

169 FERC ¶ 61,029
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

PJM Interconnection, L.L.C.

Docket No. ER19-945-001

ORDER DENYING REHEARING AND GRANTING CLARIFICATION

(Issued October 17, 2019)

1. On May 1, 2019, Vitol Inc. (Vitol) requested rehearing and clarification of the Commission's April 1, 2019 order in this proceeding.¹ In that order, the Commission accepted PJM Interconnection, L.L.C.'s (PJM) proposed revisions to its Open Access Transmission Tariff (Tariff) to incorporate Financial Transmission Rights (FTR) mark-to-auction provisions that would allow PJM to make a collateral call if a member's FTR is declining in value based on the most recent FTR auction clearing prices. In this order, we deny Vitol's request for rehearing and grant clarification.

I. Background

2. On January 31, 2019, pursuant to section 205 of Federal Power Act (FPA),² PJM filed proposed Tariff revisions that, among other things, incorporate FTR mark-to-auction provisions. Under the new provisions, purchase prices of FTRs in a market participant's portfolio are compared against the most recent auction prices for those same FTRs to assess whether the portfolio is losing or gaining value. This mark-to-auction valuation mechanism serves as an additional FTR credit requirement because it allows PJM to require a market participant to post additional collateral if its FTR portfolio is declining in value and to prohibit that market participant from acquiring additional FTR positions until it posts the required collateral.

3. Vitol filed a protest asserting that PJM market participants would be better protected if the proposal addressed when PJM should take action if an FTR portfolio loses value and when PJM should make a collateral call.³ Specifically, Vitol had

¹ *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,002 (2019) (April 2019 Order).

² 16 U.S.C. § 824d (2018).

³ Vitol Protest at 2.

requested that the word “promptly” be added in several places to Sections IV.C.8 and 9 Attachment Q to the Tariff. Vitol had also proposed to add language specifying that PJM must not delay the recalculation of Auction Revenue Right (ARR) credits “when it is in possession of information indicating that the applicable market participant may be unable to satisfy the FTR Credit Requirement.”⁴ Vitol also characterized the mark-to-auction proposal as a suboptimal solution unless and until the pricing PJM uses for the market is updated on a more frequent, market-driven basis.⁵

4. In the April 2019 Order, the Commission accepted these provisions as just and reasonable, finding that the mark-to-auction valuation of FTR portfolios will improve PJM’s FTR credit requirements.⁶ As relevant on rehearing, the Commission disagreed with Vitol that PJM’s proposed timing was unjust and unreasonable, noting that “PJM’s proposed revisions provide reasonable, specific timelines for PJM to complete the necessary steps to make additional collateral calls, collect additional collateral, recalculate ARR credit and declare a market participant in default.”⁷ The Commission held that it was sufficient for PJM to demonstrate that its proposal was just and reasonable, and that it need not demonstrate that the proposal was the optimal solution.⁸

II. Rehearing and Clarification Request

5. Vitol states that it generally supports the mark-to-auction mechanism but seeks rehearing on specific points to ensure that the Tariff amendments are just and reasonable, particularly in light of the findings of an independent report⁹ commissioned by a Special Committee of PJM’s Board of Managers to review the 2018 default of GreenHat Energy, LLC (GreenHat).

⁴ *Id.* at 5.

⁵ *Id.*

⁶ April 2019 Order, 167 FERC ¶ 61,002 at P 19.

⁷ *Id.* P 20.

⁸ *Id.* P 21.

⁹ GreenHat Energy, LLC Default Lessons Learned, PJM Interconnection, LLC Credit Subcommittee Meeting (Sept. 17, 2018), <https://www.pjm.com/-/media/committeesgroups/subcommittees/cs/20180917/20180917-item-05a-lessons-learned-document.ashx>; Report of the Independent Consultants on the GreenHat Default (dated Mar. 26, 2019) (Independent Report).

6. Vitol alleges that the Commission erred in finding that the amended tariff language included “reasonable, specific timelines.” According to Vitol, there is only one place in PJM’s proposed tariff language, having to do with the annual recalculation of Long-Term FTR Credit Recalculation, where a specific time obligation is imposed on PJM.¹⁰ Vitol also notes that any obligations placed on a market participant are conditioned on PJM taking action and that the efficacy of the market participant’s obligations are diluted by the fact that there is no obligation for PJM to act within a set time period.¹¹ Given the absence of specificity, Vitol asserts that the amendments to Attachment Q as filed by PJM are unjust and unreasonable.¹²

7. Vitol maintains that the revisions it had proposed in its protest were “intended to ensure that PJM does not wait to gather, prepare or act on information indicating that a market participant or the market has undergone a change that adversely impacts a market participant’s ability to perform.”¹³ Vitol argues that if, as PJM asserts in its answer, the mark-to-auction value process occurs during a very short window of time, there should be no objection to including Vitol’s proposed language requiring PJM to act promptly. Vitol notes that a tariff requirement provides market participants more protection than a representation in a pleading.¹⁴

8. Vitol argues that the Commission failed to adequately consider the historical weaknesses in PJM’s credit management practices. Vitol claims that the findings in two recently issued reports on the 2018 GreenHat default demonstrate why it is unjust and reasonable to give PJM broad discretion in its risk management practices.¹⁵ Citing language from the Independent Report regarding “PJM’s lack of urgency and delay in confronting many red flags that appeared,” Vitol argues that PJM’s amended tariff provisions are unjust and unreasonable because the provisions do not require PJM to act within certain windows or by certain deadlines.¹⁶ Vitol also points to prior defaults as indicators that PJM had notice of several of the credit management flaws that contributed

¹⁰ Rehearing Request at 3, 4.

¹¹ *Id.* at 4.

¹² *Id.* at 3, 4.

¹³ *Id.* at 6

¹⁴ *Id.* at 6-7.

¹⁵ *Id.* at 8 (citing Independent Report at 2).

¹⁶ *Id.* at 8 (quoting Independent Report at 28).

to the size to the GreenHat default, but deferred action. Vitol maintains that the amended language it proposed in its protest would help ensure that PJM has an obligation to act promptly when faced with information indicating that a market participant is not creditworthy or is under-collateralized.¹⁷

9. Vitol argues that the absence of specific timing obligations on PJM is contrary to Commission precedent, established in 2004 Credit Policy Statement¹⁸ and Order No. 741,¹⁹ on the importance of independent system operators (ISOs) and regional transmission organizations (RTOs) protecting their market participants. Specifically Vitol points to the following language in the 2004 Credit Policy Statement:

it is the RTO/ISO that serves as the gatekeeper for the integrity of the markets they administer. As a result, ISO/RTO market participants are exposed to risks based on an ISO's/RTO's determination of other market participants' creditworthiness, and they have little ability to mitigate that risk. Furthermore, market participants must trust ISOs/RTOs to implement their credit policies in a manner created to limit, as much as possible, the risk of credit defaults.²⁰

Vitol notes that the Commission reiterated these views in Order No. 741 when it ordered the ISOs and RTOs to update their credit policies.

10. Finally, Vitol argues that the Commission erred when it found “unnecessary” Vitol’s proposed edits that sought to require PJM to recalculate ARR credits without delay. Vitol maintains that the tariff language allowing PJM to recalculate ARR credits after each annual FTR auction and “when it deems appropriate” affords PJM a degree of discretion that is unwarranted in light of its credit management history and unjust and unreasonable, because a failure to consider timely information about a market

¹⁷ *Id.* at 11.

¹⁸ *Policy Statement on Credit-Related Issues for Electric OATT Transmission Providers, Independent System Operators and Regional Transmission Organizations*, 109 FERC ¶ 61,186 (2004) (2004 Credit Policy Statement).

¹⁹ *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, 133 FERC ¶ 61,060 (2010), *order on reh'g*, Order No. 741-A, 134 FERC ¶ 61,126, *order denying reh'g*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

²⁰ Rehearing Request at 11 (quoting 2004 Credit Policy Statement, 109 FERC ¶ 61,186 at P 18).

participant's position will expose market participants to unnecessary risk in breach of PJM's duty.²¹

11. Vitol also seeks clarification concerning the Commission's determination in paragraph 21 of the April 2019 Order where it dismissed certain aspects of Vitol's comments as outside the scope of this proceeding. Vitol requests that the Commission clarify that it intended only to dismiss comments concerning rolling monthly FTR auctions.²² Vitol explains that its reference to rolling monthly FTR auctions was simply a reminder to the Commission that other FTR credit-related proceedings pending in other dockets would need to be coupled with the mark-to-auction solution, including Vitol's request for rolling monthly FTR auctions in Docket No. EL18-170-000.

III. Discussion

12. We deny rehearing and affirm the determination in the April 2019 Order that PJM's proposal is just and reasonable. Despite making several assertions in its rehearing request that the Tariff provisions are unjust and unreasonable, Vitol also states that it "generally supports the Commission's Order."²³ While Vitol prefers tariff language that incorporates more specificity, Vitol has not persuaded us that the provisions filed by PJM are unjust and unreasonable. The issue before the Commission is whether PJM's proposal is just and reasonable, and not whether the proposal is more or less reasonable than an alternative proposed by Vitol.²⁴

²¹ *Id.* at 13.

²² *Id.* at 14.

²³ *Id.* at 1.

²⁴ See *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."); *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,114 (2019) (explaining that a proposal under FPA section 205 "need only be a just and reasonable rate, not necessarily the most just and reasonable means of achieving a particular goal") (citing *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,103, at P 59 (2014)); *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).

13. Contrary to Vitol's arguments, the Tariff imposes affirmative obligations on PJM and provides for reasonable and specific timelines in several places. For instance, in addition to the requirement in Attachment Q, section IV.C.8 that PJM update its Long-term FTR Credit Requirement calculations on an annual basis, section IV.C.9 requires that a mark-to-auction value be calculated based on "the most recently available cleared auction price applicable to the FTR."²⁵ Accordingly, the mark-to auction value calculation will occur on a regular basis after each monthly FTR auction.²⁶ In addition, the Tariff provides that "PJM shall repeat the mark-to-auction calculations subsequent to any secondary clearing calculation."²⁷ Furthermore, the Tariff requires market participants to fulfill collateral demands within one business day and outlines consequences for failure to timely satisfy such demands.²⁸ As for the recalculation of ARR credits, although the Tariff allows PJM the discretion to perform recalculations at *additional* time intervals, it also imposes an affirmative obligation on PJM to perform the recalculation on an annual basis.²⁹ In light of these provisions, we affirm the determination from the April 2019 Order that PJM's proposal is just and reasonable, and we find that the absence of greater specificity does not render the tariff filing unjust and unreasonable.

14. The information contained in the Independent Report does not alter our determination that PJM's proposal is just and reasonable. The new mark-to-auction tariff provisions were intended to address the historical flaws in PJM's credit and risk management practices. Indeed, the new tariff provisions force PJM to confront warning signs through an affirmative obligation to calculate mark-to-auction valuations after each FTR auction and to issue a collateral call whenever the mark-to-auction valuation exceeds the FTR credit available for auction bidding.

15. We also disagree that the mark-to-auction provisions are inconsistent with the 2004 Credit Policy Statement or Order No. 741. Neither the 2004 Credit Policy Statement nor Order No. 741 mandate the use of mark-to market for collateral or mandate specific time limits for mark-to market evaluations. To the contrary, the mark-to-auction

²⁵ PJM Tariff, Attachment Q, Section IV.C.9.

²⁶ PJM Tariff, Attachment K Appendix, Section 7.1.2.

²⁷ PJM Tariff, Attachment Q, Section IV.C.9.

²⁸ *Id.*

²⁹ *Id.* ("PJM *shall* recalculate ARR credits held by each Market Participant after each annual FTR auction and may also recalculate such ARR credits at any other additional time intervals it deems appropriate" (emphasis added)).

provisions are consistent with this precedent because they strengthen PJM's credit and risk management practices. PJM's implementation of a mark-to-auction approach, which Vitol generally supports,³⁰ helps to protect PJM customers as the 2004 Credit Policy Statement and Order No. 741 suggest.

16. As to Vitol's clarification request, we clarify that the discussion in the April 2019 Order concerning an issue that was beyond the scope of this proceeding was related specifically to the frequency of PJM's auctions, including Vitol's request for monthly rolling auctions, which has been raised in a separate proceeding.³¹

The Commission orders:

(A) Vitol's request for rehearing of the April 2019 Order is hereby denied, as discussed in the body of this order.

(B) Vitol's request for clarification is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³⁰ See Rehearing Request at 1 ("Vitol generally supports the Commission's Order allowing PJM to implement the mark-to-auction mechanism").

³¹ See DC Energy LLC v. PJM Interconnection, L.L.C., Docket No. EL18-170-000.