

143 FERC ¶ 61,083
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER13-1023-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued April 30, 2013)

1. On March 1, 2013, PJM Interconnection, L.L.C. (PJM) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ revisions to section 5.14(c) of Attachment DD of the PJM Open Access Transmission Tariff (Tariff)² to allow a capacity market seller to make its sell offer in a Base Residual Auction (BRA) contingent upon qualifying for the New Entry Price Adjustment (NEPA) and to correct the description of the Short-Term Resource Procurement Target³ in the NEPA qualification calculation. As discussed below, the Commission accepts PJM's proposed tariff revisions to become effective May 1, 2013, as requested.

I. Background and Details of the Filing

2. First incorporated into the Tariff on June 1, 2007,⁴ the NEPA provisions in section 5.14(c) of Attachment DD were designed to increase incentives for developing

¹ 16 U.S.C. § 824d (2006).

² PJM Tariff, Attachment DD, section 5.14, Clearing Prices and Charges, (10.0.0).

³ PJM states that, consistent with sections 5.10(a)(i) and (a)(ii) of Attachment DD of the Tariff,³ it establishes separate Variable Resource Requirement (VRR) Curves³ for the PJM Region and for LDAs by subtracting the Short Term Resource Procurement Target from the reliability requirement, shifting every point on the VRR Curve to the left to take into account the amount of megawatts of capacity that are being held back to allow for short-lead-time resources to commit capacity in Incremental Auctions.

⁴ *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, at PP 89-93 (2006).

capacity in relatively small Locational Deliverability Areas (LDA) with significant supply shortages by enabling capacity resources to receive certain revenue assurances for two years following the initial delivery year. The NEPA reflects the recognition that efficient entry in a small LDA could create a precipitous decline in market clearing prices after the initial delivery year.⁵

3. Among other requirements, in order to receive the NEPA incentive, a qualifying capacity resource must: (i) notify PJM of its NEPA election at the time the sell offer is submitted, (ii) be the marginal sell offer that sets the clearing price for the LDA in the BRA, and (iii) increase the cleared unforced capacity (UCAP) from a point on the Variable Resource Requirement (VRR) Curve⁶ below the LDA reliability requirement to a UCAP at or above the UCAP associated with the point on the VRR Curve at which price is 0.40 times the applicable Net Cone divided by one minus the pool-wide average EFORD.⁷

4. Implicit in the description above is a minimum size requirement necessary for a capacity resource to receive the NEPA incentive. Specifically, the minimum size requirement is the horizontal distance, measured in UCAP, between two points on the VRR Curve, (i) the point associated with the reliability requirement on the VRR Curve and (ii) the point on the VRR Curve that corresponds with a price that is 0.40 times the applicable Net Cone divided by one minus the pool-wide average EFORD.⁸

5. PJM states that the Capacity Senior Task Force (CSTF), whose revised charter was approved at the July 26, 2012 Markets and Reliability Committee meeting MRC,⁹ was charged with developing rules for a long-term capacity auction or alternative multi-

⁵ *Id.* P 89.

⁶ The VRR is PJM's administratively-derived demand curve used in RPM auctions. PJM develops VRR Curves for the RTO as a whole as well for individually-modeled LDAs.

⁷ PJM Tariff, Attachment DD, section 5.14(c)(3). EFORD is the Equivalent Demand Forced Outage Rate which is a measure of the probability that a generating unit will not be available due to a forced outage or forced derating when there is a demand for the unit to generate.

⁸ *Id.*

⁹ See CSTF revised charter at <http://www.pjm.com/~media/committees-groups/task-forces/cstf/postings/cstf-charter.ashx>.

year mechanism to incentivize additional capacity resource entry into the Reliability Pricing Model (RPM). PJM notes that while the CSTF has and continues to discuss a number of approaches to modifying section 5.14(c) of Attachment DD of the Tariff, stakeholder consensus is currently limited to the proposed revisions stated below.

6. In its filing, PJM proposes to amend section 5.14(c) to allow a capacity market seller to make its sell offer in a BRA contingent upon qualifying for NEPA. Specifically, the proposed Tariff provision states that the capacity market seller “must specify whether its Sell Offer is contingent upon qualifying for the [NEPA],” and PJM “shall not clear the contingent Sell Offer if it does not qualify....”¹⁰ PJM explains that, during stakeholder discussions, some capacity market sellers indicated that their decision to build a new generation capacity resource depends, in part, on obtaining multi-year price assurances for sell offers that cleared the RPM Auction to ensure that it is economically viable to build the resource. PJM states that, currently, at the time it submits its sell offer requesting NEPA treatment, a capacity market seller will not know whether its resource will qualify for NEPA because this determination is not made until after the close of the offer period for the BRA. PJM asserts that the proposed Tariff change will make the NEPA option more viable for potential developers by allowing them to choose to enter a conditional sell offer based on a resource meeting the NEPA requirements in future years rather than risking clearing in the first BRA but not qualifying for NEPA treatment in subsequent years.

7. In addition, PJM proposes to revise section 5.14(c)(3) of Attachment DD to make clear that the Short-Term Resource Procurement Target is subtracted from the LDA Reliability Requirement in order to determine the target level resources used to construct the VRR Curves for the BRA. PJM explains that, when it made revisions to Attachment DD on December 12, 2008 in Docket No. ER09-412-000, PJM inadvertently failed to make revisions to section 5.14(c)(3) to describe the Short-Term Resource Procurement Target within the description of one of the NEPA qualification criteria. PJM states that, consistent with sections 5.10(a)(i) and (a)(ii) of Attachment DD of the Tariff,¹¹ it establishes separate VRR Curves for the PJM Region and for LDAs by subtracting the Short-Term Resource Procurement Target from the reliability requirement, shifting every point on the VRR Curve to the left to take into account the amount of megawatts of capacity that are being held back to allow for short-lead-time resources to commit capacity in Incremental Auctions. PJM states that this same logic applies to NEPA as

¹⁰ Proposed PJM Tariff, Attachment DD, section 5.14(c)(1).

¹¹ PJM Tariff, Attachment DD, section 5.10, Auction Clearing Requirements, (12.0.0).

well. PJM asserts that the description of the NEPA qualification criteria in section 5.14(c)(3) should be modified to reflect the Short-Term Resource Procurement Target in order to ensure consistency with how PJM establishes the VRR Curve for LDAs within the Tariff, and conform the Tariff to reflect the manner in which PJM has intended and explained to its stakeholders that the NEPA qualification calculation is done.

8. PJM requests that its proposed revisions become effective on May 1, 2013.

II. Notice and Responsive Pleadings

9. Notice of the filing was published in the *Federal Register*, 78 Fed. Reg. 15,714 (2013), with interventions and protests due on or before March 22, 2013. Timely motions to intervene were filed by the Electric Power Supply Association, PJM Power Providers Group, Exelon Corporation, North Carolina Electric Membership Corporation, and American Municipal Power, Inc. LS Power Associates, L.P. (LS Power) filed a motion to intervene and limited protest. The Maryland Public Service Commission (Maryland PSC) filed a notice of intervention and comments. On April 8, 2013, PJM filed an answer to LS Power's protest and Maryland PSC's comments.

10. In its protest, LS Power states that it supports PJM's proposal to allow capacity market sellers to submit sell offers that are contingent upon qualifying for NEPA. LS Power argues that the current NEPA provision imposes a substantial impediment to new entry because it not only prevents a would-be entrant from knowing in advance of a BRA whether it will be able to obtain NEPA treatment, but a capacity market seller also cannot condition its sell offer on obtaining NEPA treatment. LS Power contends that PJM's proposal will promote interest in the development of new generation in small LDAs by giving a developer the certainty of knowing that, if it requires multi-year price assurances to make it economically feasible to construct a Planned Generation Capacity Resource, its sell offer won't clear in the First BRA unless it meets all NEPA qualification requirements.

11. However, LS Power urges the Commission to reject PJM's proposed modification to the NEPA qualification calculation, arguing that it has the effect of more than doubling the NEPA minimum size requirement as shown by the table included in its protest. Specifically, LS Power explains that, while the current Tariff language appropriately dictates that new entry be sized in an amount roughly comparable to three years of load growth, which matches the three years of price certainty that NEPA provides to an eligible entrant, PJM's proposed change would require, at a minimum, that the new entry be sized comparably to roughly seven years of load growth.

12. Finally, LS Power argues that PJM's proposal does nothing to address the more fundamental problems with the NEPA provision, as evidenced by the fact that only one in 29 applicants has successfully obtained NEPA treatment. LS Power asserts that it is

unjust and unreasonable to allow the NEPA provision to remain ineffective, and therefore argues that the Commission should order PJM to make immediate modifications to the NEPA mechanism that will address the fundamental flaws in time for the BRA for the 2016/2017 Delivery Year, which is scheduled to commence on May 13, 2013.

13. In its comments, the Maryland PSC urges the Commission to approve PJM's proposal to allow capacity market sellers to submit sell offers into the 2013 BRA that are contingent upon qualifying for NEPA. The Maryland PSC states that it understands from the stakeholder process that the risk of a project being selected in the BRA, assigned a capacity obligation, and thereafter denied NEPA treatment necessary to obtain financing constitutes a substantial disincentive to developers' use of the existing NEPA process. The Maryland PSC also states that it understands that there may be additional technical requirements to qualify for NEPA treatment that may also be unnecessarily limiting access or developers' willingness to employ NEPA, and therefore urges the Commission to direct PJM to evaluate whether such requirements could be removed or modified consistent with the protection of efficient markets and avoidance of imposing unnecessary costs upon PJM end users, and if so, propose such revisions for Commission approval.

14. In its answer, PJM asserts that LS Power's allegation that the proposed revision to the NEPA qualification calculation more than doubles the minimum size requirement is factually incorrect. PJM argues that LS Power misconstrues PJM's proposed revisions to correct section 5.14(c)(3) as a substantive modification to the NEPA minimum size requirement. PJM argues that its proposed revisions are consistent with the intended scope of NEPA and that not accepting the revisions would result in an unintended consequence of effectuating a substantive change to NEPA that neither PJM nor its stakeholders considered or intended. PJM includes a modified version of the table from LS Power's protest that PJM argues shows that the minimum size requirement before and after the proposed Tariff revision are exactly the same.

III. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹² the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

¹² 18 C.F.R. § 385.214 (2012).

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,¹³ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PJM's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

17. As further discussed below, we find PJM's proposed revisions to be just and reasonable, and accordingly accept PJM's filing.

18. As the parties explain, PJM's proposal to allow a capacity market seller to make its sell offer in a BRA contingent upon qualifying for NEPA will remove a disincentive to seller participation in the current tariff. Under PJM's tariff, a project that requires NEPA treatment to obtain financing faces the possibility that a project could be selected in the BRA, assigned a capacity obligation, but be denied NEPA treatment. PJM's proposed revision to allow contingent sell offers will provide market sellers in the BRA the certainty of knowing that, if a market seller requires multi-year price assurance for project development, the sell offer will not clear the first BRA unless it meets all NEPA qualification requirements. We also note that this proposed revision was not protested. Therefore, we find PJM's proposed revisions to section 5.14(c) of Attachment DD of the Tariff to allow a capacity market seller to make its sell offer in a BRA contingent upon qualifying for NEPA to be just and reasonable and accept them.

19. We also find PJM's proposed revisions to the description of the Short-Term Resource Procurement Target in the NEPA qualification calculation to be just and reasonable. PJM states that it inadvertently neglected to make this revision when the Short-Term Resource Procurement Target was incorporated in 2009.¹⁴ As PJM explains, this change accounts for the effect of the Short-Term Resource Procurement Target on the VRR Curve. LS Power argues that the Commission should reject this proposed revision to the Tariff because it results in a de facto change in the NEPA minimum size requirement. However, as the table in PJM's answer demonstrates, the proposed revision does not actually change the minimum size requirement. The table in LS Power's protest appears to reflect a misunderstanding of how the NEPA minimum size requirement is calculated. Consequently, we accept PJM's proposed revisions to correct the description of the NEPA qualification calculation.

¹³ *Id.* § 385.213(a)(2).

¹⁴ *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 (2009).

20. With respect to LS Power's and Maryland PSC's requests for Commission action to reform NEPA, we find that these arguments are outside the scope of this proceeding. However, we encourage PJM and market participants to continue to work through the stakeholder process to explore possible market design improvements aimed at promoting economically justified investment in new capacity resources when and where they are needed.

The Commission orders:

PJM's proposed revisions to section 5.14(c) of Attachment DD of the Tariff are hereby accepted, effective May 1, 2013 as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.