

170 FERC ¶ 61,166
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. ER20-83-000

ORDER ON COMPLIANCE FILING

(Issued February 27, 2020)

1. On October 10, 2019, PJM Interconnection, L.L.C. (PJM) submitted proposed revisions to Schedule 1 of the Amended and Restated Operating Agreement of PJM (Operating Agreement) and to Attachment K – Appendix of PJM’s Open Access Transmission Tariff (Tariff) in compliance with the requirements of Opinion No. 566, Order on Initial Decision.¹ As discussed below, we find that PJM’s filing complies with the requirements of Opinion No. 566, and accordingly we accept PJM’s compliance filing, effective December 10, 2019.

I. Background

2. On August 26, 2019, the Commission issued Opinion No. 566 in response to exceptions to an Initial Decision issued on January 19, 2018. The Initial Decision addressed complaints filed by merchant transmission developer, TranSource, LLC (TranSource), alleging that PJM violated the Federal Power Act (FPA) and the Tariff while processing three requests by TranSource to build network transmission upgrades on the PJM transmission system to obtain Incremental Auction Revenue Rights (IARR).²

3. TranSource initiated these three upgrade requests for IARRs in 2014 and ultimately proceeded through PJM’s System Impact Study process pursuant to

¹ *TranSource, LLC v. PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,119 (2019) (Opinion No. 566); *TranSource, LLC v. PJM Interconnection, L.L.C.*, 162 FERC ¶ 63,007 (2018) (Initial Decision).

² Opinion No. 566, 168 FERC ¶ 61,119 at PP 1, 18 (citing TranSource, LLC, Complaint, Docket No. EL15-79-000 (filed Jun. 23, 2015) (Initial Complaint); TranSource, LLC, Amended and Restated Complaint and Request for Fast Track Processing of TranSource, LLC, Docket No. EL15-79-000 (filed Feb. 10, 2016) (Amended Complaint)).

Attachment EE of the Tariff. At the conclusion of this process, PJM issued three System Impact Studies, which TranSource challenged as having material defects.³ PJM issued revised, final System Impact Studies on June 10, 2015, estimating that the necessary upgrades to accommodate TranSource's upgrade requests would cost approximately \$1.7 billion.⁴ TranSource again contested these results, and since TranSource did not sign a Facilities Study Agreement or pay the deposits necessary to move its requests forward to the next phase of the Attachment EE process, PJM terminated the three queue positions associated with TranSource's upgrade requests in July 2015.⁵

4. As a result of its dispute with PJM, TranSource filed complaints with the Commission on June 23, 2015 and February 10, 2016. In these complaints, TranSource argued that PJM's IARR study process was flawed, nontransparent, and discriminatory, and that PJM and the affected PJM transmission owners inflated the scope of the system upgrades needed to accommodate TranSource's requested IARRs, causing TranSource to lose its financing and to be unable to move forward with the queue positions associated with its upgrade requests. TranSource requested that the Commission grant various forms of relief, including suspension of all applicable Tariff deadlines to allow TranSource to retain its queue positions. PJM and certain PJM transmission owners opposed TranSource's complaints.⁶ Monitoring Analytics, LLC (Market Monitor) intervened in the Initial Complaint proceeding and subsequently worked with PJM to develop a detailed description of PJM's processes and methods for evaluating IARR requests (June 2017 Whitepaper) that was filed in the record and posted on PJM's website.⁷ When the Market Monitor filed the June 2017 Whitepaper, it stated that the June 2017 Whitepaper resolved the transparency concerns that it had previously raised in the proceeding.⁸

³ *Id.* PP 3-4 (citing Initial Complaint at P 3).

⁴ *Id.* P 4 (citing Initial Decision, 162 FERC ¶ 63,007 at P 7).

⁵ *Id.* (citing Initial Decision, 162 FERC ¶ 63,007 at P 8; PJM Interconnection, L.L.C., Motion for Leave to Respond and Limited Response, Docket No. EL15-79-000, at 1-2 (filed July 20, 2015)).

⁶ *Id.* PP 1, 5-9.

⁷ *Id.* PP 12-13 (citing PJM Interconnection, L.L.C. and Monitoring Analytics, LLC, Joint Filing Giving Notice of Partial Settlement, Docket Nos. EL15-79-000 and EL15-79-001 (filed June 6, 2017) (Notice of Partial Settlement)).

⁸ *Id.* P 13 (citing Notice of Partial Settlement at 1).

5. On September 24, 2015, the Commission set TranSource's Initial Complaint for hearing to address all the issues raised (September 2015 Hearing Order). On May 10, 2016, the Commission determined that the issues raised in TranSource's Amended Complaint should be addressed at the hearing already established by the September 2015 Hearing Order.⁹

6. Following hearing and settlement judge procedures, in the Initial Decision, the Presiding Judge found that PJM's practices during the System Impact Study phase of processing TranSource's upgrade requests were nontransparent and unduly discriminatory, and therefore unjust and unreasonable. The Presiding Judge granted TranSource limited relief in the form of restoration of its original queue positions and a refund of all monies paid to PJM for the System Impact Studies. The Presiding Judge also found that the question of whether the upgrades PJM identified were necessary to accommodate TranSource's upgrade requests could not be answered, since the litigation solely involved the System Impact Study phase of the Attachment EE process, which is only meant to represent a good faith, non-binding, preliminary estimate of the necessary upgrades and their anticipated costs. In addition, the Initial Decision suggested that the Commission potentially order PJM to vet the June 2017 Whitepaper through the stakeholder process.¹⁰

II. Opinion No. 566

7. In Opinion No. 566, the Commission reversed the Presiding Judge's findings that PJM's processing of TranSource's System Impact Studies was nontransparent and unduly discriminatory. Nevertheless, the Commission found that PJM's Tariff omits material terms about how it processes System Impact Studies for Attachment EE upgrade requests and directed PJM to make a compliance filing proposing modifications to its Tariff.¹¹ In addition, the Commission found that PJM made errors in processing the TranSource

⁹ *Id.* PP 10-11 (citing *TransSource, LLC v. PJM Interconnection, LLC*, 152 FERC ¶ 61,229 (2015); *TranSource, LLC v. PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,154 (2016) (May 2016 Hearing Order)). The May 2016 Hearing Order excluded the issue of whether PJM should be ordered to initiate a stakeholder process to consider changes to Attachment EE. May 2016 Hearing Order, 155 FERC ¶ 61,154 at PP 1, 39.

¹⁰ Opinion No. 566, 168 FERC ¶ 61,119 at PP 2, 14-15 (citing Initial Decision, 162 FERC ¶ 63,007 at PP 1, 80(j), 83-87).

¹¹ *Id.* PP 2, 22-23, 25.

System Impact Studies, in violation of its Tariff and Commission orders, but found that all such errors were immaterial, and therefore ordered no remedies.¹²

8. With respect to the compliance requirement, the Commission found that the Tariff does not comport with the Commission's policy that "[a]ll practices that 'significantly affect rates, terms and conditions of service' must be included in the tariff," as opposed to manuals or other documents not filed with the Commission.¹³ The Commission acknowledged that certain details affecting the study process for Attachment EE upgrade requests may appropriately remain outside the Tariff, in the June 2017 Whitepaper or stakeholder-vetted manuals. However, the Commission required PJM to propose Tariff modifications to ensure that critical details are contained within the Tariff, including high-level summaries of:

(1) a definition of the models used to evaluate IARR requests, including descriptions of the IARR market model and the planning model;

(2) a description of how the market limits or operative constraints in the market model are determined; and

(3) a detailed explanation of how "simultaneous feasibility" is determined for IARR requests, including a description of how PJM conducts the "simultaneous feasibility test" and determines the "incremental capability required" for IARR requests to be granted, taking into account financial rights and physical constraints of the system.¹⁴

9. In addition, the Commission stated that the term "operative constraints," used in PJM's testimony, is not defined or described in the Tariff or Operating Agreement.¹⁵ The Commission noted that a tariff may cross-reference manuals, so long as the information present in the manual, but not the tariff, does not significantly affect rates, terms, or conditions of service; as such, specific details of the processes that do not significantly

¹² *Id.* PP 2, 24, 26.

¹³ *Id.* PP 78, 82 (citing *Monterey MA, LLC v. PJM Interconnection, L.L.C.*, 165 FERC ¶ 61,201, at P 52 (2018) (quoting *Demand Response Coal. v. PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,061, at P 17 (2013))).

¹⁴ *Id.* P 83.

¹⁵ *Id.* P 84 (citing Ex. PJM-0001A at 21:5-20 (Horger Answering Test.); Ex. TS-115 at 95:8-12 (Horger Dep.)).

affect rates, terms and conditions of service need not be included, or may be included by reference.¹⁶

III. PJM's Compliance Filing

10. On October 10, 2019, PJM submitted its Opinion No. 566 compliance filing, proposing identical revisions to sections 7.5 and 7.8 of both the Operating Agreement, Schedule 1 and the Tariff, Attachment K – Appendix. In section 7.5, PJM proposes to specify and more fully describe the models it uses to evaluate IARR requests (i.e., the market model, IARR model, and planning model). PJM states that revised section 7.5(a) more fully describes the market model. PJM asserts that new section 7.5(b) summarizes how PJM determines the market limits that signal the need for system upgrades, as part of the market model, and satisfies the requirement to define or describe “operative constraints.” According to PJM, new sections 7.5(e) and (f) specifically describe how a simultaneous feasibility test is performed for IARR requests to determine the incremental capability required for an IARR request to be granted, including financial rights and physical constraints of the system. PJM states that those sections also describe the IARR model and ten-year stage 1A Auction Revenue Rights (ARR) model.¹⁷

11. In section 7.8, PJM proposes revisions regarding how PJM evaluates whether an upgrade request is simultaneously feasible and determines the estimated costs necessary to provide IARRs. PJM states that revised section 7.8(b) references the simultaneous feasibility test from section 7.5. According to PJM, additions to sections 7.8(b) and (c) describe the preliminary assessment of simultaneous feasibility of requested IARRs and outstanding ARRs, cross-referencing PJM manuals and guidance materials such as the June 2017 Whitepaper. These sections also provide further detail on the IARR model, simultaneous feasibility analysis, and the planning model. PJM asserts that new subsection 7.8(c)(i) describes the differences between the markets model used for annual ARR allocations and the markets model used for IARR determinations.¹⁸

¹⁶ *Id.* (citing *Midcontinent Indep. Sys. Operator, Inc.*, 165 FERC ¶ 61,190, at P 105 (2018) (citing *Midcontinent Indep. Sys. Operator, Inc.*, 162 FERC ¶ 61,165, at P 69 (2018)); see also *Cal. Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,271, at P 16 (2008)).

¹⁷ Compliance Filing at 2-5 (citing Opinion No. 566, 168 FERC ¶ 61,119 at PP 83-84). PJM uses the term “markets model” in its proposed revisions to the Tariff and Operating Agreement but refers to “market model” and “markets model” interchangeably in its transmittal.

¹⁸ *Id.* at 6-8.

12. Lastly, PJM proposes ministerial changes to revise the numbering of sections 7.5 and 7.8 given the addition of new provisions to the Operating Agreement and Tariff.¹⁹

IV. Notice and Responsive Pleadings

13. Notice of PJM's compliance filing was published in the *Federal Register*, 84 Fed. Reg. 55,947 (2019), with interventions and protests due on or before October 31, 2019. American Municipal Power, Inc.; Calpine Corporation; and PPL Electric Utilities Corporation filed timely motions to intervene. On November 8, 2019, the Market Monitor filed comments. On November 12, 2019, H-P Energy Resources LLC (H-P Energy) filed a motion to intervene out-of-time, motion to reject, and answer to the Market Monitor's comments. On November 26, 2019, the Market Monitor filed a motion to intervene out-of-time, motion for leave to answer and an answer.

14. The Market Monitor does not oppose acceptance of PJM's Compliance Filing and states that PJM's revisions reasonably comply with the Commission's directives in Opinion No. 566. However, the Market Monitor argues that it would be better to eliminate compensation of competitive transmission projects through IARRs than to codify what the Market Monitor contends is a confusing process that may impede development of better alternatives and interfere with efficient and equitable compensation to ARR holders.²⁰

15. The Market Monitor states that, since 2018, it has recommended that the direct customer approach for creating and allocating IARRs should be eliminated from the Tariff. The Market Monitor argues that the increased transparency of PJM's process will more clearly indicate that IARR projects are effectively nonviable under the analysis PJM performs. More specifically, the Market Monitor asserts that, given the current allocation of existing ARRs relative to system capability, the upgrades needed to produce IARRs under this approach are prohibitively expensive and impractical, and that the IARR process adds nothing to the development of competitive transmission.²¹

16. Further, the Market Monitor states that PJM's process for using IARR requests to compensate competitive transmission projects is flawed and inconsistent with the

¹⁹ *Id.* at 9.

²⁰ Market Monitor Comments at 1-2.

²¹ *Id.* at 3-4.

requirements of Order No. 681.²² In particular, the Market Monitor contends that granting stage 1A status to IARRs represents preferential treatment of IARR rights relative to ARR rights belonging to load. The Market Monitor states that, if PJM's annual market model used to allocate existing ARR rights cannot simultaneously support stage 1A ARR requests, the market model is modified to artificially support all the stage 1A ARR requests, including IARRs, reducing the amount of remaining later tier ARR requests from other rights holders, in violation of Order No. 681. According to the Market Monitor, the result is that network customers and IARR project owners pay the same network fee but receive disparate treatment in terms of ARRs that offset their congestion.²³

17. H-P Energy argues that the Commission should reject the Market Monitor's comments because the Market Monitor is not a party to the proceeding, the comments were not timely filed and no justification was made for the untimely filing, and the comments are beyond the scope of the proceeding. If the Commission does not reject the comments, H-P Energy urges the Commission to deny the relief sought by the Market Monitor. H-P Energy argues that Commission action on this out-of-scope pleading in this otherwise uncontroversial compliance proceeding would violate fundamental notions of due process. Further, H-P Energy states that no PJM Member has advocated for the elimination of the IARR construct since the Commission approved the uncontested filing twenty years ago, and that every regional transmission organization has implemented a similar IARR construct.²⁴ H-P Energy asserts that the Market Monitor's claims are inaccurate, unsupported, or speculative, and that the IARR construct is mandated by Order No. 681, as has been reaffirmed by Commission orders.²⁵ H-P Energy states that

²² *Id.* at 4 (citing *Long-Term Firm Transmission Rights in Organized Elec. Mkts.*, 116 FERC ¶ 61,077 (2006) (Order No. 681), *order on reh 'g*, 117 FERC ¶ 61,201 (2006), *order on reh 'g*, 126 FERC ¶ 61,254 (2009)).

²³ *Id.* at 4-6.

²⁴ H-P Energy Answer at 2-4 (citing *PJM Interconnection, L.L.C.*, 90 FERC ¶ 61,334 (2000); *ISO New England Inc.*, 122 FERC ¶ 61,173, at P 57 (2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,179, at P 19 (2008); *New York Indep. Sys. Operator, Inc.*, 126 FERC ¶ 61,029, at P 24 (2009); *California Indep. Sys. Operator Corp.*, 120 FERC ¶ 61,023, at P 74 (2007); *Sw. Power Pool, Inc.*, 152 FERC ¶ 61,034, at P 4 (2015)).

²⁵ *Id.* at 7-9 (citing Order No. 681, 116 FERC ¶ 61,077 at P 19; *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,144, at P 20 (2007)).

the Market Monitor does not explain how the elimination of IARRs, which could impact customers who pay for upgrades that increase system capability, is just and reasonable.²⁶

18. In response, the Market Monitor disagrees with H-P Energy's assertions and reiterates that IARRs should be eliminated. The Market Monitor maintains that the long-standing practice of using IARRs to compensate competitive transmission projects does not justify the unjust, unreasonable and unduly discriminatory results that become evident after a detailed review of how the associated rules operate. The Market Monitor states that there are no IARR-driven projects in the queue, and that H-P Energy failed to identify even one such project, evidence that the process is confusing and unworkable. According to the Market Monitor, the record generated in this proceeding more than fully substantiates the assertion that the IARR process as defined in the Tariff was and is confusing. In addition, the Market Monitor reiterates that stage 1A rights are given absolute priority in PJM's annual allocation process, over and above later stage requests (e.g., stage 1B) to claim existing system congestion rights by PJM load. The Market Monitor contends that the resulting market model sustains stage 1 ARR, including all IARRs, at the expense of other preexisting congestion rights, in violation of Order No. 681.²⁷

V. Discussion

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), we grant the motions to intervene out-of-time of H-P Energy and the Market Monitor given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. We also accept the Market Monitor's late-filed comments.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest or answer. We accept the answers filed by H-P Energy and the Market Monitor because they have provided information that assisted us in our decision-making process.

²⁶ *Id.* at 9.

²⁷ Market Monitor Answer at 2-9.

B. Substantive Matters

21. We find that PJM's filing complies with the requirements of Opinion No. 566 by proposing revisions to sections 7.5 and 7.8 of both Schedule 1 of the Operating Agreement and Attachment K – Appendix of the Tariff. Opinion No. 566 found that “certain details regarding the implementation of the models may appropriately remain outside of the Tariff in the [June 2017] Whitepaper, or in a stakeholder-vetted manual.”²⁸ However, Opinion No. 566 further found that the Tariff must “include a more detailed description of the practices it engages in when conducting System Impact Studies for Attachment EE requests,” including summaries of the modeling methodology, the limits and operative constraints used in the models, and details on the simultaneous feasibility test.²⁹ PJM satisfies the compliance requirement to include a definition of the models used to evaluate IARR requests by providing descriptions of the market model in section 7.5(a), the IARR model and ten-year stage 1A ARR model in sections 7.5(e) and (f), and the planning model in sections 7.8(b) and (c). PJM provides a description of how the market limits or operative constraints in the market model are determined in section 7.5(b). In addition, PJM satisfies the compliance requirement to provide a detailed explanation of how simultaneous feasibility is determined for IARR requests through the additions of sections 7.5(e) and (f). PJM includes a description of how PJM conducts the simultaneous feasibility test and determines the incremental capability required for IARR requests to be granted, taking into account financial rights and physical constraints of the system, in sections 7.8(b) and (c).

22. We find the Market Monitor's comments recommending the elimination of IARRs are beyond the scope of this compliance proceeding, which is limited to PJM's compliance obligations, as established in Opinion No. 566. Parties seeking to challenge PJM's compliance obligations, as established in Opinion No. 566, had the opportunity to do so by seeking timely rehearing of Opinion No. 566. No such requests were filed by the Market Monitor or any other party. Accordingly, we accept PJM's Compliance Filing, effective December 10, 2019.

²⁸ Opinion No. 566, 168 FERC ¶ 61,119 at P 83.

²⁹ *Id.* PP 83-84.

The Commission orders:

PJM's compliance filing is hereby accepted, effective December 10, 2019, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.