

139 FERC ¶ 61,031
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

PJM Interconnection, L.L.C.

Docket Nos. ER12-513-001
ER12-513-002
ER12-513-003

ORDER ON REHEARING AND CLARIFICATION
AND ORDER ACCEPTING COMPLIANCE FILINGS

(Issued April 11, 2012)

1. Rockland Electric Company (Rockland), the Public Service Commission of Maryland (Maryland Commission), and the RPM Load Group,¹ seek rehearing and/or clarification of a Commission order issued January 30, 2012.² For the reasons discussed below, we grant rehearing, in part. We also address two compliance filings submitted on February 28, 2012 by PJM Interconnection, L.L.C. (PJM), in Docket Nos. ER12-513-001 and ER12-513-002, in response to the January 30 Order. For the reasons discussed below, we accept PJM's compliance filings, subject to the submission of an additional compliance filing correcting certain filing errors.

¹ The RPM Load Group consists of the PJM Industrial Customer Coalition, Old Dominion Electric Cooperative, Public Power Association of New Jersey, Delaware Division of Public Advocate, Southern Maryland Electric Cooperative, Inc., North Carolina Electric Membership Corporation, DC Office of People's Counsel, American Municipal Power, Inc., and New Jersey Board of Public Utilities.

² *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,062 (2012) (January 30 Order).

I. Background

A. PJM's December 1, 2011 Filing

2. On December 1, 2011, PJM submitted a filing, in this proceeding, as required by its Open Access Transmission Tariff (OATT), consisting of: (i) a triennial review of its capacity market demand curve, the Variable Resource Requirement Curve (VRR Curve), and its two key inputs: the Gross Cost of New Entry (Gross CONE),³ and the Net Energy and Ancillary Services Revenue (E&AS Revenue) offset; and (ii) an assessment of the overall performance of PJM's capacity auctions since their implementation.

3. In its filing, PJM proposed to modify the rules governing the operation of RPM, as recommended by its independent consultant, the Brattle Group (Brattle). Specifically, PJM proposed to update the Gross CONE values, change the methodology for calculating E&AS Revenues to include consideration of the revenues that a reference unit would earn in the day-ahead market, and update the VRR Curve to modify the cap on the price axis to make it equal to the greater of 1.5 times Net CONE or Gross CONE. PJM also proposed changes that were either recommended by Brattle or are related to the overall design of RPM. Specifically, as relevant to the requests for rehearing and/or clarification discussed herein, PJM proposed to modify the Net CONE and Gross CONE for the unconstrained region of PJM (region-wide Net CONE and region-wide Gross CONE, respectively).

4. As background, the region-wide Net CONE is utilized by PJM to set the pricing points for the VRR Curve in the unconstrained region of PJM (region-wide VRR Curve). PJM calculates the region-wide Net CONE based on the region-wide Gross CONE minus region-wide E&AS Revenues.⁴ Under the current OATT, the region-wide Gross CONE value is set at \$112,868 per MW-year. The region-wide Gross CONE of \$112,868 per

³ Gross CONE is an estimate of the total project capital cost and annual fixed operations and maintenance expenses of a new generating plant of a type likely to provide incremental capacity to the PJM region in the forward delivery year addressed by the reliability pricing model (RPM) auctions. The reference resource for the new generating plant is a combustion turbine power plant, configured with two General Electric Frame 7FA turbines. *See* PJM OATT at Attachment DD, section 2.58.

⁴ *Id.* at sections 2.42 and 5.10(a)(v)(A). The region-wide E&AS Revenues are determined based on the annual average of the region-wide revenues that would have been received by the reference resource during the past three years.

MW-year is equivalent to the lowest Gross CONE value for any sub-region, or CONE Area, within PJM.⁵

5. PJM also calculates a location-specific Net CONE for each of the five CONE Areas in the PJM region to establish a separate location-specific VRR Curve for constrained locational deliverability areas.⁶ The location-specific Net CONE for each CONE Area is based on the Gross CONE and E&AS Revenues for the applicable CONE Area.⁷

6. In its December 1, 2011 filing, PJM proposed to change the way that it determines the region-wide Net CONE that it uses to develop the region-wide VRR Curve. First, it proposed to calculate the location-specific Net CONE for each of the five CONE Areas. Second, PJM proposed to select the median of the location-specific Net CONE values and set this median value as the region-wide Net CONE. In addition, PJM proposed to set the region-wide Gross CONE equal to the location-specific Gross CONE component that was used in the calculation of the selected median location-specific Net CONE.

7. PJM explained that under its then existing OATT, the value used for the Gross CONE for the PJM region is equal to the lowest Gross CONE value for any CONE Area. However, PJM explained that, under its proposed update to the location-specific Gross CONE values, the lowest value would be from CONE Area 5 (comprised of Dominion companies) and the environmental rules in CONE Area 5 do not require new gas-powered generators to include selective catalytic reduction technology used to control nitrogen oxides emissions. PJM stated that the value for CONE Area 5 is unreasonably low relative to the rest of the PJM CONE Areas where state or federal environmental rules indicate the need for selective catalytic reduction technology to reduce emissions that lead to the formation of ozone. For this reason, PJM argued that it is unreasonable to set the region-wide Gross CONE equal to the lowest updated location-specific Gross CONE, that of CONE Area 5.

8. PJM stated that its proposal, to set the region-wide Gross CONE equal to the median of the location-specific Net CONE values, would have made the PJM region price more representative of pricing throughout the PJM footprint. PJM also explained

⁵ See *id.* at section 5.10(a)(iv)(A). Under PJM's tariff, there are five CONE Areas. The CONE Areas are sub-regions within the PJM region that encompass one or multiple transmission zone(s). For instance, *CONE Area 5* designates the transmission facilities owned by Virginia Electric and Power Company (Dominion).

⁶ *Id.* at section 5.10(a)(ii).

⁷ *Id.* at section 5.10(a)(v)(B).

that using the median Net CONE would have eliminated any extreme Net CONE observations.

B. January 30 Order

9. In the January 30 Order, the Commission accepted PJM's filing, in part, subject to suspension, refund and the outcome of a hearing and settlement judge procedures. The January 30 Order found that PJM's proposed Gross CONE updates raised material issues of disputed fact as to the proper calculation of the Gross CONE values. The January 30 Order highlighted, specifically, intervenor arguments on issues related to electrical and gas interconnection costs, property tax estimates, location-specific adjustments, and costs for material, labor and equipment.⁸ The January 30 Order also referenced AEP-Dayton's assertion that using a cost estimate for CONE Area 5, without selective catalytic reduction technology to reduce nitrogen oxides emissions, ignores the reality of current state and federal regulations. The January 30 Order provided that these issues, along with other related cost disputes, could not be resolved based on the submitted record. The Commission therefore accepted and suspended PJM's proposed Gross CONE values for a maximum five month period, to become effective on the earlier of June 30, 2012, or a date set by a subsequent Commission order in this proceeding, subject to refund and to the outcome of a hearing and settlement judge procedures.

10. The January 30 Order rejected PJM's proposal to revise its existing methodology for establishing a region-wide Net CONE and region-wide Gross CONE. The January 30 Order expressed concerns that PJM's proposal, if implemented, would negatively affect the investment signals provided to generation plant developers seeking to locate generation in the PJM region.⁹ In rejecting PJM's median Net CONE proposal, the January 30 Order concluded that the proposal would provide more revenues to new generation plant developers than needed to encourage efficient entry in the unconstrained PJM region. As opposed to PJM's proposal, the Commission found that developers would have an incentive to build capacity in the unconstrained PJM region where that capacity can be constructed at the lowest net cost, not the median net cost.¹⁰

11. The January 30 Order further found that PJM had failed to demonstrate how the circumstances at play in CONE Area 5 warrant revision to the entire region-wide Net CONE methodology.¹¹ The January 30 Order rejected PJM's reasoning that the location-

⁸ January 30 Order, 138 FERC ¶ 61,062 at P 41.

⁹ *Id.* P 63.

¹⁰ *Id.*, citing *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275, at n.33 (2009).

¹¹ *Id.* P 62.

specific Gross CONE for CONE Area 5 was unreasonably low and unrepresentative of the PJM region. The Commission explained that a VRR Curve based on the Gross CONE for CONE Area 5 would provide adequate incentives to add capacity in CONE Area 5.¹² The January 30 Order reasoned that, because capacity can be added in CONE Area 5 at a lower cost than in any other CONE Area, PJM has failed to demonstrate that its proposal is needed to encourage entry in other, higher-cost, but unconstrained CONE Areas. The January 30 Order explained that, if transmission constraints do develop between CONE Area 5 and other CONE Areas, PJM's existing rules provide that separate VRR Curves can be developed for those other CONE Areas that reflect the constraints in those CONE Areas, so that adequate incentives to enter can exist in those CONE Areas at that time.

12. Finally, the January 30 Order accepted the remainder of PJM's filing, including proposed changes to the VRR Curve, E&AS Revenue methodology, and 2.5 percent hold-back, to become effective, as requested, on January 31, 2012, subject to the submission of two separate compliance filings to revise its OATT to reflect the effective provisions as of the applicable effective dates (that is January 31, 2012 and June 30, 2012).

II. Requests for Rehearing and/or Clarification

13. As noted above, requests for clarification and/or rehearing of the January 30 Order were filed by Rockland, the Maryland Commission and the RPM Load Group. For the reasons discussed below, we grant rehearing with respect to the region-wide Gross CONE and set this issue for hearing and settlement judge proceedings.

A. Region-Wide Gross CONE

1. January 30 Order

14. PJM's OATT prior to the filing in this proceeding established a region-wide Gross CONE of \$112,868 per MW-year. The dollar amount of the region-wide Gross CONE was equal to the lowest Gross CONE value of the CONE Areas. In its December 1, 2011 filing, PJM proposed a methodology for determining the region-wide Gross CONE based on using the Gross CONE from the median Net CONE of all the CONE Areas. As explained above, the Commission rejected this proposal.¹³ Accordingly, the currently effective OATT provides a numerical value for the region-wide Gross CONE that is equal to \$112,868 per MW-year.

¹² *Id.* P 64.

¹³ *See supra* at P 10-11.

2. Rehearing Requests

15. The Maryland Commission requests that the Commission reconsider and clarify, or alternatively grant rehearing of, the January 30 Order with respect to the region-wide Gross CONE. The RPM Load Group requests rehearing of the Commission's rejection of PJM's proposal regarding the calculation of the region-wide Gross CONE. The Maryland Commission and RPM Load Group request that the region-wide Gross CONE be set for hearing and settlement judge procedures, given that issues of material fact exist, both as to the methodology by which PJM's region-wide Gross CONE values should be calculated or modified, and what components and inputs should be updated to do so.

16. The Maryland Commission and RPM Load Group assert that the Commission erred in the January 30 Order by failing to set issues relating to the calculation of PJM's region-wide Gross CONE for hearing and settlement judge procedures. The Maryland Commission argues that, although the Commission rejected this portion of PJM's filing, the region-wide Gross CONE cannot be remedied by recourse to the PJM OATT. The Maryland Commission and RPM Load Group explain that the OATT does not contain a methodology for calculating the region-wide Gross CONE. Specifically, the Maryland Commission and RPM Load Group state that the PJM OATT does not establish the region-wide Gross CONE as equal to the lowest Gross CONE value of any CONE Area. The RPM Load Group also contends that, because the Commission's rejection of PJM's region-wide CONE proposal stems from this apparent mistaken belief, the ultimate determination in the January 30 Order does not constitute reasoned decision-making and is otherwise unsupported by the evidence in the record.

17. Rockland requests clarification that under the PJM OATT, region-wide Gross CONE equals the lowest Gross CONE for any CONE Area. Rockland explains that PJM uses the lowest Gross CONE value to calculate the region-wide Gross CONE; however, the PJM OATT currently only states a numerical value for the region-wide Gross CONE and does not explicitly state that the region-wide Gross CONE is the lowest Gross CONE of any CONE Area. Rockland argues that PJM should be required to include this clarification in its OATT. Rockland adds that if the Commission does not grant this clarification request, in the alternative, the Commission should grant rehearing and require PJM to confirm, in its OATT, that region-wide Gross CONE equals the lowest Gross CONE for any CONE Area.

3. Commission Determination

18. For the reasons discussed below, we grant rehearing, in part, and set the issue of the region-wide Gross CONE value for hearing and settlement judge procedures.

19. The current region-wide Gross CONE value of \$112,868 per MW-year happens to equal the lowest Gross CONE of the CONE Areas. Specifically, the locational Gross CONEs of CONE Areas 2, 4, and 5 are each currently equal to \$112,868 per MW-year. These locational Gross CONE values were set for hearing and settlement judge

proceedings in the January 30 Order. As the rehearing requesters point out, however, the January 30 Order did not explicitly set the region-wide Gross CONE value for hearing. Further, PJM's current OATT does not contain a methodology for establishing the region-wide Gross CONE value. While PJM proposed a methodology for determining the region-wide Gross CONE in its December 1, 2011 filing, the Commission rejected this proposal. Because the OATT contains no mechanism for establishing the Gross CONE, we will grant rehearing and set the region-wide Gross CONE for hearing and settlement judge proceedings. Rockland's position that the region-wide Gross CONE should be equal to the lowest Gross CONE of any CONE area may be explored during those proceedings.

B. Region-Wide Net CONE

1. January 30 Order

20. Prior to PJM's December 1, 2011 filing, PJM's OATT defined the region-wide Net CONE as equal to the region-wide Gross CONE minus region-wide E&AS Revenues.¹⁴ In its December 1, 2011 filing, PJM proposed to select the median of the location-specific Net CONE values and set this median value as the region-wide Net CONE. As explained above, the Commission rejected PJM's proposal to revise its existing methodology for establishing a region-wide Net CONE.¹⁵ Accordingly, the currently effective Net CONE is equal to the region-wide Gross CONE minus region-wide E&AS Revenues.

2. Rehearing Requests

21. The Maryland Commission and RPM Load Group assert that the region-wide Net CONE also should be set for hearing, given that issues of material fact exist as to how PJM's region-wide Net CONE should be calculated.

3. Commission Determination

22. We deny the Maryland Commission's and RPM Load Group's requests for the region-wide Net CONE to be subject to settlement and hearing procedures. We uphold our decision in the January 30 Order to reject PJM's proposed changes to the region-wide

¹⁴ PJM OATT at Attachment DD, sections 2.42 and 5.10(a)(v)(A). The region-wide E&AS Revenues are determined based on the annual average of the region-wide revenues that would have been received by the reference resource during the past three years.

¹⁵ *See supra* at P 10-11.

Net CONE and do not find a sufficient basis for establishing settlement and hearing procedures to evaluate PJM's current methodology for establishing the region-wide Net CONE. The Maryland Commission and RPM Load Group offer no justification for finding that PJM's existing OATT is unjust and unreasonable. Nor has the Maryland Commission and RPM Load Group explained what material issues of disputed fact affect the establishment of the region-wide Net CONE.

23. Moreover, as discussed above, we grant rehearing and set the region-wide Gross CONE issues for hearing and settlement judge proceedings. Once a just and reasonable region-wide Gross CONE is established, PJM can calculate the region-wide Net CONE by subtracting the region-wide E&AS Revenues from the region-wide Gross CONE, as provided in the currently effective OATT provisions.

III. Compliance Filings

24. The January 30 Order accepted certain OATT provisions proposed by PJM, in its filing, to become effective January 31, 2012; rejected other provisions; and accepted, subject to a five month suspension, all remaining provisions proposed by PJM, to become effective June 30, 2012.¹⁶ To implement these authorizations, the January 30 Order required PJM to submit a compliance filing consisting of those OATT provisions authorized to become effective on January 31, 2012 and rescinding proposed provisions that had been either rejected or suspended. The January 30 Order also required PJM to submit, in a separate compliance filing, suspended OATT provisions that were authorized to become effective on June 30, 2012.¹⁷

A. PJM's Filing

25. PJM states that it has complied with the requirements of the January 30 Order by including in one filing, submitted in Docket No. ER12-513-001, all OATT provisions authorized to become effective January 31, 2012, and including in a separate filing, submitted in Docket No. ER12-513-002, all OATT provisions authorized to become effective June 30, 2012.

B. Notice of Filing and Responsive Pleadings

26. Notices of PJM's filings were published in the *Federal Register*, 77 Fed. Reg. 13,586 (2012), with interventions and protests due on or before March 20, 2012.

¹⁶ January 30 Order, 138 FERC ¶ 61,062 at P 149.

¹⁷ *Id.* PP 150-151.

27. GenOn¹⁸ filed a limited protest on March 20, 2012, arguing that the definition for the reference resource¹⁹ that PJM proposed on December 1, 2011 should be contained in the compliance filing in Docket No. ER12-513-002 instead of Docket No. ER12-513-001, as the appropriate effective date for this change is June 30, 2012, not January 30, 2012. GenOn asserts that the January 30 Order suspended, until June 30, 2012, the issue of whether the reference resource for CONE Area 5 (Dominion) should have selective catalytic reduction technology.

28. PJM filed an answer on April 4, 2012 to GenOn's limited protest. PJM argues that it has correctly filed the revised definition of the reference resource for effectiveness on January 31, 2012. PJM explains that its December 1, 2011 filing proposed to change the heat rate of the reference resource and the application of selective catalytic reduction technology to CONE Areas 1 through 4 (but not for CONE Area 5). PJM states that no party protested the changes to the heat rate and that PJM presumes GenOn's limited protest does not apply to the heat rate. PJM also explains that its December 1, 2011 revisions to the heat rate were part of its E&AS Revenues proposal, which the Commission accepted in full in the January 30 Order.²⁰ PJM argues that because the heat rate is used to calculate the E&AS Revenues, which are used to establish the VRR Curve, deferring the effective date of the heat rate would disrupt the upcoming May 2012 base residual auction.

29. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PJM's answer to GenOn's limited protest because it has provided information that assisted us in our decision making process.

C. Commission Determination

30. We accept PJM's compliance filings, subject to the submission of an additional compliance filing, within 15 days of the date of this order, to correct certain errors, as identified below.

31. First, we note that, in Docket No. ER12-513-001 (the compliance filing reflecting OATT revisions authorized to become effective January 31, 2012), PJM has failed to

¹⁸ GenOn consists of GenOn Energy Management, LLC, GenOn Chalk Point, LLC, GenOn Mid-Atlantic, LLC, GenOn Potomac River, LLC, GenOn REMA, LLC, and GenOn Wholesale Generation, LP.

¹⁹ PJM OATT, Attachment DD, section 2.58.

²⁰ PJM Answer at 4, *citing* January 30 Order, 138 FERC ¶ 61,062 at P 69.

remove its proposed changes pertaining to the application of selective catalytic reduction technology in certain CONE Areas. The January 30 Order suspended PJM's proposed Gross CONE values, including the issue of whether selective catalytic reduction technology should be used in the cost estimates of Gross CONE.²¹ Accordingly, PJM's proposed revisions regarding the application of this technology in only certain CONE Areas would not become effective on January 31, 2012.²² Thus, we accept PJM's filing in ER12-513-001 to be effective on January 31, 2012, subject to PJM submitting an additional compliance filing within 15 days of the date of this order to remove the reference to CONE Areas 1, 2, 3, and 4 in the definition of the reference resource in section 2.58 of Attachment DD of the PJM OATT.

32. We further note that, in Docket No. ER12-513-002, PJM's OATT revision includes an additional zero for the location-specific Gross CONE of a combustion turbine in CONE Area 2 for the minimum offer price rule in section 5.14(h)(1) of Attachment DD, such that the proposed value is erroneously reflected as "\$123,7000" per MW-year. Accordingly, we accept PJM's filing to be effective on June 30, 2012, subject to PJM revising the CONE value in its compliance filing to equal \$123,700 per MW-year.

The Commission orders:

(A) Rehearing of the January 30 Order is hereby granted, in part, as discussed in the body of this order.

(B) PJM's compliance filings are hereby accepted, subject to revision and the submission of an additional compliance filing within 15 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis Sr.,
Deputy Secretary.

²¹ January 30 Order, 138 FERC ¶ 61,062 at P 41.

²² January 30 Order, 138 FERC ¶ 61,062 at P 149-150.