

181 FERC ¶ 61,150
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

PJM Interconnection, L.L.C.

Docket No. ER22-2886-000

ORDER ACCEPTING COMPLIANCE FILING

(Issued November 22, 2022)

1. On September 20, 2022, PJM Interconnection, L.L.C. (PJM) submitted proposed revisions to the PJM Open Access Transmission Tariff (Tariff) to comply with the Commission's August 2022 order.¹ In this order, we accept PJM's compliance filing, effective August 24, 2022, as discussed below.

I. Background

2. On January 21, 2022, the Commission instituted a proceeding pursuant to section 206 of the Federal Power Act (FPA)² directing PJM to: (1) show cause why its Tariff, Attachment DD, section 6.4(a) and duplicative language in Attachment M-Appendix, section II.E.3 (Offer Cap Provisions)³ governing market seller offer caps (offer caps) in the capacity market remain just and reasonable and not unduly discriminatory or preferential; or (2) explain what changes to its Tariff it believes would remedy the Commission's identified concerns if the Commission were to determine that the Tariff, with the Offer Cap Provisions, has, in fact, become unjust and unreasonable or unduly discriminatory or preferential.⁴ The Commission explained that the Offer Cap Provisions, which allow any seller and the Independent Market Monitor (IMM) to agree on an alternative offer cap under certain conditions, appeared to be unnecessary because the Tariff already provides sellers the flexibility to negotiate unit-specific offer caps with

¹ *PJM Interconnection, L.L.C.*, 180 FERC ¶ 61,120 (2022) (August 2022 Order).

² 16 U.S.C. § 824e.

³ PJM, Intra-PJM Tariffs, OATT Attachment DD.6.4 Market Seller Offer Cap (1.0.0), § 6.4(a); *id.* OATT Attachment M – Appendix (22.0.0), § II.E.3. (Tariff citations remove the redundancy in PJM's section titles).

⁴ *PJM Interconnection, L.L.C.*, 178 FERC ¶ 61,021 (2022).

the IMM and PJM elsewhere in Attachment DD, section 6.4.⁵ Moreover, the Commission expressed concern that the Offer Cap Provisions “may result in insufficient mitigation” because they do not require that the alternative offer cap be determined in a manner consistent with the methodology defined elsewhere in the Tariff.⁶ The Commission further explained that the Offer Cap Provisions “do not set forth any criteria by which the alternative offer cap should be evaluated by the Commission beyond mere agreement between a seller and the IMM” and that the language “does not contain requirements or deadlines for such filings” resulting in significant ambiguity in how and when such offer caps should be filed.⁷

3. In the August 2022 Order, the Commission found that the Offer Cap Provisions were unjust and unreasonable because they did not set forth any criteria by which the alternative offer cap should be evaluated by the Commission and do not contain requirements or deadlines for such filings.⁸ As a result, the Commission found the Offer Cap Provisions create significant ambiguity about how and when alternative offer caps should be filed, and the standard by which they are reviewed, which creates uncertainty in the auction process and timing.

4. The Commission determined the just and reasonable replacement rate as follows: (1) remove the Offer Cap Provisions from the Tariff; and (2) add the Tariff language agreed upon by PJM and the IMM to Tariff, Attachment DD, section 6.4(b), with one modification to clarify that the reference to Attachment M-Appendix, section E.2 should instead refer to Attachment M-Appendix, section II.E.2.⁹ The Commission found the replacement rate to be just and reasonable because it addressed the Commission’s concerns with the previous Tariff language. Additionally, the Commission agreed with PJM that the replacement rate proposed by PJM and the IMM would allow flexibility in the Tariff so that sellers could utilize mutually agreed-upon unit-specific offer caps calculated after the Tariff deadlines so long as the revised value is reviewed by PJM to ensure that it otherwise complies with the Tariff. Therefore, the Commission adopted the

⁵ *Id.* P 17. Section 6.4(b) of Attachment DD section 6.4, provides for negotiations on an offer cap without the need for making a filing with the Commission: “The Capacity Market Seller must . . . attempt to reach agreement with the Market Monitoring Unit on the level of the Market Seller Offer Cap . . .” PJM, Intra-PJM Tariffs, OATT Attachment DD.6.4 Market Seller Offer Cap (1.0.0), § 6.4(b).

⁶ *Id.* P 18.

⁷ *Id.* P 19.

⁸ August 2022 Order, 180 FERC ¶ 61,120 at P 15.

⁹ *Id.* P 16.

Tariff provision, as specified in Appendix A of the August 2022 Order, to become effective as of the date of that order – August 24, 2022. The Commission also directed PJM to make a compliance filing within 30 days of the date of the August 2022 Order to revise its Tariff per the compliance requirement.

II. Filing

5. PJM's filing implements the Tariff changes directed in the August 2022 Order.¹⁰ PJM explains that its revisions to Tariff, Attachment M-Appendix, section II.E.3 will remove the existing provision that allows for an alternative market seller offer cap. In addition, PJM states that it submits revisions to Tariff, Attachment DD, section 6.4 that remove the same provision that currently allows for an alternative market seller offer cap. PJM further states that, in its place, PJM is revising Tariff, Attachment DD, section 6.4(b) to add the language directed by the August 2022 Order. PJM explains that, as directed by the August 2022 Order, it coded the Tariff revisions with an effective date of August 24, 2022.

III. Notice of Filing and Responsive Pleadings

6. Notice of PJM's filing was published in the *Federal Register*, 87 Fed. Reg. 58,788 (Sept. 28, 2022), with interventions and protests due on or before October 11, 2022.¹¹ Delaware Division of the Public Advocate; Monitoring Analytics, LLC, acting in its capacity as the IMM for PJM; Constellation Energy Generation, LLC; Rockland Electric Company; Old Dominion Electric Cooperative; PJM Power Providers Group (P3); American Municipal Power, Inc.; and the New Jersey Division of Rate Counsel each filed timely motions to intervene. On October 11, 2022, P3 filed comments. On October 26, 2022, IMM filed an answer to P3's comments.

7. P3 states that it generally supports PJM's compliance filing with one addition.¹² Specifically, P3 proposes that PJM add additional language to its Tariff stating that failure of a seller and the IMM to mutually agree on a revised offer cap within 80 days of the auction will not be considered a market violation under Attachment M of the Tariff and will not be grounds for a referral to the Commission. P3 also states that it remains generally concerned with the current market seller offer cap rules in PJM and does not believe they are just, reasonable, or sustainable. P3 contends that the current rules effectively deprive asset owners of the ability to independently determine the costs and

¹⁰ PJM Transmittal Letter at 2-3.

¹¹ On September 20, 2022, PJM also filed a notification of compliance filing in Docket Nos. EL22-22-000 and ER22-2886-000.

¹² P3 Comments at 2.

risks of the assets in which significant capital has been invested. P3 also argues that market power can effectively be policed without requiring that every decision related to future costs and risks of capacity resources be set by the IMM rather than the asset owners.

8. The IMM asserts that P3's proposed revisions are not clarifications and that they are not narrow.¹³ The IMM explains that P3's proposed edit would prevent the IMM from meeting its Tariff-defined obligation to refer market participants who attempt to exercise market power. The IMM concludes that P3's proposed revisions should be rejected.

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2021), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2021), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept the IMM's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

11. We accept PJM's compliance filing. The Commission spelled out the revised language it required PJM to file in the August 2022 Order, and PJM has complied with the directives in that order. Because this is a compliance filing, the sole issue is whether the filing complies with the Commission's directives,¹⁴ and PJM has complied. P3's concerns are beyond the scope of this proceeding.

¹³ IMM Answer at 1-2.

¹⁴ See, e.g., *Delmarva Power & Light Co.*, 63 FERC ¶ 61,321, at 63,160 (1993) (finding that the Commission will not consider arguments raised in a compliance proceeding that are not responsive to the narrow issue of the filing company's compliance with the explicit directives of the Commission in an earlier order); *Entergy Power Mktg. Corp.*, 75 FERC ¶ 61,282, at 61,903 (1996) (asserting that the sole issue in reviewing a compliance filing is whether the filing complies with the Commission's directives); *Fla. Power & Light Co.*, 83 FERC ¶ 61,187 (1998) (addressing only the sufficiency of the

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The Commission orders:

PJM's compliance filing is hereby accepted, effective August 24, 2022, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

utility's compliance filing, noting that other issues would be addressed in a separate order).

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