

120 FERC ¶ 61,169
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

PJM Interconnection, L.L.C.

Docket No. ER07-1050-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF
PROVISIONS, SUBJECT TO CONDITIONS, AND
ESTABLISHING TECHNICAL CONFERENCE

(Issued August 17, 2007)

1. On June 19, 2007, PJM Interconnection, L.L.C. (PJM) submitted for filing, pursuant to section 205 of the Federal Power Act (FPA),¹ proposed revisions to the PJM Open Access Transmission Tariff (PJM OATT) and the Reliability Assurance Agreement among Load-Serving Entities in the PJM Region (Reliability Assurance Agreement). PJM states that its proposed revisions are intended to make minor clarifying revisions to the provisions addressing PJM's Reliability Pricing Model (RPM).² PJM has proposed a June 20, 2007 effective date for these tariff sheets. In addition, PJM states that its proposed revisions include a capacity export charge intended to address the effect of capacity withdrawals from PJM. PJM has proposed a June 1, 2008 effective date for these tariff sheets.

2. For the reasons discussed below, we will accept and suspend for a nominal period, subject to conditions and refund, PJM's clarifying revisions to the PJM OATT and Reliability Assurance Agreement, to become effective on June 20, 2007, as requested.³

¹16 U.S.C. § 824d (2000).

²See PJM OATT at Attachment DD.

³These tariff sheets are listed in Appendix A of this order.

We will also establish a technical conference to further examine PJM's proposed capacity export charge and other issues, as identified below.⁴

Background

3. PJM states that on December 22, 2006, the Commission accepted a settlement implementing RPM as a replacement for PJM's pre-existing capacity obligation rules (RPM Settlement).⁵ PJM states that the tariff sheets implementing the RPM Settlement provided that prior to the start of the first RPM delivery year, on June 1, 2007, PJM would conduct the required auction to secure commitments of capacity and determine the price of such capacity for that delivery year. The auction, PJM states, was conducted in April 2007, establishing the capacity commitments and capacity prices for each relevant location for the first delivery year. PJM states that the RPM Settlement also provided that PJM would file separately to address appropriate charges and credits, as necessary, to reflect locational price differences in capacity exported from the PJM region.⁶ PJM also states that, in the course of implementing RPM, PJM discovered that the relevant tariff provisions contained typographical errors and other minor discrepancies, or would benefit from relatively minor revisions or clarifications.

A. PJM's Proposed Minor Clarifying Revisions

4. PJM states that its minor clarifying revisions concern those provisions of the PJM OATT and Reliability Assurance Agreement addressing, among other things: (i) transmission upgrade credit requirements; (ii) the netting of RPM quantities by fixed reliability requirement quantities; (iii) forced outage rates; (iv) transfer of payment obligations; (v) the delisting of capacity resources; (vi) funding payments for qualifying transmission upgrades; (vii) generator cost information; (viii) compliance charges; (ix) demand response; and (x) incremental capacity transfer rights.

⁴ The tariff sheets applicable to PJM's proposed capacity export charge are listed in Appendix B of this order.

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

⁶ *Id.* at P 128 (noting that while the RPM Settlement did not specify how external loads would be charged for capacity exports, PJM had agreed in the RPM Settlement to address this issue in a separate filing). PJM states that in a stakeholder process convened to discuss this issue, PJM agreed to defer the effective date of the capacity export charges and credits to the start of the second RPM delivery year, *i.e.*, June 1, 2008.

1. Transmission Upgrade Credit Requirements

5. PJM proposes to revise section IV.C.d of Attachment Q to the PJM OATT to conform the RPM credit requirements for planned transmission projects to the RPM credits requirements for planned generation projects. PJM states that the RPM Settlement modified Attachment Q to address the credit risks associated with a system upgrade that is committed several years in advance through an RPM auction.⁷ PJM states, however, that for planned Qualifying Transmission Upgrades, Attachment Q only provides for elimination of the RPM credit requirement when the project comes on line. Accordingly, PJM proposes to eliminate this difference by providing that the credit requirement for a planned Qualifying Transmission Upgrade will be reduced by 50 percent at the time that the Interconnection Service Agreement becomes effective.

2. The Netting of RPM Quantities by Fixed Reliability Requirement Quantities

6. PJM states that the current definition for the megawatt quantity targeted for procurement in an RPM auction, as provided in the PJM OATT at Attachment DD, does not explicitly subtract the megawatts of capacity obligations that may be satisfied by a load serving entity by its election of the fixed reliability requirement alternative. PJM states that its proposed tariff revisions are designed to clarify this existing allowance at Attachment DD, section 2.55 (addressing the PJM region reliability requirement) and section 2.39 (addressing unforced capacity obligations of all FRR entities).

3. Forced Outage Rates

7. PJM states that, under the RPM Settlement, the demand-equivalent forced-outage rate is calculated in most, but not all, cases based on the generator's annual outage experience. PJM states, however, that there is no valid justification for this inconsistency. Accordingly, PJM proposes to revise the PJM OATT, at sections 6.7, 7.1 and 9(b) of Attachment DD, to provide for a single, consistent standard, as based on an annual period calculation. PJM also proposes to clarify, at schedule 4.1 of the Reliability Assurance Agreement, that the installed reserve margin approved by the PJM board for the PJM region will be based on PJM staff studies and will not exclude outages that are

⁷PJM notes that because this risk can be reduced to the extent the project meets certain development milestones, Attachment Q currently recognizes this reduction in risk by reducing the RPM credit requirement by 50 percent at the time that the Interconnection Service Agreement becomes effective and to zero as of the in-service date.

outside management control.⁸ PJM states that it is also proposing to revise schedule 5 of the Reliability Assurance Agreement to provide, as of June 1, 2010, that the demand-equivalent forced-outage rate used as part of the forecast pool requirement calculation *will* exclude outages that are outside plant management control.⁹

4. Transfer of Payment Obligations

8. PJM proposes two revisions to section 3.1 of Attachment DD of the PJM OATT.¹⁰ First, PJM proposes to delete a hypothetical example provided regarding the type of location that may be addressed by a transfer because, PJM claims, the example provided erroneously refers to an assessment of an RPM load charge based on a Locational Deliverability Area, rather than by zone. Second, PJM proposes to clarify that load serving entities and other market participants do not need to establish credit with PJM before entering into transfers, except as required by their other past or expected PJM market activity.

5. Delisting Capacity Resources

9. PJM states that, currently, the PJM OATT and Reliability Assurance Agreement do not explicitly address delisting, i.e., the circumstances under which a generator may terminate its status as a capacity resource, even though this option has been available for years. PJM states that RPM dramatically reduces the opportunities for delisting by

⁸PJM explains that to ensure reliability, the PJM board must set an installed capacity reserve margin for the region that takes into account a forecast of all forced outages, regardless of whether an outage is one that management could not have reasonably prevented.

⁹PJM explains that if it were to use a demand-equivalent forced-outage rate which excludes forced outages that are outside plant management control, to calculate unit performance, and a higher demand-equivalent forced-outage rate which includes forced outages that are outside plant management control, to translate the region's installed capacity margin to an unforced basis, the region would be short some amount of installed capacity. PJM notes, however, that because the PJM board has already approved the forecast pool requirements for the delivery years starting June 1, 2008 and June 1, 2009, implementation of PJM's proposed revision is properly set to occur June 1, 2010.

¹⁰Section 3.1 addresses the self-supply of capacity, including the right of a load serving entity to transfer to other load serving entities, or other market participants, their obligation to pay the RPM locational reliability charge.

securing three years in advance capacity commitments that last an entire delivery year. PJM notes, however, that delisting opportunities have not been eliminated entirely.

10. To address this right, PJM states that section 5.6.6 of Attachment DD of the PJM OATT has been revised to provide, in a new subsection (d), that a generation capacity resource located in the PJM region that is not committed to serve PJM loads may be delisted: (i) pursuant to a unit-specific bilateral transaction for services to load located outside the PJM region; and (ii) subject to satisfaction of the must-offer rules and exceptions under the RPM market power mitigation provisions.¹¹ PJM states that this new provision also clarifies how the timing of a delisting affects the application of market power tests to a seller's resource portfolio in PJM and confirms that the black-out period for recognition of new bilateral transactions during an RPM auction also applies to such bilateral export transactions.

6. Funding Payments for Qualifying Transmission Upgrades

11. PJM states that when a qualifying transmission upgrade clears an RPM auction, it receives a payment equal to the amount by which it increases the area's capacity import capability multiplied by the price difference between the capacity price in the constrained area and the capacity price in the area from which the project increased import capability. PJM states, however, that the PJM OATT does not explicitly address the source of these payments. Accordingly, PJM proposes to revise section 5.14(d) of Attachment DD of the

¹¹Section 5.6.6 addresses the availability of capacity resources for sale. Proposed subsection (d) provides, in its entirety, as follows:

A Generation Capacity Resource located in the RPM Region that is not committed to service of PJM loads as a result of an RPM Auction or [fixed reliability requirement] Capacity Plan may be delisted from PJM Capacity Resource status pursuant to a unit-specific bilateral transaction for service to load located outside the PJM Region, subject to section 6.6 [addressing market power mitigation]. Delisting of a resource shall not be reflected in a Preliminary Market Structure Screen unless the associated unit-specific bilateral transaction is approved pursuant to subsection (c) above prior to the deadline for Capacity Market Sellers to submit data for such Preliminary Market Structure Screen. Delisting of a resource shall not be reflected in the determination of available capacity pursuant to subsection (b) above unless the associated unit-specific bilateral transaction is approved prior to the deadline established by that subsection.

PJM OATT to provide that these payments will be funded through a reduction in the capacity transfer rights (associated with the qualifying transmission upgrade that cleared in the RPM auction) allocated to load serving entities. PJM also proposes to add, to section 5.15(a), a clarification regarding the megawatts of capacity transfer rights available for allocation to load serving entities.¹²

7. Generator Cost Information

12. PJM proposes to revise section 6.7(c) of Attachment DD of the PJM OATT to clarify the obligation, by the PJM Marketing Monitoring Unit, to post information related to safe harbor offers, i.e., offers for which the Marketing Monitoring Unit will not request additional cost support. PJM also proposes to revise sections 6.7(d) and 6.8(d) to allow market sellers to rely on cost and revenue projections in meeting their reporting requirements when such data is not available as of the reporting deadlines.

8. Compliance Charge Provisions

13. PJM notes that its resource commitment accounting rules require clarification, consistent with PJM's existing RPM provisions. Accordingly, PJM proposes to revise sections 7-9 of Attachment DD of the PJM OATT to more accurately reflect the varying ways in which capacity is committed under PJM's RPM rules. PJM also proposes to clarify the definition of the daily deficiency rate.¹³ In addition, PJM proposes to clarify that it will not assess a charge, either under section 7 or section 8, for the same increment, (i.e., megawatt quantity and time period) of capacity deficiency.

¹²Specifically, PJM states that in making this determination, the megawatts of capacity imported into a Locational Deliverability Area will be reduced by the megawatt increase in the area's capacity import capability provided by any qualifying transmission upgrades that clear the RPM auction.

¹³PJM notes that, generally, this rate is the higher of the net cost of new entry or two times the capacity resource clearing price. PJM notes, however, that there may be differing clearing prices in the different auctions conducted for the same delivery year. Accordingly, PJM proposes to add the following parenthetical after the reference to the capacity resource clearing price: "(weighted as necessary to reflect the clearing prices in all RPM Auctions that resulted in installed capacity commitments from such resource)."

9. Demand Response

14. PJM notes that RPM allows demand response capability to compete in the RPM auction. PJM states, however, that the specific manner in which this commitment is reflected in the Reliability Assurance Agreement requires clarification. Accordingly, PJM proposes to revise section 9, Schedule 6 of the Reliability Assurance Agreement to make clear that a committed demand resource must be registered to participate in the full program option of the emergency load response program.

10. Incremental Capacity Transfer Rights

15. PJM proposes to update the terminology used in sections 2.57 and 5.16 of Attachment DD of the PJM OATT to reflect its current definition of the term “New Service Customer,” as recently approved by the Commission.¹⁴ For example, PJM proposes to add the following language to section 5.16(a) (as shown in italics): “The Office of the Interconnection shall allocate Incremental Capacity Transfer Rights to a *New Service Customer (or, for facilities or upgrades in a PJM queue prior to March 1, 2007, to an Interconnection Customer)* obligated to fund a transmission facility or upgrade through a rate or charge specific to such facility or upgrade, to the extent such upgrade or facility increases the Import Capability into a Locational Deliverability Area, with respect to any such transmission facility or upgrade through a rate or charge specific to such facility or upgrade, to the extent such upgrade or facility increases the Import Capability into a Locational Deliverability Area, with respect to any such transmission facility or upgrade interconnected to the Transmission System pursuant to Part IV of this [OATT], including transmission facilities or upgrades interconnected to the Transmission System pursuant to Part IV prior to the effective date of this Attachment.” Section 5.16(a) is also revised to state that the “[t]erms and conditions for the allocation of Incremental Capacity Transfer Rights to New Service Customers shall be as further set forth in Part VI of the [OATT].”

16. PJM also proposes to revise section 5.16(b) to more accurately describe the Locational Deliverability Area price difference used to calculate incremental capacity transfer rights. As revised (by the language shown in italics that follows), section 5.16(b) will provide in its entirety: “[f]or any Base Residual or Incremental Auction that results in a positive Locational Price Adder for such [Locational Deliverability Area], the holder of an Incremental Capacity Transfer Right shall receive a payment equal to *the Locational Price Adder for the [Locational Deliverability Area] into which the associated*

¹⁴See Letter Order, *PJM Interconnection, L.L.C.*, Docket Nos. ER07-344-000 and EL06-67-001 (February 8, 2007) (*February 2007 Letter Order*).

facility or upgrade increased Import Capability minus the Locational Price Adder for the [Locational Deliverability Area] from which the Import Capability increase was measured multiplied by the megawatt quantity of the Incremental Capacity Transfer Right allocated to such Interconnection Customer.”

B. PJM’s Proposed Capacity Export Charge

17. PJM states that its proposed capacity export charge is necessary because, under RPM, the costs that may be incurred in a constrained Locational Deliverability Area as a result of a given export are currently borne only by the load serving entities in that area, thus giving the export transactions at issue an unwarranted preference.

18. By way of background, PJM states that, under RPM, internal constraints on the movement of capacity within the PJM region are tracked in a way that allows capacity in different locations within PJM to be priced differently, consistent with system planning realities and system reliability needs. PJM adds that the movement of capacity within PJM for export outside PJM is tracked in the same way. PJM states, however, that RPM does not address capacity for loads outside PJM. PJM states that, as such, export customers remain inappropriately insulated from the costs attributable to these transactions.

19. PJM adds that, under RPM, a Locational Deliverability Area may experience elevated capacity prices if the area’s “capacity emergency transfer objective” exceeds its “capacity emergency transfer limit.”¹⁵ PJM states that if the PJM generator that is being used for the export is not located in the particular area from which the export exits the PJM system, then the export will exacerbate any capacity constraint that the area faces. PJM states that, in this instance, the area will need more internal capacity to meet the area’s total load and export requirements than the area would need without the export. PJM states that greater demand for this internal capacity would likely translate, under RPM, into higher prices for capacity located in the area, which RPM recovers from the

¹⁵PJM explains that the capacity emergency transfer objective, or CETO, describes the area’s need for capacity under peak conditions, while the capacity emergency transfer limit, or CETL, describes the area’s ability to import capacity during peak conditions. PJM states that its system load growth can increase an area’s capacity emergency transfer objective, but so too can an export of capacity from PJM to another control area that is electrically adjacent to the area. In other words, a capacity export from PJM will draw from a particular area in PJM based on the PJM system topography and internal system limitations under capacity transfer conditions, whether or not the PJM generation identified as supporting that export is within that particular area.

loads in the zones comprising that area. PJM states that under its existing RPM rules, these higher costs are borne only by the load serving entities in the constrained area, even though an export drawing from that area contributes to these higher costs in the same way as the load serving entity loads.

20. PJM states that, in most cases, a customer exporting capacity from PJM will purchase firm transmission service inside PJM from the export generator to the export interface. PJM also states, however, that the existence of these firm rights do not ensure that PJM can deliver the full capacity of a specific generator in a lower-cost area under capacity emergency conditions, just as the network transmission purchased by PJM load serving entities does not ensure that PJM can deliver capacity from specific lower-cost generators to those load serving entities under capacity emergency conditions. PJM states that, accordingly, while firm point-to-point transmission service may provide export customers a partial hedge against capacity congestion, this firm transmission will not eliminate an export's impact on a constrained area where it exits the PJM system.

21. PJM states that to recognize these limitations, an export customer that draws capacity from a constrained area should be required to bear the capacity price premium that its export helped create and an export customer with firm transmission service should receive some credit against higher locational capacity prices based on its firm transmission service. PJM states that its proposed tariff revisions accomplish this objective.

22. PJM states that the proposed capacity export charge for any customer would be calculated as the product of the applicable megawatt component and the per-megawatt charge. PJM states that the megawatt component of the charge will be equal to the reserved capacity of the customer's firm transmission service, if it has firm service.¹⁶ If it does not, the megawatt component will be the unforced capacity of the PJM resources designated for export. PJM states that the per-megawatt charge would be equal to the zonal capacity price in the zone encompassing the export interface, minus the zonal capacity price in the zone where the resource designated for export is located, but not less than zero.¹⁷

¹⁶See proposed section 5.14(i) of Attachment DD.

¹⁷PJM notes that, in most cases, there will be only one export interface zone, but that if the export is through multiple PJM zones, PJM will prorate the effects of each relevant export zone.

23. PJM states that if a capacity export transmission customer that is assessed a capacity export charge holds firm transmission service, it will receive a credit against that charge, similar to the capacity transfer rights PJM load serving entities receive based on their funding of the network transmission system. PJM states that the megawatt component of its proposed credit will be based on the export customer's firm reserved point-to-point capacity from the source PJM generator, and the capacity otherwise assumed by the RPM auction clearing results to be imported into the export interface zone from the zone where such generator is located.¹⁸

24. Finally, PJM proposes that any net revenues from the capacity export charge (less any credits) be apportioned to the load serving entities in the export interface zone. PJM states that this approach is appropriate because these loads will bear the costs stemming from the export's increase in the zone's capacity emergency transfer objective. PJM states that if there are multiple export interface zones, revenues will be apportioned among them in the same manner as the apportionment of charges.

Notice of Filing and Responsive Pleadings

25. Notice of PJM's filing was published in the *Federal Register*¹⁹ with interventions and protests due on or before July 10, 2007. Motions to intervene were timely filed by American Electric Power Service Corporation (AEP); American Municipal Power- Ohio, Inc. (AMP-Ohio); Dominion Resources Services, Inc.; EME Companies; Hudson Transmission Partners, LLC (HTP); Long Island Power Authority (LIPA); NRG Companies; Reliant Energy, Inc.; Southern Maryland Electric Cooperative, Inc.; and Williams Power Company, Inc. On July 10, 2007, at 10:33 p.m., a motion to intervene out-of-time was filed by Exelon Corporation (Exelon). On July 31, 2007, a motion to intervene out-of-time was filed by Duke Energy Corporation (Duke). Protests were filed by AEP, AMP-Ohio, HTP, and LIPA.

26. AMP-Ohio and HTP take issue with certain of PJM's proposed clarifying revisions. First, AMP-Ohio requests clarification regarding PJM's proposed revisions to section 5.6.6(d) of Attachment DD, as it relates to delisting.²⁰ AMP-Ohio asserts that

¹⁸PJM states that the product of these two quantities will be apportioned across the sum of the reserved capacity plus the total unforced capacity obligations of all load serving entities in the export interface zone. PJM adds that the per-megawatt credit will be based on the same capacity price difference as the charge.

¹⁹72 Fed. Reg. 36,443 (2007).

²⁰See PP 9-10, *supra*

under this provision ownership of a unit should be construed as satisfying the bilateral transaction requirement as it relates to the delisting of a unit. In addition, AMP-Ohio requests clarification that resources committed to serve external load outside of PJM may be delisted and are not required to be offered into the RPM auction, and then fail to clear, before they can be allowed to serve external load.

27. HTP objects to PJM's proposed revisions to section 5.16 of Attachment DD of the PJM OATT, relating to the allocation of incremental capacity transfer rights.²¹ First, HTP asserts that PJM provides no explanation or justification for its proposed revisions to either section 5.16(a) or section 5.16(b). HTP also argues that, under proposed section 5.16(b), market participants will not be able to determine what payment the holder of an incremental capacity transfer right will receive. Specifically, HTP asserts that the proposed language does not specify the point from which the increase in import capability is measured. HTP adds that if the intent (or effect) of this provision is to measure the increase in import capability from the immediately adjacent Locational Deliverability Area, such a methodology would be inequitable. This is so, HTP claims, because the increase in import capability (which factors into the value of an incremental capacity transfer right), should include increases in import capability from as many Locational Deliverability Areas as are affected by the upgrades for which the incremental capacity transfer right holder has paid. HTP adds that PJM's policies with regard to other, similar calculations demonstrates that this is the appropriate approach to be taken here.

28. Accordingly, HTP requests that the Commission direct PJM to clarify section 5.16 and specify how the payments to the holders of incremental capacity transfer rights will be calculated (specifically, from where the increase in import capability will be measured) and to adequately demonstrate that its payment methodology is just and reasonable.

29. In addition, HTP requests that a related provision, section 234.3 of the PJM OATT be clarified, as it relates to the calculation of incremental capacity transfer rights.²² HTP asserts that there are two problems with this provision: first, PJM's proposal to have

²¹See PP 15-16, *supra*.

²²Section 234.3 of the PJM OATT was approved by the Commission in the *February 2007 Letter Order*. Section 234.3 provides, among other things, that the quantity of incremental capacity transfer rights will be determined in accordance with the applicable terms of Attachment DD of the PJM OATT and pursuant to the procedures specified in the PJM Manuals.

important procedures that affect jurisdictional charges reside outside the filed PJM OATT is contrary to Commission policy; and second, the referenced procedures do not exist. HTP further asserts that, although in proposed section 5.16(b), PJM proposes to change what a developer is paid for an incremental capacity transfer right (and to change it to the minimum payment possible by looking only to the immediately adjacent Locational Deliverability Area), PJM does not propose to change how the quantity of incremental capacity transfer rights awarded is determined in section 5.16(a). HTP asserts that, as such, there is a disjunction between these two sections that has not been explained by PJM.

30. AEP, AMP-Ohio, and LIPA argue that PJM's proposed capacity export charge should be modified or rejected. AEP argues that PJM's proposed charge is unjust, unreasonable, and unduly discriminatory because, among other things, it creates artificially high capacity costs, results in artificial economic withholding and seeks to protect local markets. AEP asserts that the RPM Settlement already results in economic withholding by capping the amount of capacity that can be sold into the PJM capacity market after meeting an initial threshold requirement. AEP asserts that PJM's proposed capacity export charge will add even more restrictions and costs to the capacity which must be offered outside of the RPM market.

31. AEP also asserts that PJM's proposed capacity export charge imposes unhedgeable financial risk because RPM auctions occur only three years before the delivery year. In addition, AEP argues that PJM's proposed charge fails to properly account for power flows and transmission impacts, imposes additional costs on pre-existing transactions, and is the equivalent of a prohibited through-and-out rate as between PJM and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO).²³

32. AEP and AMP-Ohio also argue that capacity transactions which were entered into prior to the RPM Settlement negotiations (in June 2006), or which otherwise represent long-standing agreements, should be exempt from the capacity export charge. AMP-Ohio opposes the creation of such a charge because it will impose additional, unwarranted burdens on AMP-Ohio and similarly situated entities that have long-standing agreements to export capacity from areas that are now within PJM's rapidly expanding borders.

²³AEP protest at 10, citing *Midwest Independent Transmission System Operator, Inc.*, 104 FERC ¶ 61,105 (2003).

33. LIPA argues that, in contrast to the simplified pro rata methodology used for internal load serving entities, the methodology proposed by PJM for capacity export transmission customers uses a different calculation that discriminates against entities exporting capacity from PJM. LIPA points out that rather than rely on the same pro rata allocation mechanism used for internal load serving entities, PJM proposes to allocate congestion credits to firm point-to-point rights holders based on their “allocated share” calculation derived by: (i) multiplying the total capacity exported from the zone where the capacity resource is located to the export interface zone and the export customer’s reserved from point-to-point capacity; and (ii) dividing this product by the sum of the export customer’s reserved firm point-to-point capacity and the daily unforced capacity obligations of all load serving entities in the export interface zone).

34. LIPA argues, however, that PJM fails to provide a reasoned explanation for its proposal, particularly with respect to the disparate treatment that it seeks to apply to capacity exports. Among other things, LIPA argues that PJM fails to explain: (i) the basis of its decision to use a capacity export transmission customer’s allocated share to determine credits; (ii) what the allocated share is intended to represent; or (iii) the relationship between an allocated share and a capacity export transmission customer’s firm point-to-point transmission rights.

35. LIPA adds that PJM’s proposal rests upon conclusory, and wholly unsupported assertions that the credits given to capacity export transmission customers are similar to the capacity transfer rights that load serving entities receive based on their funding of the network transmission system. LIPA argues, however, that PJM fails to support this claim. Finally, LIPA asserts that PJM’s allocated share methodology used for capacity export transmission customers does not appear to be a comparable allocation (and is likely to provide less protection against congestion costs than the pro rata allocation methodology used for internal load serving entities). Specifically, LIPA argues that the export customer’s allocated share will be smaller than a simple pro rata share of capacity able to be imported in the relevant area.

PJM’s Answer

36. On July 27, 2007, PJM filed an answer to protests. First, PJM responds to AMP-Ohio’s requested clarifications regarding section 5.6.6(d) of Attachment DD of the PJM OATT. PJM clarifies that a resource located in the PJM region that has been identified as a network resource under the tariff of the external control area can satisfy the intent of both section 5.6.6 and section 6.6(c), *i.e.*, the external sale exception to the RPM “must offer” rule) for documented unit-specific export transactions. PJM adds that what matters is that there is a legitimate export of an identified resource to serve specific external loads.

37. PJM also responds to HTP's objections to PJM's proposed changes to section 5.16 of Attachment DD, concerning incremental capacity transfer rights. PJM responds that its proposed changes to section 5.16 are adequately explained and supported. First, PJM argues that its proposed changes to section 5.16(a) are designed solely to conform this provision of the PJM OATT to other, currently effective provisions in the OATT addressing incremental capacity transfer rights.²⁴

38. PJM asserts that the sole change to section 5.16(b) is also a minor correction, required to more accurately describe the Locational Deliverability Area price difference used to calculate incremental capacity transfer rights. PJM explains that as filed with the RPM Settlement, section 5.16(b) stated only that for the holder of an incremental capacity transfer right for a facility that increases the import capability into a Locational Deliverability Area, when an RPM auction "results in a positive Locational Price Adder for such [Locational Deliverability Area]," then the holder would receive a payment based on "such Locational Price Adder." PJM states that this provision was simply incorrect and required revision.

39. PJM also responds to HTP's assertion that the PJM OATT does not adequately state the method for calculating incremental capacity transfer rights. PJM asserts that, in fact, the PJM OATT specifies that incremental capacity transfer rights are based on an increase in import capability between two Locational Deliverability Areas. PJM asserts that the OATT does not dictate that the Locational Deliverability Areas must be immediately adjacent to one another and that PJM does not interpret the OATT in this fashion.²⁵

40. With respect to PJM's proposed capacity export charge, PJM defends its assertion that capacity exports exacerbate the reliability issues underlying RPM, such as a constrained zones failure of the deliverability test as measured by a deficiency of the capacity emergency transfer limit below the capacity emergency transfer objective. PJM asserts that the export's adverse effect is plain, i.e., that an export of capacity through a constrained zone that lies on the border of PJM region consumes transfer capability into

²⁴PJM states that these currently effective provisions were approved by the Commission in the *February 2007 Letter Order* and became effective March 1, 2007. PJM asserts that, as such, the proposed conforming changes, in section 5.16, are merely cross-references and therefore non-substantive in nature.

²⁵PJM adds that it cannot dictate the Locational Deliverability Areas in advance because the Locational Deliverability Areas between which import capability is increased will depend on the specific transmission project.

that constrained zone that otherwise would be available for the load serving entities inside the constrained zone. PJM argues that in order to maintain an equitable balance of cost responsibility for the higher capacity price in the constrained zone, it is only fair that the exporting party pay a share of the cost associated with the reduced transfer capability available to the load.²⁶

41. PJM also challenges AEP's assertion that an export is just as likely to increase the capacity emergency transfer limit as it is to decrease this limit. PJM asserts that in most cases, an export transaction will decrease the capacity emergency transfer limit. PJM argues that, as such, AEP will not incur this charge when its direct exports cross its extensive ties with non-PJM systems without flowing on other PJM border zones.

42. PJM also responds to AMP-Ohio's argument that capacity export charges are inappropriate because the export customer obtains firm point-to-point transmission service to export its delisted resource to an external control area. PJM answers that the Commission has approved RPM charges for PJM loads even though they also obtain firm network transmission service for delivery from their network resources to their network loads. PJM notes that separate and apart from their transmission charges, loads in PJM now also pay charges based on the relative value of capacity in their zones, taking into account the constraints on delivery of capacity into such zones. PJM further notes that a point-to-point transmission customer that exports capacity reduces the ability of network customers in a constrained PJM border zone to rely on imports of less-expensive PJM capacity located outside their zone, so an export customer has no basis to evade its appropriate share of the resulting costs.

43. PJM also disputes AEP's assertion that a capacity export charge is the equivalent of a prohibited through-and-out rate. PJM argues that the PJM border rate charged under section 1, schedules 7 and 8 of the PJM OATT for point-to-point transactions leaving PJM remains inapplicable to transactions with a delivery point in the Midwest ISO. PJM states, however, that all point-to-point transactions, including those for delivery to the Midwest ISO, are subject to other charges, including congestion and losses that compensate for use of generation facilities. PJM adds that its capacity export charge will

²⁶PJM notes that because the capacity emergency transfer limit is determined as the sum of the tie flows into a zone, an export generally reduces the import capability into the border zone because part of the zone's import capability would be committed to bring the export into the border zone. The export then leaves the PJM system, and is not available to help meet the capacity needs of the border zone's loads. The result, PJM argues, is that the available internal resources plus available capacity import capability would be short of the capacity needed by the zone to meet reliability criteria.

compensate generators for the locational value of their capacity, just as current PJM congestion charges compensate generators for the locational value of their energy.

44. PJM also responds to the arguments made by AEP and AMP-Ohio that a capacity export charge should not apply to an export transaction that predates the start of RPM Settlement talks, in June 2006, or otherwise apply to long-standing agreements. PJM responds that this reliance argument, long-standing or not, is unavailing because the agreements at issue would have been entered into with the understanding that could be superseding OATT changes.

45. PJM also responds to LIPA's objection regarding PJM's proposed method for calculating credits for capacity export customers that have firm point-to-point transmission service in PJM.²⁷ PJM responds that its two crediting approaches are comparable, with the differences between the two necessitated by the differing services and the differing charges they entail.

46. PJM also responds to LIPA's argument that PJM's proposed capacity export charge artificially creates a higher capacity price. PJM argues that any resource that is not committed in an RPM auction or in a fixed resource requirement capacity plan and that can show a unit-specific bilateral export transaction, may enter into a transaction, on very short notice, to export its capacity outside PJM. PJM asserts that whether the export incurs any charges depends on whether the export has a locational impact on the cost of the capacity in PJM, just as charges to PJM loads depend on these impacts.

47. PJM also disputes that the imposition of this charge is an attempt to protect local markets. PJM asserts that the charge is based on an export transaction's reliability impacts, as quantified by locational capacity prices. PJM states that local markets, *i.e.*, PJM loads, currently pay such a charge based on their reliability impacts and that there is no basis for ignoring the impacts of export transactions.

48. Finally, PJM responds to AEP's argument that locational impact charges in RPM are unhedgeable. PJM asserts that RPM was explicitly designed to foster long-term capacity contracts by establishing forward locational capacity price signals. PJM adds that by the time capacity export charges take effect, on June 1, 2008, PJM will have conducted five RPM base residual auctions, revealing capacity price trends by location for delivery years extending into 2012 and providing market participants abundant information about the supplies, loads, and transmission constraints that affect these

²⁷As noted above, LIPA argues that the crediting method for exports will be inconsistent with the capacity transfer right credits allocated to PJM network loads.

prices. PJM notes that its Regional Transmission Expansion Planning process provides market participants similar data for later years, allowing sophisticated sellers a reasonable basis to project capacity price trends well into the future.

Discussion

A. Procedural Matters

49. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,²⁸ the timely, unopposed motions to intervene submitted by the entities noted above serve to make them parties to this proceeding. In addition, we will accept the unopposed late-filed interventions submitted by Exelon and Duke. Rule 213(a) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise permitted by the decisional authority. We will accept the answer submitted by PJM because it has provided information that assisted us in our decision-making process.

B. PJM's Proposed Clarifying Revisions

50. We accept, subject to a nominal suspension, refund, and conditions, those revisions proposed by PJM for which a June 20, 2007 effective date is requested, *i.e.*, PJM's proposed correcting and clarifying changes to the PJM OATT and Reliability Assurance Agreement. We agree with PJM that these revisions make mostly minor and/or helpful clarifications regarding PJM's RPM provisions. We also note that the vast majority of these revisions are unopposed.

51. With respect to PJM's proposed changes to section 9 of Schedule 6 of the Reliability Assurance Agreement, we note that PJM's revisions are designed to clarify that demand resources may participate in RPM only if they have registered for the full program option under PJM's Emergency Load Response Program. We agree that the Reliability Assurance Agreement addresses reliability concerns that might arise should market participants agree that different parties may have the right to provide capacity and energy from the resource. In addition, we find that PJM has adequately supported the proposed changes. Accordingly, we approve PJM's proposal and find the changes to section 9 of Schedule 6 of the Reliability Assurance Agreement to be just and reasonable. We also recognize that the proposed changes were not protested.

52. With respect to AMP-Ohio's requested clarifications regarding proposed section 5.6.6(d) of Attachment DD of the PJM OATT, we note that PJM, in its answer,

²⁸18 C.F.R. § 385.214 (2007).

clarifies that a resource located within the PJM region that has been identified as a network resource under the tariff of an external control area can satisfy the requirements of section 5.6.6(d) and the must-offer rule of section 6.6(c) (*i.e.*, the external sale exception to the RPM “must offer” rule) for documented unit-specific export transactions. PJM notes that what matters is that there is a legitimate export of an identified resource to serve specific external loads and not whether AMP-Ohio has a contract with itself to implement its use of its PJM resources to serve its Midwest ISO loads. In addition, PJM clarifies that if AMP-Ohio satisfies the must-offer exception of section 6.6(c), by providing evidence that such an export is a “financially and physically firm commitment to an external sale,” it will be excused from offering its identified exporting resource into the RPM auction. However, we find these clarifications, alone, will not provide the certainty that market participants may require.

53. Accordingly, we direct PJM, in a compliance filing to be made within 30 days from the date of this order, to revise section 5.6.6, as may be necessary, to: (i) explain the types of transactions and ownership arrangements that would qualify a resource to be delisted; (ii) clarify its rules for exporting; and (iii) explain whether provision 5.6.6 (d) would require a generation resource to continue to bear the obligations of a capacity resource when that resource does not have a “unit-specific bilateral transaction for service to load located outside of PJM,” but the resource has not chosen to participate in the PJM capacity market, or is not selected in an RPM auction. These issues also can be discussed at the technical conference, established below.

54. We reject HTP’s protest regarding PJM’s revisions to section 5.16 of Attachment DD, regarding incremental capacity transfer rights. PJM’s revisions are designed to accomplish two objectives: first, to make conforming, non-substantive changes to reflect corresponding OATT provisions previously approved by the Commission; and second, to correct the minor error made in section 5.16(b), as it relates to the Locational Deliverability Area price difference used to calculate incremental capacity transfer rights. In its Answer, PJM has provided the explanation requested by HTP. PJM explained that the revision to section 5.16(b) is necessary so that the holder of a capacity transfer right receives the proper payment for enhancing capacity.²⁹ As PJM explains, the proper payment for the holder of a capacity transfer right is the difference between the locational price adders in the areas for which the upgrade increased capacity.³⁰

²⁹PJM answer at 17.

³⁰PJM provides an example under which, as a result of an RPM auction, capacity prices are \$70 in the unconstrained portions of the PJM Region, \$110 in Eastern MAAC, \$150 in PSEG, and \$190 in Northern PSEG. PJM assumes next that a transmission

(continued)

55. We therefore disagree that there is a disjunction between section 5.16(a) and 5.16(b). In fact, PJM has adequately explained in its answer that changes to incremental capacity transfer right payments will be calculated based on projects that actually increase import capability into a Locational Deliverability Area from an identified unconstrained area, rather than assuming that the increase is from the lowest-cost Locational Deliverability Area. As such, PJM will use empirical information to determine the benefits of a given project. Moreover, such a calculation will be based on all Locational Deliverability Areas affected by the project, and not uniquely on adjacent Locational Deliverability Areas.³¹

C. PJM's Proposed Capacity Export Charges

56. Our preliminary analysis indicates that PJM's proposed capacity export charge has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will establish a technical conference for the purpose of further reviewing PJM's proposal.

57. We share the concerns raised by intervenors. Among other things, PJM has not demonstrated, or explained: (i) that its proposed capacity export charge is not, in fact, a prohibited through-and-out rate; (ii) why a customer exporting capacity from PJM, pursuant to a PJM firm transmission service agreement, is not ensured that PJM can deliver the entirety of that capacity under capacity emergency conditions; (iii) whether the capacity export charge will apply to exports from fixed reliability requirement generators; (iv) why, as PJM claims in its answer, the proposed capacity export charge will compensate generators for the locational value of their capacity, just as current PJM congestion charges compensate generators for the locational value of their energy; (v) how PJM would calculate the charge applicable to an export transaction that traverses multiple PJM zones; (vi) why it is appropriate to use flow analysis (*i.e.*, percent flow) to calculate capacity export charges; and (vii) whether it would be appropriate, where a specific export transaction increases the capacity emergency transfer limit of a

upgrade project increased the capacity import capability into Northern PSEG from the rest of Eastern MAAC. Under PJM's current tariff, the payment would be based on the difference between Northern PSEG (\$190) and the unconstrained portions of PJM (\$70). But this is incorrect because the transmission project increased capacity from Eastern MAAC (\$150) to Northern PSEG (\$190).

³¹HTP also requests clarification of section 234.3 of the PJM OATT, as approved by the Commission in the *February 2007 Letter Order*. We find no basis to require PJM to clarify this provision here.

constrained zone, for the relevant customer to pay the capacity export charge, even where the export at issue flows through multiple PJM zones with differing capacity prices.

58. These questions and related issues warrant additional review. Accordingly, we direct the Commission's advisory staff (Staff) to convene a technical conference. Following the technical conference, the parties will have an opportunity to file written comments that will be included in the formal record of this proceeding, which, together with the record developed to date, will form the basis for further Commission action.

The Commission orders:

(A) PJM's proposed minor clarifying revisions to the PJM OATT and Reliability Assurance Agreement, as listed in Appendix A of this order, are hereby accepted for filing, subject to a nominal suspension, refund, and conditions, to become effective June 20, 2007. As discussed in the body of this order, PJM is hereby directed to make a compliance filing within 30 days of the date of this order.

(B) PJM's proposed capacity export charge, as set forth in the tariff sheets listed in Appendix B of this order, will be addressed by the Commission in further orders that will follow the technical conference, as discussed in the body of this order.

By the Commission. Commissioners Wellinghoff and Kelly dissenting in part with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.

Appendix A

**Tariff Sheets Addressing PJM's Clarifying Revisions
To the PJM OATT and Reliability Assurance Agreement**

PJM Interconnection, L.L.C.
FERC Electric Tariff
Sixth Revised Volume No. 1

Second Revised Sheet No. 523I.04 Superseding First Revised Sheet No. 523I.04
Fourth Revised Sheet No. 562 Superseding Third Revised Sheet No. 562
Third Revised Sheet No. 563 Superseding Second Revised Sheet No. 563
Third Revised Sheet No. 565 Superseding Second Revised Sheet No. 565
Third Revised Sheet No. 566 Superseding Second Revised Sheet No. 566
Third Revised Sheet No. 568 Superseding Second Revised Sheet No. 568
Third Revised Sheet No. 570 Superseding Second Revised Sheet No. 570
Third Revised Sheet No. 572 Superseding Second Revised Sheet No. 572
First Revised Sheet No. 573 Superseding Original Sheet No. 573
First Revised Sheet No. 578 Superseding Substitute Original Sheet No. 578
First Revised Sheet No. 579 Superseding Original Sheet No. 579
First Revised Sheet No. 580 Superseding Original Sheet No. 580
First Revised Sheet No. 581 Superseding Original Sheet No. 581
First Revised Sheet No. 582 Superseding Original Sheet No. 582
First Revised Sheet No. 585 Superseding Original Sheet No. 585
First Revised Sheet No. 586 Superseding Original Sheet No. 586
First Revised Sheet No. 598 Superseding Original Sheet No. 598
First Revised Sheet No. 602 Superseding Original Sheet No. 602
First Revised Sheet No. 609 Superseding Original Sheet No. 609
First Revised Sheet No. 610 Superseding Substitute Original Sheet No. 610
First Revised Sheet No. 611 Superseding Original Sheet No. 611
First Revised Sheet No. 612 Superseding Original Sheet No. 612
First Revised Sheet No. 616 Superseding Substitute Original Sheet No. 616
First Revised Sheet No. 618 Superseding Original Sheet No. 618
First Revised Sheet No. 619 Superseding Original Sheet No. 619
Original Sheet No. 619A
First Revised Sheet No. 620 Superseding Original Sheet No. 620
First Revised Sheet No. 621 Superseding Original Sheet No. 621
First Revised Sheet No. 625 Superseding Original Sheet No. 625
First Revised Sheet No. 634B Superseding Original Sheet No. 634B

PJM Interconnection, L.L.C.
Rate Schedule FERC No. 44

First Revised Sheet No. 30 Superseding Original Sheet No. 30
First Revised Sheet No. 32 Superseding Original Sheet No. 32
First Revised Sheet No. 33 Superseding Substitute Original Sheet No. 33
First Revised Sheet No. 34 Superseding Substitute Original Sheet No. 34
First Revised Sheet No. 38 Superseding Original Sheet No. 38
First Revised Sheet No. 43 Superseding Original Sheet No. 43
First Revised Sheet No. 45 Superseding Original Sheet No. 45
First Revised Sheet No. 46 Superseding Original Sheet No. 46
First Revised Sheet No. 47 Superseding Original Sheet No. 47
First Revised Sheet No. 59 Superseding Original Sheet No. 59

Appendix B

**Tariff Sheets Addressing PJM's
Proposed Capacity Export Charge**

PJM Interconnection, L.L.C.
FERC Electric Tariff
Sixth Revised Volume No. 1

Third Revised Sheet No. 246 Superseding Second Revised Sheet No. 246
First Revised Sheet No. 248 Superseding Original Sheet No. 248
Third Revised Sheet No. 564 Superseding Second Revised Sheet No. 564
First Revised Sheet No. 603 Superseding Original Sheet No. 603
Original Sheet No. 603A
First Revised Sheet No. 604 Superseding Original Sheet No. 604
Original Sheet No. 604A

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.

Docket No. ER07-1050-000

(Issued August 17, 2007)

WELLINGHOFF and KELLY, Commissioners, dissenting in part:

Among other changes, PJM has proposed in this proceeding to revise Schedule 6 of its Reliability Assurance Agreement to require that Demand Resources may participate in RPM only if they have registered for the Full Program Option of PJM's Emergency Load Response program. In support of that proposal, PJM expresses concern about situations in which the party committing a Demand Resource as capacity through RPM may be different from the party responsible for dispatch of that resource in the energy market. PJM states that its proposal would focus more precisely on the dispatch obligation of a Demand Resource committed as capacity through RPM.

We believe that PJM has not adequately supported this aspect of its proposal. The single paragraph devoted to this proposal in PJM's filing provides a minimal explanation of the concerns that PJM is attempting to address. Similarly, that paragraph provides virtually no explanation as to why precluding Demand Resources from participating in RPM unless they register for the Full Program Option of PJM's Emergency Load Response program is an appropriate solution to those concerns.

In its order approving the RPM settlement, the Commission stated that under RPM, demand response would play a more important role in addressing capacity needs within PJM than was previously the case.³² Recognizing that role, it is particularly important for PJM to explain fully both the need for its proposed change regarding Demand Resources and why that proposed change does not unnecessarily restrict participation by Demand Resources in RPM. Absent a more thorough explanation of PJM's rationale, we cannot support this aspect of its proposal.

For these reasons, we respectfully dissent in part.

Jon Wellinghoff
Commissioner

Sudeen G. Kelly
Commissioner

³² *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 at P 132 (2006).