193 FERC ¶ 61,032
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: David Rosner, Chairman;
Lindsay S. See and Judy W. Chang.

Invenergy Energy Management, LLC | Docket No. EL23-29-000

v.

PJM Interconnection, L.L.C.,

ORDER ON COMPLAINT

(Issued October 16, 2025)

1. On February 1, 2023, pursuant to sections 206 and 306 of the Federal Power Act (FPA)[1] and Rule 206 of the Commission's Rules of Practice and Procedure,[2] Invenergy Energy Management LLC (Invenergy) submitted a complaint (Complaint) against PJM Interconnection, L.L.C. (PJM) regarding PJM's practices and procedures applicable to long-term firm point-to-point transmission service requests (TSRs)[3] for service beginning in the near future. Invenergy contends that PJM's Tariff, practices, and procedures are unjust and unreasonable or that PJM's practices and procedures are in violation of the PJM Tariff because they effectively deny all long-term TSRs for a term within the next few years that are submitted by existing generators. Invenergy requests that the Commission direct PJM to establish procedures to timely study and process TSRs for service beginning in the near future. In this order, for the reasons discussed below, we deny the Complaint.

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[1] 16 U.S.C. §§ 824e, 825e.

[2] 18 C.F.R. § 385.206 (2025).

[3] Long-term firm point-to-point transmission service has a term of one year or more. PJM, Intra-PJM Tariffs, OATTL-M-N, OATT Definitions – L – M - N (51.0.0) (definition of Long-Term Firm Point-To-Point Transmission Service). Long-term firm point-to-point TSRs as described in the PJM Open Access Transmission Tariff (Tariff or OATT) are referred to in this order as "long-term TSRs." Capitalized terms that are not defined in this order have the meaning specified in the PJM Tariff.

I. Background

A. PJM's Interconnection Process and Queue Reform

2. On November 29, 2022, the Commission accepted PJM's proposal to reform its interconnection process to transition from a serial first-come, first-served queue process to a first-ready, first-served clustered cycle approach that groups projects in three-phase cluster cycles for purposes of studying and allocating costs (PJM Queue Reforms).[4] Under PJM's Queue Reforms, PJM uses a single application and study process that includes three phases and three decision points to evaluate New Service Requests[5] on a cluster basis.[6] As part of PJM's Queue Reforms, PJM maintained its practice of studying interconnection requests and completed applications for TSRs through a single New Services Queue.[7] PJM began implementing its Queue Reforms on July 10, 2023 for pending New Service Requests that had been submitted after April 2018.[8]

3. As relevant here, at the time that Invenergy submitted the initial long-term TSR at issue in this Complaint (i.e., April 7, 2022),[9] PJM was in the process of developing its Queue Reforms, which PJM filed on June 14, 2022. Pursuant to the PJM Queue

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[4] *PJM Interconnection, L.L.C.*, 181 FERC ¶ 61,162 (2022) (PJM Queue Reform Order), *order on reh'g*, *PJM Interconnection, L.L.C.*, 184 FERC ¶ 61,006 (2023) (PJM Queue Reform Rehearing Order). Under PJM's prior first-come, first-served approach, PJM had two six-month queue windows for applications, one from April 1 to September 30 and another from October 1 to March 31. This process included an initial feasibility study, a system impact study, and a facilities study. PJM Queue Reform Order, 181 FERC ¶ 61,162 at P 4.

[5] *See* PJM, Intra-PJM Tariff, OATT, 400 N, OATT 400 Definitions N (1.0.0) (definition of New Services Request). *See also id.* § 400 I, OATT 400 Definitions I (1.0.0), (definition of Interconnection Request); *id.* § 400 C, OATT 400 Definitions C (1.0.0) (definition of Completed Application).

[6] PJM Queue Reform Order., 181 FERC ¶ 61,162 at P 10.

[7] *Id*. P 8 n.23.

[8] Pending New Service Requests submitted between April 2018 through September 2021 (queue windows AE1 through AH1) are subject to transition period rules, and New Service Requests submitted on or after October 1, 2021 (queue windows AH2 and later) are subject to the new rules under the PJM Queue Reforms. The transition period rules are not relevant to the Complaint.

[9] *See* PJM Queue Reform Order, 181 FERC ¶ 61,162 at P 10.

Reforms, the initial long-term TSR at issue in this Complaint is subject to PJM's Queue Reforms and will not be considered by PJM until at least 2026, when PJM begins processing applications under its new rules.

4. PJM conducts an interim deliverability study on a periodic basis, and as required in support of Reliability Pricing Model (RPM) auctions and preparation of documents for service, to determine whether long-term TSRs during the specific requested Delivery Year are deliverable, partially deliverable, or not deliverable.[10] PJM's interim deliverability study process is documented in Manual 14A[11] and is referenced in PJM's *pro forma* Interconnection Service Agreement (ISA) and *pro forma* Generator Interconnection Agreement (GIA) in the PJM Tariff.[12]

B. <u>Reliability Pricing Model Auctions</u>

5. Pursuant to the RPM, PJM generally conducts a Base Residual Auction three years in advance of a Delivery Year to procure resource commitments sufficient to meet reliability requirements in the PJM region.[13] PJM also holds three Incremental Auctions, which provide opportunities for capacity market participants to sell available capacity and purchase replacement capacity and for PJM to secure additional commitments of capacity or relieve sellers from prior capacity commitments based on updated reliability requirements. PJM's currently effective Tariff reflects compressed schedules for some

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[10] *See PJM Manual 14A: New Services Request Process*, PJM Interconnection, L.L.C., § 4.7 (July 26, 2023), https://www.pjm.com/pjmfiles/directory/manuals/m14a/index.html#about.html.

[11] *Id*.

[12] PJM, Intra-PJM Tariffs, OATT, Attachment O – Form of Interconnection Service Agreement (9.0.0), Specifications, § 2.1 (Capacity Interconnection Rights). PJM's *pro forma* Generator Interconnection Agreement (GIA) and *pro forma* Wholesale Market Participant Agreement that were originally accepted in the Queue Reform Order similarly mention interim deliverability studies. PJM, Intra-PJM Tariffs, OATT, Part IX.B GIA Specs (1.0.0), § 2.1 (Capacity Interconnection Rights); *id.* Part IX.C WMPA Specs (0.0.0), § 201 (Capacity Interconnection Rights).

[13] PJM, Intra-PJM Tariffs, OATT, ATTACHMENT DD.5.4, OATT ATTACHMENT DD .5.4 Reliability Pricing Model Auctions (10.0.0), § 5.4(a) (Base Residual Auction) ("The Base Residual Auction shall be conducted in the month of May that is three years prior to the start of such Delivery Year.").

capacity auctions.[14] The Base Residual Auctions for the 2025/2026 Delivery Year and the 2026/2027 Delivery Year occurred in July 2024 and July 2025, respectively.[15]

6. Owners of existing Capacity Resources are generally required to submit an offer into the Base Residual Auction; this is known as the must-offer requirement.[16] A capacity market seller may seek approval for an exception from the must-offer requirement by establishing that the resource "has a financially and physically firm commitment to an external sale of its capacity."[17] Generally, a generator must make this request no later than 120 days prior to the applicable RPM auction.[18] Final requests for exception to the must-offer requirement for the 2025/2026 Delivery Year and the

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[14] *See, e.g.*, *PJM Interconnection, L.L.C.*, 183 FERC ¶ 61,172, at PP 2, 39 (2023) (accepting PJM's tariff revisions to delay the Base Residual Auctions and Incremental Auctions for the 2025/2026 Delivery Year through the 2028/2029 Delivery Year); *PJM Interconnection, L.L.C.*, 190 FERC ¶ 61,088, at PP 3-4, 98-99 (2025) (accepting PJM's tariff revisions to memorialize delay of the Base Residual Auctions for the 2026/2027 Delivery Year through 2028/2029 Delivery Year).

[15] In its Complaint, Invenergy states that PJM's schedule at the time of the Complaint indicates that the Base Residual Auctions for the 2025/2026 Delivery Year and the 2026/2027 Delivery Year are scheduled to open in June 2023 and November 2023, respectively. *See* Complaint at 13 & n.10.

[16] *See* PJM, Intra-PJM Tariffs, OATT, OATT ATT DD.6.6, OATT ATTACHMENT DD.6.6 Offer Requirement for Capacity Resour (3.0.0); *id.* OATT ATT DD.6.6A, OATT ATTACHMENT DD.6.6A Offer Requirement for Capacity Perfo (5.0.1).

[17] PJM, Intra-PJM Tariffs, OATT ATT DD.6.6, OATT ATTACHMENT DD.6.6 Offer Requirement for Capacity Resour (3.0.0), § 6.6(g); *id.* § 6.6(g)(D) ("In order to establish that a resource has a financially and physically firm commitment to an external sale of its capacity as set forth in (ii) above, the Capacity Market Seller must demonstrate that it has entered into a unit-specific bilateral transaction for service to load located outside the PJM Region, by a demonstration that such resource is identified on a unit-specific basis as a network resource under the transmission tariff for the control area applicable to such external load, or by an equivalent demonstration of a financially and physically firm commitment to an external sale. The Capacity Market Seller additionally shall identify the megawatt amount, export zone, and time period (in days) of the export."). A generation resource also may qualify for an exception for other reasons, such as if it is reasonably expected to be physically unable to participate in the relevant Delivery Year. *Id.* § 6.6(g).

[18] *Id.* § 6.6(g)(D).

2026/2027 Delivery Year for reasons other than generation deactivation were due March 19, 2024 and March 11, 2025, respectively.[19]

7. As relevant to this proceeding, a capacity market seller exporting the generation resource may be granted an exemption from the RPM must-offer requirement if it demonstrates that it has a financially and physically firm commitment to an external sale of its capacity.[20]

II. Complaint

A. Invenergy and its TSRs

8. Invenergy states that it is affiliated with two companies that own and operate generation facilities in PJM: Invenergy Nelson LLC (Nelson) and Invenergy Nelson Expansion LLC (Nelson Expansion). Invenergy explains that it is actively pursuing opportunities to sell all or a portion of the Nelson and Nelson Expansion generation output to customers located in MISO, which would require point-to-point transmission service from the facility's location in PJM to the neighboring MISO region.[21]

9. Invenergy explains that generators in PJM that wish to sell into another regional transmission organization must first obtain an exemption from PJM's must-offer requirement or else they will be obligated to offer into the PJM capacity market.

10. Invenergy states that, on April 7, 2022, it submitted a long-term TSR to PJM, for service from June 1, 2023 to June 1, 2027 (Invenergy's multi-year TSR), which was assigned Queue Number AI1-037. Invenergy further states that on April 11, 2022, PJM tendered to Invenergy a Firm Transmission Feasibility Study Agreement for Invenergy's multi-year TSR. Invenergy explains that the cover letter accompanying the Firm Transmission Feasibility Study stated that "the expected completion date of the Firm Transmission Feasibility Study is pending the outcome of the Interconnection Process

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[19] *See PJM Interconnection, L.L.C.*, 189 FERC ¶ 61,105, at P 24 (2024) (accepting PJM's filing proposing a revised schedule for the Base Residual Auction and associated pre-auction deadlines for the 2026/2027 Delivery Year through the 2030/2031 Delivery Year). The due dates associated with the 2026/2027 Base Residual Auction are posted on PJM's website. *See* PJM, Auction Schedule, Tab 2026-2027 Base Residual Auction, https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/rpm-auction-schedule.ashx.

[20] PJM, Intra-PJM Tariffs, OATT ATT DD.6.6, OATT ATTACHMENT DD.6.6 Offer Requirement for Capacity Resour (3.0.0), § 6.6(g).

[21] Complaint at 6, 8.

Reform Task Force."[22] Invenergy states that PJM's Queue Reform Filing indicated that the studies for new service requests in the AI queue cluster, which includes Invenergy's multi-year TSR, would not begin until 2026 at the earliest.[23] Invenergy explains that PJM confirmed this delay in conducting the study for Invenergy's multi-year TSR and suggested that, as an alternative, Invenergy could potentially receive transmission service during the requested time period (i.e., June 1, 2023 to June 1, 2027), by submitting separate one-year requests (Invenergy's one-year TSRs),[24] which PJM could process more quickly and study through its interim deliverability study process.

11. Invenergy states that while it did not agree that PJM's delay in studying its multi-year TSR was appropriate, it nonetheless followed PJM's suggestion and, on May 9, 2022, submitted separate one-year TSRs covering the 2023/2024 through 2026/2027 Delivery Years. Invenergy states that PJM conducted an interim deliverability study on Invenergy's one-year TSR for the 2023/2024 Delivery Year and denied the request. Invenergy states that PJM explained that it found there was not sufficient transfer capability available to accommodate Invenergy's one-year TSR. Invenergy states that PJM appeared unwilling to discuss the procedures that led PJM to reject Invenergy's request and Invenergy subsequently withdrew its multi-year TSR request under Queue Number AI1-037 on June 3, 2022.[25]

12. Invenergy states that after refusing to timely study Invenergy's multi-year TSR, and then denying its more limited one-year TSR under the interim deliverability study process, PJM suggested that Invenergy use the available transfer capability (ATC) posted on PJM's Open Access Same-time Information System (OASIS), indicating there may be sufficient ATC available to accommodate Invenergy's multi-year TSR.[26] Invenergy states that using ATC was insufficient due to the limited 18-month ATC horizon, which does not align with the requirements for generators under PJM's capacity market rules. Invenergy explains that it therefore resubmitted its multi-year TSR, attempting to obtain

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[22] *Id*. at 9 (citing Ex. 1, Declaration of Kenneth Parkhill, attach. 1).

[23] *Id*. at 9 (citing PJM Queue Reform Filing at 30).

[24] In this order, we refer to Invenergy's multi-year TSR and Invenergy's one-year TSRs collectively as "Invenergy's TSRs."

[25] Complaint at 10 & n.24

[26] *Id.* at 11.

service to MISO beginning with the 2024/2025 Delivery Year through the 2030/2031 Delivery Year, which PJM is not expected to begin studying until at least 2026.[27]

B. Invenergy's Substantive Arguments

13. Invenergy asserts that PJM's current practices for studying and processing TSRs effectively deny all new long-term TSRs, including Invenergy's, and, therefore, that the practices are unjust and unreasonable.[28] Invenergy further asserts that this denial of transmission service by PJM is also denying Invenergy any commercial option to sell output outside PJM and will require Invenergy to offer that generation into PJM's capacity market.[29] Invenergy states that it spent months working with PJM to try and find a workable solution. Invenergy states that, unfortunately, these efforts have not produced a viable path to obtain transmission service in a timely manner. As a result, Invenergy states that it is left waiting for PJM to process its long-term TSRs, which PJM may not even begin studying until 2026.[30] Invenergy contends that PJM is effectively dictating the terms and commercial options under which an operating generator in PJM can sell its output, which is unjust and unreasonable.[31]

14. Specifically, Invenergy takes issue with three of PJM's practices used to evaluate TSRs. First, Invenergy asserts that PJM's decision not to begin the feasibility study for Invenergy's multi-year TSR until 2026 was in violation of the PJM Tariff that was in effect on April 7, 2022, when Invenergy submitted its multi-year TSR.[32] Second, Invenergy contends that the manner in which PJM implements its interim deliverability study process does not provide a viable path to obtaining transmission service.[33] Third, Invenergy contends that reserving ATC in OASIS is not a viable solution for Invenergy because the 18-month time horizon for ATC does not align with the timeline for

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[27] *Id.* at 11. Specifically, Invenergy states that "it submitted TSRs requesting service beginning June 1, 2024 through June 1, 2026, and TSRs requesting service beginning June 1, 2026 through June 1, 2031." *Id.* at 11 n.30.

[28] *Id*. at 3, 13.

[29] *Id*. at 3, 20.

[30] *Id*. at 13.

[31] *Id*. at 16.

[32] *Id*. at 14.

[33] *Id*. at 19.

generators in PJM to request an exception from the capacity market must-offer requirement for the three-year-ahead Delivery Year.[34]

15. Invenergy requests that the Commission direct PJM to discontinue its current practices that effectively deny new long-term TSRs, to establish procedures to timely study and process TSRs for service beginning in the near future, and to provide an interim pathway for accommodating such requests, such as temporarily extending the horizon for which it posts ATC to MISO on OASIS.[35]

III. Notice of Filing and Responsive Pleadings

16. Notice of Invenergy's filing was published in the *Federal Register*, 88 Fed. Reg. 8421 (Feb. 1, 2023), with interventions and protests due on or before February 21, 2023. On February 13, 2023, PJM filed a motion for extension of time from February 21, 2023 to March 7, 2023 to answer the Complaint, which was granted.

17. Timely motions to intervene were filed by: American Electric Power Service Corporation;[36] American Municipal Power, Inc.; Constellation Energy Generation, LLC; Dominion Energy Services, Inc.; Hoosier Energy Rural Electric Cooperative, Inc.; Illinois Municipal Electric Agency; Lee County Generating Station, LLC (Lee County); Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (IMM); Public Citizen, Inc.; Southern Maryland Electric Cooperative, Inc.; and Wabash Valley Power Association. On March 6, 2023, LS Power Development, LLC filed a motion to intervene out-of-time.

18. On March 2, 2023, Lee County filed comments in support of the Complaint (Lee County Comments).

19. On March 7, 2023, PJM filed an answer to the Complaint (PJM Answer). On March 22, 2023, Invenergy filed an answer to PJM's Answer (Invenergy's Answer) and Lee County filed a motion for leave to answer and answer to PJM's Answer (Lee County Answer).

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[34] *Id.* at 18.

[35] *Id.* at 13-14, 24.

[36] American Electric Power Service Corporation intervened on behalf of its affiliates, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, Inc., AEP Indiana Michigan Transmission Company, Inc., AEP Kentucky Transmission Company, Inc., AEP Ohio Transmission Company, Inc., and AEP West Virginia Transmission Company, Inc.

20. On May 5, 2023, and as renewed on September 5, 2023, PJM filed motions to hold the Complaint in abeyance for 30 days. On May 12, 2023 and September 12, 2023, the Commission issued notices granting PJM's motions to hold the proceeding in abeyance. On February 14, 2024, Invenergy informed the Commission that the parties no longer seek abeyance of Commission action in this proceeding and requested the Commission act on the Complaint.

IV. Discussion

A. Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2025), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

22. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we grant LS Power Development, LLC's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2025), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept Invenergy's and Lee County's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

24. We deny the Complaint. As detailed below, we find that Invenergy has not met its burden under FPA section 206 to demonstrate that PJM's conduct violates its Tariff or that PJM's Tariff is unjust and unreasonable or unduly discriminatory or preferential.

1. PJM's Purported Delay in Studying Invenergy's Long-Term TSRs and Whether the PJM Tariff Provisions are Unjust and Unreasonable

a. Pleadings

i. Complaint

25. Invenergy asserts that PJM was obligated under its Tariff to timely study and process Invenergy's TSRs, and not doing so was a violation of its Tariff obligations and unjust and unreasonable. Invenergy states that the then-effective PJM Tariff stipulated that PJM "shall conduct" feasibility studies, "in conjunction" with the interconnection queue, twice a year (beginning at the end of March and at the end of September each

year).[37] Additionally, Invenergy states that under the then-effective PJM Tariff, PJM was obligated to use "due diligence" to timely complete the feasibility study within approximately four months.[38] Invenergy contends that PJM's decision not to begin the feasibility study of Invenergy's multi-year TSR until 2026 reflects a lack of due diligence. Invenergy maintains that the Tariff set forth a specific procedure and timeline that PJM could not disregard. Invenergy contends that PJM's decision to not begin the feasibility study until 2026 exceeds any flexibility the PJM Tariff may provide. Invenergy points to the Commission's rejection of a PJM proposal that would have required only that PJM's studies be conducted in a "timely manner," on the grounds that this would allow for too much flexibility.[39] Invenergy states that the importance of timely processing long-term TSRs is reflected in PJM's Tariff in effect at the time, which specifically contemplated potential penalties for missing study deadlines.[40]

26. In addition, Invenergy asserts that it is unreasonable for long-term TSRs for service beginning in the near future to be effectively denied solely due to an inability to be studied until after the dates of the requested service. Invenergy maintains that interconnection and transmission service requests are separate and distinct services, and while an interconnection request may be made for a proposed generating facility that would be constructed several years in the future, a TSR like Invenergy's is made to

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[37] Complaint at 14 (citing PJM, Intra-PJM Tariffs, OATT, 19.3, OATT 19.3 Initial Study Procedures: (2.0.0) ("The Transmission Provider shall conduct Transmission Service Feasibility Studies two times each year in conjunction with the Interconnection Feasibility Studies conducted under Tariff, Part IV, section 36.2."); PJM, Intra-PJM Tariffs, OATT, 36.2, OATT 36.2 Interconnection Feasibility Study: (stating that after receiving the required materials, PJM "shall conduct an Interconnection Feasibility Study"); PJM, Intra-PJM Tariffs, OATT, 36.2, OATT 36.2 Interconnection Feasibility Study: (2.1.0) (PJM "shall use due diligence to complete Interconnection Feasibility Studies by January 31" for requests received before September 30, and it "shall use due diligence to complete Interconnection Feasibility Studies by July 31" for requests received by March 31.)).

[38] *Id.* at 14 (citing PJM, Intra-PJM Tariffs, OATT, 36.2, OATT 36.2 Interconnection Feasibility Study: (2.1.0)).

[39] *Id.* at 15 (citing *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,079, at P 35 (2012)).

[40] *Id.* at 15 (citing PJM, Intra-PJM Tariff, OATT, 19.8, OATT 19.8 Penalties for Failure to Meet Deadlines: (3.0.0)).

facilitate commercial decisions about the current output of a generator, which are decisions made on a relatively shorter term basis.[41]

27. Invenergy states that it will be forced to offer its affiliates' generation capacity into the PJM capacity auction, given that its request for an exception to the must-offer requirement was denied due to Invenergy not being able to timely obtain firm transmission service. Invenergy states that, by effectively denying any new transmission service for the foreseeable future, PJM denied Invenergy any commercial option to sell outside of PJM. Invenergy argues that dictating the terms and commercial options under which a generator operating in PJM can sell its output is unjust and unreasonable. Invenergy contends that, if PJM cannot timely study and grant transmission service under its existing rules, the Commission must direct PJM to establish procedures for studying and processing TSRs that are separate from its generator interconnection queue.[42]

28. Invenergy contends that there needs to be a way to obtain transmission service in PJM without waiting several years to be studied. Invenergy states that solutions could involve establishing new procedures applicable to TSRs for service beginning in the near future or for firm transmission service that must be secured to meet the deadline for submitting must-offer exception requests.[43]

ii. **<u>Lee County's Comments</u>**

29. Lee County agrees with Invenergy that PJM's practices relating to long-term TSRs are unjust, unreasonable, and unduly discriminatory, and highlights that it had a similar

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[41] *Id.* at 15-16 (citing *Calpine Corp. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 at n.112 (2018) ("Typically, undue discrimination cases involve a seller charging a different rate to similarly situated customers; but undue discrimination can also occur when a seller charges the same rate to differently-situated customers."); *Ala. Elec. Coop., Inc. v. FERC*, 684 F.2d 20, 27-28 & n.3 (D.C. Cir. 1982) ("[A] single rate design may also be unlawfully discriminatory. . . . It matters little that the affected customer groups may be in most respects similarly situated—that is, that they may require similar types of service. . . . If the costs of providing service to one group are different from the costs of serving the other, the two groups are in one important respect quite dissimilar."); *Ark. Elec. Energy Consumers v. FERC*, 290 F.3d 362, 368 (D.C. Cir. 2002); *Cities of Riverside v. FERC*, 765 F.2d 1434, 1439 (9th Cir. 1985); *Complex Consol. Edison Co. of N.Y., Inc. v. FERC*, 165 F.3d 992, 1013 (D.C. Cir. 1999); *Elec. Consumers Res. Council v. FERC*, 747 F.2d 1511, 1515 (D.C. Cir. 1984)).

[42] *Id.*

[43] *Id.* at 17.

experience to that of Invenergy when it submitted its own long-term TSRs.[44] Similar to Invenergy, Lee County avers that PJM's failure to conduct its Firm Transmission Feasibility Studies in a timely manner is impeding transactions in interstate commerce because such study is a prerequisite to obtaining long-term firm transmission that is needed to facilitate power sale transactions in interstate commerce between PJM and adjacent regions such as MISO. Lee County contends that

> PJM's actions effectively have put a stop to the ability to export power from PJM to MISO on a long-term firm basis for years into the future, despite the availability of ready alternatives that would avoid such result, which the Commission should find is a per se unjust and unreasonable outcome.[45]

30. Lee County contends that subjecting existing generators seeking to acquire firm transmission service in the near term and potential future generators seeking to interconnect to the grid to the same interconnection queue is unduly discriminatory because PJM is treating fundamentally dissimilar entities in the same manner.[46] Lee County asserts that when existing practices are unjust and unreasonable, as is the case here, the Commission is obligated under the FPA to require those practices to be discontinued and replaced with just and reasonable alternatives.[47]

31. As an alternative, Lee County asserts that the Commission should direct PJM within three months to make a filing that removes long-term TSRs from the interconnection queue.[48] However, Lee County asserts that this directive alone will not correct for PJM study assumptions applied to long-term TSRs that do not reflect actual transmission system topology expectations for the time period of the service request. Therefore, Lee County further contends that the Commission should combine the removal of long-term TSRs from the interconnection queue with other remedies that provide needed relief in near term.[49]

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[44] Lee County Comments at 6-8.

[45] *Id*. at 1-2.

[46] *Id*. at 4-5.

[47] *Id*. at 8.

[48] *Id*. at 5-6.

[49] *Id*. at 8-9.

iii. PJM's Answer

32. PJM states that Invenergy fails to demonstrate that the Tariff provisions governing PJM's processing of TSRs are unjust and unreasonable and that Invenergy does not identify any actual violations of the Tariff by PJM in its processing of TSRs. PJM asserts that, as a result, Invenergy fails to satisfy the first prong of its FPA section 206 burden. PJM notes that the practices that Invenergy complains about, specifically PJM's use of a single queue for generation interconnection and long-term TSRs and PJM's pause in studying pending new service requests submitted on or after October 1, 2021, were either directed by the Commission[50] or approved by the Commission.[51] PJM explains that in 2006 and 2007, it consolidated all Tariff provisions regarding studies, agreements, and rights pertaining to customer-initiated projects and service requests that could result in participant-funded upgrades to the transmission system. PJM explains that the combined processing of generation and transmission service requests is intended to ensure that interconnection and transmission customers have the same priority access to system headroom and the same responsibility for network upgrade costs based on queue priority. PJM argues that Invenergy seeks to have its TSRs considered separately but does not demonstrate that the longstanding single queue is unjust or unreasonable.[52]

33. Further, PJM disputes Invenergy's argument that PJM's practices effectively deny all new long-term TSRs because there are opportunities to take service through the interim deliverability study process and within the ATC horizon if there is sufficient ATC.[53] Regarding whether Invenergy's TSRs were timely studied, PJM states that Invenergy withdrew its multi-year TSR request under Queue Number AI1-037 before it was scheduled to be studied, and thus PJM did not act inconsistently with the Tariff by not completing the feasibility study. PJM asserts that Invenergy's resubmitted multi-year

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[50] *See* PJM Answer at 12-13 (citing *PJM Interconnection, L.L.C.*, Docket Nos. ER07-344-000 & EL06-67-001, at PP 1-2 (Feb. 8, 2007) (delegated order); PJM Interconnection, L.L.C., Filing of Tariff Revisions, Docket Nos. ER07-344-000 & EL06-67-001, at 3-5 (filed Dec. 18, 2006); *Chesapeake Transmission, LLC v. PJM Interconnection, L.L.C.*, 116 FERC ¶ 61,234, at P 37 (2006); PJM Queue Reform Order, 181 FERC ¶ 61,162 at P 8 n.23).

[51] *See id.* at 13-14 (citing PJM Queue Reform Order, 181 FERC ¶ 61,162 at PP 61, 69).

[52] *Id*. at 12-13.

[53] *Id*. at 11.

TSR was filed only days before it filed the Complaint and before requests for exemption from the must-offer requirement were due.[54]

34. In addition, PJM argues that Invenergy's proposed remedy fails to satisfy the second prong of FPA section 206 because Invenergy has not shown that its proposed remedy, which would require PJM to provide a new process for long-term TSRs, including Invenergy's TSRs, is just and reasonable.[55] PJM asserts that a special process for Invenergy's and similar long-term TSRs would amount to impermissible queue jumping by prioritizing those requests over other interconnection and transmission service requests that were submitted before Invenergy's requests. PJM asserts that the delay in studying interconnection and transmission service requests in PJM is unfortunate but necessary due to the large volume of requests in PJM's queue.[56] In response to Invenergy's request that the Commission should require PJM to provide an interim pathway for accommodating long-term TSRs, like Invenergy's, PJM argues that its existing interim deliverability study already provides such an interim pathway.[57] PJM argues that the remedies Invenergy is requesting would constitute unduly discriminatory treatment in favor of Invenergy at the expense of other new service customers.[58]

35. PJM states that its denial of Invenergy's request for an exemption from the must-offer requirement is consistent with Commission policy to provide reasonable protection from physical withholding during emergency conditions.[59] PJM notes that Invenergy's deadline to secure a must-offer exception for the 2024/2025 Delivery Year passed before this Complaint was filed.[60] PJM asserts that to the extent Invenergy is seeking to avoid a capacity commitment for the 2025/2026 Delivery Year or the 2026/2027 Delivery Year, Invenergy's multi-year TSRs were submitted only two weeks or seven months prior to the must-offer exception submission deadline, for the 2025/2026 Delivery Year and the 2026/2027 Delivery Year, respectively, without regard to complexity of the required

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[54] *Id*. at 9-10.

[55] *See id*. at 11-12.

[56] *Id*. at 2.

[57] *Id*. at 3.

[58] *Id*. at 1.

[59] *Id*. at 20-22.

[60] *Id*. at 21.

studies.[61] Additionally, PJM asserts that Invenergy has never sought, nor does the Complaint request, any waiver of the must-offer requirement for any Delivery Year.[62]

iv. Invenergy's Answer

36. Invenergy states that PJM's answer does not dispute that Invenergy and other similarly situated generators are unable to procure long-term TSRs for service beginning in the near future, nor does it make a meaningful effort to demonstrate that its existing practices are not unjust and unreasonable. Invenergy states that it does not dispute that PJM is abiding by its existing practices and procedures. Rather, Invenergy argues that those existing practices and procedures are unjust and unreasonable.[63]

37. Invenergy contends that PJM's failure to provide TSRs for service beginning in the near future impermissibly discriminates against existing generators, results in the inefficient allocation of existing transmission capacity, and curtails the use of existing interregional transfer capacity that is needed for generators to market their output to customers in MISO.[64]

v. Lee County's Answer

38. Lee County states that PJM does not present a consistent story in arguing that the relief that entities requesting long-term TSRs are seeking is discriminatory. Lee County asserts that, in the PJM Queue Reform proceeding, PJM acknowledged that PJM removed Upgrade Requests from the interconnection queue and that long-term TSRs similarly could be removed to solve the problem of delayed transactions.[65] Lee County contends that, for the same reasons it was not unduly discriminatory to remove Upgrade Requests from the interconnection queue, it is not unduly discriminatory to remove long-term TSRs from the queue. Lee County states that long-term TSR customers have already been through the PJM interconnection queue at least once to bring their generation online. Therefore, Lee County contends that New Service Customers and long-term TSR customers are not similarly situated. Moreover, Lee County avers that it

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[61] *Id*. at 19-22.

[62] *Id*. at 19-21.

[63] Invenergy Answer at 2-3.

[64] *Id*. at 6.

[65] Lee County Answer at 3 (citing PJM Interconnection, L.L.C., Submission of Response to Deficiency Letter, Docket No. ER22-2110-001, at 5 n.15 (filed Sept. 29, 2022)).

is unduly discriminatory for PJM not to remove long-term TSRs from the PJM interconnection queue because "treating dissimilarly situated customers in the same way as each other is just as discriminatory as treating similar customers differently from each other."[66] Lee County further asserts that PJM's unwillingness to remove long-term TSRs from the interconnection queue is unduly discriminatory and precludes transactions in interstate commerce that both support reliability and are in response to market signals. According to Lee County, the customers that are being harmed by this conduct are long-term TSR customers and load.[67]

b. Determination

39. We find that Invenergy has not demonstrated that PJM's processing of Invenergy's TSRs is in violation of the PJM Tariff, or that the PJM Tariff provisions for processing TSRs are unjust and unreasonable or unduly discriminatory or preferential, as required by FPA section 206. Invenergy contends that PJM did not meet the Tariff timeline for completing feasibility studies for Invenergy's TSRs (i.e., by January 31 for requests received before September 30 and by July 31 for requests received by March 31) and did not exercise due diligence, as required by the Tariff. However, the Tariff requirement that applied to Invenergy's TSRs submitted prior to the effective date of PJM's Queue Reform Tariff revisions required only that PJM exercise due diligence to meet the feasibility study timelines, not necessarily that it meet the timelines. Moreover, at the time Invenergy filed its Complaint, the Commission had approved the timeline for the PJM Queue Reforms, which proposed in relevant part to delay the processing of New Service Requests in PJM's queue (which included Invenergy's TSRs) and apply the new procedures to those New Service Requests at a later date.[68] Given these circumstances, we find that Invenergy has failed to meet its burden to demonstrate that PJM violated the Tariff requirement to exercise due diligence in meeting the study timelines. We note that the delay in study completion experienced by Invenergy was not unique to Invenergy and was common to all other interconnection requests or TSRs submitted in the same queue window as Invenergy.[69]

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[66] *Id*. at 5 n.7 (citing *Calpine Corp. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 at n.112 (2018)).

[67] *Id*. at 3-4.

[68] *See* PJM Queue Reform Order, 181 FERC ¶ 61,162 at P 60.

[69] *See W. Deptford Energy, LLC v. FERC*, 766 F.3d 10 (D.C. Cir. 2014) (reversing the Commission for applying prior tariff rules to interconnection requests). Section 19 of PJM's OATT does not contain a provision indicating that the provisions on obtaining firm transmission service will be judged based on the tariff in effect at the time the request is submitted. The current section 19.3 also does not require that PJM conduct

40. Regarding Invenergy's argument that all long-term TSRs for service beginning in the near future are effectively denied due to an inability to be studied until after the dates of the requested service, we likewise find that Invenergy has not met its burden to demonstrate how such actions violate the PJM Tariff or render the PJM Tariff unjust and unreasonable or unduly discriminatory or preferential. As the Commission found when approving the timeline for the PJM Queue Reforms as just and reasonable and not unduly discriminatory or preferential, "PJM's proposed transition mechanism is a reasonable means of implementing PJM's queue reform proposal and reasonably balances the interests of completing the interconnection study processes for mature New Service Requests under PJM's current rules with the need to move expeditiously to a first-ready, first-served clustered cycle approach in order to clear the significant backlog and begin full implementation of the [PJM Queue Reforms]."[70] We find that Invenergy has not demonstrated that PJM's transition mechanism, including the pause in processing all TSRs, which encompasses Invenergy's TSR, is unjust and unreasonable or unduly discriminatory or preferential.[71]

41. As to Invenergy's arguments about studying interconnection and transmission service requests together, to satisfy its burden under FPA section 206, Invenergy must show that PJM's Tariff provisions that set forth a consolidated process for studying interconnection and transmission service requests are unjust and unreasonable or unduly discriminatory or preferential. Although Invenergy asserts that there are differences between the needs of entities seeking interconnection service and entities seeking transmission service that begins in the near future, both interconnection requests and transmission service requests must rely on available transmission capacity and Invenergy has not demonstrated that these types of requests must be treated differently in the study process and studied separately in order for PJM's Tariff to be just and reasonable and not unduly discriminatory or preferential. Moreover, as PJM explains, it has had a single queue that includes both interconnection and transmission service requests for more than a decade, and PJM's Queue Reform Filing did not propose any changes to this process

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feasibility studies twice a year. PJM, Intra-PJM Tariffs, OATT, 19.3, OATT 19.3 Initial Study Procedures: (3.0.0). Nor does the current version point to section 36.2.

[70] PJM Queue Reform Order, 181 FERC ¶ 61,162 at P 60; *see also, id.* P 69 (finding proposed transition period timelines just and reasonable and stating that "[w]hile earlier timelines may be desirable, PJM is faced with the task of clearing its large interconnection queue backlog before commencing Cycle #1 of the New Rules").

[71] *See supra* at note 8. *See also* PJM Queue Reform Order, 181 FERC ¶ 61,162 at P 41.

structure.[72] Invenergy has not shown why it is now unjust and unreasonable for transmission service requests to receive equal queue priority to interconnection requests when studying whether sufficient transmission capacity is available to accommodate a New Service Request as both are competing for access to the same transmission capacity.[73]

2. PJM's Interim Deliverability Study Process

a. Pleadings

i. Complaint

42. Invenergy states that PJM implements its interim deliverability study process in a way that effectively denies any possibility of obtaining transmission service, and therefore it is not a viable option.[74] Specifically, Invenergy asserts that, in reviewing the study models that PJM used in its interim deliverability study when denying Invenergy's one-year TSR for the 2023/2024 Delivery Year, it appears that rather than analyzing Invenergy's requested point-to-point service, PJM analyzed whether a systemwide transfer in the MW amount of Invenergy's request would have impacts on PJM's system. In addition, Invenergy states its understanding that, as part of PJM's interim deliverability study of Invenergy's one-year TSR, PJM included all projects with requests in the AF2

[72] PJM Answer at 12-13 (citing PJM Queue Reform Order, 181 FERC ¶ 61,162 at P 8 n.23). PJM states that, in response to several Commission orders in 2006 and 2007, PJM submitted a filing to consolidate all provisions regarding the studies, agreements, and rights that pertain to the various customer-initiated projects and service requests that may result in participant-funded upgrades to the PJM transmission system. *Id.* at 12 (citing *PJM Interconnection, L.L.C.*, Docket Nos. ER07-344-000, EL06-67-001, at P 1-2 (Feb. 8, 2007); *PJM Interconnection, L.L.C.*, Filing of Tariff Revisions, Docket Nos. ER07-344-000, EL06-67-001, at 3-5 (Dec. 18, 2006); *Chesapeake Transmission, L.L.C. v. PJM Interconnection, L.L.C.*, 116 FERC ¶ 61,234, at P 37 (2006)).

[73] *See PJM Interconnection, L.L.C.*, 184 FERC ¶ 61,006, 61,032 (2023) at P 20 (citing Order No. 2003, 104 FERC ¶ 61,103 at P 118; Order No. 2003-A, 106 FERC ¶ 61,220 at P 113) (dismissing, as unsubstantiated by the record, an argument that placing both existing generators seeking new long-term firm transmission service and interconnection service customers in a single queue cluster for study is unduly discriminatory and finding that the record did not demonstrate that existing, interconnected customers seeking long-term firm transmission service are not similarly situated to new customers seeking interconnection, noting that both types of requests can require network upgrades).

[74] Complaint at 18.

and earlier queue windows, regardless of whether the projects will be in service or not.[75] Invenergy states that the details of PJM's interim deliverability study are not fully known because, after sharing some details about its interim deliverability study, PJM did not fully respond to Invenergy's questions.[76] However, Invenergy contends that, at a minimum, PJM's finding that there was not sufficient transfer capability available to grant Invenergy's request is "clearly inconsistent" with the posted ATC over the next 18 months on the relevant path, which shows an excess of 2,000 MW of available capacity.[77] Therefore, Invenergy contends that, to the extent PJM may respond that its interim deliverability process provides a viable avenue for customers to obtain service, this would be disingenuous under PJM's current implementation of that process.[78]

ii. Lee County's Comments

43. Lee County contends that, in its interim deliverability study for a particular Delivery Year, PJM unreasonably assumes that every earlier queued interconnection service request (i.e., projects that have earlier queue positions) will result in a project that will go into service before the Delivery Year requested by the long-term TSR.[79] Lee County further contends that this assumption is unreasonable given PJM's own admission that "its generator interconnection queue is replete with speculative requests, as well as the reality that these projects cannot proceed until PJM studies them years from now."[80] In addition, Lee County points out that PJM inaccurately assumes that a request to transmit power from a generator in PJM to MISO requires a "slice of the transmission system throughout PJM."[81] According to Lee County, this could lead to study results

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[75] *Id.* at 19 (citing Parkill Decl. ¶¶ 11-12).

[76] *Id.* (citing Parkill Decl. ¶ 13).

[77] *Id.* (citing Parkill Decl. ¶ 15).

[78] *Id.*

[79] Lee County Comments at 2, 5.

[80] *Id.* at 2 n. 3 (citing PJM Queue Reform Filing, Docket No. ER22-2110-000, at 6-7 (filed June 14, 2022) (recounting a drop-out rate of 80% of the number of initial queue applications), at 30 (presenting timeline)).

[81] *Id.* at 3.

showing constraints on distant transmission facilities not located on the path between the specified generator and load, leading to the denial of a long-term TSR.[82]

44. Lee County argues that these assumptions are inaccurate and lead to the inevitable result of a denial of long-term TSRs and to anti-competitive results because they effectively deny generators physically located in PJM the right to transmit power on a long-term firm basis to neighboring regions like MISO that have a greater need for the supply than PJM does, as indicated by market signals.[83] Lee County asserts that the Commission should require PJM to make further reforms in addition to requiring PJM to remove long-term TSRs from PJM's interconnections queue. Those reforms include directing PJM to revise its Tariff to require feasibility studies only for long-term TSRs when any part of the service will occur outside of an 18-month horizon.[84] Additionally, Lee County contends that the Commission should extend the 18-month horizon to 36 or 48 months, given that generators will not be changing transmission system topology for years due to the queue backlogs.[85] Lee County states that an 18-month horizon may have made sense before the significant study backlogs seen today existed and allowed PJM to complete the feasibility studies within the timeframe required to permit the power for which the transmission service was sought to flow.[86]

45. Lee County also asserts that the Commission should require PJM to use a base case for both its feasibility study and its interim deliverability study that requires "only the expected actual system usage in the year of the service request to be considered in assessing a request."[87] Lee County contends that such a rational approach "is needed to avoid unjust and unreasonable and inefficient denial of transactions."[88] Finally, Lee County asserts that PJM should discontinue its assumption that the source location for a point-to-point transmission service request may change and therefore requires that it be studied as based on injection points throughout its system when applied to a customer that is willing to cede its rights to change its source. Lee County maintains that, in that

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[82] *Id*. at 2-3.

[83] *Id*. at 3-4.

[84] *Id*. at 9.

[85] *Id*. at 10-11.

[86] *Id*. at 9-10.

[87] *Id*. at 12.

[88] *Id*. at 12.

circumstance, a long-term TSR should be assessed based on the feasibility from that point rather than being precluded based on constraints on irrelevant paths.[89]

iii. PJM's Answer

46. PJM states that Invenergy has not shown that PJM's interim deliverability study process is unjust and unreasonable or that it fails to provide a viable pathway for evaluating requests addressing interim time periods.[90] PJM states that Invenergy's dissatisfaction with the results of the interim deliverability study process does not change the fact that it is an existing process that PJM can use to analyze long-term TSRs (divided into one-year periods) while studies of multi-year long-term TSRs are paused under the transition rules approved in the PJM Queue Reform Order.

47. With respect to Invenergy's contention that PJM's interim deliverability study was flawed because it is not consistent with the ATC values that PJM calculates and posts, PJM argues that Invenergy is confusing ATC and planning studies, which serve different purposes and require different analyses.[91] PJM states that ATC is an operational calculation that relies on operational data to derive a measure of near-term transfer capability, while planning studies such as the interim deliverability studies are based on planning models and seek to determine the transmission system's long-term capabilities and identify system reinforcements that may be needed to provide the requested service. PJM argues that because of this difference, the posted ATC cannot be used to validate interim deliverability study results.

48. In response to Invenergy's criticism that PJM's interim deliverability studies should model the requested point-to-point transmission service from Invenergy's specific generating facilities to the interface between PJM and MISO instead of as a systemwide transfer, PJM asserts that it would study Invenergy's one-year TSR this way if Invenergy were to request that the generating facilities are individually pseudo-tied[92] out of PJM

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[89] *Id*. at 13.

[90] PJM Answer at 14.

[91] *Id*. at 16.

[92] A pseudo-tie involves the real-time transfer of control of a generating resource or load from the balancing authority in which that resource or load is physically located to a balancing authority in a different geographic location. The North American Electric Reliability Corporation's (NERC) Glossary of Terms Used in NERC Reliability Standards defines a pseudo-tie as: "A time-varying energy transfer that is updated in Real-time and included in the Actual Net Interchange term (NIA) in the same manner as a Tie Line in the affected Balancing Authorities' control ACE equations (or alternate control processes)." NERC, "NERC Glossary of Terms Used in NERC Reliability

and into MISO.[93] PJM explains that this pseudo-tie requirement "is consistent with how PJM treats existing generator-specific exports and with PJM's requirements for importing External Generating Resources into PJM."[94] PJM states that, based on informal discussions with MISO, the MISO pseudo-tie process will take at least a year to complete, but likely longer for non-MISO generators.[95]

49. In response to Invenergy's assertion that interim deliverability study models should not include projects in the PJM interconnection process through the queue window AF2, PJM contends that its interim deliverability study, which is set forth in PJM Manual 14A,[96] properly includes all New Service Requests that have a right to the relevant base case.[97] PJM asserts that it was appropriate for PJM to include all projects through queue window AF2 and that Invenergy's argument is an example of Invenergy seeking to jump ahead of other projects in the interconnection process or disregarding the objective of a single interconnection process for both transmission and interconnection service requests.

50. PJM explains that it performs interim deliverability studies for each RPM auction. PJM states that it uses the latest future year Regional Transmission Expansion Plan (RTEP)[98] case available for the RPM auction Delivery Year under study as a base (RTEP

Standards," at 31 (Feb. 26, 2025), https://www.nerc.com/pa/stand/glossary%20of%20terms/glossary_of_terms.pdf; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, O-P, OA Definitions O - P (24.0.0) (definition of Pseudo-Tie) (referencing the definition of pseudo-tie in NERC's "Glossary of Terms Used in NERC Reliability Standards").

[93] PJM Answer at 16 n.51, 17.

[94] *Id*. at 17 (citing *PJM Interconnection, L.L.C.*, 170 FERC ¶ 61,217 (2020)).

[95] *Id*. at 17-18.

[96] *See* PJM Interconnection, L.L.C., *PJM Manual 14A: New Services Request Process*, PJM Interconnection, L.L.C., § 4.7 (July 26, 2023), https://www.pjm.com/pjmfiles/directory/manuals/m14a/index.html#about.html.

[97] PJM Answer at 15, 18-19.

[98] PJM's Tariff defines the Regional Transmission Expansion Plan (RTEP) as "the plan prepared by the Office of the Interconnection pursuant to Operating Agreement, Schedule 6 for the enhancement and expansion of the Transmission System in order to meet the demands for firm transmission service in the PJM Region." PJM, Intra-PJM Tariffs, Operating Agreement, R-S, OATT Definitions – R - S (42.0.0).

base case) and subsequently includes any projects in the interconnection queue that have rights to the Delivery Year under study. PJM also states that any interconnection queue projects that were added to the RTEP base case to be studied would have rights to the case for that year. For example, PJM explains that it used the 2023 RTEP case as a base for the AF1 and AF2 queue studies. PJM therefore argues that all projects up through the AF2 queue window would have rights to the 2023 RTEP base case and the interim deliverability study model for the 2023/2024 Delivery Year.[99] PJM further argues that "removing some unspecified number of projects from the queue and allowing later requests for transmission service to move ahead" is antithetical to the concept and objectives of a single interconnection process, contrary to the principles of interconnection processing, and is unjust, unreasonable, and unduly discriminatory.[100]

51. PJM contends that the fact that Invenergy does not like the results of the interim deliverability study, and is not willing to see how the interim deliverability study model changes as PJM's Queue Reforms progress, does not justify Invenergy's request for a new interim process tailored for Invenergy.[101]

iv. <u>Invenergy's Answer</u>

52. Invenergy argues that its request for an interim pathway does not seek to change PJM's existing single interconnection queue process. Rather, Invenergy only requests that the Commission provide an interim pathway for existing generators to procure long-term TSRs for a term beginning within the next few years, while interconnection requests and longer-term TSRs, which Invenergy defines as "requests with a term of five years or more that would provide rights to extend service terms under the [PJM] Tariff"[102] would be studied as part of the New Services Queue approved by the Commission in the Queue Reform docket. Invenergy contends that its proposed interim pathway process would not disadvantage anyone else because longer-term TSRs and interconnection requests cannot make use of transmission capacity in the near term. Invenergy asserts that PJM's existing procedures discriminate against already-operating generators seeking long-term TSRs for a term beginning within the next few years, because they study longer-term TSRs and interconnection requests on an equal basis, while not studying long-term TSRs for a term

[99] PJM Answer at 3 n.9, 18, 23.

[100] *Id*. at 19.

[101] *Id*. at 3.

[102] Invenergy Answer at 7.

beginning within the next few years at all before their requests are moot due to the passage of time.[103]

53. Invenergy contends that PJM's claim that it will study Invenergy's one-year TSRs on a point-to point basis provided that Invenergy requests a pseudo-tie out of PJM and into MISO is a proposal from PJM of "*another* supposed method for procuring near-term transmission service" which is unjust and unreasonable.[104] Invenergy asserts that PJM makes this claim rather than justifying its decision not to study Invenergy's one-year TSRs for point-to-point service. Invenergy contends that PJM's proposed solution "proves that [PJM] lacks a meaningful process for procuring near-term transmission service."[105] In addition, Invenergy contends that PJM's action illustrates the extreme difficulty Invenergy has encountered in dealing with PJM. Invenergy asserts that "PJM's proposed solution is untimely [and] demands a course of action that far exceeds the scope of Invenergy's straightforward request for near-term transmission service."[106]

54. Invenergy disputes PJM's contention that in conducting its interim deliverability study of Invenergy's one-year TSRs, it was appropriate to include all projects in queue window AF2 and earlier queue windows, regardless of whether the projects would be in service during the requested 2023/2024 Delivery Year. Invenergy disputes PJM's defense of this approach, which is that PJM is not able to accurately anticipate which projects will or will not be in-service by that particular Delivery Year.[107] Invenergy contends that PJM's answer concedes that it can. Invenergy points out that PJM's answer concedes that pursuant to the PJM Queue Reform Order "all requests submitted on or after October 1, 2021, are on hold,"[108] and PJM's Queue Reform Filing confirms that other than in certain limited circumstances, such as where a project does not need a network upgrade that costs in excess of $5 million, PJM will not study projects after the AD2 queue window until at least 2024.[109] Consequently, Invenergy states, PJM has no basis to argue that all projects in the AF2 queue window and earlier be treated as if they

[103] *Id*. at 7-8.

[104] *Id*. at 9.

[105] *Id*.

[106] *Id*.

[107] *Id*. at 10 (citing PJM Answer at 19).

[108] *Id*.

[109] *Id*. (citing PJM Queue Reform Filing at 12).

will be available by the 2023/2024 Delivery Year. Invenergy asserts that as a result, PJM's concern that Invenergy will jump ahead of these projects is unfounded.[110]

b. Determination

55. We find that Invenergy has not met its burden under FPA section 206 to demonstrate that PJM's actions in conducting its interim deliverability study process violated its Tariff or that its Tariff is unjust, unreasonable, or unduly discriminatory or preferential.

56. Invenergy disputes the assumptions that PJM uses in its interim deliverability study, including PJM's inclusion of all earlier queued interconnection projects that may be in service during the Delivery Year being studied. As PJM explains, it uses the latest future year RTEP case available for the RPM auction Delivery Year under study as a base for its interim deliverability study and subsequently adds any projects in the interconnection queue that have rights to the Delivery Year under study to this base model.[111] We find that it is reasonable for PJM to include these earlier queued New Service Requests when studying requests for interim deliverability. As PJM explains, it cannot accurately anticipate three years in advance of a Delivery Year which projects will not be in service during that Delivery Year and therefore cannot base its studies of the availability of interim deliverability service on the assumption that those projects will not be in service.[112] Moreover, we find that even if PJM could have accurately predicted which projects are unlikely to enter service by their planned commercial operation date and removed these New Service Requests from its base model, other interconnection customers and transmission service customers ahead of Invenergy in the queue may have had priority to any headroom identified, such that granting the Complaint would not necessarily provide Invenergy the relief that it seeks.

57. Invenergy also criticizes PJM's decision to analyze Invenergy's point-to-point TSR as a systemwide transfer in the MW amount of Invenergy's request and the impacts

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[110] *Id*. at 10-11.

[111] PJM Answer at 18. *See also* PJM Interconnection, L.L.C., *PJM Manual 14A: New Services Request Process*, PJM Interconnection, L.L.C., § 4.7 (July 26, 2023), https://www.pjm.com/pjmfiles/directory/manuals/m14a/index.html#about.html ("Interim deliverability studies will incorporate those projects which are anticipated to be in service during the year under study and inclusion of projects in these studies will be based on requests by customers as well as information PJM may have as to those projects which will be in service.").

[112] *Id.* at 19.

it would have on PJM's system.[113] However, Invenergy fails to show that PJM studied its request any differently from its tariff study process for point-to-point transmission service[114] or any differently from other point-to-point transmission service requests, and Invenergy's mere claim that PJM should have studied its request differently is not sufficient to demonstrate that the study process specified in PJM's tariff is unjust and unreasonable. Therefore, we find that Invenergy has failed to meet its FPA section 206 burden to demonstrate that PJM implemented its interim-deliverability study process in an unjust and unreasonable or unduly discriminatory or preferential manner.

3. PJM's Rolling 18-Month ATC Time Horizon

a. Pleadings

i. Complaint

58. Invenergy states that PJM currently posts ATC to its OASIS on a rolling 18-month horizon.[115] Invenergy argues that its review of ATC postings demonstrates that there is consistently more than sufficient available capacity to accommodate its requested service. Invenergy notes that PJM itself suggested that Invenergy should use this ATC in lieu of Invenergy's requested transmission service.[116] However, Invenergy avers that using ATC under PJM's current practices is not a viable solution because the 18-month horizon for which ATC is available does not align with the timeline for generators in PJM to request an exception from the capacity market must-offer requirement for the three-year-ahead Delivery Year.[117] Invenergy argues that PJM's current failure to timely study TSRs and its must-offer rules effectively force generators in PJM to offer their output exclusively into the PJM market – creating a barrier to participating in the MISO market that is inconsistent with a competitive market.

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[113] Complaint at 10.

[114] PJM, Intra-PJM Tariffs, 15.2, OATT 15.2 Determination of Available Transfer Capability: (3.0.0) and ATTACHMENT C, OATT ATTACHMENT C (4.0.0) (Methodology To Assess Available Transfer Capability).

[115] Complaint at 17.

[116] *Id.* at 17-18.

[117] *Id.* at 18.

59. Invenergy argues that the Commission should direct PJM to extend the horizon for posting ATC to MISO on its OASIS from 18 months to 48 months, which would align with capacity market rules and the deadline for must-offer exception requests.

ii. Lee County's Comments

60. Lee County argues that the Commission should direct PJM to revise the provision in Tariff Part II, section 15.2 that requires a Long-Term Firm Feasibility Study, from 18 months to 36 or 48 months.[118] Lee County argues that the 18-month horizon is arbitrary and leads to unduly discriminatory and unjust and unreasonable outcomes.[119] Lee County argues that the 18-month horizon may have made sense before the significant study backlogs seen today existed, but that today, the requirement for a long-term feasibility study to be completed results in the transmission service request being denied because the study cannot be completed before the requested service commencement date, which leads to inefficient use of the transmission system and is therefore unreasonable.[120]

61. Lee County argues that when PJM "cannot complete studies for a queue position that closed in 2021 until 2025 or later, it is reasonable for it to require Feasibility Studies only for Transmission Service Request transactions that will flow power more than 36 months or even 48 months in the future."[121] Lee County argues that PJM understands generators awaiting studies will not be changing the transmission system topology for years and it should not compound the problem by holding power transactions dependent on TSRs hostage.[122] Further, Lee County asserts that since PJM study delays extend beyond 48 months' time, Invenergy's suggestion that PJM be required to post ATC for 48 months is appropriate.[123]

iii. PJM's Answer

62. PJM argues that ATC and deliverability studies are different by design, because they are for different time horizons. PJM explains that much of the data that it uses to calculate ATC is not provided beyond a 12-month time horizon, making calculating

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[118] Lee County Comments at 9-11.

[119] *Id*. at 9-10.

[120] *Id*. at 10.

[121] *Id*.

[122] *Id*.

[123] *Id*. at 11.

ATC beyond that time horizon less reliable. PJM argues that its current ATC time horizon of 18 months, which is greater than the NERC mandated 13 months,[124] is already fairly aggressive, and, consequently, it would be unreasonable to extend the current ATC time horizon as requested by Invenergy.[125] PJM argues that it would not be prudent or represent good utility practice for PJM to extend its ATC time horizon and that the Commission should reject Invenergy's request that the Commission direct PJM to extend the ATC time horizon to 48 months because it would introduce reliability risks into a methodology designed for the operating horizon.

iv. Invenergy's Answer

63. Invenergy argues that PJM's ATC postings are not currently a viable way to process long-term TSRs for a term within the next few years, because the 18-month rolling time frame for which PJM posts ATC does not align with the timeline for generators in PJM to request exception from the capacity market's must-offer requirements. Invenergy argues that PJM's existing interim deliverability studies and ATC studies are inadequate because neither can be used to evaluate ATC on a 24, 36, or 48-month basis such that the ATC would be available during the entirety of a capacity market Delivery Year.[126] Therefore, in addition to requesting that the Commission create a new process to study TSRs with service beginning in the near future, Invenergy also requests that the Commission provide an interim solution, including expanding the horizon for which PJM posts ATC to MISO to its OASIS to a minimum of 24 months, to ensure that a 12-month reservation can be reserved one year in advance of the applicable Delivery Year.[127]

b. Determination

64. We find that Invenergy has not met its burden to demonstrate that PJM's ATC time horizon is unjust, unreasonable, or unduly discriminatory or preferential. Invenergy has not demonstrated that PJM's use of an 18-month time horizon for calculating ATC is unjust and unreasonable, as PJM already calculates ATC over a longer time horizon than

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[124] PJM Answer at 17 (citing PJM Interconnection, L.L.C., *Options for Procuring New Firm PTP Transmission Service*, PJM Interconnection, L.L.C., n.10 (Sep. 1, 2022), https://www.pjm.com/- /media/etools/oasis/references/options-for-procuring-new-firm-ptp-transmission-service.ashx).

[125] *Id*. at 16-17.

[126] Invenergy Answer at 11 (citing PJM Answer at 16-17).

[127] *Id*. at 11-12.

required (i.e., 13 months).[128] As PJM points out, PJM has chosen to use an 18-month time horizon for calculating ATC because much of the data that it uses to calculate ATC is not provided beyond a 12-month time horizon. In Order No. 890,[129] the Commission required transmission providers, to "the maximum extent practicable," to use data and modeling assumptions for short- and long-term ATC calculations consistent with planning of operations and system expansion.[130] Invenergy fails to show that PJM has acted unjustly and unreasonably in not extending its ATC calculation's time horizon beyond 18 months given the data that it has available. As PJM states, extending its ATC calculation's time horizon beyond 18 months could introduce significant risk to reliable operations by reducing the accuracy of the calculation, undermining its value as a basis for making transmission service commitments.[131]

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[128] *See* North American Electric Reliability Corporation, *Standard MOD-001-1a — Available Transmission System Capability*, North American Electric Reliability Corporation, R.2.3 (Jan. 29, 2016), https://www.nerc.com/pa/Stand/Reliability%20Standards/MOD-001-1a.pdf (requiring at least a 13-month time frame for ATC calculations). After the Complaint was filed, NERC MOD-001-1a (Available Transmission System Capability) was retired and Version 003.3 of the North American Energy Standards Board (NAESB) Wholesale Electric Quadrant (WEQ) Business Practice Standards (WEQ Version 003.3 Standards), including WEQ-023 Modeling Business Practice Standards, replaced NERC MOD-001-1a, and maintained the 13-month time horizon. *See Elec. Reliability Org. Proposal to Retire Requirements in Reliability Standards Under the NERC Standards Efficiency Rev.*, Order No. 902, 185 FERC ¶ 61,064 (2023); *Standards for Business Practices & Communication Protocols for Pub. Utils.*, Order No. 676-J, 86 FR 29491 (June 2, 2021), 175 FERC ¶ 61,139, at PP 1, 30 (2021). PJM's currently effective tariff incorporates by reference the NAESB WEQ-023 Version 003.3 Standard. PJM, Intra-PJM Tariff, 4.2, OATT 4.2 (10.4.0).

[129] *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890, 118 FERC ¶ 61,119, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

[130] Order No. 890, 118 FERC ¶ 61,119 at P 292.

[131] PJM Answer at 16-17.

<u>The Commission orders</u>:

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

By the Commission.

Carlos D. Clay,
Deputy Secretary.