138 FERC ¶ 61,062
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

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

PJM Interconnection, L.L.C. Docket No. ER12-513-000

ORDER ACCEPTING, REJECTING, AND SUSPENDING TARIFF PROVISIONS, AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued January 30, 2012)

1. On December 1, 2011, PJM Interconnection, L.L.C. (PJM) submitted proposed changes to its Open Access Transmission Tariff (OATT), pursuant to section 205 of the Federal Power Act (FPA),[1] to revise certain pricing features associated with its capacity market auction rules.[2] Specifically, PJM proposes changes to its capacity market demand curve, the Variable Resource Requirement Curve (VRR Curve), and the two key inputs to this curve, which consist of: the Gross Cost of New Entry (Gross CONE) by a representative new power plant, and the Net Energy and Ancillary Services Revenue (E&AS Revenue) that such a plant would be expected to earn in the PJM markets. In addition, PJM proposes to retain the overall 2.5 percent short-term resource procurement target, or hold-back,[3] but eliminate the 2.5 percent hold-backs that are currently applied to specific resource categories. PJM also proposes related and conforming changes, as discussed below. PJM requests that the proposed OATT changes be made effective January 31, 2012, for use in PJM's next base residual capacity auction.[4]

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[1] 16 U.S.C. § 824e (2000).

[2] *See* PJM OATT, Attachment DD (Reliability Pricing Model (RPM)).

[3] In the base residual auction, the hold-back reduces the amount of capacity that PJM seeks to procure in the base residual auction by 2.5 percent of the PJM reliability requirement.

[4] PJM notes that it is required to post the parameters applicable to this auction by February 1, 2012.

2. For the reasons discussed below, PJM's filing is hereby accepted, in part, subject to suspension, refund, and the outcome of a hearing and settlement judge procedures; rejected, in part; and accepted, in part, subject to a compliance filing. Unless otherwise discussed below, we accept PJM's filing to become effective, as requested, on January 31, 2012.

I. Background

3. PJM secures capacity commitments through its capacity market, RPM, on a forward-looking basis to meet the expected peak load demands of its system.[5] PJM secures these capacity commitments in a base residual auction, held three years ahead of each delivery year, and by conducting three additional incremental auctions during the three-year period between the base residual auction and the relevant delivery year. The resources permitted to compete in these auctions include existing and planned generation, demand response, and energy efficiency resources. PJM's first base residual action was held in May 2007. Four delivery years have been completed to date.

4. In its filing, PJM states that, under its OATT, it is required to undertake a triennial review of the VRR Curve used to clear its RPM capacity auctions,[6] including the two key inputs to this curve, namely, the Gross CONE and E&AS Revenues.[7] In addition, PJM states that its OATT requires PJM to assess the overall performance of its capacity auctions since their implementation.[8] PJM states that it retained an independent consultant, the Brattle Group (Brattle), to conduct these two reviews.

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[5] *See PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 (2006).

[6] PJM OATT, Attachment DD at section 5.10(a)(iii) ("[For the 2015-16 delivery year and] for every third Delivery Year thereafter, [PJM] shall perform a review of the shape of the [VRR] Curve . . . based on simulation of market conditions to quantify the ability of the market to invest in new Capacity Resources and to meet the applicable reliability requirements on a probabilistic basis.").

[7] *See id.* at section 5.10(a)(vii)(C) ("[For the 2015-16 delivery year and] for every third Delivery Year thereafter, [PJM] shall review the calculation of the [Gross CONE] for each CONE Area."). *See also id.* at section 5.10(a)(vii)(D) ("[For the 2015-16 delivery year and] for every third Delivery Year thereafter, [PJM] shall review the methodology set forth in this Attachment for determining the Net Energy and Ancillary Services Revenue Offset for the PJM Region for each Zone.").

[8] *See id.* at section 17.6 ("Within six months after the end of the fourth Delivery Year, [PJM] shall prepare, provide to Members, and file with FERC an assessment of the performance of [RPM].").

5. PJM states that Brattle, in assessments issued August 2011, found that PJM's capacity market has been successful in attracting and retaining cost-effective capacity sufficient to meet PJM's resource adequacy requirements.[9] PJM states that the Brattle Report also found that operation of PJM's capacity market has served to reduce costs by fostering competition among all types of new and existing capacity, including demand-side resources.

6. The Brattle Report found that since 2006, a total of 28,400 MW of installed capacity from new resources have been committed in PJM's capacity market, including additions of 11,800 MW of demand-side resources, 6,900 MW of increased imports and decreased exports, and 4,800 MW of new generation. The Brattle Report further found that in all locational deliverability areas, net resource additions have been more than sufficient to meet reliability requirements. In addition, the Brattle Report found that RPM has greatly facilitated competition among various types of capacity resources by attracting commitments from new generation and new demand response resources, retaining existing generation, and supporting the upgrade of existing plants at prices below the cost of new generation. The Brattle Report also determined that competition in RPM's centralized forward auctions has allowed owners of aging coal plants to make more informed decisions about whether to invest in environmental retrofits or start planning to retire the units, particularly in the most recent auction for 2014-15 delivery year.

7. PJM states that, notwithstanding these findings, the Brattle Report also determined that certain changes would be required to further improve RPM and to further enhance RPM's performance in sustaining and attracting investment to ensure that PJM will have sufficient capacity resources on hand to meet its resource adequacy and regional reliability requirements. As discussed more fully below, the Brattle Report recommended changes, as part of its triennial review analysis, addressing, among other things, the VRR Curve shape, updated Gross CONE values, and the E&AS Revenue methodology. In its performance assessment analysis, the Brattle Report recommended, among other things, that PJM retain the hold-back, but eliminate the hold-backs that apply to specific resource categories.

8. PJM proposes to implement these recommendations of the Brattle Report. PJM also proposes to implement additional related and conforming changes.

9. PJM states that it believes that some of the other Brattle Report recommendations may have merit and would enhance RPM's performance, but states that more stakeholder

[9] *See* PJM Filing, Attachment D (2011 Cone Study) and Attachment E (2011 RPM Performance Assessment) (collectively, the Brattle Report).

discussion is required to consider these recommendations. Therefore, PJM states that it will invite further stakeholder consideration of the additional Brattle Report recommendations, which may result in additional OATT revisions in subsequent filings.

II. Notice of Filing and Responsive Pleadings

10. Notice of PJM's filing was published in the *Federal Register*, 76 Fed. Reg. 77,220 (2011), with interventions and protests due on or before December 22, 2011. Notices of intervention and timely-filed motions to intervene were filed by the entities noted in the appendix to this order. Motions to intervene out-of-time were submitted by the Illinois Municipal Electric Agency (IMEA), on January 4, 2012, and by Dynegy Power Marketing, LLC (Dynegy), on January 9, 2012.

11. Timely-filed protests and/or comments were submitted by PJM Power Providers Group (P3); PSEG Companies (PSEG); Rockland Electric Company (Rockland); Electric Power Supply Association (EPSA); Viridity Energy, Inc. (Viridity); the Public Service Commission of Maryland (Maryland Commission); Monitoring Analytics, LLC, acting as the Independent Market Monitor for PJM (IMM); Consumer Advocates,[10] filing an individual protest and, with the Demand Response Supporters, a joint protest;[11] ODEC, *et al*.;[12] American Electric Power Service Corporation and the Dayton Power and Light Company (AEP-Dayton); LS Power Associates, L.P. (LS Power); GenOn Parties (GenOn); and Calpine Corporation (Calpine).

12. On January 6, 2012, answers were submitted by P3, PSEG, and the IMM. On January 10, 2012, an answer was submitted by Consumer Advocates and Demand

[10] Consumer Advocates consist of: Delaware Division of the Public Advocate; District of Columbia Office of People's Counsel; New Jersey Division of Rate Counsel; Maryland Office of People's Counsel; and Pennsylvania Office of Consumer Advocate.

[11] Demand Response Supporters, for purposes of this protest, consist of: PJM Industrial Customer Coalition (PJM-ICC); Comverge, Inc.; Energy Connect by Johnson Controls, Inc. (Energy Connect); EnerNOC, Inc. (EnerNOC); Viridity Energy, Inc. (Viridity); and Wal-Mart Stores, Inc.

[12] ODEC, *et al*. consists of: Old Dominion Electric Cooperative; Southern Maryland Electric Cooperative, Inc., and American Municipal Power, Inc.

Response Supporters.[13] On January 13, 2012, an answer was submitted by PJM. On January 20, 2012, GenOn and PSEG submitted answers to PJM's answer. On January 25, 2012, Consumer Advocates and Demand Response Supporters submitted an answer to answers.[14] On January 27, 2012, the IMM submitted an answer to answers.

III. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, given the early stage of this proceeding and the absence of undue prejudice or delay, we grant the unopposed late-filed interventions submitted by IMEA and Dynegy.

14. 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 the answers to protests and answers to answers submitted by GenOn, P3, PSEG, the IMM, Consumer Advocates and Demand Response Supporters, and PJM because they have provided information that assisted us in our decision making process.

IV. Discussion

15. In response to the Brattle Report recommendations, PJM proposes a number of changes to the RPM construct. Three of these changes are related to the triennial review that PJM must undertake according to the OATT. First, PJM proposes to update the Gross CONE values.[15] Second, PJM proposes to change the methodology for calculating

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[13] Consumer Advocates, for purposes of this answer, consist of: Delaware Division of the Public Advocate; District of Columbia Office of People's Counsel; New Jersey Division of Rate Counsel; and Maryland Office of People's Counsel. Demand Response Supporters, for purposes of this answer, consist of Viridity, PJM-ICC, and EnerNOC.

[14] Consumer Advocates, for purposes of this answer to answers, consist of: Delaware Division of the Public Advocate; District of Columbia Office of People's Counsel; New Jersey Division of Rate Counsel; Maryland Office of People's Counsel; and Pennsylvania Office of Consumer Advocate. Demand Response Supporters, for purposes of this answer to answers, consist of Comverge, Energy Connect, Viridity, PJM-ICC, and EnerNOC.

[15] PJM OATT, Attachment DD at sections 2.58 (Reference Resource) and 5.10(a)(iv)(A) (Cost of New Entry).

E&AS Revenues to include consideration of the revenues that a reference unit would earn in the day-ahead market.[16] Third, PJM proposes to 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.[17]

16. PJM has also proposed changes to various aspects of RPM that were either recommended by the Brattle Report or are related to the overall design of RPM. As recommended by Brattle, PJM proposes to modify the manner in which the 2.5 percent hold-back is reflected in the base residual auction constraints, such that the hold-back continues to apply to the total system resource requirements, but not to specific resource categories.[18] As a product of PJM's stakeholder process, PJM also proposes to modify the region-wide Net CONE.[19] Lastly, PJM proposes a number of additional items related to the bidding mitigation mechanism,[20] new entry, and to future actions addressing longer term procurements.[21]

17. PJM's filing includes a number of component parts representing separate proposals that may be evaluated on their own merits. For the reasons discussed below, we accept, in part, PJM's filing, subject to suspension, refund, and the outcome of a hearing and settlement judge procedures; reject, in part, PJM's filing; and accept, in part, PJM's filing, subject to a compliance filing. Specifically, because PJM's proposed Gross CONE update raises material issues of disputed fact, this aspect of the filing is accepted and suspended 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. We find that

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[16] *Id.* at sections 2.46 (Peak-Hour Dispatch), 5.10(a)(v)(A) (Net Energy and Ancillary Services Revenue Offset), and 5.14(h) (Minimum Offer Price Rule for Certain Planned Generation Capacity Resources).

[17] *Id.* at section 5.10(a)(i) (Methodology to Establish the Variable Resource Requirement Curve).

[18] *Id.* at sections 2.41D (Minimum Annual Resource Requirement) and 2.41E (Minimum Extended Summer Resource Requirement).

[19] *Id.* at sections 5.10(a)(iv)(A) (Cost of New Entry) and 5.10(a)(v) (Net Energy and Ancillary Services Revenue Offset).

[20] *Id.* at section 5.14(h) (Minimum Offer Price Rule for Certain Planned Generation Capacity Resources).

[21] *Id.* at section 5.14(c) (New Entry Price Adjustment).

other proposals, including the VRR Curve, E&AS Revenue methodology, and 2.5 percent hold-back, have been sufficiently supported and we therefore accept these proposals, to become effective, as requested, on January 31, 2012, subject to compliance filings. In addition, we reject, as unsupported, PJM's proposal to revise its existing methodology for establishing a region-wide Net CONE and region-wide Gross CONE. Unless otherwise discussed below, we accept PJM's filing to become effective, as requested, on January 31, 2012.

A. Updates to Gross CONE

18. PJM's OATT specifies the benchmark Gross CONE values for the five CONE Areas in the PJM region.[22] 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 RPM auctions. The reference resource for the new generating plant is a combustion turbine power plant, configured with two General Electric Frame 7FA turbines.[23]

1. PJM's Proposal

19. PJM states that, while it proposes no changes to its current OATT requirement that the reference resource used for the Gross CONE estimate be a combustion turbine power plant, a revision to the defined term, reference resource, is appropriate to reflect the more

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[22] *See id.* at section 5.10(a)(iv)(A). *CONE Area 1* represents the Eastern Mid-Atlantic Area Council (MAAC), as comprised by the transmission facilities owned by: Public Service Electric and Gas Company, Jersey Central Power and Light Company, Atlantic City Electric Company, PECO Energy Company, Delmarva Power and Light Company, and Rockland Electric Company. *CONE Area 2* represents Southwest MAAC, as comprised by the transmission facilities owned by: Potomac Electric Power Company and Baltimore Gas and Electric Company. *CONE Area 3* designates the transmission facilities owned by: American Electric Power, Dayton Power and Light Company, Commonwealth Edison Company, Allegheny Power, Duquesne Light Company, American Transmission Systems, Inc., and Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc. *CONE Area 4* represents Western MAAC, as comprised by the transmission facilities owned by: PPL Electric Utilities Corporation, Metropolitan Edison Company, and Pennsylvania Electric Company. Finally, *CONE Area 5* designates the transmission facilities owned by Virginia Electric and Power Company (Dominion).

[23] *Id.* at section 2.58.

efficient heat rate produced by the latest combustion turbine model and to recognize the differing requirements among CONE Areas for emissions control technology.[24]

20. PJM proposes to update its existing Gross CONE values for the five CONE Areas, as recommended by the Brattle Report, based on recent installations of combustion turbine plants.[25] These values would be revised as follows: $134,000/MW-year, for CONE Area 1; $123,700/MW-year, for CONE Area 2; $123,500/MW-year, for CONE Area 3; $130,100/MW-year, for CONE Area 4; and $111,000/MW-year, for CONE Area 5. PJM states that these estimated Gross CONE values are lower than those that would result from adjusting the 2014-15 delivery year values produced under its current OATT, as adjusted by the Handy-Whitman Index.[26] The Brattle Report found that these

[24] As defined by the PJM OATT, the reference resource includes selective catalytic reduction technology. According to the Brattle Report, Brattle's Gross CONE estimates were based on combustion turbine plants that were fitted with selective catalytic reduction technology in each location except in CONE Area 5 (Dominion), where the current ozone attainment status does not yet require selective catalytic reduction. *See* PJM Filing, Attachment D, Exhibit 2 (2011 CONE Study) at 1.

[25] PJM states that these updated values are based on a full analysis by the Brattle Report that estimated the components of the representative power plants from the "bottom-up." PJM notes that the Brattle Report investigated each of the capital costs and fixed operations and maintenance costs. PJM states that the Brattle Report also used a financial model that includes estimates of the likely debt cost, required rate of return, income taxes, and the anticipated economic life of the plant. PJM also states that Brattle identified an appropriate site within each CONE Area for construction of the representative plant based on considerations including proximity to electric transmission infrastructure, access to major natural gas pipelines, site attractiveness as indicated by recently built power plants, and availability of vacant industrial land.

[26] Beginning with the 2013-14 delivery year, the Handy-Whitman Index of Public Utility Construction Costs (Handy-Whitman Index) has been used by PJM to update its benchmark Gross CONE values to reflect changes in generating plant construction costs, by region, before the base residual auction for each delivery year. The applicable Handy-Whitman Index used to adjust PJM's Gross CONE values, by CONE Area, is the most recently published twelve-month change in the Total Other Production Plant Index shown in the Handy-Whitman Index. Under this index, PJM uses the North Atlantic Region, for CONE Areas 1, 2, and 4; the North Central Region, for CONE Area 3; and the South Atlantic Region, for CONE Area 5. Absent a PJM-proposed modification to the Gross CONE values under section 205 of the FPA and an approval by the Commission of PJM's proposed Gross CONE values, PJM's OATT provides that the Handy-Whitman Index will be used to adjust the Gross CONE values.

estimates were lower due, primarily, to reductions in equipment, materials, labor costs, and economies of scale attributable to the larger turbine model used in its estimate.

21. PJM states that, in calculating the updated Gross CONE values, it used its existing nominal levelized financial model[27] and that it is maintaining the Handy-Whitman Index adjustment method. According to PJM, the Brattle Report recommended that PJM consider transitioning to a real levelized approach for the Gross CONE. However, PJM proposes to maintain its current nominal levelized approach, stating that the Brattle Report's assumption regarding risk-neutral project developers fails to account for the real-world risks and uncertainties that can cause project developers to hold back on their investments if they are not assured of a satisfactory revenue stream. PJM also states that the Commission has consistently accepted use of the nominal levelized approach in RPM as just and reasonable, and has rejected attempts to compel PJM to base generic Gross CONE values (such as those used in the VRR Curve) on the real levelized basis.[28] Further, PJM states that the Brattle Report's recommendation was expressly conditioned on PJM changing its projected E&AS Revenues calculation methodology to be based on future market simulations and forward indices, which PJM states it is not proposing to do in this filing.

2. <u>Protests and Comments</u>

22. Consumer Advocates support PJM's proposed updated Gross CONE values and note that any comparison of the numerous cost elements included in this estimate, relative to actual construction costs under specific conditions, will show numerous differences in both a positive and a negative direction.

23. Other intervenors argue that PJM's proposed Gross CONE values are unreasonably low. AEP-Dayton argue that the Brattle Report Gross CONE values used by PJM may not reflect the increased costs of environmental compliance. AEP-Dayton add that using a Gross CONE value that is lower than the Gross CONE value used for the

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[27] PJM states that the levelized annual cost provides information regarding the constant stream of revenues needed, on an annual basis, to cover project costs, including return on capital. According to PJM, these payment requirements can be expressed in either "real" or "nominal" terms. PJM explains that expressing the constant stream of payments in nominal terms (nominal levelized), means that the payment in each year is the same regardless of inflation; whereas, expressing the constant stream of payments in real terms (real levelized), means that the payment each year increases over the life of the project by the rate of inflation.

[28] PJM Filing at 12-13 (citing *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022, at P 49-51; *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,145, at P 32 (2011)).

2014-15 auction is inaccurate and not representative of a realistic scenario for the 2015-16 delivery year. AEP-Dayton also assert that using a cost estimate for CONE Area 5 (comprised of Dominion) without selective catalytic reduction technology to reduce nitrogen oxide (NO_x) emissions is also ignoring the reality of current state and federal regulations. AEP-Dayton argues that PJM has failed to support the exclusion of selective catalytic reduction technology from the cost of construction of a new combustion turbine unit in CONE Area 5.

24. LS Power also argues that PJM's proposed Gross CONE values are unreasonably low. Specifically, LS Power argues that the proposed Gross CONE values for CONE Areas 1, 2, and 5 significantly understate the amount of property taxes that a new entrant must pay. Additionally, LS Power asserts that PJM's proposed values for all five CONE Areas are based on an unreasonably low estimate of an owner's contingency costs for a new facility. LS Power argues that PJM should be directed to revise its proposed Gross CONE values to properly account for all forms of property taxes and a ten percent allowance for owner contingency costs. Overall, LS Power asserts that the impact of the unreasonably low Brattle estimates for property taxes and owner's contingency costs understates Gross CONE, on a MW-year basis, by $10,700, $9,300, $7,100, $7,200, and $9,400 for CONE Areas 1 to 5, respectively.

25. PSEG argues that PJM's proposed Gross CONE values for CONE Area 1 rely on inaccurate cost assumptions, should be set for hearing, and their implementation should be suspended for five months,[29] thus allowing current OATT provisions to remain in effect for the upcoming May 2012 base residual auction. Alternatively, PSEG requests

[29] PSEG states that for cases involving rate decreases in which the Commission as a general practice has either accepted the rates without suspension or imposed minimal suspension periods are inapposite to the instant facts and would not interfere with the Commission's ability to order a maximum suspension period for acceptance of PJM's proposed Gross CONE decrease. PSEG notes that PJM's filing would result in a 6.3 percent reduction in the combustion turbine Gross CONE value for CONE Area 1 relative to the existing Gross CONE value if current OATT provisions were to remain in effect. PSEG argues that the combustion turbine Gross CONE value proposed by PJM for setting the level of the VRR Curve is not the actual "rate" paid for capacity and, in fact, is an inappropriate reduction in Gross CONE values. PSEG argues that such an inappropriate reduction in Gross CONE could actually result in higher capacity prices. PSEG claims that if the VRR Curve is perceived to be unrealistically low, there could be incentives for developers not to bid, delay bidding new units, or retire existing units. PSEG also asserts that inappropriate reductions in Gross CONE would tend to raise prices over the long run, as prices would become more volatile since developers would delay entry until shortage conditions occur.

that the Commission issue an interim order modifying Gross CONE for CONE Area 1. PSEG argues that, according to its consultant, estimated total construction costs for CONE Area 1 are 34 percent higher for a combustion turbine unit and 29 percent higher for a combined cycle unit, as compared to the Brattle Report's estimates. PSEG further claims that the findings of its consultant take account of local conditions and requirements specific to New Jersey and other CONE Area 1 regions. PSEG concludes that PJM's proposed Gross CONE values for CONE Area 1 significantly understate the cost of building new generation in New Jersey. Specifically, PSEG argues that the Brattle Report's Gross CONE values are based on assumptions for regions outside of the New Jersey reference area and fail to adequately adjust for those differences.

26. PSEG argues that while the Brattle Report calculations for CONE Area 1 are based on the cost of constructing reference resources in Middlesex County, New Jersey, the Brattle Report's cost assumptions relied on the Gulf Coast region as the base case and then failed to make adequate adjustments to reflect local conditions in New Jersey. Specifically, PSEG asserts that the Brattle Report estimate excludes the following cost items: (i) costs of piles; (ii) costs of switchyard and switchyard-related work; (iii) storm water environmental-related costs; (iv) insurance costs; (v) owner's contingency; and (vi) a growth factor to cover the cost of design growth. PSEG further asserts that the Brattle Report's margin assessment for engineering, procurement, and construction contract costs are understated. Finally, PSEG asserts that the Brattle Report's alleged claims of lower material, equipment and labor costs cannot be supported; PSEG argues that these costs have either increased or been relatively stable over recent years.[30]

27. GenOn argues that PJM's proposed values in CONE Areas 1 and 2 significantly underestimate actual costs. Specifically, GenOn claims that PJM understated the current capital costs for a combustion turbine in CONE Areas 1 and 2 by approximately 50 percent and 43 percent, respectively. GenOn asserts that while the Brattle Report purports to identify factors that explain certain lower values within its cost estimates, an alternative analysis, prepared by GenOn's consultant, identifies inaccuracies in those

[30] PSEG notes that major construction projects in New Jersey must comply with federal and New Jersey wage rates requirements, and asserts that prevailing union wages for construction craft labor have increased by about 10.4 percent from 2008 to 2011. PSEG also argues that the Brattle Report significantly underestimates the labor expense attributable to a typical generation project in Middlesex County. PSEG further claims that PSEG Power's experience constructing generating plants suggests that the man-hours needed to construct a combined cycle unit are 46 percent higher, as compared to the Brattle Report's findings. PSEG also claims that a review of the Producer Price Index shows that the cost of major bulk materials used to construct power generating facilities have increased on average by 11 percent from 2008 to 2011.

findings. GenOn states that its consultant prepared its own "bottom-up" analysis of new combustion turbine and combined cycle plant costs in CONE Areas 1 and 2. GenOn states that this analysis incorporates the same turbine technology and assumes some of the same cost efficiencies associated with new technology that the Brattle Report incorporates. However, GenOn states that its consultant identified several areas in which higher regional costs were not fully accounted for in the Brattle Report, and that the Brattle Report failed to reflect current prices in the marketplace or otherwise omitted inappropriately other relevant factors from its estimates.

28. GenOn states that its analysis differs significantly from the findings made in the Brattle Report with respect to the following factors: (i) electrical interconnection costs;[31] (ii) gas interconnection costs; (iii) owner-furnished equipment and balance of plant expenses, inclusive of the escalation factor; (iv) contingency costs to cover certain permitting, legal, financial advisory and study costs associated with plant development; (v) other owner's costs and associated financing costs; (vi) omissions of working capital and inventories; (vii) different sales tax rates; and (viii) operation and maintenance, due to a failure to account for a proper estimation of property taxes. GenOn concludes that, because of the flaws and omissions in PJM's analysis, the Commission should reject PJM's proposed Gross CONE values for CONE Areas 1 and 2 and direct PJM to adopt the Gross CONE values supported by GenOn's consultant. GenOn asserts that the values for the combustion turbine plant should apply to establish Gross CONE for CONE Areas 1 and 2 and that PJM should utilize the values for the combustion turbine plant and the combined cycle plant as developed by GenOn's consultant in order to establish Gross CONE estimates, as applicable to the Minimum Offer Price Rule.[32] GenOn requests that if the Commission does not reject the PJM Gross CONE values for Areas 1 and 2, the Commission should set these issues for hearing and/or a technical conference.

29. ODEC, *et al*. oppose PJM's proposal to maintain both the nominal levelized method for calculating the estimated Gross CONE as well as the Gross CONE updates per the Handy-Whitman Index. ODEC, *et al*. argue that, if PJM is permitted to retain the nominal levelized method, which Brattle determined will result in an overstatement of cost recovery and over-procurement of resources, then PJM should not be permitted to add to the overstated Gross CONE based on annual Handy-Whitman Index updates. ODEC, *et al*. argue that PJM should be required to adopt an alternative proposal that garnered the greatest stakeholder support, which proposed to use a nominal levelized

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[31] GenOn notes that this review found that these costs were underestimated by approximately $199.6 million in CONE Area 1 and $74.9 million in CONE Area 2.

[32] PJM's Minimum Offer Price Rule is discussed is section IV.G of this order, below.

approach for calculating the Gross CONE estimates, without an annual Handy-Whitman Index adjustment; or alternatively, should be required to shift to the real levelized approach with an annual Handy-Whitman Index adjustment. ODEC, *et al*. assert that PJM's reliance on the fact that it is not proposing one of the Brattle Report's revisions, regarding E&AS Revenues, is an insufficient reason to retain a levelization approach which the Brattle Report found will overstate revenues and cause an over-procurement of resources.

3. Intervenors' Answers

30. The IMM argues that GenOn's proposed Gross CONE does not adequately support GenOn's higher values for a number of components relative to the Brattle Report's values. The IMM asserts that its calculations, by contrast, are generally consistent with the Brattle Report's calculations. The IMM notes that the primary differences between GenOn and the Brattle Report include an assessment of engineering, procurement and construction contract costs (about 1.3 times greater), transmission interconnection costs (about 19.2 times greater), and financial/closing fees (about 12.8 times greater). The IMM argues that the GenOn study does not adequately support inclusion of much higher values for these items. The IMM agrees that it would be appropriate to include transmission interconnection costs based on the interconnection costs for units in the queues rather than for completed projects and to do so by region; while the IMM finds that those interconnection costs would be higher than those in the Brattle Report, the IMM argues that they would not be as high as those in the GenOn study.

31. P3 and PSEG challenge ODEC, *et al.*'s arguments that PJM should use a real-levelized method for the Gross CONE estimates or, in the alternative, should eliminate the automatic Gross CONE updates based on the Handy-Whitman Index. PSEG argues that the nominal levelized approach for calculating Gross CONE is appropriate and has been previously accepted by the Commission as just and reasonable, as applied to PJM's Minimum Offer Price Rule. P3 argues that the proposal to use real levelized Gross CONE values was debated at length and proved to be impracticable. P3 further notes that the use of the Handy-Whitman Index has been settled by the Commission and is not an issue on which PJM has proposed changes in the instant proceeding.

4. PJM's Answer

32. PJM argues that its proposed Gross CONE values are well within the range of reasonableness that is likely to reflect actual Gross CONE. PJM also asserts that this issue can be addressed and resolved by the Commission, without recourse to a hearing. PJM adds that the Commission, in the past, has never ordered an evidentiary hearing to consider the issue of Gross CONE values, whether in the case of PJM or the New York Independent System Operator, Inc., the only other transmission provider using Gross

CONE values. PJM also states that in its last triennial review filing, where many of the same generation owners protested that PJM's Gross CONE values were too low, the Commission found that whether or not higher rates might also be just and reasonable does not allow the Commission to reject a utility's just and reasonable proposal under section 205.[33]

33. PJM states that the Commission should compare the proposed Gross CONE estimates with the last Gross CONE estimates that it accepted as just and reasonable for the PJM region, that is, those it approved in the last triennial review. While protesters compare PJM's proposed Gross CONE values with the Handy-Whitman Index-adjusted Gross CONE values from the last base residual auction, PJM states that the Handy-Whitman Index is only a tool for adjusting Gross CONE values and not a substitute for a detailed review. PJM states that its proposed Gross CONE values have increased, relative to currently just and reasonable Gross CONE values, for all but CONE Area 5, where costs have lowered by two percent due to a changed assumption regarding emissions control technology.

34. PJM argues that the Gross CONE valuations proposed by GenOn and PSEG rely on significantly inflated values, as compared to Commission-accepted 2009 Gross CONE values. PJM notes that GenOn's estimates of the capital costs for a new combustion turbine plant imply a levelized Gross CONE value that is 121 percent higher than the values the Commission accepted for CONE Area 1 (Eastern MAAC) and 94 percent higher than the Commission-accepted values for CONE Area 2 (Southwest MAAC). PJM adds that PSEG's capital costs would translate to a levelized Gross CONE that is 60 percent higher than PJM's 2009 values.

35. PJM argues that intervenors' alternative estimates are caused by very large increases in relatively few line items. PJM provides additional support for its proposed Gross CONE values and PJM provides reasoning as to why the large increases supported by intervenors are based on incorrect assumptions that result in inflated estimates. For instance, PJM states that GenOn's electrical interconnection cost estimates represent over half of GenOn's total proposed increase in Gross CONE for CONE Area 1 and a third of the proposed increase in CONE Area 2. PJM states that GenOn's analyses are inappropriately based on interconnection cost estimates from feasibility studies, which are worst-case estimates that are likely to be well above actual interconnection costs (over eight times actual costs for successful projects).

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[33] PJM Answer at 5 (citing *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275, at P 38 (2009) (March 2009 Order)).

36. Finally, PJM argues that it was not required, in its filing, to demonstrate that existing provisions of its OATT remain just and reasonable, including its use of the nominal levelized financial modeling approach to determine Gross CONE and its use of the Handy-Whitman Index adjustment. PJM asserts, rather, that the burden of showing that these provisions are now unjust and unreasonable rests with the intervenors that would seek to remove them from the OATT. PJM adds that this burden has not been met here.

5. Answers to PJM's Answer

37. PSEG renews its request for a five month suspension and a full evidentiary hearing of PJM's proposed Gross CONE values for CONE Area 1. PSEG includes additional cost analyses to account for financial components and other non-construction cost components, which, according to PSEG, show that PJM's proposed levelized Gross CONE values for combustion turbine and combined cycle plants are understated by 46 percent and 36 percent, respectively. PSEG states that PJM fails to address factual assertions regarding labor productivity levels and rising prices for commodities.

38. GenOn argues that PJM has not adequately demonstrated that its proposed updates to the Gross CONE are within an acceptable range of reasonableness. GenOn contends that recent trends demonstrate that costs are increasing, not decreasing. GenOn states that its experience indicates significant flaws with certain cost estimates provided by PJM. For instance, GenOn states that the property tax estimates relied upon by the Brattle Report differ significantly from what GenOn actually pays.

6. Commission Determination

39. For the reasons discussed below, we find that PJM's proposed updates to the Gross CONE values for the five CONE Areas have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we accept PJM's proposed Gross CONE values for filing, subject to refund and a five month suspension, to become effective the earlier of June 30, 2012, or a date set by a subsequent Commission order in this proceeding. With regards to the levelization methodology and the Handy-Whitman Index, we reject intervenors' arguments as outside the scope of PJM's section 205 filing. PJM has not proposed to change its existing levelization methodology or the application of the Handy-Whitman Index for annual Gross CONE escalation.

40. The Gross CONE values used by PJM to set its RPM auction parameters were first implemented by PJM in 2006 and were then updated in 2009.[34] In the October 2009

[34] *See PJM Interconnection, L.L.C.*, 129 FERC ¶ 61,090, at P 42 (2009) (October 2009 RPM Order).

RPM Order, the Commission accepted PJM's proposal for a new automated Gross CONE adjustment process, subject to conditions. In doing so, however, the Commission noted that, because PJM's Gross CONE values rely on cost assumptions and the need for predicting future costs leading up to the delivery year, hearing procedures may be required when revisions to these values are claimed to be necessary and/or where issues of disputed fact concerning these proposed revisions are raised.

41. Here, we find that intervenors have raised a number of material issues of disputed fact as to the proper calculation of the Gross CONE values, as summarized above. Intervenors argue, for example, that PJM has failed to include accurate electrical and gas interconnection costs, property tax estimates, location-specific adjustments, and costs for material, labor and equipment. AEP-Dayton also assert that using a cost estimate for CONE Area 5, without selective catalytic reduction technology to reduce NO_x emissions, ignores the reality of current state and federal regulations. These issues, along with related cost disputes detailed above, cannot be resolved based on the submitted record and we will therefore accept and suspend the Gross CONE values for five months, subject to the outcome of a hearing.

42. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.[35] While shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results,[36] suspension for the maximum period in this case will not lead to harsh and inequitable results because PJM's existing just and reasonable OATT includes a mechanism for adjusting Gross CONE values to reflect changes in conditions.[37] Additionally, suspension for the maximum period is warranted for practical reasons, as it would not be possible to revise the demand curve retroactively.[38] Accordingly, we will

[35] *Boston Edison Co.*, 12 FERC ¶ 61,211 (1980); *see also Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980).

[36] *West Texas Utilities Co.*, 18 FERC ¶ 61,189, at 61,375 (1982).

[37] PJM OATT, Attachment DD at section 5.10(a)(iv)(B).

[38] *See New York Independent System Operator, Inc*., 134 FERC ¶ 61,058, at P 168 (suspending revised demand curves for a five month period and recognizing the potential need to retain the currently-effective demand curves for an additional period), *order on clarification and reh'g*, 134 FERC ¶ 61,178, at P 16 (2011). *See also Mirant Energy Trading, LLC v. PJM Interconnection, LLC*, 122 FERC ¶ 61,007, at P 38 (2008) (dismissing complaint due to the difficulty of re-running a market); *Bangor Hydro-Electric Company v. ISO New England Inc*., 97 FERC ¶ 61,339, at 62,590 (2001)

(continued…)

accept PJM's proposed Gross CONE values for filing and suspend them for five months, to become effective the earlier of June 30, 2012, or a date set by a subsequent Commission order in this proceeding.[39]

43. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[40] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.[41]

44. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to the presiding judge.

B. Region-Wide Gross CONE and Net CONE

45. PJM utilizes a Net CONE for the unconstrained region (region-wide Net CONE) to set the pricing points for the VRR Curve in the unconstrained region (region-wide VRR Curve). Generally, PJM calculates Net CONE based on the Gross CONE minus E&AS Revenues.[42] Under the current OATT, the stated Gross CONE value used in

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(finding that re-settling a market would do more harm to wholesale electricity markets than is justifiable or appropriate and would be fundamentally unfair to market participants).

[39] PJM therefore will be required to use its existing just and reasonable Gross CONE values, as adjusted by the Handy-Whitman Index, for the May 2012 base residual auction, which occurs prior to June 30, 2012.

[40] 18 C.F.R. § 385.603 (2011).

[41] If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

[42] PJM OATT, Attachment DD at section 2.42.

developing the region-wide VRR Curve is set at the lowest Gross CONE value for any CONE Area within PJM. PJM uses a region-wide Gross CONE that is valued at $112,868 per MW-year, to establish the region-wide Net CONE and the region-wide VRR Curve.[43] By contrast, the region-wide E&AS Revenues are determined based on the annual average of the region-wide revenues (rather than the lowest revenues of any region) that would have been received by the reference resource during the past three years.[44]

46. For any delivery year, PJM can also establish a separate VRR Curve for constrained locational deliverability areas.[45] For this purpose, PJM calculates a location-specific Net CONE for each of the five CONE Areas in the PJM region. The location-specific Net CONE for each CONE Area is based on the Gross CONE for the applicable CONE Area.[46]

1. PJM's Proposal

47. PJM proposes to change the way that it determines the region-wide Net CONE that is used to develop the region-wide VRR Curve. First, it proposes to calculate the Net CONE for each of the five CONE Areas by deducting the historical E&AS Revenues that would have been earned by the reference resource in a CONE Area from the Gross CONE applicable to that same CONE Area (rather than the average revenues over the entire PJM region, as is done at present). Second, PJM proposes to select the median value of the five CONE Areas' Net CONE values and set this median value as the region-wide Net CONE that is used to develop the region-wide VRR Curve. In addition, PJM proposes to set the region-wide Gross CONE equal to the Gross CONE component of the selected median Net CONE. This region-wide Gross CONE value will be used to calculate the new maximum price on the region-wide VRR Curve, as described below in section IV.D. PJM avers that its proposal to use the median of the Net CONE values is reasonable because it is a measure of central tendency.

48. By using the median Net CONE, PJM states that its proposal also eliminates the possibility of any extreme and "unreasonable" results. PJM explains that under its existing OATT, the stated Gross CONE value for the PJM region is set at the lowest Gross CONE value for any CONE Area. However, PJM asserts that, currently, CONE

[43] *Id.* at section 5.10(a)(iv)(A).

[44] *Id.* at section 5.10(a)(v)(A).

[45] *Id.* at section 5.10(a)(ii).

[46] *See supra* P 18.

Area 5 (comprised of Dominion) values are the lowest, because the environmental rules in CONE Area 5 do not require new gas-powered generators to include selective catalytic reduction technology.[47] PJM argues that CONE Area 5 values should not be used to establish region-wide Net CONE because these values are unreasonably low relative to the rest of the PJM region.

2. Protests and Comments

49. Intervenors object to PJM's proposal to establish the region-wide Net CONE based on the median value of the location-specific Net CONE. P3 and PSEG argue that PJM should retain the current methodology and set the region-wide Net CONE using the lowest Gross CONE of the reference resource and a system-wide determination of E&AS Revenues.

50. EPSA requests that the Commission require PJM to continue to utilize its current approach. EPSA argues that PJM's proposal, if adopted, will likely result in region-wide Net CONE being set by the Net CONE for CONE Area 1 and may well change over time depending upon changes in regional energy prices. EPSA also argues that PJM should exclude CONE Area 5 because technology to control NO_x emissions is required in most of PJM's footprint. EPSA is concerned that if the RPM auction clears on a single region-wide basis, the height of the VRR Curve for units in MAAC and CONE Area 1 that have stringent environmental requirements could be negatively impacted if the region-wide Net CONE value is based on the costs of new entry for a unit without NO_x controls.

51. Similarly, Rockland argues that PJM's filing fails to provide sufficient support for the proposition that a median region-wide Net CONE is reasonable. Rockland asserts that PJM may have a legitimate concern that the CONE Area 5 value differs materially from other CONE Areas, but argues that PJM has not shown why it did not simply eliminate the materially different CONE Area 5 value and choose the next lowest Gross CONE value.

52. Rockland adds that PJM fails to provide sufficient evidence that use of the median is just and reasonable. Rockland argues that while PJM's filing assumes that using a median avoids extreme Gross CONE values, PJM fails to define the term "extreme," or explain when PJM would consider an actual Gross CONE value extreme.

53. Rockland also argues that a PJM region-wide Net CONE price is intended to indicate the marginal cost of capacity and provide an appropriate price-signal to site new generation if PJM, as a whole, were short on capacity. Rockland notes that this should be

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[47] *See supra* P 19-20.

established, by definition, by the lowest-cost area. Rockland concludes that, as such, PJM's logic for using the median is faulty.

54. LS Power argues that PJM should be required to set the region-wide Net CONE equal to the load-weighted average Gross CONE minus the PJM-average E&AS Revenues. LS Power asserts that this approach is not based on the erroneous assumption that E&AS Revenues earned by generators in constrained areas would be available to a generator in PJM's unconstrained region.

55. AEP-Dayton assert that by using the median region-wide Net CONE value as the target value for determining the VRR Curve, the target clearing price over the long term will average lower than the cost of constructing a new combustion turbine in the western part of the PJM footprint. AEP-Dayton believe that this is a disincentive to generator developers who are considering constructing a new unit in the western part of the PJM footprint. AEP-Dayton further argue that PJM does not use the median LMP values for settling its energy market and thus should not use the median to set the region-wide Net CONE values.

56. Finally, GenOn states that the median value introduces potentially greater volatility into the determination of the region-wide Net CONE by: (1) detaching the development of the region-wide Net CONE value from the reference resources (which has been a combustion turbine with selective catalytic reduction technology since RPM's inception); and (2) introducing an area-specific E&AS Revenue value into the determination of the region-wide Net CONE. GenOn notes that to the extent that the Commission rejects PJM's proposed median methodology as unjust and unreasonable but does not direct PJM to modify its OATT prospectively, the Commission should clarify that it is no longer just and reasonable to utilize CONE Area 5 in the development of the region-wide CONE.

3. <u>Intervenor's Answer</u>

57. ODEC, *et al.* urge the Commission to reject protests that PJM's region-wide Net CONE proposal will result in values that are too low. ODEC, *et al.* state that PJM's existing region-wide Net CONE methodology is unreasonable and that PJM's filing is an improvement. ODEC, *et al.* state that PJM's existing methodology would require PJM to use the Gross CONE from CONE Area 5 to calculate the region-wide Net CONE, even though it did not include a combustion turbine with selective catalytic reduction technology similar to the rest of the PJM region.

4. <u>PJM's Answer</u>

58. PJM argues that its median Net CONE proposal is reasonable, and should be accepted, because it takes into consideration each of the five CONE Areas, consistent with PJM's practice of using system-average LMPs in calculating E&AS Revenues. By

contrast, PJM characterizes, as unwarranted and arbitrary, intervenors' proposal to exclude CONE Area 5 from any region-wide Net CONE calculation. PJM argues that regardless of whether CONE Area 5 is, or is not, representative of the four other CONE Areas, as it relates to emissions control technology, each CONE Area should be considered on an equal basis.

59. PJM also responds to AEP-Dayton's argument that use of the median Net CONE value will not provide sufficient revenues to incent new entry in the west. PJM argues that the objective, in establishing a Net CONE value, is to identify a value that is reasonably reflective of the region as a whole.

60. PJM also responds to GenOn's argument that use of the median Net CONE, as proposed, could be overly-volatile. PJM asserts that if a CONE Area used to establish the median, in a given year, experiences fluctuating energy revenues, from one year to the next, then it is unlikely that such a CONE Area will qualify to be used as the median for the following year.

5. Commission Determination

61. For the reasons discussed below, we reject PJM's region-wide Gross CONE and region-wide Net CONE proposals.

62. As noted above, region-wide Net CONE is calculated by subtracting region-wide E&AS Revenues from the lowest Gross CONE value of any CONE Area.[48] PJM's justification for changing the region-wide Net CONE calculation is based on only one of these components - Gross CONE. Specifically, PJM justifies its proposal based on its assertion that the Gross CONE value for CONE Area 5 is unreasonably low relative to the remaining PJM region. However, PJM fails to demonstrate how the circumstances at play in CONE Area 5 warrant revision to the entire region-wide Net CONE methodology. Accordingly, we reject PJM's proposal as insufficiently supported.

63. We also share intervenors' 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. RPM establishes a VRR Curve for the unconstrained portion of the PJM region and also establishes separate VRR Curves for each constrained locational deliverability area within the PJM region.[49] Within the unconstrained portion of the PJM region, developers would have an incentive to build

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[48] PJM OATT, Attachment DD at section 2.42, section 5.10(a)(iv) and section 5.10(a)(v).

[49] *Id.* at section 5.10(a)(i) and (ii).

any new peaking capacity that is needed where such capacity can be constructed at the lowest net cost. Therefore, it is reasonable to establish a VRR Curve for the unconstrained area based on the net entry cost within the unconstrained area where a peaking unit can be built at lowest net cost.[50] Establishing a VRR Curve at a higher cost would provide more revenues to new entrants than are needed to encourage efficient entry in the unconstrained area.

64. Under PJM's proposal, the lowest Gross CONE is currently in CONE Area 5, the Dominion zone. PJM argues that its proposal is necessary because the CONE Area 5 value is unreasonably low and differs materially from the others because it does not include selective catalytic reduction technology. However, a VRR Curve based on the Gross CONE for CONE Area 5 would provide adequate incentives to add capacity in CONE Area 5. As long as transmission constraints do not prevent access to CONE Area 5, other CONE Areas will be able to access this generation. 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. 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. We therefore find that PJM's proposal has not been shown to be just and reasonable.

C. <u>E&AS Revenues</u>

65. Under PJM's existing OATT, PJM is required to estimate the energy revenues that the reference resource would receive, based on actual LMPs and fuel prices for the most recent three calendar years, the heat rate of the reference resource, and an assumption that the resource would be dispatched on a "peak-hour dispatch" basis.[51] Peak-hour dispatch is based on real-time LMPs; it does not consider LMPs in the day-ahead energy market. As such, PJM's existing OATT assumes that a capacity resource, like the reference resource, will not be committed in the day-ahead energy market.

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[50] It is important that Net CONE accurately represents net costs for developing and operating generation in the PJM region in the upcoming delivery year under conditions where the capacity in the market matches the target level. By doing so, the capacity price at the various capacity levels can signal whether (and provide appropriate incentives when) additional entry is needed. *See* March 2009 Order, 126 FERC ¶ 61,275 at n.33.

[51] PJM OATT, Attachment DD at section 2.46.

1. PJM's Proposal

66. PJM proposes to revise the definition of peak-hour dispatch in the OATT to provide that day-ahead revenues will also be considered in determining E&AS Revenues. Under the proposal, the reference resource will be committed first in the day-ahead energy market if economic on a peak-hour basis. The revised definition provides that, to the extent not committed in the day-ahead energy market, the reference resource will be dispatched in the real-time energy market if economic on a peak-hour basis. PJM states that its proposal is consistent with Brattle Report's recommendation and addresses Brattle Report's finding that the peak-hour dispatch methodology only uses real-time prices, even though a majority of revenues are obtained through day-ahead commitments, even for combustion turbines.

2. Protests and Comments

67. The IMM, P3, PSEG, GenOn, AEP-Dayton, and EPSA support PJM's proposal to modify the calculation of E&AS Revenues to reflect commitments in both the day-ahead and real-time energy markets instead of only the real-time energy market. While the IMM agrees with PJM's proposal, it also recommends that PJM take a related step to more accurately reflect the way in which units are actually dispatched by eliminating the artificial limits on the assumed dispatch of units in the E&AS Revenues calculation. As the IMM explains in its comments, the relevant OATT language, in its definition of peak-hour dispatch, assumes that the reference resource is committed in the day-ahead market for four distinct blocks of four hours of continuous output, and it requires the unit to be economic for at least two hours in each four-hour block. The IMM argues that dispatch should instead be based on economics and should reflect the actual flexibility of the reference technology, including the appropriate physical offer parameters (e.g. minimum run times and minimum down times). It states that the requirement to be economic for at least two hours in each four-hour block causes inaccurate results, and it further notes that the current OATT prevents consideration of any revenues from dispatch during off-peak hours.

3. PJM's Answer

68. PJM characterizes the IMM's recommendation, regarding the assumed dispatch of a reference resource, as beyond the scope of this proceeding. PJM adds that, under its proposal, it seeks only to add consideration of day-ahead prices to its calculation.

4. Commission Determination

69. For the reasons discussed below, we accept PJM's E&AS Revenues proposal, to become effective, as requested, on January 31, 2012. We agree that this proposal better reflects a capacity resource's actual unit commitment and will therefore lead to a more accurate Net CONE calculation. As noted in the Brattle Report, combined cycle plants

earn most of their revenues in the day-ahead market, and even new combustion turbine plants, similar to the reference resource, earn a substantial portion of their energy revenues from the day-ahead market.[52]

70. The IMM expresses a concern about the definition of "peak-hour dispatch" for the purpose of calculating E&AS Revenues. However, PJM is not proposing in its filing to revise the mechanics or details of the peak-hour test. Rather, PJM has proposed to apply the already-existing test to both the day-ahead and real-time markets. The IMM therefore is seeking refinements to the OATT beyond what PJM has proposed. The IMM has not argued that PJM's proposed revision is unreasonable. Instead, the IMM urges further refinements of the methodology arguably to make the calculation more accurate. At this point, we do not have sufficient evidence to mandate such changes. PJM, the IMM, and stakeholders can consider further refinements in the stakeholder process.

D. VRR Curve

71. PJM utilizes an administratively determined demand curve (VRR Curve) to establish the clearing price in its RPM auctions, in combination with a supply curve formed from capacity supplier sell offers. The VRR Curve connects price-quantity points that are stated as multiples or fractions of the Net CONE (on the price axis) and the target reliability requirement (on the quantity axis) to establish the amount of unforced capacity that PJM will be required to seek to procure in its RPM auctions.[53]

1. PJM's Proposal

72. During its review of the VRR Curve, PJM found that unusually high historical E&AS Revenues could cause the VRR Curve to drop to zero, or collapse, which would result in the curve no longer providing incentives to add resources, even if reserve margins drop well below the reliability target. In response to these concerns, PJM proposes to revise the existing cap on the price axis of its VRR Curve, currently set at 1.5 times Net CONE, in order to avoid the potential collapse of the VRR Curve due to certain scarcity events and to better meet PJM's reliability targets.[54] In support of its proposal, PJM relies on the Brattle Report's finding that PJM's existing VRR Curve is susceptible to collapsing whenever historical energy margins spike (given that the Net CONE is based on the difference between the Gross CONE and E&AS Revenues). PJM

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[52] *See* PJM Filing, Attachment E (2011 RPM Performance Assessment) at 88.

[53] Capacity levels are expressed on an "unforced capacity" basis, i.e., discounted for expected unforced outages.

[54] *See* proposed OATT, Attachment DD at section 5.10(a)(i).

notes that the Brattle Report further found that when E&AS Revenues reach, or exceed, the Gross CONE, the VRR Curve disappears (in other words, there is no demand for capacity). PJM therefore proposes that the cap on the price axis be revised to equal the greater of the Gross CONE, or 1.5 times the Net CONE.

73. PJM argues that this revision is appropriate because it will help avoid the potential collapse of the VRR Curve when historic energy revenues used to determine E&AS Revenues are high, such as during anomalous conditions caused by unusual weather, outages, or other unexpected scarcity events. PJM adds that this approach will also provide assurance to new entry project developers that, even if energy prices spike for a few years before an auction, the clearing price under tight capacity conditions will cover the full Gross CONE, with zero assumed contribution from E&AS Revenues. PJM states that under normal, or low E&AS Revenue conditions, the VRR Curve will be just as it is today.

2. **<u>Protests and Comments</u>**

74. The majority of intervenors support PJM's proposal that the left side of the VRR Curve should never be lower than the higher of 1.5 times the Net CONE or the Gross CONE. For instance, AEP-Dayton argue that this approach may help to mitigate significant volatility in the future market clearings if the reserve margin eventually does fall below target levels. Consumer Advocates support the proposed changes to the VRR Curve, stating that it preserves the shape as it is today under most conditions.

75. P3 states that it supports PJM's proposal to raise the left side of the VRR Curve, but is concerned that adoption of the proposal was not subjected to rigorous analysis or simulations. P3 argues that while this is a step in the right direction, it is not clear whether the magnitude of changes is sufficient.

76. The Maryland Commission asserts that the basis for PJM's proposed change is a market simulation by a consultant, as opposed to an actual shortfall of capacity where payments are too low to attract a reliable quantity of capacity. The Maryland Commission argues that PJM provides no justification that shifting the VRR Curve cap would make new entry or new resources likely, and the Maryland Commission is concerned that the changes to the curve will result in higher costs to the consumer. The Maryland Commission also states that PJM's proposal will raise the VRR Curve in years following high energy prices and argues that it is illogical that customers pay more for capacity after they pay more for energy.

77. Finally, Rockland argues that PJM has acknowledged that the conditions identified by the Brattle Report that would collapse the VRR Curve are unlikely. Further, Rockland argues that PJM's proposed changes to the VRR Curve are not just and reasonable given their negative impact on ratepayers.

3. PJM's Answer

78. In response to the Maryland Commission's argument that PJM's proposed changes to the VRR Curve are based only on a market simulation, PJM argues that probabilistic modeling is a useful tool to compare the likely relative outcomes of adopting one curve shape over another. PJM also argues that the OATT provisions for the triennial review expressly direct that PJM employ such probabilistic analyses to assess whether changes are needed to the RPM parameters.[55]

79. In response to Rockland's arguments that PJM's VRR Curve proposal unnecessarily raises prices for consumers and attempts to address an unlikely risk that VRR Curve will collapse, PJM argues that its proposal is premised not only on the need to prevent a curve collapse. PJM explains that its proposal also addresses the risk that anytime the curve clears at capacity levels below the reliability requirement, possible differences between actual E&AS Revenues and estimated E&AS Revenues will be great and increase the risk that the clearing price will be below the true Net CONE.

4. Commission Determination

80. For the reasons discussed below, we accept PJM's VRR Curve proposal, to become effective, as requested, on January 31, 2012. We agree with PJM that this proposal will help to avoid the potential collapse of the VRR Curve under anomalous conditions. Specifically, when historical E&AS Revenues are high, future delivery period Net CONE (which is based on historical rather than expected E&AS Revenues) can collapse, resulting in low or even zero-based capacity prices. This creates the perverse outcome that capacity prices could drop precipitously following tight capacity conditions. We therefore find that PJM's proposed approach should better meet PJM's reliability targets by providing for new entry under tight capacity conditions. We also agree that the higher cap will help to preserve resource adequacy by reducing the possible risk of deterring offers that may be temporarily above the current cap (due to historical E&AS Revenues differing significantly from expected future E&AS Revenue margins or due to errors in the Net CONE estimation).[56]

81. We note that PJM's proposal, which sets the revised cap at lower levels than those proposed in the Brattle Report, received significant support among the various stakeholder groups, represented by intervenors in this proceeding, as balancing reliability needs against increased costs to consumers. We agree with Consumer Advocates that PJM's proposal preserves the shape of the VRR Curve, as it is today under most

[55] PJM Answer at 36, (citing PJM OATT, Attachment DD at section 5.10(a)(iii)).

[56] PJM filing, Attachment E (2011 RPM Performance Assessment) at 99.

conditions, and avoids added volatility that would be associated with making the VRR Curve steeper under all conditions.

82. We reject the concerns raised by P3. P3 acknowledges that raising the left side of the VRR Curve, as PJM proposes, is directionally correct, but suggests that the magnitude of this revision may not be sufficient. PJM, however, has provided justification for raising the VRR Curve to prevent the collapse of the curve and P3 has not shown that this proposal is unjust and unreasonable. We are not persuaded that the hypothetical raised by P3 provides a sufficient basis to reject PJM's proposed cap as unreasonably low. Even if a higher cap might be justified, that does not render PJM's proposal unjust and unreasonable.

83. The Maryland Commission and Rockland argue that PJM has not supported its proposal to raise the cap because the Brattle Report's analysis only suggests that the conditions that may cause a collapse of the VRR Curve are highly unlikely to occur. The Maryland Commission further asserts that it is illogical for consumers to pay higher capacity costs after they pay more for energy.

84. However, we find that PJM's proposal strikes a reasonable balance between maintaining an incentive for resources to commit to providing capacity while not unduly burdening consumers with higher costs. Under PJM's OATT, the VRR Curve is used to establish the level of capacity resources that will provide an acceptable level of reliability.[57] PJM's proposal ensures that the appropriate investment signals needed to maintain that acceptable level of capacity in the PJM region are sent to capacity resource providers. Specifically, we agree with PJM that its proposal assures capacity resource providers that, even if energy prices spike for a few years before an auction, the clearing price under tight capacity conditions will cover the full cost of new entry. Otherwise, capacity resources would likely elect to become energy-only resources since there would be no compensation for taking on the added responsibilities and risks of a capacity resource.

85. Further, PJM's proposal provides a safeguard because currently there is no limit in the OATT that would prevent high historical E&AS Revenues from equaling the Gross CONE of the PJM region and resulting in the collapse of the entire VRR Curve. Such a collapse will result in the elimination of any signals to suppliers regarding the reliability needs for future delivery years. The fact that revenues have not historically reached this level does not negate the fact that they *could* reach these levels.[58] However, as shown by PJM in its filing, the VRR Curve cap would only increase when E&AS Revenues equal

[57] PJM OATT, Attachment DD at section 5.10(a).

[58] *See* PJM Filing, Attachment E (2011 RPM Performance Assessment) at 100.

or exceed a value that is one-half of the entire Gross CONE. Under normal or low E&AS Revenue conditions, the VRR Curve will not deviate from its current threshold. Thus, we find that PJM's proposal ensures that reliability in the upcoming delivery year, and investment signals sent three years in advance of the delivery year, are maintained most efficiently in all circumstances.

E. Removal of the 2.5 Percent Hold-Back from the Minimum Requirements

86. PJM notes that, under its existing OATT, the hold-back defers a portion of the resources that PJM would otherwise be required to seek to procure in the base residual auction, in order to procure this capacity from shorter lead-time resources in its incremental auctions for the same delivery year, to the extent required.[59] By deferring a portion of the procurement target, the hold-back acts to shift the VRR Curve to the left by 2.5 percent of the PJM reliability requirement. PJM provides that, since the incremental auctions range from two years to four months before the delivery year, the hold-back helps ensure that capacity sellers that are not able to commit their resources three years in advance have an opportunity to commit to PJM closer to the delivery year.

87. In addition to applying the hold-back to the VRR Curve, PJM applies the hold-back to the recently established Minimum Annual Resource Requirement and the Minimum Extended Summer Resource Requirement (collectively, Minimum Requirements).[60]

88. In order to ensure reliability, PJM recently established three different categories of resources for the RPM auctions. First, Annual Resources include generation, Annual Demand Resources,[61] and energy efficiency resources that are available on a year-round basis.[62] Second, Extended Summer Demand Resources are available May through

[59] *See* PJM OATT, Attachment DD at section 2.65A. A precursor program, terminated as of the 2012-13 planning year, subtracted the Interruptible Load for Reliability forecast from the reliability requirement. *See* March 2009 Order, 126 FERC ¶ 61,275 at P 83.

[60] *See PJM Interconnection, L.L.C.*, 134 FERC ¶ 61,066 (2011) (Demand Resource Products Alternative Order).

[61] Annual Demand Resources are available for an unlimited number of interruptions for at least a ten-hour duration. Reliability Assurance Agreement Among Load Serving Entities in the PJM Region (RAA), Article 1 at section 1.1A (Annual Demand Resource).

[62] PJM OATT, Attachment DD at section 2.1B (Annual Resource).

October for an unlimited number of interruptions and for at least a ten-hour duration during such interruptions.[63] Third, Limited Demand Resources must be available for interruption at least ten times during the summer period of June through September in the delivery year and must be capable of maintaining each such interruption for at least a six-hour duration.[64]

89. PJM established the Minimum Requirements to resolve the operational constraints associated with its pre-existing demand resource[65] product (termed, Limited Demand Resource). The Minimum Requirements serve as targets in the capacity auctions for specific types of resources that PJM needs to commit for the delivery year. Specifically, the Minimum Annual and Minimum Extended Summer Resource Requirements represent the minimum amount of Annual Resources and Annual Resources/Extended Summer Demand Resources, respectively, that PJM will seek to procure in the capacity auctions. The Minimum Annual Resource Requirement is calculated by subtracting the hold-back and the Extended Summer Demand Resource Target[66] from the PJM reliability requirement. The Minimum Extended Summer Resource Requirement is calculated by subtracting the hold-back and the Limited Demand Resource Target[67] from the PJM reliability requirement.

90. Although PJM calculates Limited and Extended Summer Demand Resource "targets," the amount of Limited and Extended Summer Demand Resources that are actually procured in the capacity auctions may exceed the applicable targets once the two Minimum Requirements are met. Meeting the two Minimum Requirements, while

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[63] RAA, Article 1 at section 1.20C (Extended Summer Demand Resource).

[64] *Id.* at section 1.43A (Limited Demand Resource).

[65] A demand resource is a resource with a demonstrated capability to provide a reduction in demand or otherwise control load and that offers and clears load reduction capability in a base residual auction or incremental auction or that is committed through a Fixed Resource Requirement Capacity Plan. *Id.* at section 1.13 (Demand Resource).

[66] The Extended Summer Demand Resource Reliability Target is the maximum amount of Extended Summer Demand Resources determined by PJM, to be consistent with the maintenance of reliability, that shall be used to calculate the Minimum Annual Resource Requirement. PJM OATT, Attachment DD at section 2.24C.

[67] The Limited Demand Resource Reliability Target is the maximum amount of Limited Demand Resources determined by PJM, to be consistent with the maintenance of reliability, that shall be used to calculate the Minimum Extended Summer Resource Requirement. *Id.* at section 2.36B.

concurrently purchasing Limited Demand Resources and/or Extended Summer Demand Resources above the targets, may occur if the total amount of resources procured in the auctions exceeds the reliability requirement.[68]

91. PJM's auction clearing process selects Annual Resources (generation, Annual Demand Resource and energy efficiency) or Extended Summer Demand Resources out of merit order if needed to procure the Minimum Requirements, similar to the way in which RPM auctions can select resources out of merit order to address locational constraints. In those cases, resources selected to meet the necessary Minimum Requirements will receive an adder to the base RPM price. As stated by PJM in its filing, these rules establish "layered" requirements—first, a minimum amount of Annual Resources; second, on top of the first layer, a minimum requirement for the sum of Annual Resources and Extended Summer Demand Resources; and third, on top of the two previous layers, an overall resource requirement. The hold-back is subtracted from each of these "layers." The Minimum Requirements have only been in effect for one auction—the May 2011 base residual auction for the 2014-15 delivery year.

1. <u>PJM's Proposal</u>

92. PJM is proposing to eliminate the hold-back from the Minimum Requirements because it states that the application of the hold-back to the Minimum Requirements causes adverse unintended consequences.

93. First, PJM states that when Annual Resources or Extended Summer Demand Resources are procured out of economic merit order in order to meet the Minimum Requirements (in other words, when either of the Minimum Requirements acts as a binding constraint, or "binds"), then the more limited resources will be precluded from participating in the incremental auctions. According to PJM, this occurs when one of the Minimum Requirements binds, because PJM will only procure enough of the higher-priced resources (either Annual Resources or Extended Summer Demand Resources) in the base residual auction in order to meet the applicable Minimum Requirement. Because PJM stops procuring these higher-priced resources as soon as it satisfies the Minimum Requirements in the base residual auction (and because a portion of the Minimum Requirements is held-back in an amount equal to 2.5 percent of the reliability requirement), PJM must seek to procure the remaining Minimum Requirement in the incremental auctions.

94. For example, in the last base residual auction for the 2014-15 delivery year, the Minimum Extended Summer Resource Requirement acted as a binding constraint and PJM procured exactly the Minimum Extended Summer Resource Requirement (which, as

[68] *See* Demand Resource Products Alternative Order, 134 FERC ¶ 61,066 at n.32.

currently defined, includes a deduction of 2.5 percent of the reliability requirement). PJM states that in the three incremental auctions for the 2014-15 delivery year, the overall hold-back of 3,708 MW now must come entirely from Annual Resources and Extended Summer Demand Resources in order for PJM to meet the Minimum Extended Summer Resource Requirement for the 2014-15 delivery year. PJM states that this is problematic because, under these circumstances, Limited Demand Resources are not eligible to meet the hold-back capacity in the incremental auctions, even though they are the largest single source of short lead-time resources offered in the latest base residual auction.

95. Thus, according to PJM, the current rules can foreclose the very opportunity that the Commission approved the hold-back to address, which is the opportunity for short lead-time resources (that may not be able to commit three years forward) to participate in RPM auctions closer to the delivery year. PJM states that every base residual auction in which either of the Minimum Requirements bind will follow this same pattern.

96. Second, PJM states that the current hold-back rules can skew the hold-back's resource procurement towards deferral of Annual Resources. PJM states that this is problematic because Annual Resources overwhelmingly consist of generation resources, and generation resources do not have short lead-times for their development. Further, PJM states that the incremental auctions likely do not provide enough time to address the most immediate concern to the PJM region; whether a generator should invest in emissions control retrofits or other capital improvements to ensure that their generators can remain in service. According to PJM, generation owners considering these investments need ample time to permit and install those improvements. PJM asserts that this example underscores the fact that the hold-back requirement was never intended to defer procurement of generation resources. However, according to PJM, the recently implemented hold-back changes likely will have exactly that effect.

97. Third, PJM explains that the Brattle Report also found that the current hold-back rules could suppress prices in the base residual auction for both Annual Resources and Extended Summer Demand Resources. Specifically, PJM states that the Brattle Report compared the megawatt quantity of the hold-back against the quantity of capacity that is not subject to a requirement that it must offer in the base residual auction, and that is not subject to offer price mitigation. PJM states that the Brattle Report made this comparison for each resource category: the quantity of capacity overall in the PJM region, the Annual Resources, and the Extended Summer Demand Resources. PJM explains that the Brattle Report's focus was on the extent to which suppliers have the flexibility to exercise an economic choice to offer into the base residual auction at their desired price, or to sit out the base residual auction and instead offer their desired price in the incremental auctions. For both the Annual Resources and Extended Summer Demand Resources, PJM states that the Brattle Report found that the quantity of capacity not subject to a must-offer or offer-price-cap requirement was significantly less than the hold-back quantity. The

Brattle Report concluded, for example, that sellers of Annual Resources do not have the flexibility to shift their capacity from the base residual auction to the incremental auctions in an amount that matches the hold-back quantity and thus prices are distorted in the base residual auction.

98. According to PJM, its proposal to remove the hold-back from the Minimum Requirements, but not from the overall VRR Curve, will eliminate these three unintended consequences. PJM also states that its filing preserves the flexibility for all types of demand resources to participate in the base residual auction. PJM asserts that, by eliminating the hold-back from the Minimum Requirements, Annual Resources (including Annual Demand Resources) and Extended Summer Demand Resources will have increased opportunities to clear in the base residual auctions.

99. In addition, PJM states that under its proposal, Limited Demand Resources will still have ample opportunities to commit as PJM capacity in the base residual auction. Specifically, PJM states that the level of Limited Demand Resources that are committed in the base residual auction is a function of price. In addition, PJM states that demand resource providers can aggregate end-use customers that might individually qualify only as Limited Demand Resources into resources that in combination meet the standards for Extended Summer or Annual Demand Resources. Indeed, states PJM, prospective capacity market sellers demonstrated in the last base residual auction that they can qualify a substantial part of their reduction capability as Annual or Extended Summer Demand Resources. According to PJM, over half of the demand resource quantities offered were "coupled" offers that could qualify as either Limited Demand Resources or as one or more of the other, less limited, resource types.

2. **<u>Protests and Comments</u>**

100. AEP-Dayton support PJM's recommendation that the 2.5 percent hold-back be removed from the Minimum Requirements. EPSA, P3, PSEG, and the IMM also support PJM's proposal, but only as an interim solution; these intervenors argue that the overall 2.5 percent hold-back that is applied to the VRR Curve should also be eliminated. EPSA adds that the overall hold-back that is applied to the VRR Curve results in under-procurement of capacity. P3 argues that systematically under-procuring capacity distorts price signals that are necessary to efficiently clear the market and ensure reliability, while also overtly discriminating between classes of capacity resources. The IMM provides data, showing that the overall hold-back to the VRR Curve has historically resulted in lower clearing prices and quantities. The IMM further states that eliminating the hold-back is not counter to the interests of demand resources, as the vast majority of these resources clear in the base residual auction where prices have been substantially higher than in the incremental auctions.

101. By contrast, ODEC, *et al.* agree with PJM that the overall hold-back on the VRR Curve should be retained because it accommodates short lead-time resources, reduces the risk of over-procurement with load forecast adjustments, and (based on the findings of the Brattle Report) has not been shown to cause price suppression.

102. Consumer Advocates, Demand Response Supporters, Rockland, and ODEC, *et al*. oppose PJM's proposal to remove the 2.5 percent hold-back from the Minimum Annual and Extended Summer Resource Requirements. In addition, Consumer Advocates and Demand Response Supporters argue that the hold-back amount should not only be applied to demand response resources, but should provide opportunities for the participation of all short lead-time resources.[69] Consumer Advocates and Demand Response Supporters argue that, by limiting the hold-back to a certain type of demand response, PJM is inhibiting resource-on-resource competition, as envisioned by the March 2009 Order. Consumer Advocates and Demand Response Supporters add that the Commission has also previously considered, but rejected, arguments that Limited Demand Resources should be singled-out for purposes of applying the hold-back.[70] Consumer Advocates and Demand Response Supporters also assert that while the Commission, in the March 2009 Order, encouraged demand resource participation in the base residual auction, PJM's proposal, in this proceeding, would reduce demand for Limited Demand Resources.

103. Consumer Advocates, Demand Response Supporters, and Viridity argue that PJM's proposal effectively eliminates Limited Demand Resources as competitors to other types of capacity resources in the base residual auction and forces Limited Demand Resources into lower value incremental auctions, thus reducing compensation opportunities. Viridity argues that PJM's proposal to protect the ability of Limited Demand Resources to clear in the incremental auctions is of little comfort when the incremental auctions nearly always produce prices substantially below the price established in the base residual auction. Consumer Advocates and Demand Response Supporters add that, historically, PJM's load forecasts have decreased from the base residual auctions to the incremental auctions, which substantially diminishes or eliminates the 2.5 percent hold-back and, under PJM's proposal, results in minimal Limited DR participation.

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[69] *See* Consumer Advocates and Demand Response Supporters protest at 4 (citing March 2009 Order, 126 FERC ¶ 61,275 at P 68 and n.42).

[70] *See* Demand Resource Products Alternatives Order, 134 FERC ¶ 61,066, at P 53-54.

104. Consumer Advocates and Demand Response Supporters argue that PJM's proposal rests on faulty and incomplete analyses. Contrary to PJM and the Brattle Report's analysis, Consumer Advocates and Demand Response Supporters assert that market participants are able to shift purchases out of the base residual auctions, in an amount that exceeds the hold-back, if price suppression is anticipated.

105. Consumer Advocates and Demand Response Supporters contend that, under PJM's proposal, the Minimum Requirements would be increased and would become much more important determinants of auction results. Consumer Advocates and Demand Response Supporters explain that there is no sloped demand curve for these products and the auction will satisfy any binding constraints related to the Minimum Requirements at any price up to the maximum price on the VRR Curve. Consumer Advocates and Demand Response Supporters state that when the Commission approved the sloped demand curve aspect of the RPM design, the Commission identified certain benefits of this approach, including enhanced price stability and reduced incentives to exercise market power.[71] Consumer Advocates and Demand Response Supporters believe that PJM and PJM's stakeholders have not sufficiently analyzed the impact of PJM's proposed change on RPM price formation and should gain additional experience with the hold-back before considering such a significant step.

106. Consumer Advocates and Demand Response Supporters argue that PJM's proposal could unnecessarily raise capacity prices in neighboring regions. According to Consumer Advocates and Demand Response Supporters, by requiring a larger quantity of Annual Resources and Extended Summer Demand Resources, PJM's proposal will result in a greater quantity of imports from neighboring regions, rendering this capacity unavailable to these markets, and raising the cost of capacity in these regions.

107. Consumer Advocates, Demand Response Supporters, Viridity and Rockland argue that PJM does not have sufficient experience with the new types of demand resources to appropriately evaluate the participation of these resources, since Annual and Extended Summer Demand Resources were only introduced in the May 2011 auction. Viridity argues that there is no justification to reverse OATT changes that the Commission has previously determined to be just and reasonable.[72] Rockland requests that the Commission order PJM to maintain the hold-back, but monitor the impact on capacity

[71] Consumer Advocates and Demand Response Supporters comments at 10 (citing *PJM Interconnection, L.L.C.*,115 FERC ¶ 61,079, at P 104 (2006)).

[72] *See* Viridity protest at 2 (citing Demand Resource Products Alternative Order, 134 FERC ¶ 61,066).

prices and participation of Limited Demand Resources to determine if revision is necessary, once further experience is gained.

108. Consumer Advocates, Demand Response Supporters, Viridity, and ODEC, *et al*. argue that the elimination of the hold-back was not sufficiently vetted in the stakeholder process. They argue that PJM's proposal also ignores several interrelated demand response issues (such as efficient dispatch, changes to the demand resource target calculations, measurement and verification, and others) that are currently in discussion with stakeholders and that directly impact the role of demand resources in the RPM auctions.

3. <u>Intervenors' Answers</u>

109. P3 and the IMM argue that intervenors have not made a compelling argument that the overall 2.5 percent hold-back to the VRR Curve should be maintained. P3 supports the IMM's position that the overall hold-back to the VRR Curve is unjust, unreasonable, and unduly discriminatory. P3 and the IMM challenge the argument made by Consumer Advocates and Demand Response Supporters that the hold-back cannot cause price suppression. The IMM responds that shifting the demand curve reduces the price in the base residual auction and that it is irrelevant to consider whether supply is subject to a must-offer requirement in the base residual auction. P3 further argues that the Consumer Advocates and Demand Response Supporters have made no showing that PJM's load forecast is inherently biased.

4. <u>PJM's Answer</u>

110. PJM responds to the argument made by Consumer Advocates and Demand Response Supporters that the hold-back should operate to accommodate any type of short lead-time resource. PJM agrees that there is no limit on which type of resources can be short lead-time resources. However, PJM argues that, because demand response in general and Limited Demand Resources in particular, represent the majority of short lead-time resources, a market design provision that effectively precludes the largest category of short lead-time resources, i.e., Limited Demand Resources, from participating directly in the incremental auctions, is unreasonable. PJM asserts that under its proposal the hold-back will apply to the total reliability requirement and resources of any type are permitted to clear to satisfy this requirement.

111. PJM also responds to intervenor arguments that, under PJM's proposal, legitimate compensation opportunities for Limited Demand Resources will be reduced. PJM argues, to the contrary, that compensation opportunities will be increased by ensuring that the demand in the subsequent incremental auctions can be satisfied by any resource. PJM adds that Limited Demand Resources will have the opportunity to compete in multiple

ways with Annual Demand Resources and Extended Summer Demand Resources in both the base residual auction and the incremental auctions.

112. PJM also states that its filing only proposes to change the level of the Minimum Requirements; it does not seek to change the fact that there are Minimum Requirements that must be procured independently of the overall PJM reliability requirement, as established in the VRR Curve.

113. PJM responds to the argument made by the Consumer Advocates and Demand Response Supporters that the Brattle Report's price suppression analysis, on which PJM's proposal relies, is flawed to the extent this analysis omits capacity imports, a resource that, according to intervenors, is not subject to mitigation and whose participation in the base residual auction results in sufficient capacity in excess of the hold-back. PJM argues that, under its OATT, both internal and external resources are subject to mitigation.[73]

114. PJM also states that it has not proposed any change to the reduction of the overall hold-back from the VRR Curve and that intervenor arguments relating to the overall hold-back to the VRR Curve are outside the scope of this proceeding.

5. Answer to Answers

115. Consumer Advocates and Demand Response Supporters argue that PJM's proposal will increase prices in the base residual auction, significantly reduce the ability of Limited Demand Resources to meet PJM's capacity needs, and result in lower prices for Limited Demand Resources. In addition, Consumer Advocates and Demand Response Supporters state that PJM inappropriately bases the premise for its changes on price suppression.

116. The IMM responds to PJM and Consumer Advocates and Demand Response Supporters, stating that the hold-back suppresses prices with material impacts to RPM performance that should not be ignored. The IMM states that PJM's filing is in compliance with a required triennial review and that PJM has not adequately defended its claim that elimination of the overall hold-back to the VRR Curve is outside the scope of this proceeding.

6. Commission Determination

117. For the reasons discussed below, we accept PJM's proposal to eliminate the hold-back from the Minimum Requirements, to become effective, as requested, on

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[73] PJM Answer at 34 (citing PJM OATT, Attachment DD at section 6.4(a)).

January 31, 2012. Overall, we find that PJM's proposal strikes an appropriate balance between providing an opportunity for short lead-time resources to participate in the incremental auctions and sending adequate investment signals to long lead-time resources.

118. In an order issued January 31, 2011, the Commission accepted PJM's proposal to establish three different categories of capacity resources.[74] Annual Resources include all resource types, including generation, energy efficiency, and demand resources, that can respond to system needs anytime during the year. Extended Summer Demand Resources are resources that can respond an unlimited number of times from May through October for up to ten hours per interruption. Limited Demand Resources are available June through September for no more than ten interruptions and for no more than six hours per interruption.

119. PJM established Minimum Requirements for Annual Resources and Extended Summer Demand Resources in order to ensure it has sufficient resources when needed to respond to a capacity event and thus help ensure reliability. As a consequence of the filing to establish the three resource categories, in the capacity auction, PJM adjusts the resources that clear the market in order to procure more capacity from either Annual Resources or Extended Summer Demand Resources so as to satisfy the Minimum Requirements for these resources, while procuring less of the other, less available resources. In the case where the Minimum Requirements bind, the Annual Resources and/or Extended Summer Demand Resources will receive higher prices than the Limited Demand Resources. Under its existing OATT, PJM holds back 2.5 of the reliability requirement for Annual Resources and Extended Summer Demand Resources to be procured in the incremental auctions.

120. PJM has explained that the proposed change to the hold-back for Annual Resources and Extended Summer Demand Resources is intended to ensure that it can acquire the generation as well as demand resources necessary to satisfy these requirements. We find this proposal to be just and reasonable. As described above, under PJM's OATT, it must acquire sufficient Annual Resources as well as Extended Summer Demand Resources to ensure it has sufficient resources when needed to respond to a capacity event. PJM has provided sufficient evidence to show that deferring the acquisition of these resources in the amount of the hold-backs that are currently applied to specific resource categories could lead to a situation in which it is unable to procure these resources in the incremental auctions because these resources often require long lead-times to construct. As PJM provides, Annual Resources overwhelmingly consist of generation resources that do not have short lead-times. According to the results of the

[74] *See* Demand Resource Products Alternative Order, 134 FERC ¶ 61,066.

May 2011 base residual auction for the 2014-15 delivery year, PJM will need to procure 3,708 MW of Annual Resources and/or Extended Summer Demand Resources in the incremental auctions. Under PJM's current OATT, each time one of the Minimum Requirements binds in the base residual auction, it will be forced to forego procurement of either Annual Resources or Annual Resources and Extended Summer Demand Resources.

121. We find that PJM's proposal makes certain that the hold-back serves the purpose in the capacity auctions for which it was originally intended. As defined in the Commission's March 2009 Order, the hold-back was created to allow for greater participation, as close as possible to the delivery year, of short lead-time resources.[75] According to the March 2009 Order, these short lead-time resources include: demand response, energy efficiency resources, upgrades to existing generation units and imports of capacity from areas outside of PJM.[76] PJM's proposal will continue to defer 2.5 percent of the total resources for the incremental auction and this overall hold-back to the VRR Curve can be met by any of the resource categories, including Limited Demand Resources.

122. We find that PJM's proposal provides a just and reasonable solution to an undesirable outcome that can be caused by the current application of the hold-back mechanism—namely, that long lead-time resources needed to satisfy the Minimum Requirements may be forced into incremental auctions where they have inadequate time for development. We also find that PJM's proposal is consistent with the current application of the Minimum Requirements, which already requires that PJM procure fewer resources with limited availability if needed to meet the Minimum Requirements.

123. Contrary to the intervenors' arguments, demand resources, as a whole, will not be at a disadvantage under PJM's proposal. Since the May 2011 base residual auction for the 2014-15 delivery year, three demand resource products have been able to compete to provide capacity in the auctions: Limited Demand Resources, Extended Summer Demand Resources, and Annual Demand Resources. Each of these resources is able to compete on an economic basis in the incremental auctions, so long as the Minimum Requirements do not bind in the auction. If either of the Minimum Requirements binds, then PJM will forego offers from resources with greater limitations in order to procure resources with greater availability. However, the resources that can satisfy the requirement for greater availability include Extended Summer Demand Resources and Annual Demand Resources.

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[75] *See* March 2009 Order, 126 FERC ¶ 61,275 at P 84.

[76] *Id.* at n.42.

124. According to PJM's filing, when modeling its proposal, PJM found that, although its proposal would have resulted in fewer Limited Demand Resources clearing in the last base residual auction, an approximately equivalent amount of Extended Summer Demand Resources would have been procured in place of the Limited Demand Resources and would have received higher prices based on the increased level of service provided.[77]

125. Moreover, there are a number of ways that Limited Demand Resource providers can accommodate PJM's proposal and increased need to procure resources with greater availability. For instance, a Limited Demand Resource in PJM can submit a coupled offer, which will increase its ability to compete as an Annual or Extended Summer Demand Resource in the capacity auction.[78] Specifically, a Limited Demand Resource can submit separate but coupled sell offers in the auction that would allow it to qualify as either an Extended Summer Demand Resource or Annual Demand Resource. If it is economically efficient and needed to meet the Minimum Requirements, PJM would accept the resource as an Extended Summer Demand Resource or Annual Demand Resource. In addition, while some demand resources can only offer as a Limited Demand Resource, an aggregator could combine those resources to produce an Annual Demand Resource, for instance, that would be eligible to meet the Minimum Requirement.

126. In their protest, the Consumer Advocates and Demand Response Supporters argue that PJM's proposal inappropriately increases PJM's reliance on the Minimum Requirements and results in deviations from the sloped VRR Curve. However, we do not find PJM's proposal to be in contrast with the current RPM design. Under PJM's proposal, prices will separate by resource type if additional resources are needed to meet the Minimum Requirements. As is the case in the current OATT, any deviation from the sloped demand curve under PJM's proposal will be caused by the requirement to meet the reliability objectives of the PJM region, as established by the Minimum Requirements.

127. We reject, as unsupported and speculative, the arguments made by Consumer Advocates and Demand Response Supporters that PJM's proposal could unnecessarily raise capacity prices in neighboring regions. As noted above, PJM's proposal is necessary to provide efficient signals to long lead-time resources. In addition, PJM's proposal does not propose to change the total amount of resources that PJM seeks to procure, as provided by the overall capacity requirement, for the PJM region in a given delivery year.

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[77] PJM Filing, Attachment C (affidavit of Dr. Paul M. Sotkiewicz) at 9.

[78] PJM OATT, Attachment DD at section 5.6.1(e).

128. We also reject the arguments made by intervenors that PJM's proposal is unjust and unreasonable because it inhibits resource-on-resource competition in the base residual auction. PJM's OATT already provides for the decreased procurement of certain resource groups when other resources must be procured to meet the Minimum Requirements. As the Commission has found:

> As long as the auction produces more than these minimum requirements, all resources accepted in the auction, including demand resources, are treated identically and are paid the same price. However, if one or both of the minimum requirements are not met, PJM will procure sufficiently more from either annual resources (i.e., generation, Annual [Demand Resources] and energy efficiency) or Extended Summer [Demand Resources] so as to satisfy the minimum requirements, *while procuring less of the other resources*.[79]

129. Finally, we reject intervenors' argument that PJM's proposal is a sufficient interim mechanism, but that the overall hold-back on the VRR Curve should be eliminated because it results in the under-procurement of capacity and price suppression. PJM has proposed the elimination of the hold-back from the Minimum Requirements, not the overall hold-back that is applied to the VRR Curve. As such, we reject intervenors' arguments as outside the scope of PJM's filing in this proceeding.

F. New Entry Price Adjustment

130. The New Entry Price Adjustment is intended to allow providers of new resources in locational deliverability areas to "lock in" prices for three years under certain special qualifying conditions indicating that the resource addition would severely reduce the locational deliverability area clearing price, thus making entry less likely.[80]

1. PJM's Proposal

131. PJM proposes to clarify the rules, under its OATT,[81] as applicable to the New Entry Price Adjustment by: (i) clarifying that to be eligible for the New Entry Price Adjustment treatment, a new entry resource must be the marginal offer that sets the clearing price in the first base residual auction; (ii) using more consistent language to

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[79] Demand Resource Products Alternative Order, 134 FERC ¶ 61,066 at P 29 (emphasis added).

[80] *See* PJM filing, Attachment E (2011 RPM Performance Assessment) at 153.

[81] *See* PJM OATT, Attachment DD at section 5.14(c).

recognize the possibility of minimum block quantities and more clearly describe their treatment in the first and subsequent delivery years; (iii) describing the capacity level on the VRR Curve to which the New Entry Price Adjustment sell offer must move the clearing point; (iv) clarifying that the New Entry Price Adjustment plant's sell offers in subsequent years must be at the lesser of its sell offer in the first year, or 90 percent of the Net CONE in that first year; (v) confirming that the New Entry Price Adjustment plant's failure to submit a sell offer in the second year that complies with the relevant New Entry Price Adjustment conditions prevents the seller from seeking the New Entry Price Adjustment for that resource in the third year; and (vi) dividing the New Entry Price Adjustment provision into additional numbered subsections for greater clarity and ease of reference.

132. PJM notes that its OATT currently provides for a date certain for PJM to: (i) conclude a stakeholder process on possible New Entry Price Adjustment changes addressing the issue of whether New Entry Price Adjustment provides adequate incentives for the addition of new capacity to the PJM region; and (ii) file any resulting OATT changes deemed necessary by PJM.[82] PJM states that, based on the deliberations of its stakeholders, it is proposing to replace the currently effective provision with a new requirement providing that: "[o]n or before August 1, 2012, PJM shall file with FERC under FPA section 205, as determined necessary by PJM following a stakeholder process, tariff changes to establish a long-term auction process as a not unduly discriminatory means to provide adequate long-term revenue assurances to support new entry, as a supplement to or replacement of this New Entry Price Adjustment."[83]

2. <u>Protests and Comments</u>

133. Intervenors generally support PJM's commitment to develop a voluntary, non-discriminatory, long-term auction to supplement or replace New Entry Price Adjustment. PSEG, for example, states that such a mechanism would bring willing buyers and sellers together and would allow capacity arrangements to extend beyond the current three-year forward commitment, thus advancing the benefits of the existing RPM framework. EPSA also supports such a measure in concept and states that it is exploring ways to ensure these markets provide sufficient, accurate market signals to ensure reliability. AEP-Dayton, Consumer Advocates, and P3 also voice general support for this proposal. Calpine, however, believes that PJM's proposal does not go far enough. It argues that the long-term auction should not be voluntary because states already have a means to submit Requests for Proposals to fulfill capacity needs outside of the PJM market.

[82] *See id.*

[83] *Id.* at section 5.14(c)(8).

3. PJM's Answer

134. PJM requests that the Commission not pre-judge what should be in the long-term voluntary auction, and instead, await a concrete proposal from PJM following the stakeholder process on this issue.

4. Commission Determination

135. We accept PJM's proposed New Entry Price Adjustment clarifications, to become effective, as requested, on January 31, 2012. At this time, we do not find that prejudging the forthcoming stakeholder process is necessary, and we will therefore not require here, as Calpine requests, that any such long-term auction must be mandatory.

G. Minimum Offer Price Rule

136. PJM states that, under its OATT, Gross CONE estimates are used for both the VRR Curve and in connection with the Minimum Offer Price Rule, a mitigation mechanism that analyzes the competitiveness of a sell offer from a combustion turbine, or combined cycle, plant as compared to the net asset class Gross CONEs for these plants.[84]

1. PJM's Proposal

137. PJM states that, in the Brattle Report, updated Gross CONE values were calculated for both combustion turbine and combined cycle plants. Accordingly, PJM proposes to update the net asset class Gross CONE values applicable to the Minimum Offer Price Rule, for both a combined cycle and combustion turbine plant, as recommended by the Brattle Report. PJM notes that these updated values will be equal to the values identified above, as applicable to a combustion turbine plant. PJM states that the updated values for a combined cycle plant will be: $168,200/MW-year, for CONE Area 1; $147,600/MW-year, for CONE Area 2; $162,200/MW-year, for CONE Area 3; $161,800/MW-year, for CONE Area 4; and $143,800/MW-year, for CONE Area 5.

138. PJM also proposes to revise the heat rate stated for the combined cycle plant to match the more efficient heat rate provided by the latest turbine model. In addition, PJM notes that its proposal to take into account both day-ahead commitments and real-time dispatch for determining revenues, will apply to the Net CONE values utilized in

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[84] The Minimum Offer Price Rule was established in 2006 to address the concern that some market participants might have an incentive to depress market clearing prices by offering supply at less than a competitive level. *See PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 at P 103-104.

connection with the Minimum Offer Price Rule, in addition to its proposed use in connection with the VRR Curve.

2. **Protests and Comments**

139. GenOn urges the Commission to reject PJM's proposed updates to the Gross CONE values, as used in connection with the Minimum Offer Price Rule. GenOn claims that PJM understated the costs of a combined cycle facility by approximately 45 percent and 42 percent in CONE Areas 1 and 2, respectively. GenOn argues that the Brattle Report, on this issue, offers no supporting testimony explaining the assumptions, methodologies or data sources on which it relies. GenOn asserts that this lack of adequate explanation justifies rejection of the capital cost component of PJM's proposed Gross CONE values. GenOn urges the Commission to utilize the values for the combined cycle plant as developed by GenOn's consultant. In the alternative, GenOn requests that the commission set PJM's proposed updates for hearing and/or technical conference procedures and in doing so, suspend PJM's filing for the maximum five month period.

140. LS Power requests that the Commission direct PJM to recalculate and revise the Gross CONE value for a combined cycle unit to account for property taxes and owner's contingency.

141. PSEG also opposes PJM's proposed changes to the combined cycle Gross CONE values for CONE Area 1. PSEG argues that these proposed values fail to capture all of the construction costs that are included in building new generation. Specifically, PSEG claims the combined cycle Gross CONE estimates for CONE Area 1 appear to be approximately 29 percent understated.

142. Finally, ODEC, *et al.* argue that, given certain concerns expressed in the Brattle Report, PJM should have taken up the Minimum Offer Price Rule self-supply issues in its filing in this proceeding or at least informed the Commission of a plan to address these issues by a date-certain.

3. **Commission Determination**

143. PJM proposes to use the same updated combustion turbine unit Gross CONE values, discussed above, and new combined cycle unit Gross CONE values (the Brattle Report Gross CONE values) to update the asset class cost estimates for such units, as applicable to the Minimum Offer Price Rule. For the reasons discussed in section IV.A of this order, above, regarding PJM's proposed Gross CONE values, we find that material issues of disputed fact have been raised regarding PJM's asset class cost estimates. Accordingly, we accept for filing these updated values, as they will apply to the Minimum Offer Price Rule, subject to refund and a five month suspension, to become

effective the earlier of June 30, 2012, or a date set by a subsequent Commission order in this proceeding.[85] As stated above in section IV.A, while we are setting this matter for trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced.

144. With regards to PJM's proposal to take into account both day-ahead commitments and real-time dispatch for determining E&AS Revenues for combined cycle units, as connected with the Minimum Offer Price Rule, we accept PJM's proposal, to become effective, as requested, on January 31, 2012, for the reasons discussed in section IV.C of this order.

145. Finally, we dismiss intervenor protests regarding self-supply issues as outside the scope of this proceeding. PJM filed its proposal pursuant to section 205 of the FPA and has not proposed OATT revisions regarding the treatment of self-supply under the Minimum Offer Price Rule.

H. Additional Issues

1. Adequacy of the Brattle Report

146. Consumer Advocates believe that a number of other changes to RPM, not included in PJM's proposal, are needed. Consumer Advocates request that the Commission: (i) take note that some stakeholders believe strongly that the RPM performance assessment lacked analysis of some key issues, including analyses on the accuracy of RPM prices and costs; (ii) encourage PJM to pursue additional stakeholder discussions related to RPM in 2012; and (iii) encourage PJM to respond to stakeholders' requests for additional data that will address some of the shortcomings in the RPM performance assessment. The Maryland Commission protests PJM's failure to consider and address specific concerns previously articulated by the IMM about RPM.

147. PJM clarified in its answer that it has already initiated a stakeholder process for longer-term RPM issues. PJM states that it is committed to working with stakeholders to address remaining areas in RPM that may benefit from consideration of possible changes.

148. While we dismiss Consumer Advocates' and Maryland Commission's comments as outside the scope of PJM's proposed changes to RPM, we support a continued stakeholder process on RPM and, to the extent possible, the development of a more efficient and accurate RPM construct.

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[85] PJM therefore will be required to use its existing just and reasonable Gross CONE values, as adjusted by the Handy-Whitman Index, for the May 2012 base residual auction, which occurs prior to June 30, 2012.

2. Compliance Requirements

149. As described above, some sections of PJM's OATT are accepted to become effective January 31, 2012, some sections are rejected and other sections have been accepted and suspended to become effective June 30, 2012. All of these sections, however, are contained in only three PJM OATT records: OATT Attachment DD.2. Definitions, version 8.0.0; OATT Attachment DD.5.10 Auction Clearing Requirements, version 7.0.0; and OATT Attachment DD.5.14 Clearing Prices and Charges, version 6.0.0. PJM is required to make two separate compliance filings so its OATT reflects the effective provisions as of the applicable effective dates.

150. First, PJM is required to make a compliance filing within 30 days of the date of this order with a proposed effective date of January 31, 2012 for all three OATT records to reflect the elimination of those sections that have been rejected and the removal of the provisions that have been suspended. This compliance filing will establish the effective OATT provisions as of January 31, 2012.

151. Second, PJM is required to make a separate compliance filing 30 days from the date of this order with a proposed effective date of June 30, 2012 to OATT Attachment DD.5.10 Auction Clearing Requirements, version 7.0.0, that will reflect the changes required above plus the OATT provisions that have been suspended.[86] This compliance filing is needed to remove the rejected provisions from this section and will establish the effective date for the suspended provisions as of June 30, 2012. Because the provisions in Attachment DD.2 and Attachment DD.5.14 as filed by PJM on December 1, 2011 (with no revisions) will become effective as of June 30, 2012, a second compliance filing is not needed for these sections.

The Commission orders:

(A) Pursuant to the authority contained in sections 205 and 206 of the Federal Power Act, PJM's filing, addressing updates to Gross CONE, with respect to combustion turbine and combined cycle plants, is hereby accepted and suspended for a period up to five months, 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 and a further order, as discussed in the body of this order.

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[86] Because PJM will be re-filing the same OATT record (OATT Attachment DD.5.10 Auction Clearing Requirements) in both filings, two versions of that OATT record should not be included in the same compliance filing to ensure that the correct OATT record becomes effective at the appropriate times.

(B) PJM's OATT revisions addressing region-wide Gross CONE and region-wide Net CONE are hereby rejected, as discussed in the body of this order.

(C) Unless otherwise discussed in this order, PJM's proposed OATT revisions are hereby accepted for filing, effective January 31, 2012, subject to the submission of a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning PJM's proposals addressing Gross CONE valuations, as applicable to the VRR Curve and the Minimum Offer Price Rule . However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order. Such settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five days of the date of this order.

(F) Within 30 days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge**,** shall, within 15 days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Intervenors

American Electric Power Service Corporation and
The Dayton Power and Light Company
American Municipal Power, Inc.
Baltimore Gas and Electric Company
Calpine Corporation
Commonwealth Chesapeake Company, LLC
Comverge, Inc.
Constellation Energy Commodities Group, Inc and
Constellation New Energy, Inc.
Delaware Division of the Public Advocate
District of Columbia Office of People's Counsel
Dominion Resources Services, Inc. and
Dominion Energy Marketing, Inc.
Dynegy Power Marketing, LLC *
Edison Mission Energy
Electric Power Supply Association
EnergyConnect, Inc.
EnerNOC, Inc.
Exelon Corporation
FirstEnergy Companies
GenOn Parties
Hess Corporation
Illinois Commerce Commission
Illinois Municipal Electric Agency *
Indiana Municipal Power Agency
Indiana Utility Regulatory Commission
LS Power Associates, L.P.
Maryland Office of People's Counsel
Maryland Public Service Commission
Monitoring Analytics, LLC
NRG Companies
New Jersey Board of Public Utilities
New Jersey Division of Rate Counsel
NextEra Energy Generators
North Carolina Electric Membership Corporation
Nucor and Steel Dynamics
Old Dominion Electric Cooperative
Pennsylvania Office of Consumer Advocate
Pennsylvania Public Utility Commission

PJM Industrial Customer Coalition
PJM Power Providers Group
PSEG Companies
Public Power Authority of New Jersey
Rockland Electric Company
Southern Maryland Electric Cooperative
Viridity Energy, Inc.

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* motion to intervene out-of-time

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