

174 FERC ¶ 61,036
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James P. Danly, Chairman;
Neil Chatterjee, Richard Glick,
and Allison Clements.

Calpine Corp.; Dynegy Inc.; Eastern
Generation, LLC; Homer City Generation,
L.P.; NRG Power Marketing LLC; GenOn
Energy Management, LLC; Carroll County
Energy LLC; C.P. Crane LLC; Essential
Power, LLC; Essential Power OPP, LLC;
Essential Power Rock Springs, LLC;
Lakewood Cogeneration, L.P.; GDF SUEZ
Energy Marketing NA, Inc.; Oregon Clean
Energy, LLC; and Panda Power Generation
Infrastructure Fund, LLC

Docket Nos. EL16-49-004

v.

PJM Interconnection, L.L.C.

PJM Interconnection, L.L.C.

ER18-1314-007
ER18-1314-008

PJM Interconnection, L.L.C.

EL18-178-004
(Consolidated)

ORDER ON COMPLIANCE AND CLARIFICATION

(Issued January 19, 2021)

1. On November 13, 2020, PJM Interconnection, L.L.C. (PJM) submitted proposed revisions to the to the PJM Open Access Transmission Tariff (Tariff) in compliance with the requirements of the Commission's October 15, 2020 order,¹ along with a motion, pursuant to Rule 212 of the Commission's Rules of Practice and Procedure,² to reinstate the Tariff deadline for submission of demand resource sell offer plans. In this order, we

¹ *Calpine Corp. v. PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,061 (2020) (Compliance Order).

² 18 C.F.R. § 385.212 (2020).

accept PJM's compliance filing, in part, and reject it in part, as explained below, effective October 15, 2020, as requested. We also grant PJM's motion to reinstate the Tariff deadline for demand resource sell offer plan submission.

2. On October 30, 2020, pursuant to Rule 212 of the Commission's Rules of Practice and Procedure,³ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (Market Monitor), submitted a request for clarification of the Compliance Order. As discussed below, we deny the request for clarification.

I. Background and Compliance Filing

3. In 2018, the Commission acted on a complaint filed by Calpine Corporation and additional generation entities⁴ and a filing by PJM to amend its Tariff, finding that PJM's Tariff was unjust and unreasonable because it failed to protect the integrity of competition in PJM's wholesale capacity market against unreasonable price distortions and cost shifts caused by out-of-market support to keep existing uneconomic resources in operation, or to support the uneconomic entry of new resources.⁵ Following a paper hearing, the Commission issued an order on December 19, 2019 determining a just and reasonable replacement rate and directing PJM to submit a compliance filing with Tariff revisions to implement the replacement rate.⁶ The order found that any resource, new or

³ 18 C.F.R. § 385.212.

⁴ Calpine Corporation was joined by Dynegy Inc., Eastern Generation, LLC, Homer City Generation, L.P., NRG Power Marketing LLC, GenOn Energy Management, LLC, Carroll County Energy LLC, C.P. Crane LLC, Essential Power, LLC, Essential Power OPP, LLC, Essential Power Rock Springs, LLC, Lakewood Cogeneration, L.P., GDF SUEZ Energy Marketing NA, Inc., Oregon Clean Energy, LLC and Panda Power Generation Infrastructure Fund, LLC.

⁵ *Calpine Corp. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (2018).

⁶ *Calpine Corp. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239 (2019) (December 2019 Order), *order on reh'g*, 171 FERC ¶ 61,035 (2020) (Rehearing Order).

existing, that receives or is entitled to receive a State Subsidy,⁷ and that does not qualify for an exemption, should be subject to the Minimum Offer Price Rule (MOPR).⁸

4. On March 18, 2020 and June 1, 2020, PJM submitted proposed revisions to its Tariff. In the Compliance Order, the Commission accepted PJM's compliance filings, in part, effective October 15, 2020, rejected PJM's compliance filings, in part, granted waiver regarding certain capacity auction Tariff deadlines, and directed PJM to submit a further compliance filing.⁹ PJM submitted the additional compliance filing on November 13, 2020.

5. PJM states that its November 13 filing contains proposed modifications to its Tariff regarding application of the MOPR to comply with the directives of the Compliance Order.¹⁰ PJM requests that the Tariff revisions contained in its compliance filing be effective as of October 15, 2020.¹¹

II. Notice, Responsive Pleadings, and Procedural Issues

6. Notice of PJM's compliance filing was published in the *Federal Register*, 85 Fed. Reg. 74,337 (Nov. 20, 2020) with comments due on or before December 4, 2020. The Organization of PJM States, Inc. (OPSI) submitted a timely protest. On December 11, 2020, as amended on December 14, 2020, PJM filed a motion for leave to answer and an answer to OPSI's protest. On December 18, 2020, OPSI submitted a motion for leave to answer and answer in response to PJM's answer.

⁷ State Subsidy shall mean a direct or indirect payment, concession, rebate, subsidy, non-bypassable consumer charge, or other financial benefit that is a result of any action, mandated process, or sponsored process of a state government, political subdivision or agency of a state or an electric cooperatives formed pursuant to state law, and that (1) is derived from or connected to the procurement of (a) electricity or electric generation capacity sold at wholesale in interstate commerce, or (b) an attribute of the generation process for electricity or electric generation capacity sold at wholesale in interstate commerce; or (2) will support the construction, development, or operation of new or existing Capacity Resource; or (3) could have the effect of allowing a unit to clear in any PJM capacity auction. Tariff, OATT Definitions—R-S (State Subsidy Definition).

⁸ December 2019 Order, 169 FERC ¶ 61,239 at P 9.

⁹ Compliance Order, 173 FERC ¶ 61,061 at P 1.

¹⁰ See PJM Transmittal at 2-32.

¹¹ *Id.* at 34.

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2020), prohibits an answer to a protest or answer. We accept the answers filed by PJM and OPSI because they provided information that assisted us in our decision-making process.

III. Discussion

8. With the exception of one provision discussed below regarding the market seller offer cap, we find that PJM's compliance filing is consistent with the directives of the Compliance Order, and we therefore accept PJM's compliance filing, effective October 15, 2020, as requested.

9. We also grant PJM's prospective request to reinstate the Tariff deadline—30 days prior to the capacity auctions—for submission of demand seller offer plans. As PJM explains, when PJM sought waiver of pre-auction Tariff deadlines in its March 18 compliance filing, which the Commission granted,¹² PJM inadvertently listed the pre-auction deadline for submission of demand resource sell offer plans as 21 days prior to the start of the capacity auction. However, PJM avers that the deadline for the submission of demand resource sell offer plans should remain 30 days prior to each auction, consistent with the provisions of the Tariff, Attachment DD-1, section A.5 and parallel provisions of the Reliability Assurance Agreement (RAA), Schedule 6, A.5.¹³

A. Market Seller Offer Cap Provisions

1. Compliance Order

10. The Compliance Order rejected PJM's proposal to mitigate the offer to the higher of the applicable market seller offer cap or offer price floor, finding that revisions to the market seller offer cap had not been a subject of the FPA section 206 proceeding and were therefore beyond the scope of the compliance directive.¹⁴ However, the Commission recognized that sellers may be left without a valid offer under potentially conflicting Tariff provisions in circumstances where the default or resource-specific offer price floor for a particular resource is higher than the market seller offer cap for such resource. The Commission directed that, in such a circumstance, the seller should submit an offer using the MOPR resource-specific review process and directed PJM to make the following underlined change to Attachment DD, section (h-1)(2):

¹² Compliance Order, 173 FERC ¶ 61,061 at P 358.

¹³ PJM Transmittal at 32-33.

¹⁴ Compliance Order, 173 FERC ¶ 61,061 at P 104.

(2) Minimum Offer Price Rule. Any Sell Offer for a New Entry Capacity Resource with State Subsidy or a Cleared Capacity Resource with State Subsidy that does not qualify for any of the exemptions, as defined in Tariff, Attachment DD, sections 5.14(h-1)(4)(8), shall have an offer price no lower than the applicable MOPR Floor Offer Price, unless the applicable MOPR Floor Offer Price is higher than the applicable Market Seller Offer Cap, in which circumstance the Capacity Resource with State Subsidy must seek a resource-specific value determined in accordance with the resource-specific MOPR Floor Offer Price¹⁵ process to participate in an RPM Auction.¹⁶

2. PJM's Compliance Filing

11. In its compliance filing, PJM included the language directed by the Commission, but proposes to add an additional sentence to the Tariff, Attachment DD, section (h-1)(2), stating:

In the event the resource-specific MOPR Floor Offer Price is greater than the applicable Market Seller Offer Cap, the Capacity Market Seller of such Capacity Resource may only submit an offer for such resource equal to the resource-specific MOPR Floor Offer Price into the relevant RPM Auction notwithstanding the provisions in Tariff, Attachment DD, section 6.4(a) or Tariff, Attachment DD, section 6.5(a).¹⁷

12. PJM explains that, despite changes to the methodology for calculating revenue offsets,¹⁸ there can still be instances where the applicable offer price floor exceeds the market seller offer cap for a given resource, such as when a resource is treated as new for

¹⁵ MOPR Floor Offer Price shall mean a minimum offer price applicable to certain capacity resources under certain conditions, as determined in accordance with Tariff, Attach. DD, § 5.14(h) and 5.14(h-1). Tariff, OATT Definitions—L-M-N (MOPR Floor Offer Price).

¹⁶ Compliance Order, 173 FERC ¶ 61,061 at P 105.

¹⁷ PJM Transmittal at 9.

¹⁸ In a separate proceeding, the Commission accepted a new forward-looking methodology for calculating the energy and ancillary services offset. *See PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,134 (2020).

the purposes of the offer price floor but existing for the purposes of the offer cap. PJM asserts that the additional sentence addresses this circumstance.¹⁹

3. OPSI Protest

13. OPSI argues that PJM's proposed additional sentence should be rejected, contending it was not directed by the Compliance Order, has already been rejected by the Commission in this proceeding, and that it is not just and reasonable.²⁰ OPSI argues that the Commission should not permit PJM to accept an offer higher than the applicable market seller offer cap—default or resource specific.²¹ OPSI states that the Commission instead should determine that when the applicable offer price floor exceeds the applicable market seller offer cap, the seller should be permitted to offer at the applicable market seller offer cap. OPSI states that its proposed solution is within the scope of the current proceeding because it involves the offer price floor at which an offer may be submitted.²²

4. PJM Answer

14. PJM argues that OPSI is in error in stating that PJM's instant proposal for addressing circumstances where the offer price floor is higher than the market seller offer cap is the same as that the Commission rejected in the Compliance Order. Rather, PJM explains, the proposal has been modified from allowing sellers to choose whether to offer at the floor or the cap, to limiting the sell offer to the resource-specific offer price floor, as directed by the Commission in the Compliance Order.²³ PJM also reiterates that the additional sentence is necessary to clarify what the sell offer should be in the event the resource-specific offer price floor is greater than the market seller offer cap. PJM explains that the proposed addition ensures the Commission-directed language does not leave to a vacuum as to what constitutes an acceptable sell offer.²⁴

5. OPSI Answer

15. OPSI reiterates its argument that the Compliance Order did not direct PJM to submit a compliance filing that requires the applicable market seller offer cap to be

¹⁹ See PJM Transmittal at 6-7.

²⁰ OPSI Protest at 2-3 (citing Compliance Order, 173 FERC ¶ 61,061 at P 101).

²¹ *Id.* at 3.

²² *Id.* at 3-4.

²³ PJM Answer at 3-4 (citing Compliance Order, 173 FERC ¶ 61,061 at P 105).

²⁴ *Id.* at 4.

exceeded in circumstances where the resource-specific offer price floor is higher than the applicable seller offer cap, which is what PJM's proposed sentence does. According to OPSI, the Commission demonstrated its intent to not permit offers higher than the applicable market seller offer cap, but rather the language directed by the Commission on compliance was aimed at lowering the applicable MOPR Floor Offer price.²⁵ OPSI reiterates that the Compliance Order rejected PJM's prior compliance proposal to alter the market seller offer cap provisions as out of scope of this proceeding.²⁶

6. Commission Determination

16. We reject the additional sentence PJM proposes to add to Attachment DD, section 5.14(h-1)(2) regarding the resource-specific offer price floor and the market seller offer cap because it exceeds the directives of the Compliance Order, without prejudice to PJM submitting the suggested Tariff revision under section 205 of the Federal Power Act if it still thinks it is warranted.²⁷ Within 15 days of the date of this order, PJM is directed to submit a compliance filing removing this sentence from the Tariff.

17. As PJM posits, we acknowledge that circumstances may occur where the applicable offer price floor, whether default or resource-specific, may be higher than the applicable market seller offer cap, either default or resource-specific, such as where a resource is treated as new for the purposes of the MOPR and existing for the purpose of the offer cap. We also agree with PJM that the Compliance Order found that, in these circumstances, the resource must use the resource-specific offer price floor.²⁸

18. Having rejected this sentence in PJM's proposed Tariff, we need not address the rest of OPSI's protest to the inclusion of this sentence. Additionally, the remainder of OPSI's protest is essentially an untimely attempt to relitigate issues already decided by the Commission,²⁹ as OPSI requests that the Commission find that when the applicable offer price floor exceeds the applicable market seller offer cap, the seller should be

²⁵ OPSI Answer at 4-6.

²⁶ *Id.* at 6.

²⁷ 16 U.S.C. § 824d.

²⁸ Compliance Order, 173 FERC ¶ 61,061 at P 105.

²⁹ *See Cal. Indep. Sys. Operator Corp.*, 120 FERC ¶ 61,147, at P 15 (2007) (rejecting certain protests to a compliance filing that should have been raised as a request for rehearing).

permitted to offer at the applicable market seller offer cap.³⁰ The Compliance Order made the opposite finding.³¹

B. Market Monitor Clarification Requests

1. Market Monitor Request

19. The Market Monitor requests clarification of the Compliance Order regarding the definition of fixed resource requirement (FRR) revenue as excluded from the definition of State Subsidy and whether FRR revenue that does not meet the definition should be considered a State Subsidy.³² As an example, the Market Monitor posits if a resource is paid to be part of an FRR plan and the costs are recovered through a non-by-passable consumer charge, or if a resource is paid bonus payments because the FRR entity chose the capacity performance financial option, the former should be considered a State Subsidy and the latter not a State Subsidy.³³

20. The Market Monitor also seeks clarification regarding the Compliance Order's finding regarding replacement transactions within portfolios, asking whether Tariff revisions are needed to address the Commission's finding that sellers may not replace an unsubsidized capacity resource's commitment with that of a subsidized capacity resource within a portfolio.³⁴

2. Commission Determination

21. We deny the Market Monitor's request for clarification regarding FRR revenue. The Compliance Order accepted PJM's proposal regarding excluding FRR revenue from the definition of State Subsidy and acknowledged that FRR entities can be compensated in a variety of ways, including those recognized as State Subsidies.³⁵ The Market Monitor posits broad hypotheticals regarding how this Tariff provision may be applied in

³⁰ OPSI Protest at 3-4.

³¹ See Compliance Order, 173 FERC ¶ 61,061 at P 105.

³² Market Monitor Clarification Request at 2 (citing Tariff, OATT Definition—R-S, State Subsidy definition, § 3(f) (“any revenues for providing capacity as part of an FRR Capacity Plan or through bilateral transactions with FRR Entities” are not a state subsidy)); see Compliance Order, 173 FERC ¶ 61,061 at P 97.

³³ *Id.* at 2-3.

³⁴ *Id.* at 3; see Compliance Order, 173 FERC ¶ 61,061 at P 373.

³⁵ Compliance Order, 173 FERC ¶ 61,061 at P 97.

specific circumstances. We decline to address hypothetical applications at this juncture as PJM will need to evaluate each application based on its specific facts.³⁶

22. We also deny the Market Monitor's clarification request regarding seller portfolios. The Compliance Order did not order changes to the Tariff on this issue. In any event, as explained by PJM in its compliance filing, PJM is making conforming changes to Manual 18, consistent with the Commission's findings on this issue.³⁷

The Commission orders:

(A) PJM's compliance filing is hereby accepted, in part, effective October 15, 2020, subject to further compliance filing, as discussed in the body of this order.

(B) PJM's compliance filing is hereby rejected, in part, as discussed in the body of this order.

(C) PJM's motion to reinstate the Tariff deadline is granted, as discussed in the body of this order.

(D) The Market Monitor's motion for clarification is hereby denied, as discussed in the body of this order.

³⁶ See, e.g., *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890-A, 121 FERC ¶ 61,297, at P 972 (2007) ("The Commission also declines to address here the hypothetical scenarios offered by Idaho Power. Any determination regarding the appropriate use of secondary, network, or point-to-point service will depend upon the facts surrounding the use of such services."); *Interstate Nat. Gas Ass'n of Am.*, 18 FERC ¶ 61,170, at 61,337 (1982) ("While it is likely that exchanges similar to those described by INGAA occur, the status of such exchanges should be decided on the basis of the concrete facts and circumstances of each exchange, and not on principles formulated in advance which are based on the assumption of hypothetical facts. To do otherwise would result in an exercise in speculation which would remove little uncertainty from these transactions.").

³⁷ PJM Transmittal at 29-31, n.60 (citing PJM Manual 18: PJM Capacity Market, § 8.8 (regarding replacement transactions)).

(E) PJM is hereby directed to submit a further compliance filing, within 15 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Glick is concurring with a separate statement attached.
Commissioner Clements is concurring with a separate statement attached.
Commissioner Christie is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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GLICK, Commissioner, *concurring*:

1. Although I concur in the relatively narrow determinations in today's order, I write separately to underscore my continuing disagreement with the conclusions that the Commission has reached throughout this proceeding.¹

¹ See, e.g., *Calpine Corp. v. PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,061 (2020) (Glick, Comm'r, dissenting); *Calpine Corp. v. PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,035 (2020) (Glick, Comm'r, dissenting); *Calpine Corp. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239 (2019) (Glick, Comm'r, dissenting); *Calpine Corp. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (2018) (Glick, Comm'r, dissenting).

For these reasons, I respectfully concur.

Richard Glick
Commissioner

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CLEMENTS, Commissioner, *concurring*:

1. As a new member of the Federal Energy Regulatory Commission, I join this proceeding at the end of its nearly three-year lifespan. The Commission has issued ten orders in this proceeding and numerous parties petitioned for review of the Commission's orders, in both the D.C. Circuit and in the U.S. Court of Appeals for the Seventh Circuit.¹ With a significant investment of time and resources and a voluminous record behind us, all of which has failed to assuage continuing market uncertainty, the narrow issue before the Commission in today's order is whether PJM's filing complies with the Commission's directives in its October 15, 2020 Order.² I concur with the narrow

¹ See, e.g., *Calpine Corp. v. PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,061 (2020); *Calpine Corp. v. PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,035 (2020); *Calpine Corp. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239 (2019); *Calpine Corp. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (2018).

² *Calpine Corp. v. PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,061 (2020)

determinations in today's order because I agree that PJM's filing largely complies with those directives.

2. While I did not participate in the previous orders, I strongly disagree with the imposition of a strict minimum offer price rule in this proceeding. I believe the Commission must look forward, past the false dichotomy presented in this proceeding that implies that we must choose to either "protect" the markets within the Commission's jurisdiction or to accommodate state public policy goals. I hope to immediately engage with my colleagues to work with states, the regional transmission operators, independent system operators and the stakeholder community to re-examine the current capacity market constructs and the interplay between state public policies and Commission-jurisdictional organized whole electric markets.

For these reasons, I respectfully concur.

Allison Clements
Commissioner

(October 15, 2020 Order).