UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Reliant Energy Mid-Atlantic Power Holdings, LLC v. PJM Interconnection, L.L.C. — Docket No. EL03-116-000

ORDER DENYING COMPLAINT

(Issued July 9, 2003)

1. On April 2, 2003, Reliant Energy Mid-Atlantic Power Holdings, LLC (Reliant) tendered for filing a complaint pursuant to Section 206 of the Federal Power Act (FPA) against PJM Interconnection, L.L.C. (PJM) complaining that the price caps on certain of its generation facilities in PJM operating areas subject to chronic transmission constraints were not just and reasonable and requesting approval of a Formula Price Cap Mitigation Proposal (Proposal) applicable to those facilities. Reliant requested that the proposal be accepted by May 30, 2003. As discussed below, the Commission denies Reliant's complaint.

Background

2. Section 6 of Schedule 1 of PJM's Amended and Restated Operating Agreement prescribes rules applicable to generation resources in the PJM region that have or may have local market power (i.e., reliability must-run units). These provisions apply to units on which construction commenced prior to July 9, 1996, and which, as a result of transmission constraints, PJM determines, in the exercise of Good Utility Practice, must be run in order to maintain the reliability of service in the PJM Control Area and PJM West Region.[1] Section 6.4 of Schedule 1 provides that, at any time that PJM determines that such a unit must be dispatched out of economic merit order to maintain reliability as a result of limits on transmission capability, the prices offered by such resources for sale of their energy shall be capped. Section 6.4.2 states that the offer cap for each such unit must be one of three specified amounts:

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[1] PJM Operating Agreement, Schedule 1, Section 6.1

(i) The weighted average Locational Marginal Price at the generation bus at which energy from the capped resource was delivered during a specified number of hours during which the resource was dispatched for energy in economic merit order, the specified number of hours to be determined by the Office of the Interconnection and to be a number of hours sufficient to result in a price cap that reflects reasonably contemporaneous competitive market conditions for that unit;

(ii) The incremental operating cost of the generation resource as determined in accordance with Schedule 2 of this Agreement and the PJM Manuals, plus 10% of such costs; or

(iii) An amount determined by agreement between the Office of the Interconnection and the Market Seller.

3. The electric generation facilities which are the subject of Reliant's complaint[2] were purchased by Reliant in May 2000 from Sithe Energies, Inc. Sithe originally obtained the facilities from GPU, Inc. in November 1999. The ten units have a total capacity of 199 MW, with nine units having generating capacity of 20 MW and one unit having generating capacity of 19 MW. The offer caps that apply today to the Reliant facilities are the same caps that have always applied to these units and were in place when Reliant purchased the units from Sithe Energy in 2000.

4. The nature of the offer capping has been the subject of discussions between Reliant and PJM since November 2000. On August 3, 2001, Reliant and PJM reached an agreement on a temporary alternative method of price mitigation to be applied to units out of merit order. According to PJM, the temporary method was based on a recognition of environmental conditions that restrict the number of hours that the units may operate each year. Reliant's concern was that when PJM calls on these units to run out of merit order during winter months, Reliant is denied the opportunity to run the units during summer months, when market prices generally are higher. The agreement added an opportunity cost component to the incremental cost plus 10% offer cap for these units.[3] In February and March 2003, Reliant met with representatives of PJM to discuss the possibility of implementing a formula methodology that is similar in nature to the Proxy CT formula

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[2]Blossburg CT, Mountain CT1, Mountain CT2, Hunterstown CT1, Hunterstown CT2, Hunterstown CT3, Tolna CT1, Tolna CT2, Orrtanna CT, and Hamilton CT.

[3]PJM Answer, p. 5-6

methodology proposed by ISO New England and approved by the Commission.[4] According to Reliant's complaint, those discussions did not result in agreement.

5. PJM established the Local Market Power Mitigation Working Group ("Working Group") in September 2002 to evaluate the existing offer caps and to consider changes to them. The Working Group met approximately biweekly since its initial meeting on September 26, 2002. The working group was not able to develop a permanent framework in time for implementation for the 2003 summer peak season. As a temporary measure, the working group approved, on April 14, 2003, an Interim Solution that contains the following terms:

> For any unit that:
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> > Was cost capped in 2002 more than 80% of its operating hours;
> > Was cost capped in 2002 more than 50% and less than 80% of its operating hours;
> > Operated more than 200 hours in 2002;
> > Was required for reliability; and
> > Did not cover its fixed costs with other revenues,
>
> The Market Monitoring Unit will negotiate modified cost caps to include:
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> > An adder of $40 per MWh for any unit that was cost capped more than 80% of its run hours during 2002 and operated for more than 200 hours in 2002; or
> > An adder of $20 per MWh for any unit that was cost capped more than 50% of its run hours and less than 80% of its run hours during 2002 and operated for more than 200 hours in 2002; or
> > An adder based on 200 hours for any units that was cost capped more than 50% of its run hours and ran less than 200 hours; and
> > An agreement that the owner of the unit will maintain the unit consistent with good utility practice.[5]

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[4]Reliant Complaint, p. 4

[5]Bowring testimony at 14-15; Exhibit PJM-2

PJM's Market Monitoring Unit (MMU) offered to modify Reliant's offer caps on the same terms included in the Interim Solution adopted by the Working Group, but Reliant declined and instead filed its Complaint.[6]

Reliant's Complaint

6. Reliant argues that the current framework that provides compensation to facilities dispatched out of economic merit order at the unit's incremental cost plus 10 percent is inappropriate.[7] Reliant asserts that a just and reasonable rate would reflect scarcity in the prices for units that are needed primarily for reliability purposes, which in turn would provide an appropriate market signal for potential new entrants. It contends that the current PJM market design does not reflect either of these properties and therefore the Commission should find the current compensation is not just and reasonable. By approving this proposal, Reliant states that the Commission will resolve a chronic problem that is unique to these Reliant facilities through market-oriented measures that are consistent with the application of the threshold adopted in ISO New England.

7. In support of its complaint, Reliant witness John Meyer makes two arguments. Mr. Meyer argues that the definition PJM uses to dispatch a generating unit out of economic merit order, and the percentage of total run hours that these units are price capped, implies that the Reliant facilities are deemed needed to maintain system reliability in PJM. Mr. Meyer states that all the facilities provide reactive power to support system voltage and provide blackstart capability that could be used to restart other units if a large portion of the system goes down. Because of its provision of reliability service and PJM offer capping , Mr. Meyer states that Reliant is not afforded the opportunity to recover revenue levels consistent with the service the units provide, including long-run marginal costs necessary for long-term reliability. He asserts that the PJM market design presumes that all capacity resources are perfect substitutes; however, in practice there are no substitutes for the facilities or the reliability services they provide. Thus, while the overall capacity market demonstrates a surplus and associated low prices in the installed capacity market, the facilities continue to provide reliability service that is not recognized in either the capacity market or in the often cost-capped energy market.

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[6] Bowring testimony at 11; Exhibit PJM-2

[7] Reliant contends that the facilities are frequently dispatched out of merit order. Specifically, it asserts that in 2002, the facilities were dispatched out of merit order more than 90 percent of their run hours. Individually, the units were run out of merit order between 81 percent and 97 percent of their total run hours.

8. Mr. Meyer also argues that the current compensation methodology does not meet the revenue expectations of a new market entrant and therefore is at odds with the Commission's goal of promoting robust long-term wholesale power markets. Reliant argues that this comparison clearly demonstrates the unreasonableness of the existing compensation, and that the existing compensation methodology does not provide Reliant with the appropriate opportunity to obtain market-oriented values or provide an appropriate market signal for new resource entry.

9. Reliant also reports that during 2002, the total revenues received from PJM by Reliant for the operation of the facilities was slightly over $11 million, and after fuel expenses are subtracted, reached only $5.4 million. Reliant also forecasts that due to the expiration of certain capacity contracts and an increase in system-wide capacity, that it will likely receive even lower revenues in 2003 compared to 2002.

10. Reliant proposes that the appropriate methodology for payment to facilities in transmission constrained locations be based on a Proxy CT Threshold methodology similar to that approved for use by ISO New England.[8] The Proxy CT methodology is a formula-based mechanism that permits generators in chronically constrained areas to bid up to a "safe harbor" threshold without mitigation. The threshold proposed by Reliant is determined by a formula that calculates the fixed costs of a new Proxy CT generator less expected ICAP revenues, operating reserve revenues, ancillary service revenues, and start-up revenues divided by the greater of the 3-year rolling average total run hours of the individual units or 500 hours plus the incremental operating costs of a Proxy CT. When congestion occurs and a unit is dispatched out of economic merit order and the unit's bid is above the Proxy CT threshold, the unit price is mitigated to the threshold as determined by the formula. In all other hours, the unit would receive its economic bid when it is dispatched.

11. Reliant proposes that the CT Proxy mechanism be in place until a mutually agreeable, market-oriented, PJM-wide price mitigation methodology for all generating units is adopted. Reliant asserts that, while it is committed to its participation in the Working Group to facilitate a PJM-wide resolution to issues surrounding bid mitigation, it has become apparent that the working group will not resolve the issue in time for implementation for the summer 2003 peaking season. Reliant contends that the uncertainty surrounding the implementation date requires that it seek relief at this time while it continues to work in parallel with the LMPWG to develop a PJM-wide solution. Reliant proposes an initial term for the proposal of one year with automatic renewal

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[8]See New England Power Pool and ISO New England, Inc., et al., 100 FERC ¶ 61,287 at P 44

unless terminated by the mutual agreement of the parties or appropriate superceding amendments to the PJM Operating Agreement.

12. Reliant cites recent Commission orders which reject similar variable cost plus 10 percent approaches[9] in other ISO market designs and the Commission's Strategic Plan. Reliant also supports this approach by stating that it is consistent with the SMD NOPR.[10]

PJM's Answer

13. PJM, in its answer, requests that the Commission deny the complaint in its entirety. PJM states that, even though Reliant's claim of 'insufficient' revenues for the 10 named units is the principal foundation of its complaint, Reliant conspicuously omits even the tiniest shred of information about the units' actual costs or revenues. Further, PJM assets that Reliant does not even claim, much less demonstrate, that even PJM's current offer caps, let alone the Interim Solution's higher caps, are not compensatory or that Reliant cannot keep its units in operation without the immediate, far more generous relief that it demands. PJM also questions why Reliant's claims of inadequate revenues in 2002 should be considered representative of Reliant's results in other future and past years, or, more importantly, sufficient of itself to satisfy Reliant's Section 206 burden of proof. As support for this assertion, PJM notes that Reliant admitted that PJM capacity and energy markets were depressed in 2002 relative to previous years and thus should not be used as representative of the adequacy of Reliant's revenues. PJM thus argues that Reliant has failed to carry its initial burden under Section 206 of the FPA of proving that PJM's existing offer caps are unjust and unreasonable, and therefore requests that the Commission dismiss the complaint with prejudice.

14. PJM further argues that Reliant's contention that the fact that its units were capped a proportionally high number of hours in 2002 demonstrates that the units are located in areas of chronic congestion is erroneous. Mr. Bowring of PJM's MMU shows in his testimony that most of the offer capped hours in 2002 for the Reliant units were not due to chronic congestion, but local and temporary transmission constraints such as transformer fires and local transmission upgrades.

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[9]Reliant cites the recent Midwest Independent Transmission System Operator, Inc. (MISO) order which says that a variable cost plus 10 percent approach would upset the balance between the need to mitigate market power and the need to avoid unwarranted market intervention. 102 ¶ 61,280 at P 58 (2003).

[10]Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking, 100 FERC ¶ 61,138 at P 393 (2002).

15. PJM does assert that there is no scarcity of energy in the areas where the Reliant units are located. PJM asserts that the Reliant units are in areas where when local load exceeds the transmission import capability, some of the generation in that area must run for reliability. As a consequence, this generation is "pivotal" and has local market power. PJM maintains that available generation in the constrained area generally exceeds load. Furthermore, the combination of available generation and sufficient transmission implies and there is no scarcity of energy to serve the area.

16. PJM notes that the offer caps that apply today to the Reliant units are the same caps that have always applied to these units and were in place when Reliant purchased the units from Sithe Energy in 2000. PJM further notes that during discussions in 2000 with Reliant on adjusting the offer cap, Mr. Bowing asked Reliant to identify the particular affected units and to provide the MMU with information to support Reliant's assertion that it was not receiving adequate compensation related to the units. Reliant never provided the information. The MMU did enter into a revised capping mechanism in August 2001 that incorporated an opportunity cost component based on an option valuation model that Reliant developed and to which the MMU, after review and some mutually acceptable modifications, agreed. The August 2001 agreement remained in effect until Reliant unilaterally terminated it a few days before it filed its complaint in this proceeding.

17. PJM also notes that the ongoing Working Group has produced an interim solution, and PJM has offered Reliant (and Reliant rejected this offer), for all of its offer capped units, the same terms that are now included in the interim solution. PJM contends that Reliant at any time, with the support of just four other members of PJM, could have established a User Group to address its concerns. Reliant did not initiate any such effort, and PJM asserts that Reliant is now attempting to circumvent the PJM stakeholder process. PJM maintains that a final version of the Interim Solution was discussed on March 29, 2003, before Reliant filed its complaint, and, based on substantial support, was scheduled for a final vote at the next Working Group meeting on April 14. PJM asserts that Reliant knew when it filed the complaint that the Interim Solution was forthcoming and that it would be available for the upcoming summer. PJM argues that Reliant's claim that there was uncertainty about whether PJM could develop a revised offer cap is erroneous. PJM also notes that the Working Group is committed to developing a new long-term mitigation approach prior to November 30, 2003.

18. PJM does not believe that Reliant's argument that the present must-run offer caps do not provide accurate price signals is persuasive. PJM contends that contrary to Reliant's claim, PJM's offer caps do not interfere with scarcity pricing. In any event, there generally are no scarcity conditions when Reliant's 10 units operate under these offer

caps. Since must-run units are paid the higher of the market LMPs or their respective offer caps, PJM believes that aggregate market scarcity which can lead to high LMPs will signal the potential value of new investment. PJM asserts that the offer caps merely prevent must-run units from exercising local market power that they enjoy due to transmission constraints.

19. PJM contends that the precedents cited by Reliant to support its complaint are not applicable, and are taken out of context. PJM argues that Reliant's cite from the MISO order which characterizes offer caps for mitigation of local market power based on incremental cost plus 10 percent as "inappropriate" is not applicable to the transmission-constrained Reliant units. The relevant portion of the MISO order from which the cite is taken is directed at MISO's proposed thresholds for establishing price caps to mitigate local market power in Broad Constrained Areas, not load pockets. PJM notes that the Commission only held that a simple offer cap for all units in the MISO footprint was inappropriate.

20. PJM asserts that Reliant has failed to sustain the second part of the burden of proof prescribed by Section 206 of the FPA. Section 206 requires a proponent of change to prove that the rate or practice that it advocates to replace the existing terms of service is just and reasonable. While PJM believes that Reliant's failure to prove that the current offer cap mechanism is unjust and unreasonable renders moot a need to prove the second Section 206 prescription, it also maintains that Reliant has not demonstrated that its proposed CT proxy formula is just and reasonable. In particular, PJM notes that Reliant does not even mention that both ISO New England and the MISO apply the proxy CT formula as mitigation for local market power only in formally defined chronically congested areas. In addition, PJM argues that Reliant satisfy the criteria approved by the Commission in ISO New England and the MISO, i.e., Reliant does not demonstrate that its units operate in defined, chronically congested areas, nor does it argue that a localized ICAP market does not exist, and thereby satisfy the criteria approved by the Commission. PJM also notes that the circumstances and market design of the PJM region are markedly different than in New England and the Midwest, and that direct application of a mechanism from these markets to PJM would be ill-advised. Finally, PJM asserts that the cost elements, in particular estimated capital costs for a new combustion turbine generator, of the proxy CT formula are not reasonable and cannot be directly applied to PJM.

Comments and Protests

21. Multiple parties filed protests and comments[11] in response to Reliant's complaint In general, generators are in support of the complaint. LSEs, state commissions and consumer groups are in opposition. Below is a brief summary of certain of the issues raised.

22. Multiple commenters agree with PJM's assessment that Reliant did not meet its burden of proof on whether the current mitigation mechanism is unjust and unreasonable. Similarly, commenters also questioned whether the proposed CT proxy mechanism was a just and reasonable solution. There is, however, disagreement amongst commenters about Reliant's arguments that their units need to be compensated for providing reliability service.

23. Many commenters responded to Reliant's assertion that current prices do not provide adequate incentive to support entry by new generation. The Delaware PSC questions as unrealistic the premise that the CT proxy-based formula would lead to construction in the specific locations of the Reliant units. FirstEnergy notes that the current offer caps have not prevented Reliant from building new generation in Hunterstown, which is located adjacent to one of the units for which Reliant seeks relief. Con Edison Energy, CPS, EPSA, Mirant, Potomac Power, and Williams agree with Reliant and are concerned that caps costs that are below long-run marginal costs, or the price of entry as a proxy, dampen price signals, and do not provide incentives for new entry. EPSA and Williams argue that current local resource problems will endure into the future without pricing that covers the full costs of entry. Mirant is also concerned that the lack of the proper price signal will lead to premature mothballing of existing units such as Reliant's.

24. Joint Consumer Advocates and the PJM ICC filed comments that agreed with PJM, that application of a CT proxy-type approach in PJM is problematic. PJM has a significantly different local market power situation than New England. The "load pockets" in New England cover large portions of the grid and involve many generation units. In PJM, "load pockets" appear to be much smaller and encompass only a few units. To the extent that a solution is necessary to further incent generation in chronically constrained load pockets, the solution must be more targeted in order to avoid stepping over the line from incenting generation adequacy to facilitating market power exercise.

25. Many commenters were concerned about the potential to short-circuit the ongoing PJM deliberations on developing a long-term solution, and are concerned that Reliant's proposal represents a bypass of this process. They urge the Commission to allow this

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[11] See Appendix for list of parties filing protests and comments.

process to continue and not prematurely take the solution out of the hands of the market participants.

26. Multiple commenters supported the ongoing Working Group process and the Interim Solution. While supporting the Interim Solution, commenters view this agreement as a temporary fix and are interested in the development of long-term solution. Several commenters offered specific requests and suggestions to the Commission. Exelon stresses the critical need for a final solution and requests that the Commission give PJM a deadline of not later than September 30, 2003, to file a revised long-term cost-capping methodology for RMR units. PSEG requests that PJM be directed to file a mechanism that provides a permanent solution by year's end as PJM has proposed. CPS requested a November 30, 2003 deadline for filing the permanent solution. ODEC requests a full proceeding be established with PJM and all interested stakeholders, with the assistance of the Commission staff, to develop a long-term solution to the problems unique to load pocket areas. The Joint Consumer Advocates requests that any long-term solution be based on more sophisticated analysis of which plants are in fact needed for reliability and should receive some kind of extraordinary payment from load.

Discussion

Procedural Matters

27. Notice of Reliant's filing was published in the Federal Register, 68 FR 27,554 (2003), with comments, protests, or interventions due on or before April 22, 2003. On April 17, 2003, PJM filed a motion for extension of time to answer Reliant's complaint until April 25, 2003, which was granted by the Commission on April 18, 2003. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2003)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. The Commission's Rules of Practice and Procedure do not permit answers to answers (18 C.F.R. § 385.213(a)(2)(2003)).[12] However, the Commission finds good cause to admit Reliant's and FirstEnergy's answers since they will not delay the proceeding, will assist the Commission in understanding the issues raised, and will insure a complete record upon which the Commission may act.

[12]On May 12, 2003, Reliant filed an answer in response to PJM's answer and other intervenor comments. On May 27, 2003, FirstEnergy filed an answer in response to Reliant's answer.

Analysis

28. The Commission finds that Reliant has not sustained its burden of proof to make a showing that the current offer caps in the PJM region are unjust and unreasonable. Reliant did not provide data to show that its units in PJM are not recovering fixed and variable costs, nor did it show that the PJM mechanism fails to provide its units or units in general a reasonable opportunity to recover their costs, or that the offer caps provide insufficient revenues to create an incentive for new entry. The Commission therefore denies Reliant's complaint.

29. The only support for Reliant's assertions that these provisions are unreasonable as specifically applied to it is that Reliant has only netted $5 million in revenues in 2002. Reliant did not provide any additional information on whether this level of revenues covers either their incremental, "going forward" costs, or fixed costs or is otherwise non-compensatory. Reliant bases its complaint solely on 2002 revenues, and does not provide any information on revenues in previous years or expected for future years. As PJM and others have pointed out, energy and capacity prices throughout PJM were lower in 2002 than in previous years, and therefore may not be representative. Consequently, the Commission finds that Reliant has not provided a basis for a finding that the PJM market design is not just and reasonable as applied to it.

30. Reliant also asserts that the units provide reliability services that provide greater value to the PJM market than incremental costs plus 10 percent. Nevertheless, it provides no evidence or demonstration of the level of reliability service besides blanket assertions that the units provide voltage support and blackstart capability, or contend that the fact that the unit was operated out of merit implies that it is providing reliability services. The Commission recognizes that the Reliant units have been providing reliability support to PJM, particularly during recent localized transmission problems such as transformer fires, but as stated above finds that Reliant has not provided evidence that the current offer caps render the PJM market design non-compensatory.

31. Reliant also asserts that the current offer caps are unjust and unreasonable because incremental cost plus 10 percent does not provide sufficient revenues to create an incentive for new entry, and do not represent scarcity value. Reliant bases its assertions on applying policies and statements from recent Commission orders in ISO New England and MISO to its circumstances, particularly the approval of the proxy CT mechanism in ISO New England. The primary reasons that the Commission used to approve the proxy CT and the more recent Peaking Unit Safe Harbor (PUSH) mechanisms in ISO New England were problems associated with delivering capacity to New England load pockets with the existing infrastructure, and the lack of localized price signal, particularly the lack of a locational ICAP market for load pockets. The proxy CT and PUSH mechanisms were approved as temporary measures until ISO New England develops these markets.

PJM requires deliverability of its IAP unlike ISO New England. New units in PJM are also not subject to offer caps as compared with ISO New England and MISO, except for the $1,000 bid cap. Hence, the proxy CT mechanism may not have the same application in the PJM market.

32. Indeed, by its own actions, Reliant has shown that there is adequate incentive for new entry with the current PJM mechanism. According to the protest by FirstEnergy, Reliant is building new generation at Hunterstown, which is located physically adjacent to three of the units for which Reliant seeks relief.[13] The location of a large generation plant in the general area of nine of the Reliant units should resolve the situations identified by PJM when local generation is insufficient and imports of electricity are constrained, and could reduce the number of hours that the Reliant units are operated out of merit dispatch.

33. Moreover, the existing incremental cost plus 10 percent mechanism is not the only offer capping mechanism available to Reliant. As PJM and other commenters have identified, an Interim Solution has been approved by the Working Group, and is available to Reliant. This Interim Solution will provide units such as the Reliant units with an adder of $40 per MWh instead of the 10 percent adder in the tariff.

34. While we deny the complaint, we note that PJM itself has recognized that its current provisions may not be the most appropriate mechanism for providing recovery to RMR units, particularly as they relate to scarcity pricing.[14] We, therefore, find that PJM should re-examine its mechanism to ensure that it is providing appropriate compensation for mitigating market power for must-run services. According to PJM, the Working Group is committed to the development of a long-term solution by November 30, 2003, and that this solution will be filed with the Commission. PJM has also stated that, should the group fail to reach an agreement, the MMU will file a proposal for permanent mitigation measures by the end of 2003.[15]

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[13]The annual 10-K SEC report filed by Reliant Resources for 2002 states that "we are constructing a 795 MW gas-fired intermediate and peaking generation unit at an existing facility located in Pennsylvania. We expect this unit will begin commercial operation in the third quarter of 2003." Reliant Resources 2002 10-K, at p. 25

[14]In the context of discussing the PJM Interim Solution, Mr. Bowring states that "the MMU recognizes that the 'to go' approach does not include an explicit method for scarcity pricing under scarcity conditions in local areas." Bowring Testimony at 34.

[15]PJM Answer at p. 8

35. Exelon, however, finds that creating greater certainty for RMR units is important and requests that the Commission establish a deadline of not later than September 30, 2003 to file a revised long-term cost-capping methodology for RMR. The Commission agrees that this issue is of sufficient importance that PJM needs to complete its process and file its changes more quickly. The PJM Working Group has had sufficient time to develop a solution since its inception in September 2002, and the filing of either an agreement or PJM proposal should not be delayed, so that the Commission can consider whatever changes may be necessary. Therefore, PJM is required to make a filing by September 30, 2003, either to revise its tariff or to justify its existing provisions.

36. The Commission rejects ODEC's request that a full proceeding be established with PJM and all interested stakeholders, with the assistance of the Commission staff, to develop a long-term solution to the problems unique to load pocket areas. The Commission is interested in receiving a proposal that represents stakeholder input and acceptance, and is providing PJM with the opportunity to develop such a solution.

37. The Commission agrees with the Joint Consumer Advocates that any long-term solution be based on more sophisticated analysis of which plants are in fact needed for reliability and should receive some kind of extraordinary payment from load. Detailed analysis on how units such as Reliant's are operated to support reliability in PJM would provide important support for the development of a long-term solution. PJM should include in its tariff filing or report this more comprehensive analysis.

38. Moreover, in analyzing its September filing, PJM should consider whether its current market design, including its mitigation measures, satisfies the requirement of the FPA that rates must be just and reasonable.[16] In the context of a bid-based market design like that found in PJM (and taking into account all of the elements of that market design, including mitigation), we are particularly interested whether there are both adequate incentives to attract and retain needed investment as well as rates that are not excessive. PJM should also include such an analysis in each of its future Annual State of the Market reports.

<u>The Commission orders</u>:

(A) The complaint is denied.

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[16] U.S.C. § 824a (2000).

(B) The Commission directs PJM to file either a revised tariff, or a justification for its existing tariff, as discussed in the body of this order, no later than September 30, 2003.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

Appendix

Protesting Parties

PJM Industrial Customer Coalition
Exelon Corporation
Delaware Public Service Commission*
Joint Consumer Advocates
Delaware Municipal Electric Corporation, Inc.
Select Energy, Inc.
The PSEG Companies
PPL Parties
Metropolitan Edison Company and Pennsylvania Electric Company (collectively, First Energy)

Commenting Parties

TXU Portfolio Management Company LP
Mirant Americas Energy Marketing, LP, Mirant Chalk Point, LLC, Mirant Mid-Atlantic, LLC, Mirant Peaker, LLC, and Mirant Potomac River, LC
Commonwealth Chesapeake Company, L.L.C.
Independent Energy Producers of New Jersey
Williams Energy Marketing & Trading Company
The California Electricity Oversight Board
Edison Mission Energy and Edison Mission Marketing & Trading, Inc.
Potomac Power Resources, Inc.
Calpine Eastern Corporation
Electric Power Supply Association
Constellation Power Source, Inc.
Strategic Energy
NRG Companies
Commonwealth Power Corporation

* Also filed comments