

171 FERC ¶ 61,036
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

CPV Power Holdings, L.P., Calpine Corp.,
and Eastern Generation, LLC

Docket No. EL18-169-000

v.
PJM Interconnection, L.L.C.

ORDER DISMISSING COMPLAINT AS MOOT

(Issued April 16, 2020)

1. On May 31, 2018, CPV Power Holdings, L.P., Calpine Corp. (Calpine), and Eastern Generation, LLC (Eastern Generation) (collectively, Complainants), filed a Complaint, pursuant to section 206 of the Federal Power Act (FPA)¹ against PJM Interconnection, L.L.C. (PJM). The Complaint alleges that PJM's Minimum Offer Price Rule (MOPR) is unjust and unreasonable, a finding subsequently made by the Commission in an order issued in a related proceeding on June 29, 2018.² The Complaint also seeks a replacement rate, as summarized below—a matter which was addressed by the Commission in an order issued December 19, 2019, based on a paper hearing record established in that proceeding.³ Accordingly, and for the reasons discussed below, we dismiss the Complaint as moot.

¹ 16 U.S.C. § 824e (2018).

² See *Calpine Corp. v. PJM*, 163 FERC ¶ 61,236, at P 149 (2018) (June 2018 Order) (order rejecting tariff revisions, granting in part and denying in part complaint, and instituting a proceeding under FPA section 206), *order on reh'g*, 171 FERC ¶ 61,034 (2020).

³ *Calpine Corp. v. PJM*, 169 FERC ¶ 61,239 (2019) (December 2019 Order) (order establishing just and reasonable rate), *order on reh'g*, 171 FERC ¶ 61,035 (2020).

I. Background

2. In March 2016, two of the Complainants herein (Calpine and Eastern Generation) filed a complaint (Calpine Complaint) in Docket No. EL16-49-000, raising issues similar to those raised by the instant Complaint.

3. In the June 2018 Order, the Commission addressed both the Calpine Complaint and PJM's alternative proposals for revising its MOPR in Docket No. ER18-1314-000. Specifically, the June 2018 Order rejected PJM's section 205 proposals to revise its MOPR and granted in part and denied in part the Calpine Complaint.⁴ The order also instituted a proceeding under section 206, finding PJM's existing MOPR unjust and unreasonable and establishing paper hearing procedures to determine the just and reasonable replacement rate.⁵

4. Subsequently, in the December 2019 Order the Commission determined the principles underlying the replacement rate and directed PJM to make a compliance filing to retain its current review of new natural gas-fired resources under the MOPR, while extending the MOPR to include both new and existing resources, internal and external, that receive, or are entitled to receive, certain out-of-market payments, subject to certain exemptions.⁶ The Commission also determined that it would not order refunds pursuant to section 206(b).⁷

5. In the instant Complaint, which was filed before the June 2018 Order, the Complainants allege that PJM's existing MOPR is unjust and unreasonable, because it does not fully mitigate the impact of subsidized resources participating in PJM's capacity market.⁸ As a remedy, the Complainants argue that PJM should be required to apply the MOPR to all subsidized resources, without categorical exemptions.⁹

⁴ June 2018 Order, 163 FERC ¶ 61,236 at P 149.

⁵ *Id.*

⁶ December 2019 Order, 169 FERC ¶ 61,239 at P 2.

⁷ *Id.* P 3.

⁸ Complaint at 9.

⁹ *Id.* at 18-22.

II. Notice of Filings and Responsive Pleadings

6. Notice of the Complaint was published in the *Federal Register*, 83 Fed. Reg. 27,325 (June 12, 2018), with answers, interventions, and protests due on or before June 20, 2018. Notices of intervention and timely filed motions to intervene were submitted by the entities listed in the Appendix to this order. In addition, motions to intervene out-of-time were submitted by PSEG Companies (PSEG); Starwood Energy Group Global, L.L.C. (Starwood); and Natural Resources Defense Council and Sustainable FERC Project (NRDC/SFP).

7. PJM filed an answer, as the respondent to the Complaint, asserting that the Complaint relies on facts already before the Commission, in Docket No. ER18-1314-000. Protests and comments were filed by the entities noted in the Appendix. Among other things, commenters assert that the Complaint should be dismissed, given the pendency of issues relating to PJM's capacity market in Docket No. ER18-1314-000.¹⁰ Answers were submitted on June 20, 2018, following the 5:00 p.m. comment deadline, by Monitoring Analytics, LLC, acting as PJM's independent market monitor (Market Monitor), on June 26, 2018, by Exelon Corporation (Exelon), and on June 28, 2018, by the Illinois Commerce Commission (Illinois Commission).

III. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, we will grant the unopposed motions to intervene out-of-time submitted by PSEG, Starwood, and NRDC/SFP, given their interest, the early stage of this proceeding, and the absence of undue prejudice or delay.

9. 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 and/or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed by the Market Monitor, Exelon, or the Illinois Commission and therefore reject them.

IV. Discussion

10. We dismiss the Complaint as moot. In the June 2018 Order, the Commission found, as the Complainants here argue, that out-of-market subsidies "suppress

¹⁰ See, e.g., Joint Consumer Coalition Protest at 6-7; Exelon/PSEG Protest at 29.

capacity market clearing prices, rendering the rate unjust and unreasonable.”¹¹ In the December 2019 Order, the Commission established the principles that will govern the just and reasonable replacement rate. Since the Commission addressed the very issue raised in this Complaint in the June 2018 Order and exercised its discretion to not order refunds in that proceeding (which covers the refund period from the May 2018 Complaint here), we deny the complaint as moot. To the extent the Complainants in this case challenge the remedy ordered in the December 2019 Order, they are parties to that proceeding and could have requested rehearing in that proceeding.

The Commission orders:

The Complaint is hereby dismissed as moot, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹¹ June 2018 Order, 163 FERC ¶ 61,236 at P 149 (finding that the records established in the Calpine Complaint proceeding and in the PJM section 205 proceeding demonstrate that out-of-market subsidies allow resources to suppress capacity market clearing prices, rendering the rate unjust and unreasonable).

Appendix

List of Intervenorors

American Electric Power Service Corporation *
Ameren Services Company
American Municipal Power, Inc. *
American Public Power Association *
Buckeye Power, Inc.
Carroll County Energy LLC *
Delaware Division of the Public Advocate *
Delaware Municipal Electric Cooperation, Inc.
Direct Energy – USA, *et al.*
Dominion Energy Services, Inc.
Duke Energy Corporation
East Kentucky Power Cooperative, Inc.
Electric Power Supply Association *
Exelon Corporation *
FirstEnergy Service Company *
Illinois Citizens Utility Board *
Illinois Commerce Commission
Illinois Municipal Electric Agency
Institute for Policy Integrity
J-Power USA Development Co., Ltd.
LS Power Associates, L.P. *
Maryland Office of People’s Counsel *
Maryland Public Service Commission *
Monitoring Analytics, LLC, acting as PJM’s Independent Market Monitor *
National Rural Electric Cooperative Association *
Natural Resources Defense Council *
New England Power Pool Participants Committee
New Jersey Board of Public Utilities *
New Jersey Division of Rate Counsel
NextEra Energy Resources, LLC
North Carolina Electric Membership Corporation
Northern Virginia Electric Cooperative, Inc. *
NRG Power Marketing LLC and GenOn Energy Management, LLC
Office of the People’s Counsel for the District of Columbia *
Old Dominion Electric Cooperative *
Organization of PJM States, Inc. *
Panda Power Funds
Pennsylvania Public Utility Commission

PJM Industrial Customer Coalition
PJM Interconnection, L.L.C.
PJM Power Providers Group *
PSEG Companies *
Public Citizen, Inc.
Public Service Commission of West Virginia
Sierra Club *
Solar RTO Coalition *
Southern Maryland Electric Cooperative, Inc.
Starwood Energy Group Global, L.L.C.
Sustainable FERC Project *
Talen PJM Companies *
The Dayton Power and Light Company

* parties submitting protests and/or comments