

176 FERC ¶ 61,021  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;  
Neil Chatterjee, James P. Danly,  
and Mark C. Christie.

LS Power Development, LLC  
Doswell Limited Partnership

Docket No. EL21-72-000

v.

PJM Interconnection, L.L.C.

ORDER DENYING COMPLAINT

(Issued July 16, 2021)

1. On May 7, 2021, pursuant to Federal Power Act (FPA) sections 206 and 306<sup>1</sup> and Rule 206 of the Commission's Rules of Practice and Procedure,<sup>2</sup> LS Power Development, LLC (LS Power) and Doswell Limited Partnership (Doswell) (together, Complainants) filed a complaint against PJM Interconnection, L.L.C. (PJM) alleging that PJM has been violating its Reliability Assurance Agreement (RAA) by approving Fixed Resource Requirement (FRR) Alternative elections based on noncompliant FRR Capacity Plans. As discussed below, we deny the Complaint.

**I. Background**

2. PJM operates a wholesale, centralized capacity market that effectuates the procurement and pricing of capacity to meet resource adequacy needs in PJM's region on a multi-year forward basis through an auction mechanism (i.e., the Base Residual Auction (BRA)). The FRR Alternative is available to an eligible load-serving entity (LSE) to satisfy its obligation to commit Unforced Capacity outside of PJM's centralized capacity auction.<sup>3</sup> The RAA

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<sup>1</sup> 16 U.S.C. §§ 824e, 825e.

<sup>2</sup> 18 C.F.R. § 385.206 (2020).

<sup>3</sup> See RAA, Sched. 8.1, § A, The FRR Alternative (1.0.0); Settlement Agreement and Offer of Settlement, Docket No. ER05-1410-000, at § II.O (filed Sept. 29, 2006) (RPM Settlement); see also *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, at P 36 (2006). The RAA defines Unforced Capacity as installed capacity rated at summer conditions that

provides that any party seeking to elect the FRR Alternative shall notify the Office of the Interconnection in writing no less than four months before the conduct of the BRA for the first Delivery Year for which such election is to be effective. The RAA further provides that “[s]uch election shall be for a minimum term of five consecutive Delivery Years” and that “such party shall submit its FRR Capacity Plan demonstrating its commitment of Capacity Resources for the term of such election sufficient to meet such Party’s Daily Unforced Capacity Obligation (and all other applicable obligations under this Schedule) for the load identified in such plan.”<sup>4</sup>

3. The FRR Capacity Plan that an entity must submit is defined as “a long-term plan for the commitment of Capacity Resources and Price Responsive Demand to satisfy the capacity obligations of a Party that has elected the FRR Alternative.”<sup>5</sup> The RAA provides that each FRR Entity “shall annually extend and update such plan by no later than one month prior to the [BRA] for each succeeding Delivery Year in such plan.”<sup>6</sup>

4. The RAA also provides that in states that have retail choice, “the FRR Entity must include in its FRR Capacity Plan all load, including expected load growth, in the FRR Service Area, notwithstanding the loss of any such load to or among alternative retail LSEs,” and that the LSE must compensate the FRR Entity in the case of load reflected in the FRR Capacity Plan that switches to an alternative retail LSE.<sup>7</sup> The RAA further provides an alternative compensation mechanism:

Notwithstanding the foregoing, in lieu of providing the compensation described above, such alternative retail LSE may, for any Delivery Year subsequent to those addressed in the FRR

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is not on average experiencing a forced outage or forced derating, calculated for each Capacity Resource on the 12-month period from October to September without regard to the ownership of or the contractual rights to the capacity of the unit. RAA, Art. 1, Definitions (33.0.0).

<sup>4</sup> RAA, Sched. 8.1, § C.1, Election, and Termination of Election (4.0.0). The Daily Unforced Capacity Obligation equals the LSE’s Obligation Peak Load in the zone/area \* the Final Zonal RPM Scaling Factor \* the Forecast Pool Requirement for a load serving entity in a zone/area. *Id.* § F.1.

<sup>5</sup> RAA, Art. 1, Definitions (35.1.0).

<sup>6</sup> RAA, Sched. 8.1, § D.1, FRR Capacity Plans (11.0.0).

<sup>7</sup> *Id.* § D.8.

Entity's then-current FRR Capacity Plan, provide to the FRR Entity Capacity Resources sufficient to meet the capacity obligation described in paragraph D.2 for the switched load.<sup>8</sup>

## II. Complaint

5. Complainants state that LS Power is a Delaware limited liability company that, through Doswell and other subsidiaries, develops, owns, and operates independent power projects and merchant transmission projects in the United States, including generation and merchant transmission projects in PJM.<sup>9</sup> Complainants state that Doswell owns a 1,165 MW natural gas generator within the service territory of the Virginia Electric and Power Company, doing business as Dominion Energy Virginia (Dominion). Complainants allege that Dominion made, and PJM approved, an FRR Alternative election beginning with the 2022/2023 Delivery Year and submitted an FRR Capacity Plan that covered only that Delivery Year.<sup>10</sup>

6. Complainants argue that the requirement to submit an FRR Capacity Plan “demonstrating its commitment of Capacity Resources *for the term of such election*” unambiguously requires that an FRR Capacity Plan cover the entire term elected by the entity to participate in the FRR Alternative.<sup>11</sup> Complainants state that this interpretation is supported by Commission precedent, which has recognized that FRR Capacity Plans are “long-term” plans.<sup>12</sup> Complainants further argue that, when considering capacity performance requirements in PJM, the Commission required a phase-in of the new requirements for FRR Entities because they “are subject to long planning horizons and multi-year plans,” and on rehearing the Commission made clear that the referenced FRR plans, which, according to Complainants, can only be the same FRR Capacity Plans described in the RAA, are multi-year plans.<sup>13</sup>

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<sup>8</sup> *Id.* § D.9.

<sup>9</sup> Compliance at 3.

<sup>10</sup> *Id.* at 7-8.

<sup>11</sup> *See id.* at 4-6, 8-9 (quoting RAA, Sched. 8.1, § C.1, Election, and Termination of Election (4.0.0) (emphasis added)).

<sup>12</sup> *Id.* at 6 (quoting *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,228, at P 4 n.8 (2011); *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022, at P 137 n.73 (2011)).

<sup>13</sup> *Id.* at 6-7 (first quoting *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, at P 212 (2015), then quoting *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,157 (2016)).

7. Complainants state that the PJM market rules provide that a party submitting a noncompliant FRR Capacity Plan “shall not be permitted to elect the FRR Alternative.”<sup>14</sup> Complainants argue that these rules represent the filed rate, and the filed rate doctrine mandates strict adherence to the rules.<sup>15</sup> Complainants assert that PJM’s actions also implicate the statutory prohibition against undue discrimination because even when an RTO/ISO “has discretion, it must exercise that discretion in a not unduly discriminatory manner.”<sup>16</sup> Complainants contend that PJM has been approving FRR Alternative elections based on one-year FRR Capacity Plans covering only the Delivery Year associated with the upcoming BRA, thereby violating those rules.<sup>17</sup> Complainants note that it was the market participants making FRR Alternative elections that failed to satisfy the RAA requirement, and any informal guidance they received from PJM on making their FAA Alternative elections cannot override the plain language of the RAA.<sup>18</sup>

8. Complainants contend that the only acceptable remedy here is to invalidate FRR Alternative elections that were not supported by compliant FRR Capacity Plans. Complainants assert that there is no legal or equitable justification for allowing any FRR Alternative elections that were improperly accepted by PJM to stand.<sup>19</sup>

9. Complainants argue that even if waiver of the RAA’s FRR Capacity Plan requirements had been timely requested, the standards for waiver would not be satisfied because failure to enforce this requirement will have undesirable consequences, such as harming third parties.<sup>20</sup> Complainants argue that the RAA requirements are important and designed to protect other market participants and the market. Complainants state that the PJM Manual recognizes that the FRR Alternative is a “long-term plan.”<sup>21</sup> Complainants assert that this was a core element of the FRR Alternative from the

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<sup>14</sup> *Id.* at 9 (quoting RAA, Sched. 8.1, § D.1, FRR Capacity Plans (11.0.0)).

<sup>15</sup> *See id.* at 8-10.

<sup>16</sup> *Id.* at 11-12 (quoting *Sw. Power Pool, Inc.*, 114 FERC ¶ 61,222, at P 78 (2006)).

<sup>17</sup> *Id.* at 9.

<sup>18</sup> *Id.* at 10-11.

<sup>19</sup> *Id.* at 10.

<sup>20</sup> *Id.* at 12.

<sup>21</sup> *Id.* at 12-13 (quoting PJM Manual 18: PJM Capacity Market, Revision: 47, § 11.3 (effective Jan. 27, 2021), <https://www.pjm.com/~media/documents/manuals/m18.ashx> (PJM Manual)).

beginning and was, among other things, the basis for the Commission's requirement that FRR Entities be given a special phase-in for capacity performance rules.<sup>22</sup>

### III. Notice and Responsive Pleadings

10. Notice of the Complaint was published in the *Federal Register*, 86 Fed. Reg. 27,079 (May 19, 2021), with answers, interventions, and protests due on or before May 27, 2021. Notices of intervention and timely-filed motions to intervene were submitted by the entities listed in the Appendix to this order, which also lists the abbreviated names for each entity and identifies those entities that submitted comments and protests. On May 12, 2021, PJM submitted a timely answer.

#### A. Answer

11. PJM agrees that any entity seeking to elect the FRR Alternative is required to remain in the FRR Alternative for a minimum term of five consecutive Delivery Years.<sup>23</sup> PJM contends that the sole disagreement in the underlying Complaint is whether PJM's governing documents allow FRR Entities to submit one-year FRR Capacity Plans for a minimum of five consecutive years or whether the rules require an initial submission of a five-year FRR Plan.<sup>24</sup> PJM argues that the express and implied language in both the RAA and the PJM Manual permits FRR Entities to initially submit a one-year FRR Capacity Plan and then submit an updated FRR Capacity Plan for each subsequent Delivery Year.

12. PJM argues that the phrase "for the term of such election" only requires a plan be submitted every year for the term of the initial FRR election.<sup>25</sup> PJM asserts that there is no RAA language that explicitly requires that an FRR Entity must first submit a five-year FRR Capacity Plan when it elects the FRR Alternative.<sup>26</sup>

13. PJM states that the RAA also requires an FRR Entity to annually "extend and update" its plan, and argues that such a requirement would be superfluous if the rules also

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<sup>22</sup> *Id.* at 13.

<sup>23</sup> PJM Answer at 2.

<sup>24</sup> *Id.* at 3.

<sup>25</sup> *Id.* at 3-4.

<sup>26</sup> *Id.* at 4.

require an FRR Entity to submit a five-year FRR Capacity Plan.<sup>27</sup> Thus, PJM contends, the RAA language permits FRR Entities to submit, and for PJM to approve, one-year FRR Capacity Plans on an annual basis, but such plans must be submitted for at least five consecutive Delivery Years.

14. PJM asserts that, even if the RAA is unclear, PJM's manual language unambiguously states that an FRR Capacity Plan must be submitted, "at least one month prior to the conduct of the [BRA] *for the first Delivery Year* by demonstrating that it has sufficient capacity resources in its FRR resource portfolio...."<sup>28</sup> PJM argues that this clearly states that an FRR Entity must demonstrate that it has sufficient capacity resources in its FRR resource portfolio for the first Delivery Year and that there is no reasonable interpretation of this provision if an FRR Entity must submit a five-year FRR Capacity Plan. PJM maintains that the PJM Manual does not contradict the RAA language, but instead provides additional guidance.

15. PJM states that there are other provisions of the RAA that further support the position that FRR Capacity Plans do not need to cover all five years of the election.<sup>29</sup> PJM asserts that the RAA, Schedule 8.1, section D.7 provides that an FRR Entity that fails to provide an FRR Capacity Plan or provides an FRR Capacity Plan that does not satisfy its capacity obligations after the first Delivery Year in which it elected the FRR Alternative is assessed an FRR Commitment Insufficiency Charge.<sup>30</sup> PJM contends that this FRR Commitment Insufficiency Charge specifically ensures that an FRR Entity electing the FRR Alternative would be required to submit an adequate FRR Capacity Plan that satisfies its capacity obligations for each subsequent Delivery Year through the term of the initial election or face severe financial consequences.<sup>31</sup>

16. PJM further argues that there is also no justifiable policy argument for requiring an initial five-year FRR Capacity Plan.<sup>32</sup> PJM contends it would not be practical or reasonable to require a five-year FRR Capacity Plan given the timing with which certain

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<sup>27</sup> *Id.* (quoting RAA, Sched. 8.1, § D.1, FRR Capacity Plans (11.0.0)).

<sup>28</sup> *Id.* at 5 (quoting PJM Manual, at 223 (emphasis provided by PJM Answer)).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 5-6.

<sup>31</sup> *Id.* at 6.

<sup>32</sup> *Id.* at 7.

parameters are determined that define an FRR Entity's obligations.<sup>33</sup> Specifically, PJM states that the RAA requires an FRR Entity to "designate Capacity Resources in a megawatt quantity no less than the Forecast Pool Requirement for each applicable Delivery Year times the FRR Entity's allocated share of the Preliminary Zonal Peak Load Forecast for such Delivery Year."<sup>34</sup> PJM states that, consistent with the RAA, it establishes the Forecast Pool Requirement and the Installed Reserve Margin on an annual basis no later than three months in advance of each BRA and there would therefore be no Forecast Pool Requirement for subsequent Delivery Years. PJM further states that the Preliminary Zonal Peak Load Forecast would rely in part on the Weather-Normalized Summer Peak Load, which is based on annual peak load data and is similarly updated for each Delivery Year.<sup>35</sup> PJM states that both the Forecast Pool Requirement and the Base Zonal FRR Scaling Factor are simply unknown until the time of the relevant BRA for the subsequent Delivery Years.<sup>36</sup> PJM further contends that additional data may be needed to determine the obligations and requirements of an FRR Entity beyond the first year, such as Capacity Emergency Transfer Objective and Capacity Emergency Transfer Limits, which are updated annually. Thus, PJM argues, it would be unreasonable to require FRR Entities to provide five-year FRR Capacity Plans for each of the subsequent Delivery Years because an FRR Entity's capacity obligations would not be known until a few months prior to the corresponding BRAs for such Delivery Years.<sup>37</sup>

## **B. Comments**

17. The Market Monitor, Vistra, EPSA, and P3 agree with the Complaint's interpretation that the RAA unambiguously requires an entity seeking to use the FRR Alternative to submit an FRR Capacity Plan that demonstrates its capability to satisfy its Unforced Capacity obligations for all load in the FRR Service Area for at least five

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<sup>33</sup> *See id.*

<sup>34</sup> *Id.* at 7 (quoting RAA, Sched. 8.1, § D.2, FRR Capacity Plans (11.0.0)).

<sup>35</sup> *Id.* at 7-8.

<sup>36</sup> *Id.* at 8.

<sup>37</sup> *Id.* at 8-9.

consecutive Delivery Years.<sup>38</sup> The Market Monitor and Vistra also argue that PJM's past practice and interpretation of the PJM Manual cannot supplant the filed rate.<sup>39</sup>

18. The Market Monitor and Vistra state that PJM's interpretation is not consistent with the RAA provision requiring each FRR Entity to "annually extend and update" its plan.<sup>40</sup> The Market Monitor states that "extend" means to extend the plan for an additional year and "update" means to revise the existing plan to reflect more current information.<sup>41</sup> Vistra contends that, contrary to PJM's assertions, this language is not superfluous if multi-year plans are required.<sup>42</sup> Vistra states that an FRR Entity that only provided a single-year plan would not have anything to "update" at all if the FRR Entity had only filed a one-year plan. Vistra further argues that the provision requires that an FRR Entity's plan be updated "for each succeeding Delivery Year in such plan," and that it would be nonsensical to reference the succeeding Delivery Years in a single-year plan.

19. Vistra also contends that PJM's argument that the entity would not have precise figures yet to create a five-year plan is without merit because any type of planning protocol, particularly with a medium- to long-term time horizon, will necessarily require the use of certain estimates and assumptions.<sup>43</sup>

20. P3 argues that the Commission must act swiftly to take action to remedy this violation of the RAA or risk undermining confidence in the administration of the PJM markets and creating significant uncertainty.<sup>44</sup> P3 states that market participants need to know that the terms of tariffs and rate schedules on file with the Commission will be binding on PJM and market participants alike.

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<sup>38</sup> See Market Monitor Comments at 1-2; Vistra Comments at 2; EPSA Comments at 2-3; P3 Comments at 2-3.

<sup>39</sup> See Market Monitor Comments at 2-3; Vistra Comments at 3-4.

<sup>40</sup> See Market Monitor Comments at 2; Vistra Comments at 3.

<sup>41</sup> Market Monitor Comments at 2.

<sup>42</sup> Vistra Comments at 3.

<sup>43</sup> *Id.* at 4.

<sup>44</sup> P3 Comments at 3.

21. P3 and Vistra note that PJM has emphasized adherence to the filed rate regarding far less substantive tariff requirements.<sup>45</sup> Vistra argues that, given this history of strictly interpreting its tariff provisions where generators are involved, its failure to do so with respect to this critical component of the capacity market design would appear to constitute unduly discriminatory and preferential treatment of different types of market participants.<sup>46</sup> Vistra also argues that this disparate treatment of Dominion is unduly discriminatory and preferential with respect to those entities who read the plain language of the RAA in considering the requirements that would apply to any such election.<sup>47</sup>

22. EPSA states that the Commission must act to enforce these stringent requirements and that these tariff protections should remain stringent so that the FRR Alternative can offer a capacity market exit option without affecting the capacity market for all other market participants, states, and consumers.<sup>48</sup> EPSA argues that an important element of ensuring the market functions in this manner is the requirement for a five-year election term, which includes the submission of a five-year Capacity Plan.<sup>49</sup> EPSA notes that it made the same point in its recent post-technical conference reply comments in Docket No. AD21-10, and incorporates those comments by reference.<sup>50</sup>

23. Vistra adds that any election of the FRR Alternative would “create new reliability challenges, reduce competition, and inhibit, not advance, the achievement of a state’s policy goals, all while putting the risk of poor investments on the backs of consumers.”<sup>51</sup>

24. EPSA argues that Dominion is a sophisticated market participant.<sup>52</sup> EPSA contends that Dominion’s failure to comply with the basic requirements of the PJM Tariff

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<sup>45</sup> *Id.* at 3-4; *see also* Vistra Comments at 4.

<sup>46</sup> Vistra Comments at 4.

<sup>47</sup> *Id.* at 4-5.

<sup>48</sup> EPSA Comments at 3-4.

<sup>49</sup> *Id.* at 4.

<sup>50</sup> *Id.* at 3.

<sup>51</sup> Vistra Comments at 5 (quoting Reply Comments of the Electric Power Supply Association, Docket No. AD21-10-000, at 9, (filed May 10, 2021)).

<sup>52</sup> EPSA Comments at 4.

should not negatively impact all other market participants, and any negative outcomes should rest solely with the party failing to comply with the tariff.

25. The Market Monitor states that the only practical relief within the available time frame is the invalidation of FRR elections for the May BRA, which is for the 2022/2023 Delivery Year.<sup>53</sup> The Market Monitor notes that there is a separate, related issue that the market rules require notice of an FRR election four months in advance, and PJM received a timely FRR election notice from Dominion but held it confidential at Dominion's request.<sup>54</sup> The Market Monitor asserts that an important purpose of the tariff requirement for four months' notice is to allow market participants to adapt their plans based on potentially significant market information, but participants cannot prepare if the notice is not posted.<sup>55</sup> The Market Monitor requests that, in addition to the specific issue and request for relief raised in the Complaint, the Commission clarify that an entity's notice of an intent to elect the FRR Alternative should not be kept confidential, but should instead be posted by PJM.

26. ODEC, Exelon, AEP, and Dominion agree with PJM that the phrase "for the term of such election" only requires a plan be submitted every year for the term of the initial FRR election.<sup>56</sup> ODEC, AEP, and Dominion also agree with PJM that five-year FRR Capacity Plans are not workable as certain data and planning parameters are calculated annually and not available beyond the Delivery Year for the upcoming BRA.<sup>57</sup> AEP states that it has been electing the FRR Alternative since it was approved by the Commission in 2007, and PJM's interpretation is consistent with its understanding of the RAA's requirements regarding the creation and submittal of FRR Capacity Plans.<sup>58</sup>

27. Exelon urges the Commission to consider the implications for competitive retail suppliers. Exelon states that since the inception of the FRR Alternative, the RAA has included the right for alternative retail suppliers to self-supply capacity in lieu of

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<sup>53</sup> Market Monitor Comments at 3.

<sup>54</sup> *Id.* at 3-4.

<sup>55</sup> *Id.* at 4.

<sup>56</sup> *See* ODEC Comments at 2; Exelon Comments at 4; AEP Comments at 2-4; Dominion Comments at 2-3.

<sup>57</sup> *See* ODEC Comments at 2-3; AEP Comments at 4; Dominion Comments at 3.

<sup>58</sup> AEP Comments at 2.

compensating an FRR Entity for its FRR capacity obligations.<sup>59</sup> Exelon argues that Schedule 8.1, section D.9 of the RAA explicitly contemplates that the FRR Capacity Plan is submitted annually, as the section specifically refers to a supplier's ability to self-supply "for any Delivery Year subsequent to those addressed in the FRR Entity's then-current FRR Capacity Plan."<sup>60</sup> Exelon asserts that the Complaint's interpretation would essentially prevent alternative retail suppliers from exercising their rights under the RAA to self-supply, as working with an FRR Entity to arrange self-supply prior to the FRR Entity's filing of a five-year FRR Capacity Plan would be infeasible. Exelon argues that the ability to submit annual FRR Capacity Plans under the RAA means that alternative suppliers in fact can self-supply in the remaining years of the FRR election.<sup>61</sup> Exelon further argues that this interpretation not only provides needed flexibility to competitive retail suppliers and their customers, it also allows the FRR Entity's resource mix to evolve and change.

28. Exelon further states that to the extent the Commission determines that the rules applicable to the FRR Alternative should be further clarified or refined, the Commission should keep in mind the benefits for competition, and ultimately consumers, of defining the default capacity rate as soon as possible after the initial FRR election is made.<sup>62</sup> Exelon states that it would be most equitable and least disruptive to suppliers and customers for the default rate for the first Delivery Year of the FRR Capacity Plan to be the PJM capacity auction rate. Exelon notes that suppliers and customers did not have advance notice of Dominion's FRR election, and therefore a capacity rate for the first Delivery Year based on the auction price would align with prior expectations. Exelon argues that if a capacity rate higher than the PJM capacity auction rate is charged by Dominion, then retail customers who had signed agreements could be faced with significant and unexpected cost increases.

29. AEP and Dominion note that FRR Capacity Plans that only cover the Delivery Year associated with the upcoming auction makes sense, as an FRR Entity's capacity obligation mirrors the obligation of an LSE procuring its capacity from the BRA.<sup>63</sup> AEP explains that LSEs that procure capacity through the BRA do so for only one Delivery

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<sup>59</sup> Exelon Comments at 2.

<sup>60</sup> *Id.* at 3.

<sup>61</sup> *Id.* at 4.

<sup>62</sup> *Id.* at 5.

<sup>63</sup> AEP Comments at 4; Dominion Comments at 3.

Year and similarly, the FRR Entity demonstrates resources necessary to meet its capacity obligation only for that same Delivery Year.<sup>64</sup>

30. AEP and Dominion further note that some commenters make arguments that raise opposition to the FRR Alternative process more generally or could be read as applying to entities that have been participating in the FRR Alternative for some time.<sup>65</sup> AEP and Dominion argue that the Commission should disregard these comments as outside the scope of this proceeding.

31. Dominion states that it prepared its FRR Capacity Plan and FRR Alternative election consistent with the RAA and the procedures that have been in place and followed by each entity that has selected the FRR Alternative.<sup>66</sup> Dominion states that it relied on the PJM rules and practices, following the process available to all entities electing the FRR Alternative, and in preparing its FRR Capacity Plan, included the information sought and usable by PJM in a manner consistent with how PJM has applied the FRR provisions to all entities since the inception of the program.

32. Dominion argues that, to the extent that the Commission finds that five-year FRR Capacity Plans are required by the RAA, the relief should be limited to providing prospective clarification on the RAA requirements and should not invalidate Dominion's FRR election.<sup>67</sup>

33. AEE and AEBG do not take a position on the merits of the Complaint. AEE and AEBG urge the Commission to consider the potential negative ramifications of PJM's FRR Alternative process, but not to take any action that would delay the 2022/2023 BRA.<sup>68</sup> They also express concern about the lack of transparency in the FRR Alternative process and stated that expanded use of the FRR Alternative will erode the benefits of regional competition, limit access to a diverse array of clean advanced energy technologies on a regional basis to meet clean energy goals of states and consumers,

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<sup>64</sup> AEP Comments at 4-5.

<sup>65</sup> *See id.* at 2; 5-6; Dominion Comments at 4-7.

<sup>66</sup> Dominion Comments at 4.

<sup>67</sup> *See id.* at 7-8.

<sup>68</sup> AEE and AEBG Comments at 1-2, 5-6.

create new barriers to market participation, and increase the costs of meeting clean energy goals while assuring reliability.<sup>69</sup>

#### IV. Discussion

##### A. Procedural Matters

34. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2020), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

##### B. Substantive Matters

35. All parties agree that the RAA requires a commitment to the FRR Alternative for a minimum term of five years. The only matter in dispute is whether the initial FRR Capacity Plan must cover the entire minimum five-year term or if it may cover only the first Delivery Year, with annual updates thereafter. As discussed further below, we agree with the latter interpretation and, accordingly, deny the Complaint.

36. As an initial matter, we find that the RAA's requirement to submit an FRR Capacity Plan "for the term of such election" is ambiguous.<sup>70</sup> We agree, however, with PJM and other commenters that, when the RAA is read as a whole, a reasonable interpretation is that the phrase "for the term of such election" in section C.1 means an FRR Capacity Plan may be submitted every year for the term of an entity's participation in the FRR Alternative.

37. When interpreting tariff and contract provisions, the tariff or contract should be read as a whole, with meaning given to every provision.<sup>71</sup> We find that, reading the RAA

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<sup>69</sup> *See id.* at 3-5.

<sup>70</sup> A tariff or contract is ambiguous when it is reasonably susceptible to different constructions or interpretations. *Sw. Power Pool, Inc.*, 160 FERC ¶ 61,115, at P 45 (2017); *see also Rockies Express Pipeline LLC*, 145 FERC ¶ 61,179, at P 33 (2013) (citing *Consol. Gas Transmission Corp. v. FERC*, 771 F.2d 1536, 1544 (D.C. Cir.1985)) ("To determine whether a contract is ambiguous, the Commission looks to the four corners of the agreement and considers the entire instrument as a whole. The Commission considers extrinsic evidence if the terms of the contract are ambiguous.") (footnotes omitted)).

<sup>71</sup> *See S. Co. Servs., Inc. v. FERC*, 353 F.3d 29, 35 (D.C. Cir. 2003); *Ark. Elec. Coop. Corp.*, 119 FERC ¶ 61,314, at P 19 (2007); *Duquesne Light Co.*, 122 FERC ¶ 61,039, at PP 90-92 (2008) (reading RAA as a whole to resolve ambiguity); *Columbia Gas Transmission Corp.*, 27 FERC ¶ 61,089 (1984) ("One looks first to the four corners

as a whole, other terms and provisions indicate that it does not require the submission of an initial FRR Capacity Plan that covers the entire term of the initial election. For example, the remaining portion of the sentence in section C.1 requires that the plan contain certain data that is unavailable beyond the Delivery Year for the upcoming BRA. Specifically, section C.1 provides that an LSE that has elected the FRR Alternative “shall submit its FRR Capacity Plan demonstrating its commitment of Capacity Resources for the term of such election sufficient to meet such Party’s Daily Unforced Capacity Obligation (and all other applicable obligations under this Schedule) for the load identified in such plan.”<sup>72</sup> The Daily Unforced Capacity Obligations of the LSE are not available for Delivery Years beyond the Delivery Year for the upcoming BRA, thus, supporting an interpretation that only single-year plans are contemplated. In addition, the RAA requires that entities “shall annually extend and update” the plan.<sup>73</sup> We agree with PJM that this requirement would be redundant if five-year plans were required, as it would not be necessary to annually extend the plan if the initial FRR Capacity Plan already covered the entire term.<sup>74</sup>

38. Further demonstrating that one-year plans for each year of the minimum term of five years are more consistent with the overall expectations of the RAA, many of the parameters necessary for constructing an initial FRR Capacity Plan are not known for the Delivery Years beyond the Delivery Year associated with the upcoming BRA. For example, the RAA requires an FRR Entity to “designate Capacity Resources in a megawatt quantity no less than the Forecast Pool Requirement for each applicable Delivery Year times the FRR Entity’s allocated share of the Preliminary Zonal Peak Load

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of the entire tariff, considers the entire instrument as a whole, giving effect so far as possible to every word, clause and sentence, and attributes to the words used the meaning which is generally used, understood, and accepted.”).

<sup>72</sup> RAA, Sched. 8.1, § C.1, Election, and Termination of Election (4.0.0) (emphasis added). The Daily Unforced Capacity Obligation equals the LSE’s Obligation Peak Load in the zone/area \* the Final Zonal RPM Scaling Factor \* the Forecast Pool Requirement for a load serving entity in a zone/area. *Id.* § F.1.

<sup>73</sup> *Id.* § D.1.

<sup>74</sup> The RAA also provides for severe financial penalties for a previously approved FRR Entity that submits an FRR Capacity Plan for a subsequent Delivery Year that is insufficient. *Id.* § D.7. This, along with the RAA’s strict requirement that the FRR Alternative election be for a minimum of five years, provides assurance that an FRR Entity electing the FRR Alternative will submit an adequate FRR Capacity Plan that satisfies its capacity obligations for each subsequent Delivery Year.

Forecast for such Delivery Year.”<sup>75</sup> According to the terms of the RAA, the Forecast Pool Requirement and the Installed Reserve Margin are only updated three months in advance of each BRA.<sup>76</sup> Similarly, some entities may need to rely in part on the Zonal Weather-Normalized Summer Peak Load, which is based on peak load data “for the summer concluding four years prior to the commencement of such Delivery Year.”<sup>77</sup> This means that, for future Delivery Years, such data does not yet exist.<sup>78</sup>

39. Vistra posits that FRR Entities may use “estimates and assumptions” for later years in the plan.<sup>79</sup> But there is no language in the RAA that suggests that FRR Capacity Plans are to be created using estimates. The absence of any detail in the RAA on how to estimate these parameters indicates that the RAA does not contemplate that five-year plans are required. While the Complainants and some commenters point to other language that they claim support their interpretation,<sup>80</sup> we find their arguments unpersuasive when the RAA is read as a whole, as discussed above.

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<sup>75</sup> *Id.* § D.2.

<sup>76</sup> RAA, Sched. 4.B, Forecast Pool Requirement and PJM Region Installed Reserve Margin To Be Determined Annually (0.2.0).

<sup>77</sup> RAA, Sched. 8.1, § D.3, FRR Capacity Plans (11.0.0).

<sup>78</sup> As PJM illustrated in its Answer, to determine the preliminary capacity obligation for an FRR Entity that is not responsible for all load within a Zone (such as Dominion), the FRR Capacity Plan would need to use peak load data from “the summer concluding four years prior to the commencement of such Delivery Year.” *Id.* § D.3. Under this example, the peak load data associated with the fifth year of the FRR Capacity Plan would be from a summer that has yet to occur. Consequently, both the Forecast Pool Requirement and the Base Zonal FRR Scaling Factor are simply unknown until the time of the relevant BRA for the subsequent Delivery Years. *See* PJM Answer at 8.

<sup>79</sup> Vistra Comments at 4.

<sup>80</sup> *See id.* at 3 (“[The RAA] requires that [an FRR Capacity Plan] be updated ‘for each succeeding Delivery Year in such plan.’ If only one year was covered in the original plan, it would be nonsensical to reference the succeeding Delivery Years in *such plan.*”) (emphasis in original).

40. The Complaint also cites to Commission precedent that it claims supports its interpretation of the RAA. But the language in these orders introduces the same ambiguities found in the RAA language regarding whether an FRR Entity can submit an annual plan.<sup>81</sup> While the Commission did reference “long planning horizons and multi-year plans,” when requiring a phase-in of capacity performance requirements for FRR Entities, we find that this language is not determinative regarding the Commission’s understanding of the requirements of FRR Capacity Plans.<sup>82</sup> As the Commission made clear on rehearing, its primary concern in requiring a phase-in of capacity performance requirements for the FRR Alternative was that FRR Entities were subject to a *five-year commitment*.<sup>83</sup> What is not in dispute in this proceeding is that the FRR Alternative is a long-term commitment, or arrangement, for meeting the resource adequacy needs of the FRR Entity. Furthermore, the Commission explained that “[f]or each delivery year during this five-year commitment period, [FRR] [E]ntities *must submit detailed, resource-specific plans* that meet PJM’s capacity and resource requirements,” suggesting that the Commission actually understood that the RAA did not require the submission of anything beyond an annual plan.<sup>84</sup>

41. Lastly, we find the concerns raised regarding the FRR process generally and the fact that PJM kept Dominion’s FRR Election confidential to be outside the scope of the complaint.

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<sup>81</sup> *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,228 at P 4 n.8 (describing the FRR Capacity Plan as a “long-term plan”); *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 at P 137 n.73; *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, at P 36 (2006) (explaining that entities may elect the FRR Alternative “if it demonstrates the capacity to satisfy the entire capacity obligation for all load, including load growth, in the applicable [FRR] service area for the term of the entity’s participation in the [FRR] alternative”).

<sup>82</sup> *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 at P 212.

<sup>83</sup> *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,157 at P 150 (“Unlike load serving entities that participate in [the BRA], [FRR] [E]ntities are subject to a five-year commitment to fulfill their capacity obligation through the [FRR]Alternative.”).

<sup>84</sup> *Id.* (emphasis added).

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The Commission orders:

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

By the Commission. Commissioner Clements is not participating.

( S E A L )

Debbie-Anne A. Reese,  
Deputy Secretary.

**Appendix****List of Intervenors**

Advanced Energy Buyers Group (AEBG)\*  
Advanced Energy Economy (AEE)\*  
AES Clean Energy Development, LLC  
American Electric Power Service Corporation (AEP)\*  
American Municipal Power, Inc.  
Boston Energy Trading and Marketing LLC  
Calpine Corporation  
Cogentrix Energy Power Management, LLC  
Delaware Public Service Commission  
Dominion Energy Services, Inc., on behalf of Virginia Electric and Power Company,  
d/b/a Dominion Energy Virginia (Dominion)\*  
East Kentucky Power Cooperative, Inc.  
Electric Power Supply Association (EPSA)\*  
Exelon Corporation, Exelon Generation Company, LLC and its Affiliates (collectively,  
Exelon)\*  
The FirstEnergy Transmission Companies  
J-POWER USA Development Co., Ltd.  
Midwest Generation, LLC  
Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for  
PJM (Market Monitor)\*  
New Jersey Board of Public Utilities  
Northern Virginia Electric Cooperative, Inc.  
NRDC/Sustainable FERC Project  
NRG Power Marketing LLC  
Ohio Federal Energy Advocate  
Old Dominion Electric Cooperative (ODEC)\*  
PJM Industrial Customer Coalition  
PJM Power Providers Group (P3)\*  
PSEG Companies  
PSEG Energy Resources & Trade LLC  
PSEG Power LLC  
Public Citizen, Inc  
Public Service Electric and Gas Company  
Rockland Electric Company  
Shell Energy North America (US), L.P.  
Solar Energy Industries Association  
Talen Energy Corporation  
Tenaska, Inc.

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Tenaska Pennsylvania Partners, LLC  
Tenaska Virginia Partners, L.P.  
Virginia Municipal Electric Association No. 1  
Vistra Corp. (Vistra)\*

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\*parties submitting protests or comments

Document Content(s)

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