

164 FERC ¶ 61,204
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tilton Energy LLC

Docket No. EL18-145-000

v.

PJM Interconnection, L.L.C.

ORDER ESTABLISHING PAPER HEARING

(Issued September 20, 2018)

1. On May 11, 2018, Tilton Energy LLC (Tilton), pursuant to sections 206, 306, and 309 of the Federal Power Act (FPA),¹ and Rule 206 of the Commission's Rules of Practice and Procedure,² filed a complaint against PJM Interconnection, L.L.C. (PJM) (Complaint). Tilton alleges that PJM wrongly determined that its pseudo-tie from the Midcontinent Independent System Operator, Inc. (MISO) Balancing Authority Area³ (BAA) into the PJM BAA does not pass the market-to-market flowgate test set forth in the PJM Open Access Transmission Tariff (Tariff) at Attachment DD, section 5.5A(b)(i)(B) (Flowgate Test), and thus wrongly determined that the pseudo-tied resource would not be eligible to participate in the PJM capacity auctions

¹ 16 U.S.C. §§ 824e, 825e, 825h (2012).

² 18 C.F.R. § 385.206 (2018).

³ A Balancing Authority Area is “[t]he collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.” *See Glossary of Terms Used in NERC Reliability Standards*, North American Electric Reliability Corporation (NERC Glossary), https://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf.

after the 2021/2022 Delivery Year. Tilton asks the Commission to direct PJM to reverse its determination. In this order we establish paper hearing procedures to examine issues raised in the Complaint, including PJM's interpretation and application of the Flowgate Test, and establish a refund effective date.

I. Background

2. In order for external generation resources to participate in PJM's capacity auctions, they must be pseudo-tied from their native BAA into PJM.⁴ In order to be eligible for a pseudo-tie, an external resource must meet a set of threshold requirements that the Commission approved in November 2017 in the Pseudo-Tie Enhancement Order.⁵ One of those requirements, referred to herein as the Flowgate Test, is the subject of the Complaint.

3. In the Pseudo-Tie Enhancement Order, the Commission approved a five-year transition period for certain resources that had an existing pseudo-tie, cleared in a capacity market auction prior to May 9, 2017, and met certain other operational and deliverability requirements.⁶ Resources subject to the transition period are required to comply with the Flowgate Test and PJM's other new pseudo-tie requirements by May 2019 in order to be eligible to offer into the capacity auction for the 2022/2023 Delivery Year.

4. Although the Flowgate Test determines the eligibility of a pseudo-tied *external* resource, the test focuses on *internal* resources, because PJM may use an internal resource to alleviate the impact on congestion caused by the external pseudo-tied resource. In order for an external resource to pass the Flowgate Test, the pseudo-tied resource must meet the following requirement:

at least one generation resource that has a historic economic minimum offer lower than its historic economic maximum offer, located inside the metered boundaries of the PJM Region, has a minimum flow distribution impact of

⁴ See *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, at PP 96-97 (2015), *order on reh'g*, 155 FERC ¶ 61,157 (2016).

⁵ *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,197 (2017) (Pseudo-Tie Enhancement Order).

⁶ *Id.* PP 119, 134-138.

1.5 percent on each eligible coordinated flowgate resulting from such Pseudo-Tie.⁷

When PJM proposed the Flowgate Test, PJM explained that the purpose of the Flowgate Test is to ensure PJM does not have to “add[] new coordinated flowgates unless PJM has adequate options to manage congestion on that flowgate in addition to reducing the output of the pseudo-tied resource itself.”⁸

5. PJM’s Manual 12: Balancing Operations (Manual 12) specifies five steps in PJM’s application of the Flowgate Test:

1. Identify new coordinate [*sic*] flowgates impacted by requested Pseudo-Tie pursuant to any interregional agreements.
2. Identify flexible internal PJM Generation.
3. Perform analysis to determine the percentage of flow impact (shift factor) for a transfer of flow from the flexible internal PJM Generation with respect to the PJM RTO load on coordinated flowgates previously identified.
4. Identify which coordinated flowgates have a flexible internal PJM generator with at least ± 1.5 [percent] impact.
5. If any flowgates do not have an internal PJM generator with at least ± 1.5 [percent] impact, the resource fails the M2M Flowgate Eligibility Test and will not be approved for implementation.⁹

⁷ *Id.* P 79 (directing PJM to revise PJM, Intra-PJM Tariffs, OATT, Attachment DD, § 5.5A(b)(i)(B), setting forth the Flowgate Test, to include the 1.5 percent impact level, as quoted above); *see also* PJM, Compliance Filing, Docket No. ER17-1138-002 (filed Dec. 15, 2017) (pending).

⁸ Pseudo-Tie Enhancement Order, 161 FERC ¶ 61,197 at P 63; *see also* PJM, Pseudo-Tie Enhancement Filing at 14-15, Docket No. ER17-1138-000 (filed Mar. 9, 2017) (Pseudo-Tie Enhancement Filing).

⁹ *PJM Manual 12: Balancing Operations* at 94-95 (Attachment F: Dynamic Transfers) (Rev. 38, effective Apr. 20, 2018) (Manual 12), <http://www.pjm.com/-/media/documents/manuals/m12.ashx>.

II. Complaint

6. Tilton states that it owns and operates a 176 MW natural gas-fired generation facility (Facility) located in Tilton, Illinois within the MISO BAA. Tilton explains that the Facility has been pseudo-tied into PJM for approximately two years¹⁰ and has cleared in each of PJM's last two Base Residual Auctions.¹¹ Tilton explains that the Facility qualified for the transition period and thus is allowed to remain pseudo-tied through the 2021/2022 Delivery Year, but it must demonstrate compliance with the Flowgate Test and PJM's other pseudo-tie criteria before offering into PJM's Base Residual Auction for the 2022/2023 Delivery Year, to be held in May 2019.¹² Tilton states that on December 26, 2017, PJM notified Tilton that the Facility is not eligible for a pseudo-tie into PJM after the 2021/2022 Delivery Year because 44 of the tested flowgates failed the Flowgate Test.¹³

7. Tilton asserts that PJM erred in concluding that the Facility failed the Flowgate Test because the PJM Tariff provides that the Flowgate Test is applied to "each eligible coordinated flowgate resulting from such Pseudo-Tie," and PJM has acknowledged that none of the 44 tested flowgates are coordinated flowgates. According to Tilton, "PJM has not been required to take on any additional responsibility for market congestion management to accommodate the Tilton Pseudo-Tie since its inception almost two years ago."¹⁴ Tilton asserts that PJM's application of the Flowgate Test to the Facility is inconsistent with the Tariff and the intent of the test, which was intended to set "objective standards for when [PJM] will assume market congestion management for new coordinated flowgates solely to accommodate a pseudo-tied resource" and is "designed to establish limits on the number of new coordinated flowgates that PJM must add to accommodate a proposed pseudo-tie."¹⁵ Because "no new coordinated flowgates are necessary to accommodate the existing Tilton Pseudo-Tie," Tilton argues, "the Tilton

¹⁰ Complaint at 6.

¹¹ *Id.* at 9. The last two capacity Base Residual Auctions include the May 2017 and May 2018 capacity auctions for the 2020/2021 and 2021/2022 Delivery Years, respectively.

¹² *Id.* at 4.

¹³ *Id.* at 5.

¹⁴ *Id.*

¹⁵ *Id.* at 6 (citing Pseudo-Tie Enhancement Filing at 4, 14-15; Pseudo-Tie Enhancements Order, 161 FERC ¶ 61,197 at P 63).

Pseudo-Tie clearly passes the Flowgate Test as contemplated by the Tariff and the Commission.”¹⁶

8. Tilton argues that PJM should not be permitted to disqualify the Facility’s pseudo-tie even if flowgates that are currently uncoordinated may become coordinated in the future. Tilton argues that the Flowgate Test is akin to a generator interconnection study and is an eligibility test; once a resource’s pseudo-tie passes it, any subsequent changes to the system should not adversely affect the pseudo-tie.¹⁷ Tilton asserts: “It is discriminatory and unjust and unreasonable to shift the consequences of other system users’ flow impacts to existing pseudo-tied resources that have not changed their operating parameters.”¹⁸

9. Tilton further argues that even if the Commission finds PJM’s extension of the Flowgate Test to uncoordinated flowgates to be consistent with the Tariff, application of the test in that manner is unjust and unreasonable because it permits PJM to terminate a pseudo-tie without any demonstrated need to do so to protect PJM customers from congestion costs on coordinated flowgates.¹⁹ Tilton argues that PJM’s application of the Flowgate Test will exclude needed Tilton capacity from the PJM capacity market without reasonable justification because there is nothing that Tilton can do to come into compliance—namely, there is no way for Tilton to affect whether an internal resource has a minimum impact on the 44 tested flowgates.²⁰

10. Tilton also argues that PJM has refused to provide it with documentation supporting the Flowgate Test results. Tilton argues that in Order No. 845, in the

¹⁶ *Id.*

¹⁷ *Id.* at 7 (citing Pseudo-Tie Enhancements Filing at 15).

¹⁸ *Id.*

¹⁹ *Id.* at 8. Tilton also asserts that the application of the Flowgate Test is unjust and unreasonable as applied to coordinated flowgates, asserting that the premise of the test is flawed, and it is designed to preclude most if not all external resources from being pseudo-tied. *Id.* at 8 n.14.

²⁰ *Id.* at 9. Tilton asserts that Order No. 890-A, in which the Commission concluded that transmission providers are not required to accommodate a pseudo-tie, should not be interpreted as granting unfettered discretion to terminate an existing pseudo-tie after a generator has relied on the transmission provider’s accommodation of the pseudo-tie. *Id.* at 9 n.17 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 631 (2007)).

generator interconnection context, the Commission found that the exchange of models and assumptions used to assess generator interconnections should be made available to customers, subject to appropriate confidentiality safeguards, both to help inform customers and also hold transmission providers accountable for their models and assumptions.²¹ According to Tilton, the same rationale applies in this context because it “should not be required to blindly accept PJM’s [] Flowgate Test results and termination of the Tilton Pseudo-Tie without access to information necessary to understand and verify the results.”²² Tilton asks the Commission to direct PJM to comply with its request for documentation, subject to Tilton’s signing a confidentiality agreement.

III. Notice and Responsive Pleadings

11. Notice of the Complaint was published in the *Federal Register*, 83 Fed. Reg. 23,273 (2018), with answers, interventions, and protests due on or before May 31, 2018. The following parties filed timely motions to intervene: American Municipal Power, Inc. (AMP); Brookfield Energy Marketing LP (Brookfield); Illinois Municipal Electric Agency; MISO; Monitoring Analytics, LLC, in its capacity as the Independent Market Monitor for PJM (IMM); NRG Power Marketing LLC and GenOn Energy Management, LLC; and Tatanka Wind Power, LLC. The Illinois Commerce Commission filed a notice of intervention. The Organization of MISO States (OMS) and Northern Indiana Public Service Company LLC (NIPSCO) submitted motions to intervene out of time.

12. On May 31, 2018, PJM filed its answer. On June 15, 2018, both Tilton and AMP filed answers to PJM’s answer. On July 6, 2018, Brookfield filed an answer. On July 13, 2018, PJM filed a second answer. On July 23, 2018, Brookfield filed a second answer. On July 30, 2018, AMP filed a second answer. On August 8, 2018, PJM filed a third answer. On August 10, 2018, the IMM filed an answer in support of PJM.

A. PJM’s Answer

13. PJM asks the Commission to deny the Complaint, asserting that Tilton has failed to meet its FPA section 206 burden of proof to demonstrate that PJM has applied its Tariff in an unjust, unreasonable, or unduly discriminatory manner.²³ According to PJM,

²¹ *Id.* at 9-10 (citing *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043, at P 237 (2018)).

²² *Id.* at 10.

²³ PJM Answer at 6 (citing *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,161, at P 9 (2008), *order on reh’g*, 127 FERC ¶ 61,121 (2009); *Cal. Mun. Utils. Ass’n v. Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,315, at

the Complaint rests on the narrow and “easily rebutted” argument that the Facility’s historic pseudo-tie should not raise concerns and should be allowed to continue, to facilitate the Facility’s participation in the PJM capacity market, despite the fact that under “[e]ven-handed application” of PJM’s Commission-approved feasibility test, the Facility no longer qualifies to be pseudo-tied.²⁴ PJM asserts that the fact that MISO has not yet invoked its coordination rights to require PJM to take responsibility for Tilton’s effects on certain flowgates will not alter PJM customers’ exposure to coordination costs in the event that MISO does so in the future.

14. PJM explains that on December 26, 2017, it notified Tilton that the Facility would not be eligible to participate in PJM’s capacity auctions for the 2022/2023 Delivery Year and beyond.²⁵ PJM states that of the 44 flowgates that failed the Flowgate Test: “(1) all would be impacted by the Tilton Pseudo-Tie; (2) all would become eligible for coordination between PJM and MISO as a result of the Tilton Pseudo-Tie; and (3) all fail the requirement for at least one qualifying PJM-internal Generation Capacity Resource that has at least a 1.5 percent flow distribution impact on the flowgate.”²⁶

15. PJM explains that the Flowgate Test is an eligibility test applied both to new external generation resources and to external generation resources that are already pseudo-tied, after the expiration of the transition period established in the Pseudo-Tie Enhancement Order. According to PJM, the purpose of the Flowgate Test is to ensure that PJM assumes responsibility for coordinating a new flowgate to facilitate a pseudo-tie only if at least one PJM internal generation resource also has an appropriate flow impact on that flowgate.²⁷ Thus, PJM explains, the test applies to “each eligible coordinated

PP 69-72 (2009), *reh’g denied*, 143 FERC ¶ 61,174 (2013); *Nantahala Power and Light Co.*, Opinion No. 139, 19 FERC ¶ 61,152, at 61,276, *reh’g denied*, Opinion No. 139-A, 20 FERC ¶ 61,430, *reh’g denied & clarified*, Opinion No. 139-B, 21 FERC ¶ 61,222 (1982)).

²⁴ *Id.* at 1-2. PJM asserts that because Tilton has not met the requirements outlined in Attachment DD, section 5.5A(b)(i)(B), its currently pseudo-tied connection to the PJM Region does not qualify as a “Pseudo-Tie” as defined in the PJM Tariff. *Id.* at 1-2 n.4.

²⁵ *Id.* at 4.

²⁶ *Id.* at 5 (citing Affidavit of Timothy Horger (Horger Aff.) at PP 7-8).

²⁷ *Id.* at 7 (citing Pseudo-Tie Enhancement Filing at 15).

flowgate *resulting* from such Pseudo-Tie”²⁸ and “identifies flowgates that would be affected by a Pseudo-Tie, and that would become eligible for coordination as a result of the Pseudo-Tie.”²⁹ Because the Flowgate Test establishes limits on the number of new coordinated flowgates, PJM asserts, the Flowgate Test “clearly applies to flowgates that were uncoordinated before the Pseudo-Tie but would become eligible for coordination as a result of a Pseudo-Tie under PJM’s current (i.e., new) Pseudo-Tie rules.”³⁰

16. PJM asserts that the PJM Tariff and PJM’s filings have been clear that the phrase “each eligible coordinated flowgate resulting from such Pseudo-Tie” in Attachment DD, section 5.5A(b)(i)(B) means that the “Flowgate Test’s flow distribution impact requirement must be applied to each flowgate that becomes eligible for coordination between balancing authorities as a result of the impacts of the Pseudo-Tie being tested.”³¹ PJM agrees with Tilton that a flowgate becomes coordinated only after one Balancing Authority proposes, and the other Balancing Authority accepts, coordination, under the terms of the Joint Operating Agreement between MISO and PJM (MISO-PJM JOA). PJM avers that under the PJM Tariff, the Flowgate Test applies to flowgates that are impacted under the terms of the MISO-PJM JOA by a pseudo-tie and thus are eligible to become coordinated, and could become coordinated, as result of the pseudo-tie.³² PJM asserts it “must have the opportunity to evaluate Pseudo-Ties that may trigger PJM coordination obligations that PJM has little ability to control with PJM-internal generation, *before PJM commits to reliance on the pseudo-tied facility as a Generation Capacity Resource.*”³³ PJM argues that the Commission agrees with this interpretation of the Flowgate Test, citing the Commission’s statements in the Pseudo-Tie Enhancement Order that the test requires PJM to assess “all *new flowgates [PJM] would need to coordinate as a result of the pseudo-tie,*” and that “if the proposed pseudo-tie would

²⁸ *Id.* (quoting, with emphasis added, PJM, Intra-PJM Tariffs, OATT, Attachment DD, § 5.5A(b)(i)(B)) (internal quotation omitted).

²⁹ *Id.* at 8.

³⁰ *Id.*

³¹ *Id.* at 8-9 (citing Pseudo-tie Enhancements Filing at 15; PJM, Pseudo-Tie Enhancements Deficiency Response at 13, Docket No. ER17-1138-001 (filed Sept. 18, 2017)).

³² *Id.* at 9-10.

³³ *Id.* at 10 (emphasis in original).

require PJM to *add a new coordinated flowgate* that does not meet these conditions, the external [Generation Capacity Resource] would not be qualified.”³⁴

17. PJM then explains that its application of the Flowgate Test to the Tilton Facility’s pseudo-tie revealed 231 flowgates impacted by the Tilton Facility’s pseudo-tie, of which 65 already were coordinated and 166 would newly become eligible for coordination; of those 166 newly eligible flowgates, 44 did not meet the 1.5 percent internal Generation Capacity Resource minimum flow distribution impact threshold.³⁵ PJM contends that Tilton has no reason to believe that its eligibility for the transition period would exempt the Facility from the Flowgate Test at the end of the transition period, because “[I]ike all external Generation Capacity Resources not eligible for transition treatment in the 2022/2023 Delivery Year, Tilton must meet the Pseudo-Tie feasibility standards” under the PJM Tariff.³⁶ According to PJM, application of the Flowgate Test reveals that, due to the Tilton Facility’s being pseudo-tied, PJM could be forced to take on additional coordination responsibility that it has already demonstrated PJM should not be obligated to assume.³⁷

18. Regarding Tilton’s assertion that PJM needs the Tilton Facility’s capacity to meet its needs, PJM states that it expects any gap to be filled by other resources participating in the capacity market.³⁸ Regarding Tilton’s claim that its Facility’s pseudo-tie has never caused the need for coordination in the past, PJM avers that the Facility has caused several flowgates to become eligible for coordination, but these flowgates were not identified by the Flowgate Test because the test “will only identify flowgates that are newly eligible for coordination (excluding flowgates that were already eligible for coordination) because that is how the test is set forth in the Tariff.”³⁹

³⁴ *Id.* (quoting, with emphasis added, Pseudo-Tie Enhancements Order, 161 FERC ¶ 61,197 at P 79).

³⁵ *Id.* at 11 (citing Horger Aff. at PP 7-8).

³⁶ *Id.* at 12.

³⁷ *Id.*

³⁸ *Id.* (citing Horger Aff. at P 11).

³⁹ *Id.* at 13. PJM explains that it analyzes all flowgates listed in the North American Electric Reliability Corporation (NERC) Interchange Distribution Calculator’s Book of Flowgates, which generally includes flowgates designated as permanent flowgates and excludes temporary flowgates, and also analyzes flowgates listed on internal flowgate lists provided to PJM by neighboring balancing authorities. *Id.*

19. Regarding Tilton's allegation that PJM's application of the Flowgate Test was unjust and unreasonable and unduly discriminatory, PJM asserts that Tilton has failed to specify an instance of discrimination against Tilton in favor of any other resource, stating that it has implemented the test as proposed and accepted by the Commission.⁴⁰ Rather than being discriminatory, PJM argues, its application of the Flowgate Test to the Facility demonstrates that the test is needed and "appropriate as it will prevent PJM customers from facing undue excessive costs resulting from congestion on coordinated flowgates."⁴¹

20. Regarding Tilton's claim that PJM failed to disclose sufficient information, PJM states that it has communicated to Tilton that 44 flowgates failed the test and provided to Tilton the information that PJM has submitted in this proceeding. PJM asserts that it provided an appropriate level of information that balances Tilton's interests with PJM's obligations to observe limits on the disclosure of information.⁴² PJM explains that it tests the flowgates listed in NERC's Book of Flowgates as well as internal flowgate lists provided by neighboring balancing authorities, which are lists PJM neither creates nor owns; PJM does not believe it is authorized to share the proprietary flowgate information that forms the basis for its testing data. PJM states that it is "willing to work with Tilton and the neighboring balancing authorities to provide additional testing information to Tilton with the consent of PJM's neighbors, perhaps under the terms of a confidentiality agreement, if Tilton will take the lead on securing such consent."⁴³

B. Tilton's Answer

21. Tilton explains that it understands that the Flowgate Test does not apply to flowgates that already are coordinated, and acknowledges that the test applies annually. However, Tilton avers, the test does not apply to all uncoordinated flowgates affected by the pseudo-tied resource; rather, the test applies only to flowgates that PJM is "required to add to the coordination process" to maintain the pseudo-tie.⁴⁴

⁴⁰ *Id.* at 14 (quoting Pseudo-Tie Enhancements Order, 161 FERC ¶ 61,197 at PP 76-77).

⁴¹ *Id.* at 15 (quoting Pseudo-Tie Enhancements Order, 161 FERC ¶ 61,197 at P 76).

⁴² *Id.* at 15-16.

⁴³ *Id.* at 16.

⁴⁴ Tilton Answer at 3.

22. According to Tilton, even though a flowgate might be identified as eligible for coordination, PJM and its customers incur no harm until it is added to the coordination process. Because MISO has not sought coordination of any of the 44 flowgates that “failed,” termination of the pseudo-tie is premature.⁴⁵ Tilton asserts that PJM provides no evidence that MISO may pursue coordination on the 44 flowgates that failed the Flowgate Test in the future. Citing the language in Manual 12, Tilton asserts that Manual 12 “could not be more clear” that the Flowgate Test applies to new flowgates added to the coordination process.⁴⁶

23. Tilton asserts that PJM mischaracterized the Commission’s holdings in the Pseudo-Tie Enhancement Order. Tilton argues that the Commission was merely reciting PJM’s statements, and that PJM failed to quote portions of the order that indicate that the Commission understood the test to apply to flowgates that PJM must in fact coordinate.⁴⁷

24. Tilton concludes by pointing out that if the 44 flowgates that “failed” the Flowgate Test had been coordinated prior to PJM’s application of the test, then the pseudo-tie would have passed the test.⁴⁸ Tilton argues that this result is unjust and unreasonable because, under that scenario, PJM would have had significantly more coordination responsibility.

C. AMP’s and Brookfield’s Answers

25. AMP agrees with Tilton that PJM’s application of the Flowgate Test is contrary to the plain language of the Tariff provision. AMP contends that the Flowgate Test should only apply to flowgates that PJM and MISO have actually designated as coordinated flowgates under the MISO-PJM JOA. AMP contends that the MISO-PJM JOA clearly distinguishes between “Coordinated Flowgates” and other “Flowgates,” and PJM’s interpretation of the Tariff is inconsistent with the use of these terms in the MISO-PJM

⁴⁵ *Id.* at 3-4.

⁴⁶ *Id.* at 5-6; *see supra* n.9 and accompanying text.

⁴⁷ Tilton Answer at 7 (citing PJM Answer at 10 and quoting Pseudo-Tie Enhancement Order, 161 FERC ¶ 61,197 at P 76 (“We find that the 1.5 percent impact threshold is . . . an appropriate measure to provide PJM options to relieve or mitigate congestion at market-to-market flowgates between PJM and MISO, . . . beyond the sole recourse of redispatching a pseudo-tied resource, where the alternative is discontinuation of a coordinated flowgate.”)).

⁴⁸ *Id.* at 7-8.

JOA.⁴⁹ Brookfield similarly asserts that PJM’s interpretation that “each eligible coordinated flowgate” means any flowgate, or perhaps any monitored transmission facility, that is “eligible for coordination” is “grammatically nonsensical, as ‘eligible’ clearly does not modify ‘coordinated’ but instead refers to the subgroup of coordinated flowgates (in the Book of Flowgates) on which the pseudo-tie being analyzed has a 5% or greater flow distribution impact and to which PJM applies the M2M Flowgate Test.”⁵⁰ Brookfield asserts that this interpretation is most consistent with PJM’s explanation of the Flowgate Test, the Commission’s understanding of the test, and the PJM Manuals.⁵¹

26. AMP further argues that PJM’s interpretation of the Flowgate Test is anticompetitive and has the potential to jeopardize every pseudo-tied resource, as a resource could fail the Flowgate Test even if it has a *de minimis* impact on a particular flowgate and the RTOs forgo coordination under the MISO-PJM JOA. AMP contends that PJM has made no representation nor provided evidence that any of the 44 flowgates are likely to be designated as a coordinated flowgate, or indicated the level of congestion that would materialize on these flowgates as a result of the Tilton Facility’s pseudo-tie.⁵² Brookfield similarly asserts that the practical effect of PJM’s interpretation is to unnecessarily prevent external resources from participating in the PJM capacity auctions, “which will adversely impact the competitiveness of the [capacity market] to the detriment of electricity consumers in PJM.”⁵³

27. Brookfield discusses a similar experience with PJM’s implementation of the Flowgate Test. Brookfield describes how PJM preliminarily indicated that Brookfield’s pseudo-tie arrangement⁵⁴ passed the Flowgate Test, but ultimately found that Brookfield’s pseudo-tie arrangement failed with respect to 19 flowgates or monitored

⁴⁹ AMP Answer at 3-5 (citing MISO-PJM JOA §§ 2.2.12; 2.2.24).

⁵⁰ Brookfield Answer at 4.

⁵¹ *Id.* at 4-5.

⁵² AMP Answer at 5-7.

⁵³ Brookfield Answer at 5-6, 9.

⁵⁴ Brookfield explains that Brookfield Smoky Mountain Hydropower LLC owns four hydro resources located in Tennessee and North Carolina, two of which have existing pseudo-ties into PJM. Herein, these pseudo-ties are collectively referred to as the Brookfield pseudo-tie arrangement.

transmission facilities, none of which are coordinated flowgates.⁵⁵ On the basis of these results, Brookfield explains that its facilities are, like Tilton's Facility, ineligible to participate in the May 2019 capacity auction for the 2022/2023 Delivery Year.

D. PJM's Second Answer

28. PJM asserts that, since its initial Pseudo-Tie Enhancement Filing, it has been clear that PJM would apply the Flowgate Test at the time the pseudo-tie is requested, to address the risk that an impacted flowgate could become coordinated in the future without an internal alternative for relieving transmission constraints. PJM explains that if it were to "wait[] until after committing to a Pseudo-Tie to learn that a flowgate expected (based on PJM's analysis) to become a PJM coordination responsibility *actually becomes* coordinated, then it would be too late—PJM loads would become exposed to external Balancing Authority congestion costs that PJM could not effectively manage with PJM resources."⁵⁶ That is why, according to PJM, it "applies the test to all flowgates that are impacted by the Pseudo-Tie and thus could *become* coordinated between PJM and an external balancing authority (in this case MISO) as a result of the Pseudo-Tie."⁵⁷ PJM asserts that Tilton, AMP, and Brookfield's arguments ignore the fact that PJM cannot control whether or when a flowgate will become coordinated after a pseudo-tie is in place: "[i]ndeed, flowgates typically do not become coordinated immediately after flows or system changes occur that give rise to a coordination obligation. Rather, sometime after such conditions arise, a neighboring Balancing Authority entitled to invoke such rights may call for coordination, such as under the MISO-PJM JOA."⁵⁸ PJM states that Tilton, AMP, and Brookfield "advance an approach that unduly advantages external resources and unduly harms PJM loads."⁵⁹

29. Regarding how to interpret the phrase "eligible coordinated flowgate," PJM asserts that contrary to the "strained interpretations" offered by other parties, "the word

⁵⁵ *Id.* at 6-8.

⁵⁶ PJM Second Answer at 4 (emphasis in original).

⁵⁷ *Id.* at 5.

⁵⁸ *Id.* at 6 (citing MISO-PJM JOA, Attachment 2, Congestion Management Process, § 3.2).

⁵⁹ *Id.* at 5-6.

‘eligible’ must be afforded meaning”⁶⁰ and thus the phrase is “reasonably understood to refer to flowgates that would become eligible for coordination as the result of a Pseudo-Tie”—a reading that is consistent with the “practical meaning and purpose of the Tariff provision, which is to require PJM to accommodate Pseudo-Ties *only* when accommodating them would not cause PJM to become responsible for coordinating flowgates for which there are very limited PJM alternatives for relieving constraints.”⁶¹

30. Regarding Tilton’s argument that PJM mischaracterized the Commission’s previous findings, PJM asserts that it focused on the specific language of the Commission order that is most directly relevant. According to PJM, the portion of the Pseudo-Tie Enhancement Order that Tilton criticizes PJM for failing to quote in its answer actually reinforces PJM’s position that the purpose of the Flowgate Test “is to avoid having pseudo-tied resources on coordinated flowgates where there are not sufficient PJM-internal alternatives for congestion relief.”⁶² Regarding the language of Manual 12, PJM asserts that “failing to use the word ‘eligible’ in a manual does not mean that word must be read out of the Tariff; the filed Tariff governs over the Manual.”⁶³

31. Responding to arguments that the Flowgate Test unnecessarily prevents external resources from participating in the PJM capacity auctions, PJM contends that the Pseudo-Tie Enhancement Order addresses that issue, finding that the Flowgate Test “is appropriate as it will prevent PJM customers from facing undue excessive costs resulting from congestion on coordinated flowgates, whether those flowgates are coordinated with MISO or any other Balancing Authority.”⁶⁴ According to PJM, the Commission

⁶⁰ *Id.* at 7 (citing *Frank v. Volkswagenwerk*, 382 F.Supp. 1394, 1400 (E.D. Pa. 1974)).

⁶¹ *Id.* (emphasis in original).

⁶² *Id.* at 8 (citing Tilton Answer at 7, 14); *see supra* n.47 and accompanying text.

⁶³ PJM Second Answer at 9 (citing, among other cases, *Cal. Indep. Sys. Operator Corp.*, 154 FERC ¶ 61,169, at P 63 (2016)). PJM asserts that the word “new” in the relevant portions of Manual 12 “can reasonably be understood as referring to flowgates that would be ‘new’ *as a result of agreeing to the Pseudo-Tie.*” *Id.* (emphasis in original).

⁶⁴ *Id.* at 10 (quoting Pseudo-Tie Enhancement Order, 161 FERC ¶ 61,197 at P 76).

explicitly found that the Flowgate Test does not pose an undue barrier to PJM's capacity market.⁶⁵

32. Regarding AMP's argument that the Flowgate Test should not apply when an external resource has only a *de minimis* effect on a flowgate, PJM counters that AMP fails to quantify *de minimis* in this context, "and fails to recognize that there is no *de minimis* safe harbor" in the test.⁶⁶ Regarding Brookfield's arguments about potential adverse impacts to the competitiveness of the capacity market, PJM asserts that the allegations must be rejected because Brookfield provides no basis for them.⁶⁷

33. Finally, PJM asserts that issues regarding PJM's application of the Flowgate Test to Brookfield's facilities are outside the scope of this proceeding. Moreover, regarding differences between the preliminary and final results of the Flowgate Test as applied to Brookfield, PJM contends that "it is common sense that a preliminary determination is subject to revision," and the differences are "not evidence of inconsistency, but rather evidence of PJM's thoughtful implementation" of the Flowgate Test.⁶⁸

E. Brookfield's and AMP's Second Answers

34. Brookfield argues that a "foundational principle" of tariff interpretation is that the plain and literal meaning controls⁶⁹ and reiterates that in the "clear and unambiguous" Tariff language, the word "'eligible' . . . refers to the subgroup of coordinated flowgates . . . on which the pseudo-tie being analyzed has a 5 [percent] or greater flow distribution impact and to which PJM applies the Test."⁷⁰ Brookfield agrees with PJM that the Tariff language governs the associated language in Manual 12 but argues that PJM's interpretation of the relevant Tariff language is inconsistent with Manual 12, while Brookfield's interpretation is consistent with Manual 12, which describes step one of the

⁶⁵ *Id.* (citing Pseudo-Tie Enhancement Order, 161 FERC ¶ 61,197 at P 76).

⁶⁶ *Id.* at 10-11.

⁶⁷ *Id.* at 11.

⁶⁸ *Id.* at 12.

⁶⁹ Brookfield Second Answer at 3 (citing *Cal. Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395, 400 (D.C. Cir. 2004); *Wolverine Power Co. v. FERC*, 963 F.2d 446, 452 (D.C. Cir. 1992); *ETC Tiger Pipeline, LLC*, 138 FERC ¶ 61,035, at P 40 (2012)).

⁷⁰ *Id.* at 3.

test as being to identify “new coordinated flowgates.”⁷¹ Brookfield also argues that “competitive harm will undoubtedly and logically occur as a result of a significant amount of capacity *that cleared in prior PJM capacity auctions* no longer being eligible to participate” due to PJM’s application of the Flowgate Test.⁷² Finally, in response to PJM’s assertions that PJM’s application of the Flowgate Test to Brookfield is outside the scope of this proceeding, Brookfield explains that it offered facts about its experience because it “appears to be in the exact same position as Tilton,” meaning that PJM’s interpretation and implementation of the Flowgate Test “is unnecessarily restricting [Brookfield’s] ability to participate in the PJM capacity market.”⁷³

35. AMP argues that PJM unreasonably interprets the terms of the Flowgate Test without regard to the terms of the MISO-PJM JOA, when the basis for the Flowgate Test is PJM’s cost exposure under the MISO-PJM JOA.⁷⁴ According to AMP, “under the [MISO-PJM] JOA, PJM’s coordination obligation and associated potential to incur costs arise in the case of coordinated flowgates, but not in the case of mere flowgates.”⁷⁵

F. PJM’s Third Answer and the IMM’s Answer

36. PJM explains that there are currently 316 coordinated flowgates included in the PJM-MISO market-to-market coordination process, and the potential addition of the 44 flowgates identified in its application of the Flowgate Test to the Tilton Facility

⁷¹ *Id.* at 4.

⁷² *Id.* at 5 (emphasis in original). Brookfield also cites to assertions by the independent market monitor for MISO and for the New York Independent System Operator, Inc. regarding potential cost increases in the PJM capacity market that could result from restricting participation by external resources. *Id.* (citing Complaint of Potomac Economics, Ltd. against PJM, Docket No. EL17-62-000, Patton Aff. at P 32 (filed Apr. 6, 2017)).

⁷³ *Id.* at 5. Brookfield states that it has broader concerns about the Flowgate Test “that go beyond PJM’s faulty interpretation of the language in its Tariff” and thus is evaluating whether to file its own complaint. *Id.*

⁷⁴ AMP Second Answer at 3-4 (citing Pseudo-Tie Enhancements Filing at 9, PJM Second Answer at 4, 10).

⁷⁵ *Id.* at 4.

“would result in 12.2 [percent] of the flowgate total being attributable to the Tilton Pseudo-Tie.”⁷⁶ PJM further asserts:

Once PJM’s grant of a Pseudo-Tie triggers a process under the PJM-MISO JOA by which PJM could be required to manage a coordinated flowgate, whether a particular flowgate might be considered to bear only a “*de minimis*” impact has no bearing because MISO has the right, under the PJM-MISO JOA, to cause an impacted flowgate to become a coordinated flowgate. Because PJM is not the only Balancing Authority in control over the decision to coordinate flowgates, the congestion management risk to PJM’s customers arises regardless how small a Pseudo-Tie’s impact would be on an impacted flowgate.⁷⁷

37. The IMM supports PJM’s interpretation and implementation of the Flowgate Test, and agrees with PJM that the Tilton Facility’s pseudo-tie does not pass the Flowgate Test.⁷⁸ According to the IMM, PJM’s pseudo-tie requirements do not create unnecessary barriers to competition, but rather “ensure that inferior products are not permitted to compete with and displace internal PJM resources and suppress prices below competitive levels.”⁷⁹

IV. Discussion

A. Procedural Matters

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

39. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2018), we grant OMS’s and NIPSCO’s late-filed motions to intervene given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

⁷⁶ PJM Third Answer at 5-6.

⁷⁷ *Id.* at 6.

⁷⁸ IMM Answer at 1-2.

⁷⁹ *Id.* at 2-3.

40. 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 an answer unless otherwise ordered by the decisional authority. We accept the answers of AMP, Brookfield, the IMM, PJM, and Tilton because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

41. Upon consideration of the Complaint and responses thereto, we find that Tilton and other commenters raise issues related to PJM's interpretation and application of the Flowgate Test that warrant further examination and cannot be resolved based on the current record in this proceeding. Therefore, as discussed below, we establish paper hearing procedures.

42. The parties' disagreement centers on what it means for a flowgate to be an "eligible coordinated flowgate" under the Flowgate Test. We find that the meaning of the phrase "eligible coordinated flowgate" in Attachment DD, section 5.5A(b)(i)(B) of the PJM Tariff should be interpreted in the context of the MISO-PJM JOA provisions governing coordinated flowgates. However, based on the record developed thus far in this proceeding, it is unclear how PJM interpreted and applied the phrase "eligible coordinated flowgate." The MISO-PJM JOA describes the fundamentals of coordinating flowgates through the market-to-market process,⁸⁰ with such coordination largely based on how NERC defines a significant impact on a flowgate. PJM and MISO rely on NERC's current five percent shift factor threshold to determine whether a flowgate is eligible for coordination,⁸¹ but have additional processes for either PJM or MISO to request market-to-market coordination of a flowgate.⁸² PJM does not explain, with

⁸⁰ See generally MISO-PJM JOA, Attachment 3, Interregional Coordination Process.

⁸¹ *Id.* § 1.1 ("The list of M2M Flowgates will be limited to only those for which at least one generator in the adjacent market has a significant Generation-to-Load Distribution Factor (GLDF), sometimes called 'shift factor,' with respect to serving load in that adjacent market. NERC rules currently establish that a significant shift factor is five percent or greater. If NERC adopts a lower shift factor threshold than 5 [percent], the new threshold will be used to determine whether the generator has a significant GLDF for the purpose of this market-to-market ICP.").

⁸² For example, the MISO-PJM JOA Interregional Coordination Process also states: "Where the adjacent market does not have a generator with a significant impact (either positive impact or negative impact) on a single-monitored element Flowgate at voltages of 138kV (i.e., shift factor is less than 5 percent) but its Market Flows are a significant portion of the total flow . . . , these transmission constraints will be included in

reference to specific MISO-PJM JOA provisions, how it determines a flowgate is “impacted by a Pseudo-Tie under the terms of the MISO-PJM JOA and thus becomes eligible for coordination” in applying the Flowgate Test.⁸³ In addition, the current record does not show how PJM applied the Flowgate Test to the Tilton Facility’s pseudo-tie (i.e., the characteristics of the flowgates to which PJM applied the Flowgate Test) and whether PJM expected coordination rights to be invoked for any of the “eligible coordinated flowgates” identified for the Tilton Facility.

43. To develop the record on these issues, we direct PJM to file within 45 days of the date of this order an explanation, accompanied by documents or affidavits, if necessary, addressing the following:

(1) How PJM determines a flowgate is “impacted by a Pseudo-Tie under the terms of the MISO-PJM JOA” and how PJM identifies an “eligible coordinated flowgate” resulting from a pseudo-tie from the MISO BAA into PJM. Please include a step-by-step description of the process and an explanation of its basis for doing so, with reference to the MISO-PJM JOA where relevant, and include an explanation of how PJM’s process for identifying an “eligible coordinated flowgate” when applying the Flowgate Test departs, if at all, from the MISO-PJM JOA;

(2) Whether PJM applies the five percent shift factor threshold in the MISO-PJM JOA, Attachment 3, § 1.1, to determine “eligible coordinated flowgates” or, if not, why it does not, and whether the five percent shift factor threshold, other specific thresholds set forth in the MISO-PJM JOA, or some other screen would be a reasonable means of identifying flowgates for which coordination could be required;

the list of M2M Flowgates subject to market-to-market coordination. If the Market Flow impacts of the Non-Monitoring RTO exceed 35 percent of the Flowgate rating during real-time operations, the Flowgate will be added as a M2M Flowgate at the request of the Monitoring RTO.” *Id.* § 1.1.3; *see also id.* § 1.3.4 (“The Parties can mutually agree to add or remove a Flowgate from the market-to-market process whether or not it passes the coordination tests, or whether or not it is a Reciprocal Coordinated Flowgate. A M2M Flowgate may be removed when the Parties agree that the market-to-market process would not be an effective mechanism to manage congestion on that Flowgate.”).

⁸³ *See* PJM Answer at 9.

(3) How PJM applied the Flowgate Test to the Tilton Facility's pseudo-tie, including an explanation of how PJM identified the "eligible coordinated flowgates" associated with the Tilton Facility's pseudo-tie and how PJM implemented each step of the Flowgate Test;⁸⁴ and

(4) Whether PJM intends to request, or whether PJM expects MISO to request, coordination for any of the "eligible coordinated flowgates" identified for the Tilton Facility, and why or why not.

44. We direct PJM to provide sufficient technical information to enable the parties to the paper hearing and the Commission to understand how PJM interpreted and applied the Flowgate Test.⁸⁵ Tilton and other parties may submit reply testimony, evidence, and/or argument 30 days thereafter (or 75 days from the date of this order).

45. Section 206(b) of the FPA provides that upon the filing of a complaint, the Commission must establish a refund effective date that is no earlier than the date of the complaint and no later than five months subsequent to the date of the complaint. In such cases, in order to give maximum protection to customers, and consistent with our precedent, we have historically tended to establish the section 206 refund effective date at the earliest date allowed by section 206, and we do so here as well.⁸⁶ That date is May 11, 2018, the date Tilton filed the Complaint.

46. Section 206(b) of the FPA also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, the Commission shall state the reason why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a decision. As we are setting the Complaint in Docket No. EL18-145-000 for further proceedings, we expect to render a decision prior to April 1, 2019.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly section 206 thereof,

⁸⁴ See Manual 12 at 94-95.

⁸⁵ Any confidential information can be filed under the terms of 18 C.F.R. § 388.112 (2018).

⁸⁶ See, e.g., *Idaho Power Co.*, 145 FERC ¶ 61,122 (2013); *Canal Elec. Co.*, 46 FERC ¶ 61,153, *order on reh'g*, 47 FERC ¶ 61,275 (1989).

and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), the Commission hereby institutes paper hearing procedures in this proceeding, concerning issues raised in the Complaint, including PJM's interpretation and application of the Flowgate Test.

(B) The refund effective date in Docket No. EL18-145-000 established pursuant to section 206 of the FPA shall be May 11, 2018, the date of the Complaint.

(C) PJM is hereby directed to submit the filing discussed in the body of this order, accompanied by documents or affidavits, if necessary, within 45 days of the date of this order. Reply testimony, evidence, and/or argument may be submitted 30 days thereafter, or 75 days from the date of this order, as discussed in the body to this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.