISO integration conditions under which it will be held.

included in the auction for that year.⁹ Duquesne filed its written commitment to withdraw on February 1, 2008. Consequently, capacity will not be acquired for the Duquesne zone in the May 2008 auction.

17. Under schedule 10 of the RA Agreement, capacity resources, whether internal or external, are required to satisfy a deliverability requirement:

Generation Capacity Resources must be deliverable, consistent with a loss of load expectation as specified by the Reliability Principles and Standards, to the total system load, including portion(s) of the system in the PJM Region that may have a capacity deficiency at any time. Deliverability shall be demonstrated by either obtaining or providing for Network Transmission Service or Firm Point-To-Point Transmission Service within the PJM Region such that each Generation Capacity Resource is either a Network Resource or a Point of Receipt, respectively. In addition, for Generation Capacity Resources located outside the metered boundaries of the PJM Region that are used to meet an Unforced Capacity Obligation, the capacity and energy of such Generation Capacity Resources must be delivered to the metered boundaries of the PJM Region through firm transmission service.

Schedule 10 does not expressly address the status of generators that may be located within PJM, as of the auction date, but outside PJM as of the delivery year. Nonetheless, we find that the logical interpretation of this provision, under the circumstances presented here, is to treat generators in the Duquesne zone as external resources for the 2011-12 delivery year. In fact, Duquesne has committed to withdraw from PJM as of this delivery year.

18. Schedule 10 requires that external resources have firm transmission service to the metered boundaries of the PJM region. Schedule 10, however, does not specify whether such transmission service is a prerequisite for bidding into the RPM auction. Under the circumstances presented here, we view this requirement as applicable to the delivery year, not as a prerequisite for bidding into the auction.¹⁰ This interpretation is also

⁹ January 17 Order, 122 FERC ¶ 61,039 at P 142.

¹⁰ PJM's Manual and training manuals provide support for this interpretation, requiring external generators to acquire the requisite firm transmission service by the start of the delivery year. See PJM's Manual 18 at pp. 29-30; PJM's Training Manual, <http://www.pjm.com/services/training/downloads/rpm-overview-demand-and-supply.pdf>.

consistent with other provisions included in PJM's RPM protocols, which also are based on the satisfaction of requirements for the delivery year.¹¹

19. We also understand that the Duquesne zone generators may require some assurance prior to the conduct of the May 2008 auction that they will be able to obtain firm transmission service to the border of PJM. PJM is the current administrator of the OATT for the Duquesne zone and its tariff requires that it sell firm point-to-point service.¹² Order Nos. 888 and 890 also require transmission providers to offer firm point-to-point service with a future reservation date.¹³ Therefore, we agree with PJM that it has the tariff authority to contract for firm point-to-point service for the 2011-12 delivery year for those generators that wish to contract for such service prior to the May 2008 auction. Based on Commission precedent and policy, these contracts must be honored with respect to any arrangements that Duquesne makes for providing service after it leaves PJM.¹⁴ Should Duquesne join the Midwest ISO, the Midwest ISO has already indicated its willingness to honor such contracts.¹⁵

¹¹ See, e.g., PJM OATT, Attachment DD at section 8.1(c).

¹² See PJM OATT at article II.

¹³ See *PacifiCorp.*, 98 FERC ¶ 61,224, at 61,883, *order on reh'g*, 99 FERC ¶ 61,259, at 62,120 (2002).

¹⁴ See, e.g., *PJM Interconnection, L.L.C.*, 109 FERC ¶ 61,299 (2004) (finding that the integration of a utility into an RTO does not constitute a sufficient basis for abrogating a pre-existing service agreement, provided that the customer continues to receive service commensurate with the service to which it is entitled under [its] contract.).

¹⁵ See Reliant December 4, 2007 protest at Attachment C (Midwest ISO letter to Orion Power Midwest, L.P., dated Nov. 20, 2007).

The Commission orders:

Clarification is hereby provided, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.