

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.)	Docket Nos. ER18-988-000
)	EL14-48-000
)	Not Consolidated.

**REQUEST OF PJM INTERCONNECTION, L.L.C.
FOR REHEARING AND
CLARIFICATION OF COMMISSION ORDER**

In accordance with section 313 of the Federal Power Act (“FPA”)¹ and Rule 713 of the Commission’s Rules of Practice and Procedure,² PJM Interconnection, L.L.C. (“PJM”) seeks rehearing of the Commission’s “Order Rejecting Tariff Revisions and Terminating Section 206³ Proceeding,” issued May 8, 2018 in the captioned proceeding.⁴ PJM also seeks clarification of the May 8 Order to (1) ensure that PJM is not precluded from making a new filing under section 205 of the FPA that address remaining concerns related to Sell Offers in PJM’s Reliability Pricing Model (“RPM”)⁵ that have little or no reasonable expectation of physical delivery; and (2) obtain guidance from the Commission on the remaining aspects of PJM’s March 9, 2018 Filing and/or alternative methods designed to deter Sell Offers that have no reasonable expectation of physical delivery to inform any such future filing.

¹ 16 U.S.C. § 825l(a).

² 18 C.F.R. § 385.713.

³ 16 U.S.C. § 824e.

⁴ *PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,101 (2018) (“May 8 Order”).

⁵ Capitalized terms not defined herein shall have the meaning as contained in the PJM Open Access Transmission Tariff (“Tariff”), the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., (“Operating Agreement”) or the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region (“RAA”).

I. STATEMENT OF ISSUES AND SPECIFICATIONS OF ERROR

PJM specifies the following issues and errors in accordance with Commission Rule 713(c)(2):

- (1) *With respect to PJM's request for rehearing:*
 - The termination of the Section 206 Proceeding⁶ is unlawful as the Commission's conclusion ignores the factual record and is unsupported by substantial evidence.⁷
- (2) *With respect to PJM's request for clarification regarding the March 9 Order's impact on the remaining components of the Incremental Auction proposal presented in the March 9 Filing:*
 - The Commission should grant clarification that any rejection of the remaining components of the Incremental Auction proposal is without prejudice to PJM proposing a subsequent section 205 Tariff revision aimed at preventing Sell Offers in the RPM with no reasonable expectation of physical delivery.
 - To that end, PJM seeks guidance from the Commission on the remaining components of its March 9 Filing and/or alternative methods that will deter Sell Offers that have no reasonable expectation of physical delivery.

⁶ As referred to in this Request, the Section 206 Proceeding refers to the proceeding that the Commission established in Docket No. EL14-48-000 by its order in *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,108 (2014).

⁷ See May 8 Order at PP 44-46. See also 5 U.S.C. § 706(2)(E) (“The reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . unsupported by substantial evidence.”)

III. REHEARING REQUEST

A. *The Commission Unlawfully Terminated the Section 206 Proceeding Without a Valid Factual Record and Substantial Evidence.*

On May 9, 2014, as part of its order on PJM's then-proposed revisions concerning the replacement of capacity through the Incremental Auctions, the Commission established a separate Section 206 Proceeding because it found PJM's existing tariff provisions may fail to promote long-term reliability in its capacity market.⁸ Specifically, the Commission found that PJM's existing tariff provisions may allow, and even incent, Sell Offers in the RPM Auction that have little or no reasonable expectation of physical delivery.⁹ While PJM filed four separate requests for deferral of a technical conference and comment procedure in the Section 206 Proceeding, none of the requests for deferral sought termination of the Section 206 Proceeding.¹⁰ Rather, the requests for deferral explained that, pending Commission action, PJM sought to obtain additional Incremental Auction data to better inform the technical conference and comment procedure.¹¹

Yet, without any evidence in this record that demonstrates such concern is unwarranted, and in the face of substantial evidence that there is ample justification for this concern, the Commission abruptly terminated the Section 206 Proceeding as part of its May 8 Order solely based on its misconception that other PJM reforms in recent years may have reduced the

⁸ See *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,108, at P 2 (2014).

⁹ *Id.*, P 74.

¹⁰ See Request for Deferral of Action in the Proceedings of PJM Interconnection, L.L.C. under ER14-1461, et. al. (Aug. 18, 2014); Report and Request for Continued Deferral of Action in the Replacement Capacity Proceeding of PJM Interconnection, L.L.C, Docket No. ER14-1461, et. al (Oct. 29, 2015); Further Report and Request for Continued Deferral of Action in the Replacement Capacity Proceeding of PJM Interconnection, L.L.C. under ER14-1461, et. al. (Nov. 23, 2016); Report of PJM Interconnection, L.L.C. and Request for Further Deferral of Action in the Replacement Capacity Proceeding under ER14-1461, et. al. (Mar. 9, 2018).

¹¹ *Id.*

likelihood of Capacity Market Sellers submitting Sell Offers in the RPM Base Residual Auction (“BRA”) with little or no reasonable expectation of delivery.¹² Importantly, *none* of the three protestors in this docket provided any evidence that supports such a conclusion. In fact, no protests were even filed that suggests this concern is unwarranted and no party sought termination of the Section 206 Proceeding.

Simply put, the Commission improperly terminated the Section 206 Proceeding without a valid factual basis and without substantial evidence to support its action. Instead, the Commission incorrectly assumed that other unrelated PJM initiatives may have alleviated these concerns. To the contrary, however, as evidenced by the affidavit of Mr. Jeffrey D. Bastian, submitted as part of PJM’s March 9 Filing, capacity commitments continue to be replaced in the Incremental Auctions at only a fraction of the BRA clearing price.¹³ Such low Incremental Auction prices cannot deter Sell Offers in the BRA that have little or no reasonable expectation of physical delivery because Capacity Market Sellers can reliably expect to replace capacity commitments at a fraction of the relevant BRA value. In fact, capacity replacement levels have not materially diminished and, in some years, even exceeded replacement levels from when the Commission first initiated the Section 206 Proceeding.¹⁴ Thus, the evidence demonstrates that PJM’s recent reforms have done little, if anything, to discourage Capacity Market Sellers from submitting Sell Offers with no reasonable expectation of physical delivery.

¹² See May 8 Order at P 44-46.

¹³ See March 9 Filing, Affidavit of Mr. Jeffery D. Bastian at 3 (Table 1) As demonstrated in PJM’s March 9 Filing, the Incremental Auction costs have consistently represented only a fraction of the BRA values for each and every Delivery Year.

¹⁴ See “Analysis of Replacement Capacity for RPM Commitments: June 1, 2007 to June 1, 2017,” Table 9, available at:

http://www.monitoringanalytics.com/reports/Reports/2017/IMM_Report_on_Capacity_Replacement_Activity_4_2_0171214.pdf (December 14, 2017).

While the Commission may control its various dockets, especially ones that it opens on its own, the record in this proceeding demonstrates that the factual basis for the concern that was expressed in PJM's 2014 proceeding, and reinforced by PJM's uncontested 2018 affidavit in the March 9 Filing, remains as it was when the Commission initiated the Section 206 Proceeding. Rather than analyzing that evidence, however, the Commission simply reached a sweeping conclusion with no record support (and in fact with record support directly to the contrary). Such action is inconsistent with the legal requirement that Commission actions must be supported by substantial evidence based on a filed record.¹⁵ Consequently, the Commission's erroneous conclusion is unlawful as it is unsupported by substantial evidence.

Accordingly, the Commission should grant rehearing and restore the Section 206 Proceeding in order to properly develop a record and investigate whether PJM's current Incremental Auction rules permit illegitimate business purposes by allowing, and even incenting, Capacity Market Sellers to submit Sell Offers with little or no reasonable expectation of delivery. Especially in light of the Commission's rejection of PJM's Incremental Auction proposal, the Section 206 Proceeding is an appropriate vehicle for the Commission to investigate whether, in fact, PJM's Incremental Auction structure incents Capacity Market Sellers to submit Sell Offers that have little or no reasonable expectation of physical delivery. Such Sell Offers are in direct contravention of the very purpose of RPM, which is to ensure the procurement three years forward of physical resources needed to meet projected reliability needs. Rather than simply closing the docket, the Section 206 Proceeding gives the Commission the greatest latitude to investigate and resolve this ongoing problem, particularly in light of the potential limitations on

¹⁵ See *Allentown Mack Sales & Serv. v. NLRB*, 522 U.S. 359, 377 (1998) (The substantial evidence test established by an Administrative Procedure Act provision, which requires an agency's action to be set aside if the action is unsupported by substantial evidence "is an objective test, and there is no room within that test for deference to an agency's eccentric view of what a reasonable factfinder ought to demand.")

the Commission as a result of the Court's ruling in *NRG Power Marketing, LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017). In short, rather than PJM continuing to bring various proposals to the Commission only to face potential rejection, resources would be better spent through a holistic investigation and review of this issue through the Section 206 Proceeding.

IV. CLARIFICATION REQUEST

- A. *The Commission Should Confirm that the May 8 Order Does Not Foreclose PJM's Ability to Submit, and the Commission to Approve, Another Proposal Designed to Deter Sell Offers with No Reasonable Expectation of Physical Delivery.*

Clarification is necessitated by the Commission's statement in the May 8 Order that "there is no need for the Commission's further consideration of solutions to address potential speculative behavior in the Base Residual Auctions and Incremental Auctions" ¹⁶ PJM is concerned that, absent clarification, the May 8 Order could be interpreted as foreclosing the future filing by PJM, and Commission approval, of subsequent section 205 Tariff revisions proposing Incremental Auction revisions aimed at preventing Sell Offers in the RPM with no reasonable expectation of physical delivery.

PJM recognizes that, with respect to any such future filing, PJM would bear the burden of demonstrating that its proposal is just and reasonable and not unduly discriminatory. In seeking clarification, PJM merely seeks confirmation that nothing in the May 8 Order precludes a future filing, and the Commission's approval, (1) that may contain the some or all of the same or similar remaining components from the March 9 Filing and (2) designed to address Sell Offers with no reasonable expectation of physical delivery.

¹⁶ May 8 Order at P 46.

B. PJM Seeks Guidance from the Commission as to the Remaining Components of the Incremental Auction Proposal Contained Within the March 9 Filing.

The Commission's rejection of the entire Incremental Auction proposal without even discussion of the other aspects of PJM's package does not promote administrative efficiency.¹⁷ Under the Commission's Order, to determine whether the remaining components of the Incremental Auction revisions would be acceptable, PJM would have to file a separate Incremental Auction proposal containing the same remaining components only to potentially be rejected again on future unknown grounds. Such a process is clearly inefficient and could easily be avoided if the Commission provides guidance on the remaining aspects of the proposal as part of this Order. The Commission's failure to address the remaining aspects of PJM's March 9 filing is especially problematic given its closure, without evidentiary support, of the Section 206 Proceeding. This leaves PJM with little choice but to simply guess at whether the other filed aspects of PJM's proposal might be deemed just and reasonable. Accordingly, in the interest of sound administrative efficiency, PJM respectfully requests that the Commission consider and provide guidance on the viability of the remaining components of the Incremental Auction proposal presented in the March 9 filing and/or suggest acceptable alternative methods that would deter Sell Offers that have no reasonable expectation of physical delivery.

V. CONCLUSION

PJM requests that the Commission grant rehearing and clarification of the May 8 Order. Specifically, the Commission should restore the Section 206 Proceeding. In the event the

¹⁷ Despite the approval of the Incremental Auction proposal by an overwhelming majority of PJM members, the Commission sided with three protestors, out of the 1000+ PJM Members. The proposed Incremental Auction revisions were thoroughly vetted and the result of over a year's worth of stakeholder efforts to address a real concern. Ultimately, the Incremental Auction proposal was approved by a large majority of PJM's diverse membership. Such consensus building in the stakeholder process is rendered meaningless when the Commission rejects the entire package and fails to provide guidance on all aspects of the proposal.

Commission declines to grant rehearing on the above grounds, the Commission should, at a minimum, provide guidance on and address the remaining aspects of PJM's March 9 Filing, as well as confirm that PJM may propose alternative Incremental Auction revisions designed to deter Sell Offers with little or no reasonable expectation of physical delivery.

Respectfully submitted,



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On behalf of
PJM Interconnection, L.L.C.

Dated: June 7, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Audubon, PA, this 7th day of June, 2018.



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