

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

**PJM Interconnection, L.L.C.**

Docket Nos.ER05-1410-000  
EL05-148-000  
ER09-412-006

***REQUEST FOR REHEARING AND CLARIFICATION  
OF THE PJM POWER PROVIDERS GROUP***

PJM Power Providers Group (“P3”) hereby requests rehearing and clarification of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) order in this case, *PJM Interconnection, L.L.C.*, 129 FERC ¶ 61,090 (2009) (“October 30, 2009 order”) involving elements of the Reliability Pricing Model (“RPM”). P3 is a nonprofit corporation dedicated to promoting policies that will allow the PJM region to fulfill the promise of its competitive wholesale electricity markets. Combined, P3 members own over 75,000 megawatts of power and over 51,000 miles of transmission lines in the PJM region, serve nearly 12.2 million customers and employ over 55,000 people in the 14-state PJM region.<sup>1</sup>

This request for rehearing and clarification is limited to two narrow, but significant issues. First, the finding in the order that PJM should sell back capacity procured through the operation of a Base Residual Auction (“BRA”) not needed to meet the minimum Reliability Requirement if the sales price for such capacity exceeds the auction clearing price is clearly at odds with the RPM penalty mechanism. Essentially, if implemented, the current penalty for failing to provide committed resources would be reduced by potentially

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<sup>1</sup> The views expressed in this motion are those of the PJM Power Providers Group and are not necessarily those of individual members of the organization.

up to 20%, thereby undermining the primary means by which PJM ensures compliance with RPM commitments. Second, certain findings in the October 30, 2009 order seem to suggest that PJM could sell back capacity, if a high enough purchase price were to be offered, even if the Reliability Requirement were not being achieved. This result is grossly inconsistent with the basic goal of RPM, which is to procure sufficient capacity to meet the system reliability needs.

On rehearing, the Commission should find that PJM should not become a market participant and sell back capacity merely because the capacity can be sold at a price higher than it was purchased. The goal of achieving system reliability through adherence to the design elements of RPM previously approved by the Commission should not be compromised in this manner.

## **I. BACKGROUND**

On September 1, 2009, pursuant to earlier FERC orders issued on March 26, 2009<sup>2</sup> and August 14, 2009,<sup>3</sup> PJM submitted for filing to the Commission revisions to the PJM Open Access Transmission Tariff, FERC Electric Tariff Sixth Revised Volume No. 1 intended to comply with the Commission's directives in the March 26, 2009 order. The September 1, 2009 filing mainly addressed three areas of the RPM design: (a) a modified mechanism to set Cost of New Entry ("CONE") values on an automatic basis, (ii) procedures for the procurement in RPM Incremental Auctions of the 2.5% of the Reliability Requirement "holdback" from the BRA for the stated purpose of facilitating the participation in RPM of short lead-time capacity resources, and (iii) operation of the

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<sup>2</sup> *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 (2009) ("March 26, 2009 order")

<sup>3</sup> *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,157 (2009) ("August 14, 2009 order").

Incremental Auctions and, in particular, the circumstances under which PJM would purchase or seek to sell capacity due to a change in the Reliability Requirement.

P3 takes no position in this filing with respect to the first two issue areas identified above. Certain of the Commission's findings with respect to the third issue area – the operation of the Incremental Auction – however, are problematic. As discussed more fully below, certain findings in the order appear to undermine the RPM penalty structure and, apparently, could obligate PJM to sell back capacity to capacity resources owners even when the reliability targets have not been achieved.

## **II. STATEMENT OF ISSUES**

1. The October 30, 2009 order erred by finding that PJM's proposal to buy capacity in Incremental Auctions when it failed to purchase sufficient capacity in a Base Residual Auction may result in "undue discrimination" unless PJM also sells back capacity when it procures more than sufficient capacity in the Base Residual Auction. Requiring PJM to sell back capacity at a price in excess of the auction clearing price but less than the penalty rate for failing to provide committed capacity resources undermines the RPM penalty structure. Under the order's findings, PJM would be required to facilitate the release of capacity to cover shortages of capacity resources previously committed in a Base Residual Auction at a level below the penalty level. FERC should not require PJM to participate in the Incremental Auctions in a manner that will undermine the penalty structure of RPM.
2. The findings in the October 30, 2009 order that PJM's decision whether to purchase or sell additional capacity "should depend on whether the market price is comparatively high or low" should be clarified or, if necessary modified on rehearing. PJM should not seek to sell capacity in any circumstances in which either the minimum Reliability Requirements have not been satisfied or the sale would result in the minimum reliability standards not being satisfied, without regard to the price that it could obtain in a sell-back transaction.

### III. ARGUMENT

#### A. The “Sell-Back” Requirement Adopted In The October 30, 2009 Order, If Implemented, Will Be In Conflict With The RPM Penalty Structure

One element of the October 30, 2009 order concerns PJM’s proposal in the September 1, 2009 filing to utilize the Incremental Auctions to acquire additional capacity resources if there is a failure to meet an applicable Reliability Requirement in a BRA. The Commission accepted this aspect of PJM’s filing, stating that “[i]n general, we find PJM’s proposal to meet its Reliability Requirement through the incremental auctions when additional supplies become available at a sufficiently low price in accordance with the VRR curve.”<sup>4</sup>

In response to concerns expressed by the Illinois Commerce Commission, however, the Commission also found that PJM’s proposal to make purchases in an Incremental Auction may be unduly discriminatory because it does not include a fully symmetrical “sell back” obligation in circumstances in which an amount in excess of the Reliability Requirement was purchased in the BRA. As stated in the order:

[W]e do agree that PJM’s proposal may unreasonably discriminate in certain situations. There may be situations in which a generator is willing to buy its capacity obligation back from PJM for an amount greater than what the excess capacity is worth to PJM, as reflected in the VRR curve. For example, a new generator may be unable to complete its plant on time, which would subject it to a penalty (the higher of 20 percent of the capacity price or \$20/MW-day above the capacity price). If that generator is unable to purchase replacement capacity from another generator or resource, it might be willing to buy its obligation back from PJM at a price lower than the capacity price plus penalty, but greater than the price PJM paid for that capacity in a previous auction.<sup>5</sup>

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<sup>4</sup> October 30, 2009 order, P 75.

<sup>5</sup> October 30, 2009 order, P 76.

Accordingly, under the order, PJM apparently would be required to seek to sell back capacity when, potentially, the owner of a previously committed capacity resource is willing to pay one cent more than the auction clearing price to be relieved of its obligation.<sup>6</sup>

The findings of the order are inconsistent, however, with the penalty structure adopted for RPM. Imposing the new sell back obligation on PJM, effectively, lowers the level of the penalties set forth in the tariff for RPM compliance. The requirement thus undermines the penalty construct approved by the Commission in the March 26, 2009 order, which already lowered the level of penalties from the previously effective level.<sup>7</sup> It is thus necessary to preserve PJM's proposal for when to sell back capacity in order to maintain the penalty structure that the Commission previously approved to provide compliance with RPM commitments.

For example, under RPM's previously approved rules, a developer of generation, demand response or energy efficiency capacity resources faces potential penalties of the higher of \$20 per MW-day or 20% of the clearing price in the BRA. If the developer commits resources and then fails to supply them, it loses the capacity value it would have received and is required to pay, out of pocket, the \$20 per MW-day or 20% of the clearing price adder.

While suppliers may always seek to buy replacement capacity from other suppliers to cover their RPM commitment, that activity is very different than the suggestion made in

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<sup>6</sup> The order directs PJM to indicate in a compliance filing the prices at which it will sell back excess capacity at various excess quantity levels. *See* October 30, 2009 order, P 81. It seems clear, however, that the prices will need to be within a range with a lower limit just above the clearing price and with an upper limit just below the level of the penalty. The lowest possible price PJM could propose thus would appear to be one cent above the clearing level. In any event, however, the price will need to be less than the penalty level or there will be little likelihood of sufficient economic incentives for purchases to occur.

<sup>7</sup> March 26, 2009 order, P 180.

the October 30, 2009 order that PJM should actively seek to release capacity previously committed in the BRA to reduce the overall amount of capacity committed for the delivery year. The effect of such participation by PJM will be to significantly increase the likelihood that a supplier could buy out of its obligation without ever paying a penalty. This has the potential of decreasing reliability long term, as suppliers would be able to unwind their three-year forward obligations with much less risk than exists today. The risk of a penalty serves an important function in ensuring that capacity offered into RPM is not illusory and will deliver on its obligation when needed. Accordingly, given the important function that the penalty structure serves, the findings of the October 30, 2009 order that PJM's proposal was "unreasonably discriminatory" cannot be sustained.

**B. The Commission Should Clarify, Or If Necessary Determine On Rehearing, That PJM Should Not Sell Back Capacity When Doing So Would Result In A Failure To Meet the Reliability Requirement**

Assuming that the Commission does not eliminate the new sell back obligation discussed *supra*, at a minimum, it needs to clarify its findings regarding application of the sell back obligation when the Reliability Requirement is not met.

The October 30, 2009 order makes findings regarding the possibility of a sell back obligation in circumstances in which the Reliability Requirement has increased. The order posits a scenario in which there may be an obligation to sell back capacity (presumably because an amount in excess of the Reliability Requirement was obtained in the BRA) while at the same time there may be obligation to buy capacity because the Reliability Requirement has increased above the threshold amount. In these circumstances, the order indicates that whether PJM buys or sell capacity would be a function of PJM's view of whether prices are comparatively high or low.

As stated in the order:

We recognize that this requirement [*i.e.*, the sell back obligation discussed *supra*] would need to be implemented in conjunction with the requirement to purchase additional capacity when the Reliability Requirement increases above the threshold, and in some cases both the purchase and sale requirements would apply at the same time. In this situation, whether PJM ultimately buys or sells capacity in the incremental auction should depend on whether the market price is comparatively high or low. If the price is sufficiently high, PJM would sell capacity and would not buy any additional capacity. Conversely, if the price is sufficiently low, PJM would buy additional capacity and would not sell any capacity that it had acquired in previous auctions.<sup>8</sup>

The Commission should reconsider and reverse or at least clarify this discussion.

Read literally, the quoted passage suggests that PJM would be vested with discretion to determine whether a price is comparatively high or low and then be required to take actions in the marketplace in response, instead of acting as a neutral market operator. Moreover, PJM would apparently be required to sell back capacity if a high enough price for capacity could be obtained even if it failed to achieve the Reliability Requirement. The Commission likely did not intend for a result so at odds with the goals of RPM. RPM was intended to meet the need for capacity within the PJM footprint. There should be no circumstances under which PJM would sell back capacity if the Reliability Requirement is not met or will not be met as a result of the sale.

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<sup>8</sup>

October 30, 2009 order, P 78.

**WHEREFORE**, P3 respectfully requests that the Commission grant rehearing or clarification with respect to the matters identified herein.

Respectfully submitted,

PJM Power Providers Group

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the Official Service List compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 30th day of November, 2009.

          /s/ Glen Thomas            
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