

168 FERC ¶ 61,155
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

PJM Interconnection, L.L.C.

Docket No. ER19-2417-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued September 16, 2019)

1. On July 18, 2019, pursuant to section 205 of the Federal Power Act (FPA)¹ and part 35 of the Commission's regulations,² PJM Interconnection, L.L.C. (PJM) filed revisions to Attachment DD, Section 6, of its Open Access Transmission Tariff (Tariff). PJM proposes (1) revisions to establish a process by which capacity market sellers may request removal of the capacity resource status from Existing Generation Capacity Resources,³ and (2) revisions to the process for sellers of Existing Generation Capacity Resources seeking Reliability Pricing Model (RPM) must-offer exceptions due to their physical inability to meet Capacity Performance Resource⁴ requirements. In this order, we accept PJM's proposed Tariff revisions, to become effective September 23, 2019, as requested, subject to PJM submitting a compliance filing to make a clarification in Attachment DD, Section 6.6A(c), and a ministerial correction in Section 230.3.2, as discussed in more detail below.

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. pt. 35 (2019).

³ PJM defines "Existing Generation Capacity Resource" as a capacity resource that, as of the date on which bidding starts for any RPM auction, either is in service or is not in service but has cleared an RPM auction. *See* PJM, Intra-PJM Tariffs, OATT, E-F, OATT Definitions – E - F (21.0.0); PJM Intra-PJM Tariffs, RAA, Article 1 -- Definitions (29.0.0).

⁴ PJM defines "Capacity Performance Resource" as a capacity resource that, to the extent that it has cleared an RPM auction or is otherwise committed as a capacity resource, is subject to performance requirements and penalties for failure to deliver energy during certain emergency conditions. *See* PJM, Intra-PJM Tariffs, OATT, Attachment DD.5.5A Capacity Resource Types (4.0.0), § 5.5A(a).

I. Background

2. The RPM is PJM's construct for obtaining the capacity needed to ensure long-term reliability. PJM secures capacity commitments from sellers under the RPM through the Base Residual Auction (BRA), which is held three years before a delivery year, and Incremental Auctions, which are held closer in time to the relevant delivery year.⁵

3. To mitigate market power, PJM requires sellers of Existing Generation Capacity Resources to offer their full capacity in all RPM auctions unless the resources are categorically exempt or eligible for an exception.⁶ PJM's Tariff specifies how generators may qualify for an exception to the must-offer requirement and also provides that sellers may seek to remove a resource from capacity resource status.⁷

4. Beginning with the 2015 BRA for the 2018/2019 delivery year, PJM established a new capacity product, Capacity Performance Resource, which is subject to performance requirements and penalties for failure to deliver energy during certain emergency conditions.⁸ Because PJM requires all Existing Generation Capacity Resources to be Capacity Performance Resources, PJM's Tariff specifies that PJM can grant must-offer exceptions when sellers demonstrate that resources are reasonably expected to be physically incapable of satisfying the Capacity Performance Resource requirements.⁹

⁵ See PJM, Intra-PJM Tariffs, OATT, Attachment DD.5.4 Reliability Pricing Model Auctions (5.0.0), § 5.4(a) & (b).

⁶ See PJM, Intra-PJM Tariffs, OATT, Attachment DD.6. Market Power Mitigation (21.1.0), § 6.6(a).

⁷ *Id.* § 6.6(g). A seller may obtain an exception when it demonstrates that it (i) is reasonably expected to be physically unable to participate in the relevant delivery year, (ii) has a financially and physically firm commitment to an external sale of its capacity, or (iii) was interconnected to the transmission system as an energy resource and not subsequently converted to a capacity resource.

⁸ See *Id.* § 6.6A(a). PJM also held two transitional auctions to incorporate the new Capacity Performance Resource requirements for the 2016/2017 and 2017/2018 delivery years. See PJM, Intra-PJM Tariffs, OATT, Attachment DD.5.14 Clearing Prices and Charges (24.0.0), § 5.14D.

⁹ See PJM, Intra-PJM Tariffs, OATT, Attachment DD.6. Market Power Mitigation (21.1.0), § 6.6A(c). Section 6.6A(c) also exempts intermittent resources, capacity storage resources, demand resources, and energy efficiency resources from the Capacity Performance Resource must-offer requirement.

II. Filing

5. PJM proposes to amend two aspects of the RPM must-offer requirement.

A. Process to Remove Capacity Resource Status

6. PJM states that its proposed changes to Attachment DD, Section 6.6(g), of the Tariff establish a documented process by which sellers can request removal of the capacity resource status from an Existing Generation Capacity Resource.¹⁰ PJM states that the Tariff already provides that a seller may remove a resource from capacity resource status, but it does not provide a process.¹¹ PJM explains that under the proposal, a seller must notify PJM and the independent market monitor for PJM (IMM) of a request to remove the capacity resource status. Specifically, the seller must provide a preliminary written notification with supporting data and documentation indicating the reasons and conditions of the request to PJM and the IMM by September 1 prior to the applicable BRA or 240 days prior to the offer period for the applicable Incremental Auction.¹² Thereafter, the seller must either confirm or withdraw its preliminary request to remove the capacity resource status of the resource by December 1 prior to the BRA or 120 days prior to the offer period for the applicable Incremental Auction. PJM notes that these timelines are identical to the rules for sellers requesting an exception to the must-offer requirement due to deactivation. PJM believes that basing the notification process on the existing deactivation rule is appropriate given that deactivation of a capacity resource and a request to change status to an energy resource both result in the permanent removal of a resource from the capacity market.¹³

7. PJM states that upon receiving a request for removal of capacity resource status, PJM will post on its website the aggregated MWs of all Existing Generation Capacity Resources for which sellers have requested removal of capacity resource status,

¹⁰ PJM Transmittal at 3, 5, 14.

¹¹ *Id.* at 5 (citing PJM Tariff, Attachment DD, § 6.6). PJM explains that Section 6.6 of Attachment DD is silent on what documentation a seller is required to submit for the change in status, required timelines, or review standards for evaluation of such requests by PJM and the IMM. *Id.* at 5 n.8.

¹² *Id.* at 6. PJM states that because it does not expect an order on this filing prior to September 1, 2019, it also proposes to allow sellers to submit the preliminary notification of a capacity resource status removal by November 1, 2019, for the BRA for the 2023/2024 delivery year. *Id.* at 14 n.23.

¹³ *Id.* at 6.

consistent with the existing postings for RPM must-offer exceptions related to deactivating resources. Further, PJM states it will incorporate the loss of capacity resource status in the appropriate models and reliability studies, including those used in the development of the auction planning parameters. PJM explains that the IMM will analyze the effects of the proposed removal of the capacity resource status with respect to potential market power concerns and notify the seller and PJM of its determination no later than 90 days before the applicable RPM auction. PJM states that it will consider the IMM's advice and input before making the final decision of whether to approve the removal of capacity resource status, based on the existing deadlines that apply for must-offer exception requests.¹⁴ PJM explains that after an approval, PJM will no longer require the seller to offer the resource into the RPM auctions. In addition, PJM explains that because the resource will no longer be a capacity resource, PJM will remove the corresponding Capacity Interconnection Rights (CIRs), consistent with the existing process for a deactivating resource.¹⁵ PJM will terminate the CIRs one year from the date the capacity resource status change takes effect. PJM explains that during this intervening period, the seller can transfer the CIRs to another holder or preserve the CIRs by submitting a new generation interconnection request, consistent with the process used for deactivation in the Tariff.¹⁶ PJM argues that this process provides sellers with sufficient time to reallocate the CIRs to another capacity resource while ensuring that the CIRs are not unduly held in perpetuity when a resource no longer retains capacity resource status. PJM states that the termination of the CIRs will be reflected through an amendment to the applicable interconnection service agreement or wholesale market participation agreement.¹⁷

B. Revised Rules for Exceptions to the Must-Offer Requirement

8. PJM also proposes to amend Attachment DD, Section 6.6A(c), of the Tariff so that sellers cannot continuously receive exceptions to the must-offer requirement for a resource that is physically unable to meet the requirements of a Capacity Performance Resource. PJM explains that current rules allow sellers to obtain exceptions indefinitely

¹⁴ *Id.* at 7, 14-15.

¹⁵ *Id.* at 7 (citing PJM Tariff, § 230.3.3), 14. CIRs are rights to input generation as a Generation Capacity Resource into the transmission system at the point of interconnection. *See* PJM, Intra-PJM Tariffs, OATT, C-D, OATT Definitions – C-D, (17.0.0).

¹⁶ PJM Transmittal at 7-8. PJM states that the proposed revision regarding loss of CIRs are to Part VI, Section 230.3.3, of the Tariff. *Id.* at 19-20.

¹⁷ *Id.* at 15.

so long as PJM deems the Existing Generation Capacity Resource to be physically unable to participate as a Capacity Performance Resource.¹⁸

9. PJM contends that because the purpose of the must-offer requirement is to prevent withholding of capacity resources from RPM auctions, rules that prevent sellers from circumventing this requirement are appropriate. PJM explains that under the proposal, sellers may request only a one-time exception to the must-offer requirement on the basis that the resource is physically unable to meet the Capacity Performance requirements, with a possible one-year extension.¹⁹ In addition, PJM explains that sellers must submit, as part of an exception request, a documented plan that provides the steps that a seller will take to make the Existing Generation Capacity Resource capable of meeting the requirements of a Capacity Performance Resource.²⁰ PJM explains that the plan must include a timeline for applicable design, permitting, procurement, and construction milestones.²¹ PJM and the IMM will use this plan to evaluate whether sufficient steps are being taken during the intervening period and consider any extenuating circumstances that may merit a one-year extension.²²

10. PJM contends that the timing of the proposal is appropriate because all capacity resources must now be able to meet the Capacity Performance Resource requirements. PJM argues that if a resource is unable to participate as a Capacity Performance Resource for extended periods of time, and therefore unable to take on a capacity obligation after the transition years, the resource should not be permitted to retain its capacity resource status.²³ PJM contends that such resources should be limited to participate in the PJM markets as an energy resource and should not retain their CIRs.

11. PJM states that one exception for a future delivery year three years in advance equates to four years of development time for an Existing Generation Capacity Resource to meet the Capacity Performance Resource requirements.²⁴ PJM explains that to

¹⁸ *Id.* at 8, 17.

¹⁹ *Id.* at 8. PJM explains that the one-time exception refers to the BRA and associated Incremental Auctions for a relevant delivery year. *Id.* at 8 n.16.

²⁰ *Id.* at 8-9.

²¹ *Id.* at 17.

²² *Id.* at 9.

²³ *Id.*

²⁴ *Id.* at 10.

account for any possible delays in the development of necessary upgrades, a one-year extension to the plan timeline will be permissible if the delay was not caused by the seller. PJM notes that because a seller is required to request an exception to the must-offer requirement 120 days prior to the relevant BRA, a seller could have more than five years to make an Existing Generation Capacity Resource capable of meeting the requirements of a Capacity Performance Resource.²⁵ PJM contends that five years is reasonable given that the vast majority of new resources interconnecting into PJM reach commercial operation within five years of executing an interconnection service agreement.²⁶

12. PJM explains that if a seller requests an exception to the must-offer requirement without a documented plan, then the resource will lose its capacity resource status beginning with the delivery year associated with the must-offer exception request.²⁷ Similarly, PJM explains that if a seller fails to complete, or make a good-faith effort to complete, the necessary upgrades consistent with the plan, then the resource will lose its capacity resource status beginning with the delivery year associated with the must-offer exception request.²⁸ PJM states that the procedures for terminating CIRs for capacity resource status changes also would apply.

13. PJM contends that it is unreasonable for a resource that is physically unable to participate as a capacity resource to have prolonged retention of CIRs because annual baseline reliability assessment and associated upgrades necessary to maintain the transmission system, which are paid by load customers, are based on the amount of CIRs in the geographic area.²⁹ PJM states that this could lead to an overbuilt transmission system or deter new capacity resources from being built. Thus, PJM asserts, the termination of CIRs when a resource loses its capacity resource status is appropriate.³⁰

14. PJM contends that any potential arguments that CIRs cannot be terminated because they are contractual rights are flawed.³¹ PJM explains that CIRs are created by a

²⁵ *Id.*

²⁶ *Id.* at 10-11.

²⁷ *Id.* at 11.

²⁸ *Id.* at 11, 17-18.

²⁹ *Id.* at 11.

³⁰ *Id.* at 12.

³¹ *Id.*

contractual right as part of an interconnection service provided by the interconnection service agreement. PJM argues that sellers are on notice when they enter into the interconnection service agreement that the use and retention of CIRs are subject to the terms of the Tariff, which will evolve over time.³²

C. Non-substantive Revisions

15. PJM states that it is also submitting non-substantive revisions to Part VI, Section 230, of the Tariff to correct formatting issues and modify incorrect references.³³

III. Notice of Filing and Responsive Pleadings

16. Notice of PJM's July 18, 2019 filing was published in the *Federal Register*, 84 Fed. Reg. 35,668 (2019), with interventions and protests due on or before August 8, 2019. Timely motions to intervene were filed by American Municipal Power, Inc.; Calpine Corporation; Delaware Division of the Public Advocate; Dominion Energy Services, Inc., on behalf of Virginia Electric and Power Company d/b/a Dominion Energy Virginia and Dominion Energy Generation Marketing, Inc.; Duke Energy Corporation (Duke);³⁴ Exelon Corporation (Exelon); FirstEnergy Service Company;³⁵ Monitoring Analytics, LLC, acting in its capacity as the IMM; New Jersey Division of Rate Counsel; North Carolina Electric Membership Corporation; NRG Power Marketing LLC; Office of the People's Counsel for the District of Columbia; PJM Industrial Customer Coalition; the PJM Power Providers Group; Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC (collectively, the PSEG Companies); and West Virginia Consumer Advocate Division. The Illinois Commerce Commission filed a notice of intervention. Old Dominion Electric Cooperative filed an out-of-time motion to intervene.

³² *Id.* at 13.

³³ *Id.* at 21.

³⁴ Duke moved to intervene on behalf of its franchised public utility affiliates, Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., Duke Energy Indiana, LLC, Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC.

³⁵ FirstEnergy Service Company moved to intervene as agent for its regulated affiliates Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, Pennsylvania Power Company, Pennsylvania Electric Company, Metropolitan Edison Company, West Penn Power Company, Jersey Central Power & Light Company, Monongahela Power Company, and The Potomac Edison Company (collectively, FirstEnergy Utilities).

17. Duke, Exelon, and PSEG Companies (together, Indicated Parties) filed a joint protest. FirstEnergy Utilities also filed a protest. PJM and the IMM each filed a motion to answer and answer to the protests. Indicated Parties filed a motion to answer and answer to PJM's and the IMM's answers.

A. Protests

18. Indicated Parties argue that although PJM may have legitimate reasons for not wanting units to seek exceptions to the must-offer rule indefinitely, PJM's concerns about physical withholding are overblown and unsupported by evidence.³⁶ Indicated Parties argue that because such exception requests are rare³⁷ and the IMM and PJM review the requests, the threat of physical withholding is very small. Indicated Parties note that under the current rules, resources requesting an applicable exception already submit a plan detailing how the unit could be upgraded to make it able to participate in the market. Indicated Parties contend that these safeguards allow PJM and the IMM to ensure that requests for exceptions are legitimate.³⁸ FirstEnergy Utilities state similar arguments, noting that the current review process generally includes numerous data requests.³⁹

19. Indicated Parties and FirstEnergy Utilities argue that PJM's proposal is an overreaction to a small risk that is likely to decrease over time.⁴⁰ In support of the latter claim, Indicated Parties note that Exelon once sought Capacity Performance must-offer exceptions for several Existing Generation Capacity Resources but has since submitted notices of deactivation for them. Similarly, Indicated Parties claim that the pool of resources that might avail themselves of the must-offer exception is small and shrinking fast. FirstEnergy Utilities also argues that this pool of resources can be expected to

³⁶ Indicated Parties Protest at 3, 5.

³⁷ Indicated Parties note that for both the 2020/2021 and 2021/2022 delivery years, the percentage of MWs associated with exceptions due to physical inability to meet Capacity Performance Resource requirements, as a percentage of total cleared capacity, was 0.2 percent. *Id.* at 3-5.

³⁸ *Id.* at 3. Indicated Parties argue that the recent additions of new capacity in PJM and current excess capacity confirm that the current process is working to prevent potential CIR withholding. *Id.* at 3 n.7.

³⁹ FirstEnergy Utilities Protest at 2.

⁴⁰ Indicated Parties Protest at 5-6; FirstEnergy Utilities Protest at 2.

remain flat or decline because PJM only recently implemented the full Capacity Performance construct.⁴¹

20. Indicated Parties argue that the proposal will infeasibly require detailed information about upgrades. Noting that the proposal requires resource owners to commit potentially millions of dollars of capital investment and that their costs are ever-changing, Indicated Parties protest that the proposal will limit Existing Generation Capacity Resources to one year to decide whether market revenue, of which capacity market revenue is significant, justify those investments. In addition, Indicated Parties note that some factors contributing to physical capability are outside the seller's control, such as the ability to construct additional pipeline laterals. Indicated Parties request that the Commission reject PJM's proposal and direct PJM to continue to treat resources with physical incapability exceptions the same way they treat categorically exempt units so long as the exception request remains legitimate.⁴²

21. Indicated Parties contend that PJM's proposal to terminate CIRs following the removal of capacity resource status is also overly punitive and could force units into retirement. They argue that CIRs are a contractual right provided as part of a generator's overall interconnection rights and should not be taken away so easily or on such a "flimsy justification."⁴³ Indicated Parties argue that interconnection rights are not granted on a "use it or lose it" basis.⁴⁴ FirstEnergy Utilities argue that once CIRs were lost, PJM could not return them even if investments were made to meet the Capacity Performance Resource requirements.⁴⁵

22. Indicated Parties explain that resources can obtain or increase CIRs only by executing an agreement with PJM, a process that requires studies and often significant financial outlay by the resources to construct network upgrades. Indicated Parties explain that a resource, after losing its CIRs under the proposal, could obtain them again only through a new interconnection request, and likely new network upgrades, thus requiring a second "access charge" for the same facility.

23. Indicated Parties take issue with PJM's argument that because its proposal allows up to five years for upgrades, it is consistent with the time it takes new resources to reach

⁴¹ FirstEnergy Utilities Protest at 2.

⁴² Indicated Parties Protest at 6-7.

⁴³ *Id.* at 7.

⁴⁴ *Id.*

⁴⁵ FirstEnergy Utilities Protest at 1-2.

commercial operation after signing an interconnection service agreement.⁴⁶ Indicated Parties contend that upgrades to existing facilities often can take substantially longer. As an example, Indicated Parties state that a new gas pipeline (which PJM lists as an example) is both outside the control of the generator and likely to take significantly longer than five years.

24. Indicated Parties state that if the Commission decides that additional limitations on the relevant must-offer exception are needed, the Commission should reject the proposal with guidance that, if PJM chooses to refile, it should allow generators to obtain exceptions for up to three delivery years.⁴⁷ Furthermore, Indicated Parties recommend that the Commission require PJM to entertain requests for an extension after the third delivery year when applicants show that upgrades will not be completed in time for reasons beyond their control. Indicated Parties state that their proposal is consistent with PJM's practice of protecting a generator's CIRs by reducing them, when necessary, to the highest tested amount during the past three years. Indicated Parties argue that their proposal likewise protects against unduly harsh CIR forfeiture, and meets PJM's goals while providing more time for generators to make investments or decide whether prices justify investments.

25. FirstEnergy Utilities, similar to Indicated Parties, argue that the proposal could inappropriately and hastily drive investment decisions, and that because those decisions are based on many factors that can change over a period beyond one year, the one-year exception period is unreasonable and should be rejected or extended.⁴⁸

26. Finally, Indicated Parties argue that PJM's proposed language in Attachment DD, Section 6.6A(c), of the Tariff implicates all generators seeking a must-offer exception due to physical capability, not only those physically incapable of meeting the Capacity Performance Resource requirements. Indicated Parties thus request that the Commission direct PJM to clarify that this requirement applies only to units unable to meet the Capacity Performance Resource requirements.⁴⁹

B. Answers

27. In response to protesters, PJM argues that the increasing rarity of must-offer exception requests related to physical incapability to meet Capacity Performance

⁴⁶ Indicated Parties Protest at 9 (citing PJM Transmittal at 10).

⁴⁷ *Id.* at 10-11.

⁴⁸ FirstEnergy Utilities Protest at 1-2; Indicated Parties at 6-7.

⁴⁹ Indicated Parties Protest at 11-12.

Resource requirements is not dispositive of the reasonableness to establish a transparent and orderly process for such requests. PJM contends that if no more must-offer exception requests are made in the future, PJM's proposal will not have any impact. However, PJM contends that the current process is insufficient because it requires only that applicants demonstrate their inability to meet the Capacity Performance Resource requirements, failing to address procedures to relinquish CIRs, or means for a seller to show how the resource could meet the Capacity Performance Resource requirements over a defined time period.⁵⁰

28. In its answer, the IMM argues that Indicated Parties' and FirstEnergy Utilities' arguments concerning the limited threat posed by market power in the capacity market are without merit. The IMM argues that review of transactions is only significant if there is a clear and enforceable rule, and that the absence of the proposed changes will lead to an increase in the frequency and significance of requests. In addition, the IMM claims that the historical frequency of exception requests is irrelevant because even a small number of units in constrained locations can have a significant impact on prices.⁵¹ In their answer, Indicated Parties reiterate that the small number of megawatts obtaining must-offer exceptions for physical capability suggests that the negative impact of the proposal outweighs the potential value of deterring the exercise of market power.⁵²

29. In response to Indicated Parties' assertion that the proposal will lead to retirements, PJM notes that the proposal creates a process by which resources instead can continue to participate in the PJM markets as an energy resource. PJM contends that its proposal will not force retirements but instead prevent the hoarding of CIRs by resources unable to meet the Capacity Performance Resource requirements.⁵³

30. PJM contends that even though CIRs are part of an interconnection service agreement or wholesale market participant agreement, those agreements require the resources to be compliant with PJM's rules. PJM also notes that the CIRs are tradeable and can be transferred for up to one year before termination.⁵⁴ The IMM notes that continued use of CIRs is conditional and that CIRs are not property rights, but are

⁵⁰ PJM Answer at 2-3.

⁵¹ IMM Answer at 2.

⁵² Indicated Parties Answer at 5-6.

⁵³ PJM Answer at 3-5.

⁵⁴ *Id.* at 6.

contractual in nature.⁵⁵ In response to these arguments, Indicated Parties argue that CIRs are granted through the interconnection process, are retained through meeting operational standards, and are not tied to a generator's actual market participation.⁵⁶ Indicated Parties contend that PJM and the IMM cannot show any Tariff provision that limits CIR ownership to Capacity Performance-compliant resources. Similarly, Indicated Parties state that the Tariff contains no definition or requirements describing the constitution of Capacity Performance capability.⁵⁷ Indicated Parties further argue that the premise that Capacity Performance status is a prerequisite to continued CIR ownership cannot be true because generators exist that are categorically exempt from the Capacity Performance must-offer rule. Under the current Tariff, they add, resources that receive an exception are treated the same as categorically exempt resources.⁵⁸

31. The IMM contends that generator owners must decide whether to invest to meet the Capacity Performance Resource requirements, and that there is no economic reason to delay the decision. The IMM argues that generators that want unlimited ability to seek a must-offer exception and postpone investment decisions block competitors' access to the transmission system, and act as a barrier to entry by blocking access to market information about retirements, changes in capacity resource status, and capacity supply conditions. The IMM states that a generator holding CIRs indefinitely forces new entrants to spend millions on transmission upgrades that would not be necessary otherwise.⁵⁹ Indicated Parties argue that generators that retain CIRs cannot block other resources from investing or entering the market because these other resources can obtain CIRs through the interconnection process. Indicated Parties contend that the large increase in new generation capacity since the inception of RPM confirms this to be the

⁵⁵ IMM Answer at 5-6.

⁵⁶ Indicated Parties Answer at 3 & n.12 (citing PJM Tariff, § 230.3.1). Indicated Parties emphasize and quote Section 230.3.1, "Generation Capacity Resources that meet these operational standards shall retain their Capacity Interconnection Rights *regardless of whether they are available as a Generation Capacity Resource* or are making sales outside the PJM Region," and argue that the interconnection process is separate from and not dependent on a resource's participation in the capacity market and that "operational standards" require that generation capacity resources be capable of operating at the capacity level associated with the rights to retain CIRs. *Id.* (quoting PJM Tariff, § 230.3.1).

⁵⁷ *Id.* at 2-3.

⁵⁸ *Id.* at 4.

⁵⁹ IMM Answer at 3-4.

case.⁶⁰ Similarly, Indicated Parties argue that there are no realistic concerns that resources will hoard CIRs.⁶¹

32. In response to Indicated Parties' protests regarding the feasibility of detailed plans for becoming able to meet the Capacity Performance Resource requirements, the IMM states that detailed information about upgrades is infeasible only if the generator has done no serious planning; otherwise, the information should be available. In response to Indicated Parties' claims that the proposal is overly punitive, the IMM argues that sellers have the choice to make the investments, convert the resources to energy resources, or retire the resources.

33. PJM counters Indicated Parties' alternative proposals by noting that under section 205 of the FPA, the Commission decides only whether PJM's proposal is just and reasonable and does not need to consider alternatives that may also be just and reasonable.⁶²

34. In response to Indicated Parties' assertion that PJM's proposed language for Attachment DD, Section 6.6A(c), of the Tariff implicates all generators seeking a must-offer exception due to physical inability, PJM confirms that the proposed language applies only to exception requests for resources physically unable to meet the Capacity Performance Resource requirements. PJM states that to the extent the Commission believes a clarification is needed, PJM agrees to add clarifying language to the section.⁶³

35. In their answer, Indicated Parties ask the Commission to reject the proposal as premature because stakeholders are in the beginning stages of reviewing the classification of CIRs and their relationship to PJM's Capacity Performance rules.⁶⁴

IV. Discussion

A. Procedural Matters

36. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to

⁶⁰ Indicated Parties Answer at 4.

⁶¹ *Id.* at 5.

⁶² PJM Answer at 6.

⁶³ *Id.* at 7.

⁶⁴ Indicated Parties Answer at 7-8.

Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), the Commission will grant Old Dominion Electric Cooperative'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.

37. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept PJM's, the IMM's, and Indicated Parties' answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

38. As discussed below, we accept PJM's proposed revisions, effective September 23, 2019, as requested, subject to PJM submitting a compliance filing to make a clarification in Attachment DD, Section 6.6A(c), and a ministerial correction in Section 230.3.2.

39. We find that PJM's proposed revisions create a reasonable and transparent process for sellers to voluntarily remove capacity resource status from an Existing Generation Capacity Resource and convert it to an energy resource.

40. We find that PJM's proposed revisions to the process of must-offer exceptions for Existing Generation Capacity Resources physically incapable of meeting Capacity Performance Resource requirements will prevent sellers from avoiding those requirements. We agree with PJM that sellers that are neither meeting nor attempting to meet the Capacity Performance Resource requirements should not be able to retain capacity resource status and CIRs indefinitely through must-offer exceptions.

41. We disagree with protesters' arguments that PJM exaggerates its market power concerns associated with must-offer exceptions. The underlying purpose of the must-offer requirement is to ensure that sellers do not withhold capacity resources from RPM auctions and potentially exert market power. We concur with the IMM that the historical frequency of exception requests is irrelevant and that a small number of units in constrained locations in the market could have significant impact on prices. We find that the proposed revisions to the must-offer exception procedures and limitations on the number of exceptions are consistent with the purpose of preventing sellers from physically withholding capacity. We also agree that these provisions will prevent hoarding of CIRs by resources that are not performing as a capacity resource.

42. Under the proposal, sellers will have up to five years to develop and complete necessary upgrades, which is consistent with the time frames for new resources to complete upgrades and reach commercial operation. We are unpersuaded by arguments that the ability to request exceptions should be extended to three or more delivery years, as the protesters failed to support such arguments with more than anecdotal examples.

43. We find unsupported Indicated Parties' claims that sellers cannot feasibly provide detailed upgrade information and investment commitments required by the proposal. We agree that if a seller plans to make an upgrade, it should have the detailed information necessary to make the decision.

44. We are also unpersuaded by protesters' arguments that PJM's proposal could cause sellers concerned about being able to meet Capacity Performance Resource requirements to make overly hasty investment decisions. If a unit is physically incapable of meeting the Capacity Performance Resource requirements, a seller has a choice whether to seek a must-offer exception with a plan to meet the Capacity Performance Resource requirements, convert the capacity resource to an energy resource, or retire the unit. We also note that PJM has concluded a multiyear transitional period to the Capacity Performance Resource requirements, and through that process sellers have had opportunities to determine if upgrades were necessary for existing resources to meet those requirements. Moreover, throughout the process sellers have known the Capacity Performance Resource requirements and that they would apply going forward.

45. We are not persuaded by Indicated Parties' arguments that because CIRs are long-term contractual rights for which sellers often pay significant amounts of money, CIRs are not conditional or able to be revised. The interconnection service agreement or wholesale market participation agreement, which is signed by the seller, explicitly provides that CIRs are subject to the terms of the Tariff, which may change over time. For example, PJM's Tariff currently provides that, in the event a capacity resource fails to meet certain operational standards for any consecutive three-year period, such capacity resource will lose its CIRs in an amount commensurate with the loss of generating capacity.⁶⁵

46. We also find unpersuasive Indicated Parties' arguments that neither PJM nor the Market Monitor can identify any Tariff provision that limits CIR ownership to Capacity Performance-compliant resources and that, to the contrary, Section 230.3.1 of the Tariff explicitly provides that CIRs are not tied to a resource's capacity market participation.⁶⁶

⁶⁵ See PJM, Intra-PJM Tariffs, OATT, 230.3 Loss of Capacity Interconnection Rights (4.0.0), §§ 230.3.1, 230.3.2.

⁶⁶ Indicated Parties Answer at 3. Section 230.3.1 provides: "To retain Capacity Interconnection Rights, the Generation Capacity Resource associated with the rights must operate or be capable of operating at the capacity level associated with the rights. . . . Generation Capacity Resources that meet these operational standards shall retain their Capacity Interconnection Rights *regardless of whether they are available as a Generation Capacity Resource* or are making sales outside the PJM Region." (emphasis added).

Section 230.3.1 of the Tariff applies to generation capacity resources only. Under PJM's proposal, the failure of a capacity market seller to satisfy certain requirements of proposed section Attachment DD, Section 6.6A(c), results in the removal of a resource's capacity resource status.⁶⁷ Therefore, Section 230.3.1 does not apply to a capacity market seller that loses its capacity resource status under PJM's proposal. PJM's proposal allows PJM to terminate a generation unit's CIRs when that unit is no longer a capacity resource.

47. In addition, Indicated Parties' comparisons between categorically exempt resources and resources receiving a must-offer exception is misplaced because the Commission has found that the exempt resources "do not raise the same physical withholding concerns as do existing generation resources because their ownership is not concentrated."⁶⁸

48. We do not agree with the protesters' arguments regarding the types of hardships sellers could face if they lose their CIRs. The proposed procedures for removal of CIRs because of a resource status change are the same Tariff procedures used for removal of CIRs after a resource deactivates. After a resource loses its capacity resource status, the seller is able for one year to transfer the CIRs or submit a new generation interconnection request that contemplates the use of the same CIRs. Sellers also may choose to continue to participate in the PJM markets as an energy resource.

49. We also reject Indicated Parties' request that we reject the proposal as premature because PJM stakeholders are reviewing the classification of CIRs and their relationship with the Capacity Performance Resource requirements. We find the classification of CIRs and their relationship with the Capacity Performance Resource requirements to be outside the scope of this proceeding.

50. Indicated Parties argue that the Commission should direct PJM to clarify that its proposed revisions to Attachment DD, Section 6.6A(c), requiring submission of a plan, apply only to generators seeking a must-offer exception due to physical incapability to meet the Capacity Performance Resource requirements. In its answer, PJM confirms that

⁶⁷ PJM's proposed revisions to Attachment DD, Section 6.6(c), state that "[f]ailure to submit a documented plan, or lack of good faith effort by a Capacity Market Seller to make an Existing Generation Capacity Resource physically capable of meeting the requirements of a Capacity Performance Resource in accordance with a documented plan, shall result in the removal of the resource's Capacity Resource status effective with the first future Delivery Year for which the resource was granted an exception."

⁶⁸ *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, at P 355 (2015), *order on reh'g*, 155 FERC ¶ 61,157 (2016).

the proposed revisions in Attachment DD, Section 6.6A, apply only to exception requests for capacity resources that are physically incapable of meeting the Capacity Performance Resource requirements. PJM further confirms that the specific proposed requirement to include a plan for a resource to meet the Capacity Performance Resource requirements in Attachment DD, Section 6.6A, applies only to those resources that seek an exception to the RPM must-offer requirement on the basis that the resource is physically incapable of meeting the Capacity Performance Resource requirements. PJM agrees to include additional clarifying language to that section if the Commission believes additional clarity is needed.⁶⁹ We find that additional clarifying language, as agreed to by PJM in its answer, would be helpful and therefore direct PJM to submit a compliance filing to revise Attachment DD, Section 6.6A(c), to clarify that the requirement to include a plan is limited only to exception requests for resources that are incapable of meeting the Capacity Performance Resource requirements.

51. Finally, we direct PJM to submit a compliance filing to correct a ministerial error in the proposed revisions in Section 230.3.2 of the Tariff. Specifically, the reference to “Tariff, Attachment O, Section 9.4, Tariff, Appendix 2” appears to be intended to reference “Tariff, Attachment O, Appendix 2, Section 9.4.”

The Commission orders:

PJM’s filing is hereby accepted, effective September 23, 2019, as requested, subject to PJM submitting a compliance filing to add clarifying language to Attachment DD, Section 6.6A(c) and a ministerial correction to Section 230.3.2, within 30 days of the date of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁶⁹ PJM Answer at 7.