

123 FERC ¶ 61,037
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

PJM Interconnection, L.L.C.

Docket Nos. ER05-1410-000
EL05-148-000

ORDER ON MOTION

(Issued April 17, 2008)

1. On March 19, 2008, RPM Buyers¹ filed a motion for technical conference (Motion) to examine the performance of the Reliability Pricing Model (RPM) recently implemented by PJM Interconnection, L.L.C. (PJM). The Commission is requiring PJM to provide information in response to the issues raised by RPM Buyers, and after reviewing the information, will determine appropriate procedures.

¹ RPM Buyers consist of: Blue Ridge Power Agency; the Maryland Public Service Commission; Office of the People's Counsel for the District of Columbia; Office of the Ohio Consumers' Counsel; the PJM Industrial Customer Coalition; United States Department of Defense and other affected Federal Executive Agencies; Delaware Public Service Commission; Public Service Commission of the District of Columbia; New Jersey Board of Public Utilities; the Pennsylvania Office of Consumer Advocate; Pennsylvania Public Utility Commission; the Public Power Association of New Jersey; Southern Maryland Electric Cooperative, Inc.; Commonwealth of Pennsylvania Department of Environmental Protection; Industrial Energy Users -- Ohio; Maryland Office of People's Counsel; American Forest & Paper Association; Illinois Municipal Electric Agency; American Municipal Power - Ohio, Inc.; Duquesne Light; and Portland Cement Association.

I. Background

2. As discussed in prior orders,² in 2006 the Commission found that PJM's existing capacity market was unjust and unreasonable, because it failed to procure sufficient capacity to enable PJM to maintain a reliable transmission system. To address this upcoming capacity problem, PJM has implemented the RPM program: a capacity market under which PJM will purchase capacity on a multi-year forward basis through an auction mechanism, and prices for capacity will be derived through these forward auctions.³ As of today, PJM has conducted four base residual auctions, which have determined capacity prices for delivery years 2007-2011.

II. RPM Buyers' Motion

3. On March 19, 2008, pursuant to Rule 212 of the Commission's Rules of Practice and Procedure,⁴ RPM Buyers filed a motion for technical conference to convene analytical and in-depth discussions to examine the performance of RPM. RPM Buyers express concern that RPM has resulted in increased prices without commensurate new capacity and reliability benefits. RPM Buyers submitted an analysis by James F. Wilson of the LECG Group (Wilson Report) of the first four base residual auctions conducted under RPM. The Wilson Report concludes that results of the first four auctions "call into question" whether RPM is achieving its intended goals, and suggests that the Commission may need to make changes in RPM to address design flaws.⁵

4. RPM Buyers also express concern about the potential for the exercise of market power under RPM. They point to PJM's Market Monitoring Unit's finding of structural market power requiring mitigation of all RPM offers for the 2009-2010 RPM Auction,⁶ and assert that due to the widespread application of administratively-determined mitigation, RPM auctions cannot be "competitive" and cannot produce reasonable capacity prices.⁷

² See *PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,264 (2008).

³ *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 (2006).

⁴ 18 C.F.R. § 385.212 (2007).

⁵ Motion at 4.

⁶ *Id.* at 10, citing to PJM Marketing Monitoring Unit Analysis of the 2009-2010 RPM Auction (Feb. 11, 2008).

⁷ Motion at 11.

5. As a result, RPM Buyers request the Commission to hold a technical conference no later than mid-May to address eight specific issues. In particular, RPM Buyers ask the Commission to focus on the following issues: (1) whether the higher capacity prices in the first four base residual auctions relative to PJM's pre-auction simulations and reasonable expectations can be fully explained, and what changes a full understanding of these differences would suggest for RPM; (2) whether RPM prices have been instrumental in stimulating new generation, new demand response, or retention of capacity resources that would otherwise have deactivated, and how RPM can more effectively attract and retain capacity resources; (3) whether the "avoidable cost" offer mitigation mechanisms and other administrative mechanisms have been effective in preventing withholding, and what modifications to those mechanisms may be needed; (4) whether the higher prices in certain locations served any useful purpose in the first three base residual auctions and whether they will serve a useful purpose going forward; (5) whether the slopes of the Variable Resource Requirement (VRR) demand curves to determine capacity prices provide inappropriate incentives to withhold capacity; (6) whether PJM's administrative mechanisms for setting reliability requirements within local delivery areas have appropriately reflected the need for new capacity, and what changes should be made to reflect needed capacity more accurately; (7) whether RPM's mechanism for determining the net Cost of New Entry (CONE), which uses historical energy and ancillary service revenues, produces prices that accurately reflect the need for new capacity, and whether there are more accurate ways to set capacity prices; and (8) whether RPM supports state initiatives for demand reduction, renewable energy resources, and base load generation, and what modifications may be necessary in light of these state initiatives.⁸

6. On April 2, PJM filed an answer to the motion, in which it asks the Commission to await the outcome of the broad review of RPM by PJM and its stakeholders that PJM has already initiated before ruling on the need for a technical conference. PJM states that it has commissioned an independent assessment of the RPM auction results by an outside consultant, whose report is expected by June 30, 2008 (June 30 report).⁹ PJM anticipates

⁸ *Id.* at 14-15.

⁹ In a February 28, 2008 letter to stakeholders, PJM stated that this analysis of RPM would include a review of the five RPM base residual auction results up to and including the 2011/2012 auction. The scope of this review will include (1) review of the shape of the VRR Curve and the CONE reference price; (2) review of the net energy and ancillary service offset methodology; (3) review of the Local Delivery Area (LDA) definitions and the procedures to establish new LDAs; (4) review of the 3-year forward commitment period; (5) review of the ability of RPM to sustain infrastructure investment and review of the capital expenditure and project investment provisions for upgrades to existing generation resources; (6) review of demand response participation rules to

(continued...)

that the June 30 report will commence an open stakeholder process to discuss the report's findings and recommendations and consider any other matters related to RPM that stakeholders wish to address.¹⁰

7. With regard to RPM Buyers' suggestion that a technical conference be held in mid-May, with the possibility of changing capacity prices that will go into effect on June 1, 2008, PJM notes that PJM already has secured resource commitments for the 2008-2009 delivery year through an RPM auction held last year, and market participants have already taken actions in reliance on those commitments. PJM states that it is unclear how the Commission could change the payments to capacity resources or other material terms of these existing commitments now, without raising serious equity concerns. It also states that the first four RPM auctions were transitional, with forward periods of only one, ten, nineteen and twenty-eight months, and the upcoming May auction, held a full three years before the delivery year, offers the first reasonable opportunity for entirely new resources to participate.

8. PJM also states that, if the Commission decides after the full PJM review that a technical conference would be useful, PJM "would not necessarily object."¹¹

9. Duke Energy North America, the Electric Power Supply Association, and PPL Parties also filed responses opposing the Motion for Technical Conference, stating that the RPM Buyers are seeking to make an impermissible collateral attack on the Commission's acceptance of the RPM program, and also pointing out that the RPM

investigate potential barriers to entry; (7) review of interaction between the ability of a resource to offer into RPM and to comply with the generation interconnection queue process in the PJM Regional Transmission Expansion Plan (RTEP) process; (8) review of generation and demand response performance requirements and non-compliance penalty structures to ensure that these resources have the appropriate incentive to reform based on their forward commitments; (9) review of the incentives for existing resources to participate in the RPM auctions; and (10) review of the incremental auction rules as they relate to incentives to participate in the RPM Base Residual Auctions. PJM's Market Monitoring Unit has also been invited to participate in the analysis. *See* attachment to PJM Answer.

¹⁰ PJM expects to hold a stakeholder conference within two weeks of the report's release for the study's authors to present the report and take questions, followed by another stakeholder conference two weeks thereafter with stakeholder panel discussions on the report and its recommendations, as well as opportunities for comments.

¹¹ PJM Answer at 2.

Buyers' concerns are premature. The PJM Power Providers Group (P3) seeks late intervention, and also opposes a technical conference at this time.

III. Commission Determination

10. The Commission will accept the PJM Power Providers Group's motion for late intervention. Under Rule 214(d) of the Commission's Rules of Practice and Procedure, in deciding whether to grant late intervention, the Commission may consider whether (i) the movant had good cause for failing to seek to intervene within the time prescribed; (ii) any disruption of the proceeding might result from permitting intervention; (iii) the movant's interest is not adequately represented by other parties in the proceeding; and (iv) any prejudice to, or additional burdens upon, the existing parties might result from permitting the intervention.¹² P3 states in its motion to intervene that the organization was not formed until February 2007, well after the date originally set for timely intervention in this proceeding (although each of its members is already a party to this docket). P3 further states that it will take the record in the RPM dockets as it has been developed and will not disrupt the current status of this proceeding or add any burden upon any party. On this basis, the Commission grants P3's motion for late intervention.

11. Given that PJM is engaged in an evaluation of RPM, which may provide some or all of the information that RPM Buyers are seeking, we believe PJM's RPM assessment could provide valuable information that could aid the Commission in its consideration of RPM Buyers' motion. Additionally, we agree with PJM that the outcome of the May 2008 auction should provide additional information that would assist the Commission in considering the issues raised by the RPM Buyers. We therefore consider it premature to convene a technical conference before PJM completes the evaluation and submits the outside consultant's report. We also note that the list of issues that PJM has already committed to examine is comprehensive and commend PJM for its effort. However, as the RPM Buyers have pointed out, this list does not cover all of the specific concerns that the RPM Buyers raise in their motion and seek to discuss in more detail. While PJM's proposed June 30 report may shed light on these issues, it does not provide the detail that RPM Buyers seek and that the Commission believes PJM should analyze.

¹² 18 C.F.R. § 385.214(d) (2007).

12. Pursuant to sections 304, 307(a) and 309 of the Federal Power Act (FPA),¹³ we direct PJM to discuss in its analysis of RPM and proposed June 30 report the issues that RPM Buyers raise in their motion, and to specifically identify, in its report, what parts of that report respond to the issues identified by RPM Buyers above. We will also require PJM to file its report in this docket, upon issuance, as an informational filing. We will also require PJM to file with us, as an informational filing in this docket, a summary of the post-report stakeholder proceedings discussed in footnote 10, *supra*, within 15 days of the conclusion of those proceedings. We further note that following receipt of PJM's report, the Commission may at that time convene a technical conference, or take other appropriate steps.

The Commission orders:

(A) PJM is hereby required to expand the scope of its proposed analysis of RPM and final report;

(B) PJM is hereby required to file its proposed June 30 report, upon issuance, as an informational filing in this docket; and

(C) PJM is hereby required to file, also as an informational filing in this docket, a summary of the post-report stakeholder proceedings discussed in footnote 10, *supra*, within 15 days of the conclusion of those proceedings.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹³16 U.S.C. § 825c (2000) (every public utility shall "file with the Commission such annual and other periodic or special reports as the Commission may . . . prescribe as necessary or appropriate to assist the Commission in the proper administration of" the FPA); 16 U.S.C. § 825f(a) (2000) (Commission "may investigate any . . . matters which it may find necessary or proper in order to . . . aid in the enforcement of the provision of this Act or in prescribing rules or regulations thereunder"); and 16 U.S.C. § 825h (2000) (Commission "shall have power to perform any and all acts . . . as it may find necessary or appropriate to carry out the provisions of" the FPA).