

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

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer and Philip D. Moeller.

American Transmission Systems, Inc.

Docket No. ER09-1589-001

FirstEnergy Service Company

v.

Docket No. EL10-6-001

PJM Interconnection, L.L.C.

ORDER ADDRESSING EXPEDITED PARTIAL
REQUESTS FOR CLARIFICATION AND REHEARING

(Issued March 10, 2010)

1. FirstEnergy Services Company, American Transmission Systems, Inc. (ATSI), and the ATSI Utilities¹ (collectively, FirstEnergy) seek expedited, partial clarification and/or rehearing of an order issued in this proceeding on December 17, 2009.² In the December 17 Order, the Commission addressed a conditional proposal made by ATSI, a transmission-owning member of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). ATSI proposed, subject to conditions, to: (i) terminate its membership in the Midwest ISO regional transmission organization (RTO); and (ii) join the PJM Interconnection, L.L.C. (PJM) RTO. The December 17 Order conditionally

¹ The Cleveland Electric Illuminating Company, Ohio Edison Company, the Toledo Edison Company, and Pennsylvania Power Company.

² *American Transmission Systems, Inc.*, 129 FERC ¶ 61,249 (2009) (December 17 Order).

authorized ATSI to terminate its existing obligations to the Midwest ISO and addressed ATSI's proposed integration of the ATSI zone into PJM's capacity markets.³

2. FirstEnergy seeks expedited clarification and/or rehearing regarding the fixed resource requirement (FRR) integration auction requirements authorized for use for the ATSI zone, including clarifications regarding PJM's must-offer requirements and relevant offer caps.⁴ Related rehearing and/or clarification requests were submitted by Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (PJM MMU); the Office of the Ohio Consumers' Counsel (Ohio Consumers Counsel); and the Coalition of Midwest Transmission Customers and Industrial Energy Users-Ohio (collectively, Industrial Energy Consumers).

3. For the reasons discussed below, we grant, in part, and deny, in part, clarification and rehearing of the December 17 Order. In a separate order, we will address all other issues raised on rehearing.⁵

Background

4. In a filing submitted August 17, 2009, ATSI requested that the Commission conditionally approve, subject to the submission of related filings, the termination of its status as a transmission operator, owner and local balancing authority in the Midwest ISO, effective June 1, 2011. ATSI also sought a finding that its commitment to withdraw from the Midwest ISO and join PJM will be authorized by the Commission subject to: (i) the integration of the ATSI-zone load into PJM's capacity markets and processes,

³ The December 17 Order also addressed a related complaint submitted by FirstEnergy, ATSI's parent.

⁴ These FRR integration auctions, sometimes referred to below as the ATSI zone integration auctions, are scheduled to open March 15, 2010.

⁵ Additional clarifications and/or requests for rehearing of the December 17 Order were submitted by: the ATSI Utilities; the Public Utilities Commission of Ohio; Indianapolis Power & Light Company; Ohio Consumers' Counsel; the Northeast Ohio Public Energy Council; and the Coalition of Midwest Transmission Customers and Industrial Energy Users-Ohio.

pursuant to the Implementation Agreement submitted by ATSI in its filing;⁶ and (ii) the utilization of PJM's FRR alternative, subject to certain requested waivers.⁷

5. In the December 17 Order, the Commission conditionally authorized ATSI to terminate its existing obligations to the Midwest ISO. The December 17 Order also addressed ATSI's proposed integration of the ATSI zone into PJM's capacity markets, pursuant to the FRR alternative.⁸

Expedited Requests and Responsive Pleadings

6. FirstEnergy, the PJM MMU, Ohio Consumers Counsel, and Industrial Energy Consumers seek expedited clarification or, in the alternative, request rehearing, of the December 17 Order, regarding PJM's operation of the ATSI zone integration auction, as scheduled for March 15, 2010. Answers to these requests were submitted on February 3, 2010, by PJM, and on February 9, 2010, by PSEG Companies and PPL Companies (PSEG, *et al.*).

7. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d), prohibits an answer to a request for rehearing. Accordingly, we reject the answers submitted by PJM and PSEG, *et al.*

⁶ The parties to the implementation agreement are FirstEnergy and PJM. The agreement was executed on August 12, 2009.

⁷ See PJM Reliability Assurance Agreement (RA Agreement) at Schedule 8.1.A ("The [FRR] Alternative provides an alternative means, under the terms and conditions of this Schedule, for an eligible Load-Serving Entity to satisfy its obligation hereunder to commit Unforced Capacity to ensure reliable service to loads in the PJM Region."). ATSI stated that while its integration into PJM is planned for June 1, 2011, participation in PJM's reliability pricing model (RPM) processes cannot occur as of that date because the RPM base residual auctions covering the first two years of this post-integration period (i.e., covering the 2011-2012 and 2012-2013 delivery years) had already occurred. Accordingly, ATSI proposed that the ATSI zone load serving entities satisfy their capacity obligations for this interim post-integration period by utilizing a modified version of PJM's FRR alternative, based on the same model approved by the Commission in authorizing the recent re-integration of the Duquesne Light Company (Duquesne) into PJM's capacity markets. See *Duquesne Light Co.*, 126 FERC ¶ 61,074 (2009) (*Duquesne Settlement Order*).

⁸ December 17 Order, 129 FERC ¶ 61,249 at P 78.

Discussion

A. PJM's Must Offer Requirement

8. FirstEnergy and the PJM MMU request clarification and/or rehearing regarding PJM's must-offer requirement, as set forth at Attachment DD, Section 6.6 of the PJM open access transmission tariff (OATT), and whether, and to what extent, this provision will apply to the ATSI zone integration auctions.

1. December 17 Order

9. The December 17 Order addressed PJM's must-offer requirement in response to clarification requests submitted by PJM and the PJM MMU.⁹ The December 17 Order found that, under Section 6.6, generators that submit offers into a base residual auction are required to offer uncommitted capacity into all incremental auctions. However, the Commission declined to require all generators in the ATSI zone submit offers into the ATSI zone integration auction. The Commission found that PJM's RPM protocols do not require that all generators within the PJM footprint submit offers into a base residual auction or an initial auction. The Commission found, instead, that Attachment DD, Section 6.6, deals with different issues, i.e., the ability of a generator to withhold capacity from the initial base residual auction and then offer such capacity in incremental auctions and the ability of a generator that has already manifested its desire to participate in an auction to withhold uncommitted capacity in a later auction.

10. The Commission held that these requirements do not obligate all generators within PJM to participate in capacity auctions. The Commission noted, moreover, that neither PJM nor the PJM MMU had provided a basis upon which PJM could require a generator to participate in the capacity market of the RTO in which its zone is located.

2. Requests for Expedited Clarification/Rehearing

11. FirstEnergy requests expedited clarification that the must-offer requirement applicable to the ATSI zone integration auctions will not be limited to capacity suppliers that have already offer into a prior base residual auction. FirstEnergy asserts (and the PJM MMU, in its request for clarification, concurs) that capacity suppliers in the ATSI

⁹ *Id.* P 81. PJM requested clarification regarding the applicability of the must-offer requirement, as it relates to capacity resources under the FRR alternative outlined by ATSI in its filing. The PJM MMU requested clarification that all uncommitted generation capacity in the ATSI zone, and in PJM, be required to offer in the ATSI zone integration auction at prices less than their offer caps.

zone should be required to offer into the ATSI zone integration auctions, unless they otherwise qualify for exemption under one or more of the three stated exemptions set forth at Attachment DD, Section 6.6(g) of the PJM OATT.¹⁰

12. FirstEnergy notes that much of the ATSI zone capacity is controlled by only three suppliers, one of whom is FirstEnergy's affiliate, FirstEnergy Solutions Corp., an entity that has already committed to offer all of its available capacity into the ATSI zone integration auctions.¹¹ FirstEnergy asserts that permitting any non-affiliated supplier to withhold part, or all, of its available capacity could result in market abuses by allowing an increase of greater than five percent in the ATSI zone integration auction-clearing price.¹² FirstEnergy asserts that, under these circumstances, the Commission would be justified in directing that the RRI and IPA generation in the ATSI zone, and all other ATSI zone generation that is available, be offered into the ATSI zone integration auctions, consistent with the authority granted to the PJM MMU, under Attachment DD, section 6.6(k) of the PJM OATT.¹³

13. The PJM MMU asserts that PJM's must-offer rule must be applied to the ATSI zone integration auction, with respect to all uncommitted capacity located in the ATSI zone and in PJM. The PJM MMU asserts that all such capacity should be required to offer into the March 15 auction, unless the seller qualifies for one of the three exemptions

¹⁰ Section 6.6(g) exempts from PJM's must-offer requirement generation that: "(i) is reasonably expected to be physically unable to participate in the relevant auction; (ii) has a financially and physically firm commitment to an external sale of its capacity; or (iii) was interconnected to the Transmission System as an Energy Resource and not subsequently converted to a Capacity Resource."

¹¹ The other capacity suppliers to which FirstEnergy alludes are RRI Energy, Inc., (RRI) which owns or controls 1,400 MW of capacity, and International Power America, Inc. (IPA), which owns or controls 712 MW of capacity.

¹² FirstEnergy notes that the collective capacity of RRI and IPA represents approximately 15 percent of the total unforced capacity obligation of the ATSI zone.

¹³ Section 6.6(k) states, in relevant part, that "if the [PJM MMU] determines that one or more Capacity Market Sellers' failure to offer part or all of one or more existing generation resources into an auction would result in an increase of greater than five percent in any Zonal Capacity Price determined through such auction, [PJM] shall apply to FERC for an order . . . directing such Capacity Market Seller to participate in the auction, or for other appropriate relief[.]"

set forth at Attachment DD, Section 6.6. The PJM MMU adds that this approach would be consistent with FRR auction used in the case of the *Duquesne Settlement Order*.¹⁴

14. The PJM MMU adds that PJM's must-offer requirement applies to all capacity resources for each base residual auction and each subsequent incremental auction. The PJM MMU asserts the ATSI zone integration auctions, in this instance, are analogous to the base residual auctions in that they are the first auctions for the ATSI zone and will otherwise use the rules applicable to the base residual auction, including the application of a demand curve based on the PJM-determined reliability requirement.

3. Commission Determination

15. For the reasons discussed below, we grant, in part, the requests for clarification submitted by FirstEnergy and the PJM MMU. In the December 17 Order, the Commission sought to respond to requests for clarification seeking to expand the scope of the must-offer requirement contained in Attachment DD, Section 6.6 of PJM's OATT, by applying this provision, without exception, to every generator physically located in the ATSI zone. The Commission declined to do so. The Commission held, instead, that Section 6.6 should be applied to all generation that was offered into the base residual auction for the delivery year.¹⁵

16. However, as FirstEnergy and the PJM MMU correctly note, Section 6.6(g) contains exemptions from the must-offer requirement. In addition, Section 6.6(a) applies the must-offer requirement to "all Unforced Capacity of all existing Generation Capacity Resources located in the PJM Region[.]" Accordingly, we clarify that PJM must apply these provisions of its OATT to the ATSI zone integration auction, based on the understanding that these integration auctions, for purposes of Section 6.6, will be functionally analogous to the operation of an initial base residual auction. As such, unless a generator in the ATSI zone meets one of the must-offer exemptions set forth in Section 6.6(g) or does not otherwise qualify as a "resource," under Section 6.6(a), it must satisfy PJM's must-offer requirement. In turn, the must-offer requirement applicable to the ATSI zone integration auctions will not be limited to capacity suppliers that have already offer into a prior base residual auction.

17. Finally, we deny FirstEnergy's request that we make additional findings regarding the implications attributable to a supplier's failure to offer all, or part, of its resources into

¹⁴ *Duquesne Settlement Order*, 126 FERC ¶ 61,074 at P 36.

¹⁵ December 17 Order, 129 FERC ¶ 61,249 at P 81.

the ATSI zone integration auctions, as contemplated under Section 6.6(k), a provision applicable to requests submitted by the PJM MMU.¹⁶

B. Integration Auction Offer Cap Options

18. FirstEnergy, the PJM MMU and the Ohio Consumers Counsel question the December 17 Order regarding the market seller offer cap options applicable to the ATSI zone integration auctions, under Attachment DD, Section 6.4 of the PJM OATT.

1. December 17 Order

19. The December 17 Order held that PJM's existing mitigation procedures are to be applied to the ATSI zone integration auctions, including the RPM price caps set forth at Attachment DD, section 6.4. The Commission also held that, because a generator will not have the opportunity to obtain replacement capacity in these auctions, the offer cap options as authorized for use in PJM's third incremental auctions would be applied to the ATSI zone integration auctions -- an option that permits a seller to offer at prices 10 percent above the base residual auction clearing price for the relevant locational delivery area (LDA) and delivery year.¹⁷

2. Requests for Expedited Clarification/Rehearing

20. FirstEnergy questions the Commission's finding, in the December 17 Order, that because a generator will not have the opportunity to obtain replacement capacity in the ATSI zone integration auctions, the offer cap options for the third incremental auction, as

¹⁶ See *supra* note 13.

¹⁷ December 17 Order, 129 FERC ¶ 61,249 at P 90, citing *Mirant Energy Trading, LLC*, 124 FERC ¶ 61,140 (2008) (*Mirant Settlement Order*). In the *Mirant Settlement Order*, the Commission found that PJM's prior offer cap, setting the offer cap at the selling generator's avoided cost rate, failed to appropriately reflect the seller's risk of having to sell its remaining capacity in the third incremental auction. The Commission found that this was so because the generator, in this instance, is unable to deliver this capacity and has no opportunity to purchase replacement capacity in a subsequent incremental auction. Accordingly, the Commission authorized an optional offer cap, at Attachment DD, Section 6.4(g), for an existing generation resource set, at the election of such resources, at either: (i) the avoided cost rate; (ii) the documented price available to an existing generation resource in a market external to PJM; or (iii) 1.1 times the capacity resource clearing price in the base residual auction for the relevant LDA and delivery year.

approved in the *Mirant Settlement Order*, should be applied.¹⁸ FirstEnergy asserts that setting a market seller offer cap for the incremental auctions at 1.1 times the capacity resource clearing price in the base residual auction for the relevant LDA and delivery year is not possible because there would be no price or pricing data in the ATSI zone for the base residual auction. FirstEnergy argues that, as such, suppliers participating in the ATSI zone integration auctions must be subject to an offer cap based on the avoidable cost rate or, in the unlikely event of demonstration of a documented opportunity in an external market, the opportunity cost for such external market.¹⁹

21. The PJM MMU and the Ohio Consumers Counsel, in their requests for clarification and/or rehearing, seek this same determination. The PJM MMU argues that the rationale for a default offer cap equal to 110 percent of the base residual auction clearing price could not be applied to the circumstance presented by the ATSI zone integration auction. Specifically, the PJM MMU argues that there would be no point in applying this behavioral incentive to the integration auctions because there will be no generation owners purchasing capacity and thus no potential impact of such an incentive. The PJM MMU asserts that the highest reasonable default offer cap is the capacity resource clearing-price in the relevant base residual auction. The PJM MMU asserts that this would allow generation capacity resources to offer additional capacity that becomes available due to performance increases at a level based on the base residual auction clearing price received on the same unit. The Ohio Consumers Counsel asserts that the ATSI zone integration auction should apply the standard RPM mitigation rules applicable to PJM base residual auctions.

3. Commission Determination

22. The December 17 Order held that because a generator will not have the opportunity to obtain replacement capacity in the ATSI zone integration auctions, the offer cap options as authorized for use in PJM's third incremental auctions, and as approved by the Commission in the *Mirant Settlement Order*, would apply. These options are set forth at Attachment DD, Section 6.4(g) of the PJM OATT and provide

¹⁸ December 17 Order, 129 FERC ¶ 61,249 at P 90.

¹⁹ The PJM MMU, in its request for clarification, seeks this same determination. The PJM MMU argues that the rationale for a default offer cap equal to 110 percent of the base residual auction clearing price could not be applied to the circumstance presented by the ATSI zone integration auction. Specifically, the PJM MMU argues that there would be no point in applying this behavioral incentive to the integration auctions because there will be no generation owners purchasing capacity and thus no potential impact of such an incentive.

that “[f]or any Third Incremental Auction, the Market Seller Offer Cap for an existing Generation Capacity Resource shall be determined pursuant to paragraph (a) of the Section 6.4,^[20] or if elected by the Capacity Market Seller, shall be equal to 1.1 times the Capacity Resource Clearing Price in the Base Residual Auction for the relevant LDA and Delivery Year.”

23. Applying these options, here, we conclude that resources offering into PJM’s RPM auction for the first time, by way of the ATSI zone integration auctions, will not be permitted to price their offers at 10 percent above the base residual auction clearing price, as contemplated by Attachment DD, Section 6.4(g), because the relevant LDA, in this instance, i.e., the ATSI zone, did not previously exist and, as such, there is no price or pricing data on which the 110 percent offer could be based. Accordingly, we clarify that this alternative offer cap option (i.e., Section 6.4(g)) cannot, and does not, apply for: (i) units in the ATSI zone with no pre-existing RPM capacity obligations; (ii) units located in the PJM LDAs with no preexisting RPM capacity obligations in a relevant delivery year because they failed to clear; or (iii) units that did not exist at the time of the relevant base residual auctions, which are located in a PJM LDA.

24. However, we note that to the extent a capacity resource can demonstrate a pre-existing RPM capacity obligation for the relevant LDA and delivery year then the default offer-cap option should apply.

C. Demand Response Participation in the Integration Auctions

25. For the reasons discussed below, we deny the Industrial Energy Consumers’ request for rehearing regarding demand response participation in the ATSI zone integration auctions.

²⁰ Section 6.4(a) provides, in relevant part, as follows:

The Market Seller Offer Cap, stated in dollars per MW-year of installed capacity, applicable to price-quantity offers within the Base Offer Segment for an existing Generation Capacity Resource shall be the Avoidable Cost Rate for such resource, less the Projected PJM Market Revenues for such resource, stated in dollars per MW of unforced capacity. . . . The Market Seller Offer Cap for an existing Generation Capacity Resource shall be the Opportunity Cost for such resource, if applicable. . . . Nothing herein shall preclude any Capacity Market Seller and the [PJM MMU] from agreeing to, nor require either such entity to agree to, an alternative market seller offer cap determined on a mutually agreeable basis.

1. Request for Rehearing

26. Industrial Energy Consumers assert as error the December 17 Order's failure to address the obligation of Ohio distribution utilities to achieve peak demand reductions and energy efficiency improvements in conjunction with their participation in the ATSI zone integration auctions. Specifically, the Industrial Energy Consumers argue that the ATSI Utilities have a responsibility to ensure that the ATSI zone integration auctions adhere to the requirements of Ohio state law as it relates to these matters.

27. Industrial Energy Consumers assert that to the extent that FirstEnergy can point to specific and known demand response resources that will meet PJM's requirement to be a capacity resource, the FRR forecast could and should be reduced by the amount of demand response that will be provided by those resources. The Industrial Energy Consumers further assert that maintaining PJM's interruptible load for reliability (ILR) option for planning year 2011-2012 would also provide a vehicle through which the amount of cleared capacity is reduced, while preserving demand response capabilities. The Industrial Energy Consumers add that energy efficiency improvements planned to comply with Ohio requirements could also serve to explicitly reduce the ATSI zone integration auction load forecast. The Industrial Energy Consumers argue that, regardless, this forecast should be reduced to recognize the requirements of Ohio state law regarding peak demand reductions and energy efficiency improvements.

2. Commission Determination

28. We reject the Industrial Energy Consumers' request for rehearing. PJM's load forecasts and the manner and extent to which these forecasts are required to reflect committed load response, including ILR or cleared demand response from PJM's RPM auctions, is governed by the PJM RA Agreement and PJM's manuals.²¹ While these provisions require PJM to include demand and energy efficiency resources in a FRR capacity plan, three years in advance of the applicable delivery year, the December 17 Order appropriately exempted the ATSI zone FRR plan from meeting this unworkable timing requirement, given the circumstances presented by ATSI's planned integration date.

29. Nonetheless, PJM's customers, including customers required to comply with the requirement of Ohio state law, will be permitted, under PJM's auction rules, to offer demand response resources, ILR resources and energy efficiency resources as capacity resources into PJM's auction. Moreover, PJM's FRR capacity plan rules explicitly

²¹ See RA Agreement at Schedule 8.1, D.4 and PJM Manual 18.

provide for the inclusion of all demand response, load management, energy efficiency, or similar programs.

D. Use of Additional Incremental Auctions

30. For the reasons discussed below, we deny the Ohio Consumers Counsel's request for rehearing regarding the use of, and reliance on, auctions in addition to those authorized in the December 17 Order.

1. Request for Rehearing

31. The Ohio Consumers Counsel asserts that incremental auctions should be made available to replace capacity committed in the ATSI zone integration auctions. The Ohio Consumers Counsel argues that no reason exists to forbid such opportunities and that precluding this right would impose unnecessary risks on capacity sellers participating in the ATSI zone integration auctions and could, in fact, discourage participation. The Ohio Consumers Counsel argues that if questions exist about whether capacity sellers whose capacity clears in the FRR integration auctions will be permitted to acquire replacement capacity on a bilateral basis or through subsequent PJM incremental auctions, the Commission should clearly state that these opportunities will be available to such capacity sellers.

2. Commission Determination

32. We deny the Ohio Consumers Counsel's request for rehearing. In approving the ATSI zone integration auctions in the December 17 Order and related waivers regarding PJM FRR plan procedures, as they will apply to the ATSI zone, the Commission neither limited nor otherwise revised the existing rights of capacity sellers to replace their capacity commitments. We are not persuaded that any such revisions would be warranted here.

E. Excess Capacity Sell-Back Requirements

33. For the reasons discussed below, we deny the Ohio Consumer Counsel's request for rehearing regarding the December 17 Order's asserted error in failing to require PJM to implement an excess capacity sell-back provision applicable to the ATSI zone integration auctions.

1. Request for Rehearing

34. The Ohio Consumers Counsel asserts as error the December 17 Order's failure to require PJM to implement an excess capacity sell-back provision in those circumstances where PJM has cleared capacity from a prior RPM auction in excess of its updated reliability requirement. The Ohio Consumer Counsel argues that such a directive is

required pursuant to the Commission findings in a pending proceeding, in Docket No. ER05-1410-000, *et al.*²²

2. Commission Determination

35. We deny Ohio Consumers Counsel's request for rehearing. The PJM tariff provides that PJM shall offer to sell back capacity in an incremental auction in instances where the reliability requirement has decreased from the previous auction for the same delivery year. In addition, in the *RPM Revisions Order*, the Commission found that it may be warranted, in certain circumstances, to allow a generator to buy its capacity obligation back from PJM in incremental auctions. Accordingly, the Commission required PJM to either revise its tariff to provide for such an allowance, or otherwise explain why such a provision should not be adopted.²³

36. The Commission has yet to issue an order addressing PJM's subsequent compliance filing. Accordingly, we will not require PJM to implement an excess capacity sell-back provision applicable to the ATSI zone integration auctions because the sell-back provisions provide for sell-back only within incremental auctions, and not other categories of capacity auctions.

F. Additional Requests for Expedited Clarification/Rehearing

37. For the reasons discussed below, we grant FirstEnergy's remaining additional requests for expedited clarification and/or rehearing.

1. Requests for Expedited Clarification/Rehearing

38. FirstEnergy states that, in the course of finalizing the details regarding the ATSI zone integration auctions, FirstEnergy and/or PJM identified certain potential ambiguities in the December 17 Order. FirstEnergy states, however, that these potential ambiguities were either addressed, or resolved, by the general waiver authorization granted by the December 17 Order, or are otherwise consistent with the Commission's authorizations. Nonetheless, out of an abundance of caution, FirstEnergy seeks clarification regarding the following:

²² *PJM Interconnection, L.L.C.*, 129 FERC ¶ 61,090, at P 77 (2009) (*RPM Revisions Order*).

²³ *Id.* P 79.

- FirstEnergy asserts that, in several instances, the December 17 Order's reference to FirstEnergy and/or its affiliates may have been either mistaken and/or ambiguous as it relates to PJM's capacity procurement requirements. Accordingly, FirstEnergy seeks clarification that its affiliated load-serving entities, i.e., the ATSI Utilities,²⁴ and not ATSI, a transmission company, will be the entities held responsible for the PJM capacity requirement in the ATSI zone.
- FirstEnergy also requests clarification that the ATSI zone integration auctions will not be required to procure the marginal block of capacity if doing so would result in clearing more than the capacity requirement. FirstEnergy seeks clarification that, instead, only the amount of capacity up to the capacity requirement will be procured.²⁵
- FirstEnergy also requests an after-the-fact clarification that certain deadlines otherwise applicable to PJM's capacity procurement auctions were properly shortened by PJM to fit the circumstances presented by the ATSI zone integration auctions, namely, that the deadline for submitting cost data was properly reduced from two months prior to the auction to 45 day prior to the auction, or by January 29, 2010,²⁶ and that the deadline for entities required to certify their market-based rate authorizations was properly shortened to February 1, 2010.²⁷
- FirstEnergy also requests clarification that the Commission's authorization of a vertical demand curve for use in clearing the ATSI zone integration auctions²⁸ will include the PJM "buy bid" cap when additional resources are sought, i.e., a cap set at 1.5 times the net cost of new entry (CONE).²⁹

²⁴ See *supra* note 1.

²⁵ FirstEnergy notes that this clarification would be consistent with PJM's "make-whole" payment obligation to the marginal supplier, as applicable to the excess amount of cleared capacity. See PJM OATT, at Attachment DD, Section 5.14(b).

²⁶ *Id.* Section 6.7(b).

²⁷ *Id.* Section 5.12(b)(1).

²⁸ December 17 Order, 129 FERC ¶ 61,249 at P 83.

²⁹ See PJM OATT at Attachment DD, Section 5.12(b)(1).

- Finally, FirstEnergy seeks an after-the-fact clarification that load serving entities were permitted to participate, at their election, as independent FRR entities responsible for their own capacity, assuming they had submitted, on or before February 15, 2010, their own FRR plan.

2. Commission Determination

39. We grant FirstEnergy's requests. Specifically, the ATSI Utilities, not ATSI, will be the entities subject to PJM's capacity procurement requirements. And the integration auctions contemplated by the December 17 Order will not procure the marginal block of capacity if doing so would result in clearing more than the capacity requirement. Instead, only the amount of capacity up to the capacity requirement will be procured.

40. We also find that certain deadlines otherwise applicable to PJM's capacity procurement auctions will be shortened to fit the circumstances presented by the FRR integration auctions, namely, that the deadline for submitting cost data will be reduced from two months prior to the auction to 45 day prior to the auction, or by January 29, 2010, and the deadline for entities required to certify their market-based rate authorizations will be February 1, 2010.

41. We also clarify that the Commission's authorization of a vertical demand curve for use in clearing the integration auctions includes the PJM "buy bid" cap when additional resources are sought, i.e., a cap set at 1.5 time net CONE. Finally, we conclude that load serving entities will be permitted to participate, at their election, as independent FRR entities responsible for their own capacity, subject to their prior submission, on or before February 15, 2010, of their own FRR plan.

The Commission orders:

(A) Expedited partial clarification and/or rehearing of the December 17 Order is hereby granted, in part, and denied, in part, as discussed in the body of this order.

(B) As discussed in the body of this order, all remaining issues raised on rehearing of the December 17 Order will be addressed by the Commission in a separate order.

By the Commission. Commissioner Norris is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)

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