

126 FERC ¶ 61,251
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER08-1569-001

ORDER ACCEPTING AND REJECTING TARIFF SHEETS

(Issued March 19, 2009)

1. On December 24, 2008, PJM Interconnection, L.L.C. (PJM) submitted a filing to comply with the Commission's previous order in this docket.¹ PJM's compliance filing proposes to revise Schedule 1 of the Amended and Restated Operating Agreement of PJM (Operating Agreement) and the parallel provisions in the Appendix of Attachment K of the PJM Open Access Transmission Tariff (OATT). We accept certain tariff sheets effective December 1, 2008 and reject other tariff sheets that we find are beyond the scope required of the compliance filing.

I. Background

2. In its initial filing on September 25, 2008, PJM proposed several interrelated changes to its tariff's handling of Operating Reserves. PJM proposed to (1) separately consider extended hours of operation when calculating a pool-scheduled resource's Operating Reserve credits, (2) limit under certain conditions the operating parameters that may be submitted for a unit to reduce the possibility that market power may be exerted to receive Operating Reserve credits, and (3) change how the costs of Balancing Operating Reserves are allocated to PJM Members.²

3. In the November 26 Order, the Commission found PJM's proposal to be a just and reasonable method of maximizing market efficiencies for procuring operating reserves in

¹ *PJM Interconnection, L.L.C.*, 125 FERC ¶ 61,244 (2008) (November 26 Order).

² PJM September 25, 2008, Transmittal Letter at 1.

the day-ahead and real-time markets. Accordingly, the Commission accepted PJM's proposed revisions effective December 1, 2008, as requested, subject to PJM:

- a. making a compliance filing to report on the findings of the PJM Reserve Markets Working Group meeting to be held three months after the implementation of the proposed revisions, to determine whether the revisions have proven to be equitable; and
 - b. revising its tariff, within thirty days of the issuance of the November 26 Order, to include certain Operating Reserve Construct business rules in its tariff.
4. The instant order addresses PJM's compliance filing to revise its tariff. As with the November 26 Order, the instant order remains contingent upon PJM's compliance filing on the findings of the PJM Reserve Markets Working Group meeting.

II. Compliance Filing

5. PJM's compliance filing incorporates parallel provisions to Schedule 1 of its Operating Agreement and the appendix to Attachment K of the PJM OATT. These parallel provisions are identical except that PJM proposes to renumber the table of contents to its Operating Agreement. Specifically, PJM proposes to incorporate Operating Reserve Construct business rules 29 through 31 into Section 6.6(c) and business rules 64 through 69 into Section 3.2.3(b). PJM interprets the Commission's order as directly requiring it to incorporate rules 29, 31, 65 through 69, and 71. PJM argues that it was also necessary to incorporate rules 30 and 64 since they "are inseparable from" the directly required rules.³ Since rule 71 is a one-time requirement to reconvene the PJM Reserve Markets Working Group to discuss the impact of the proposed revisions on market operations, PJM proposes to not incorporate it.

6. "Rather than copying the exact wording of the business rules," PJM informs the Commission, it instead "weaved the substance of the business rules" into its Operating Agreement.⁴ While most of the changes in wording are insignificant, PJM has also introduced new language into Section 6.6(c), on the use of historical offer parameters for units other than steam or combined cycle. PJM notes that the new language changes the substance of rules 29 and 31, but claims its changes are consistent with the intent of the November 26 Order: PJM states it would be unfair to limit the rule's application to only

³ PJM December 24, 2008 Compliance Filing at 4.

⁴ *Id.*

certain generators.⁵ In addition, PJM argues that its stakeholders would be better served if PJM were permitted to revise its Operating Agreement in this proceeding instead of making a separate Section 205 filing.

7. Finally, PJM notes two clerical errors in its original filing, and proposes corrections. PJM states that the proposed new Sections 3.2.3(o), (p), and (q) were inserted inside Section 3.2.3(n) instead of in their proper location after Section 3.2.3(n). PJM also states that in a separate filing on October 1, 2008, in Docket No. ER09-13, PJM submitted tariff sheets that failed to acknowledge the changes that it had previously proposed in this docket, creating a potential conflict between the November 26 Order in this docket and the simultaneously-issued order in Docket No. ER09-13; PJM files corrected sheets to avoid any contradiction in its tariff sheets on file.

III. Notice of Filings and Responsive Pleadings

8. The Commission gave notice of PJM's filing on January 2, 2009. Interventions and protests were due on or before January 21, 2009. In addition to those parties that intervened in the original proceeding, Epic Merchant Energy, L.P. and Old Dominion Electric Cooperative filed timely motions to intervene.

9. Prior to PJM's compliance filing, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM ("Market Monitor"), filed a motion to intervene out-of-time on November 26, 2008 in the original proceeding. On January 21, 2009, the Market Monitor filed a protest to the compliance filing.

10. On February 5, 2009, out-of-time motions to comment, protest and/or answer the Market Monitor's protest were filed by American Electric Power (AEP), PJM Power Providers Group, and Public Service Electric and Gas (PSE&G). On February 6, 2009, PJM filed an answer to the Market Monitor's protest.

11. The Market Monitor protests that PJM has gone beyond the scope of the November 26 Order and has included additional changes in its tariff not required by that order. It argues further that incorporation of these revisions would yield discriminatory results.

12. The Market Monitor interprets the Commission's order as requiring PJM to incorporate rules 65 through 69, but not rules 29, 30, or 31.⁶ The Market Monitor notes

⁵ *Id.* at 5.

⁶ *See* Independent Market Monitor January 21, 2009 Protest at 3-5. The Protest is silent regarding rule 64, and "does not protest inclusion" of rule 71, which PJM states

that the paragraph in the November 26 Order placing a condition on acceptance discusses rules 65 through 69.⁷ The paragraph discussing rules 29 and 31, by contrast, contains no statement requiring their inclusion.⁸ The Market Monitor also notes that the November 26 Order refers to AEP's concerns about historical *operating* data, but that the subject of rules 29 and 31 is historical *offer* data, suggesting an incorrect citation.

13. The Market Monitor notes PJM's own statement in its transmittal letter that it made additional revisions beyond the text of rules 29 and 31, despite no directive from the Commission to do so. The Market Monitor especially draws attention to PJM's decision to expand relaxed rules on historic *offer* data, which currently only apply to steam units, to now apply to all generators. Not only are PJM's revisions beyond those permitted by the November 26 Order, the Market Monitor argues, they may also be rejected on the merits. The Market Monitor alleges that the revisions upset the well-established consensus reached by PJM's stakeholders to limit the scope of the relaxed historical offer data rules to steam but not combined cycle units.⁹

14. AEP disagrees with the Market Monitor that PJM's revisions regarding historic *offer* data should be rejected on the merits.

15. PSE&G states that it is primarily concerned that combined cycle units are able to continue to use historical offer data, which it contends is not at issue in the Market Monitor's protest.

16. PJM Power Providers Group asserts that PJM's compliance filing comports with the Commission's directives in the November 26 Order and, therefore, the assertions in the Market Monitor's protest should be rejected.

17. PJM answers the Market Monitor's protest, stating that it does not believe its proposed revisions would weaken the standards for parameter limit exceptions. PJM also disputes the Market Monitor's contention that during the stakeholder process a decision was made to explicitly and intentionally differentiate steam units from other types of units with respect to using historical offer data to determine parameter limits. PJM

that it did not include.

⁷ See November 26 Order, 125 FERC ¶ 61,244 at P. 40.

⁸ See November 26 Order, 125 FERC ¶ 61,244 at P. 39.

⁹ See Market Monitor Protest at 6.

admits, however, that “[w]hen it made its compliance filing, PJM was well aware that the Commission might disagree with the approach that PJM took in the filing.”¹⁰

IV. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,¹¹ timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We grant the motion of the Market Monitor to intervene out-of-time.¹² Pursuant to Rule 214(d)(3) of the Commission’s Rules of Practice and Procedure,¹³ the Market Monitor must accept the record of the proceeding as of the issuance of the November 26 Order.

B. Substantive Matters

19. In the November 26 Order, the Commission rejected a challenge to PJM’s initial filing made by AEP, and in so doing, cited several Operating Reserve Construct business rules. The Commission finds that PJM’s compliance filing improperly goes beyond compliance with the requirements of the November 26 Order.

20. In the November 26 Order, the Commission in P 40 directed that as “a condition to our acceptance of this filing, PJM must file ... to include *these* business rules in its tariff.”¹⁴ The business rules cited by the Commission in that paragraph were only rules

¹⁰ PJM Compliance Filing at 7.

¹¹ 18 C.F.R. § 385.214 (2008).

¹² Although not filing a timely answer contesting the Market Monitor’s intervention, PJM in its answer to the protest states that the Market Monitor’s attempt to intervene in the proceeding participation “calls into question whether the Commission ever intended that an RTO’s independent market monitor should be permitted to act as a litigant in an adjudicatory fashion against the RTO with respect to an issue about which no stakeholder has expressed concern.” PJM Answer at 5-6. PJM has not briefed nor provided tariff or other support for denying the Market Monitor’s intervention and we, therefore, will grant late intervention.

¹³ 18 C.F.R. § 385.214(d)(3) (2008).

¹⁴ November 26 Order, 125 FERC ¶ 61,244 at P. 40.

65 through 69 and 71.¹⁵ The order also referred in P 39, however, to business rules 29 and 31. In its compliance filing, PJM interpreted the order as requiring the incorporation of rules 29 and 31 and went even further and presented a modified version of rules 29, 30, and 31 as amendments to section 6.6(c) of its Operating Agreement and Tariff.¹⁶

21. We will accept PJM's proposed tariff provisions relating to rules 65 through 69 as being in compliance with our November 26 Order. We also accept PJM's explanation of its failure to incorporate rule 71 on the grounds that inclusion of rule 71 is unnecessary, since rule 71 did no more than call for a meeting of the PJM Reserve Markets Working Group, which the November 26 Order had separately required as a condition of acceptance.

22. Although ambiguous, the Commission clarifies that its directive in the November 26 Order was for PJM to put into its Tariff only business rules 65 through 69 and 71, not 29 and 31. Under section 154.203(b) of the Commission's regulations, "filings made to comply with Commission orders must include only those changes required to comply with the order."¹⁷ We therefore reject PJM's proposed tariff sheet nos. 132a.01, 132a.02, 402A.01b, and 402A.01c, in which PJM proposed to incorporate new provisions based on rules 29, 30, and 31 into its tariff, without prejudice to PJM refiling these provisions in a new proceeding pursuant to Section 205 of the Federal Power Act.¹⁸

¹⁵ Business Rules 65 – 69 describe the award of balancing operating reserve credits. Rules 65 and 66 cover the reliability analysis period for credits created by deviations and reliability respectively. Rule 67 references units that are awarded credits based on operations outside their day-ahead schedules. Rules 68 and 69 refer to the operating day credits created by real-time schedules that do not cover a dispatched unit's cost or price and deviations between day-ahead and real-time schedules. Rule 71 is a one-time requirement to reconvene the PJM Reserve Markets Working Group as noted herein.

¹⁶ See PJM Compliance Filing at 5.

¹⁷ 18 CFR § 154.203(b) (2008).

¹⁸ Because the protested issues relate only to the proposed changes to the rejected tariff sheets, we dismiss the protest.

The Commission orders:

(A) Tariff sheet Nos. 132a.01, 132a.02, 402A.01b, and 402A.01c are rejected.

(B) Tariff sheet Nos. 9, 94, 111, 111a, 111.01, 379, 379A, 380.01, 383.01, and 384 are accepted effective December 1, 2008.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.