

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

PJM Interconnection, L.L.C.)	
)	Docket No. ER13-1654-000
)	

COMMENTS OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 211 of the Commission’s Rules and Regulations,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (“Market Monitor”),² submits these comments on the filing submitted in the above captioned proceeding by PJM Interconnection, L.L.C. (“PJM”) on June 10, 2013 (“June 10th Filing”). In this filing, PJM proposes to redefine up-to congestion transactions as virtual transactions (rather than bilateral transactions) and to clarify associated tariff rules, including application of the FTR forfeiture rule to such transactions (“June 10th Filing”). The Market Monitor supports these objectives, but this filing is about more than mere clarification and this filing fails to clarify all associated tariff rules. The June 10th Filing changes the tariff’s definition of up-to congestion transactions to mean purely virtual transactions rather than bilateral transactions that contemplate the physical transfer of energy but does not correspondingly address the need to treat all virtual transactions in the same way, including the assignment of operating reserve charges, the assignment of Schedule 9 charges, and FTR forfeitures. The June 10th Filing also proposes to relax scheduling limitations on up-to congestion transactions that have protected the markets.

¹ 18 CFR § 385.211 (2013).

² Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”) and/or PJM Operating Agreement (“OA”)(collectively, “PJM Tariff”). Citations to sections of the PJM Tariff can be found in both the OATT Attachment K-Appendix and the OA Schedule 1.

Accordingly, PJM should be required to submit an additional filing that explicitly assigns operating reserves charges to up to congestion transactions consistent with other virtual transactions. PJM should also be required to include in this additional filing the longstanding rule that limits up to congestion transactions to sourcing or sinking at interfaces.

Up-to congestion transactions affect dispatch, unit commitment, congestion and prices just as do other virtuals and should therefore be treated in a comparable way. PJM's proposal fails to treat comparable products in a comparable way and should be rejected until modified.

I. BACKGROUND

Up-to congestion transactions are currently implemented as if they were a type of virtual transaction, and have been since PJM started the Day-Ahead Energy Market in 2000.³ Despite millions of dollars in virtual up-to transactions that have occurred since then, the PJM Tariff has defined "up-to transactions" as "bilateral transactions."⁴ Bilateral

³ See PJM filing initiating Docket No. ER00-1849 at 7, 11–12 ("Up-to' congestion bids permit transmission customers to specify how much they are willing to pay for congestion by bidding a certain maximum amount for congestion between the transaction source and sink. If the congestion charges are less than the amount specified in the bid, then the transaction will be scheduled in the day-ahead schedule. These 'up-to' bids protect transmission customers from paying uncertain congestion charges by guarantying that they will pay no more than the amount reflected in their bids. Transmission customers also may use an increment and decrement bid pair to accomplish the same type of hedging strategy, which further enhances their price certainty options. In the Commission's words, these types of bids 'allow transmission customers to specify the maximum price they are willing to pay for congestion in much the same way that energy market participants place bids for energy.'"); *PJM Interconnection, LLC.*, 91 FERC ¶ 61,148 (2000).

⁴ See OA Schedule 1 § 1.10.1A(c) ("Any Market Participant that elects to include a bilateral transaction in the Day-ahead Energy Market may specify the price (such price not to exceed the maximum price that may be specified in the PJM Manuals), if any, at which it will be wholly or partially curtailed rather than pay Transmission Congestion Charges. The foregoing price specification shall apply to the price difference between the specified bilateral transaction source and sink points in the day-ahead scheduling process only.").

transactions are defined by the tariff as transactions that contemplate physical transfers of energy rather than as virtual products.⁵ For the period from June, 2000–June 1, 2009, the relevant section of the PJM Tariff referred only to “bilateral transactions” and nowhere referred to “up-to transactions.”⁶ During the period from June 2000 to present, the core provision of the PJM Tariff continues to define up-to transactions as bilateral transactions and not as virtual transactions.

Unlike bilateral transactions, virtual transactions refer to transactions that do not contemplate the physical transfer of energy.⁷ As PJM explains (at 2–6), virtual transactions were included in the tariff at the same time as what would later “evolve” outside of the tariff framework to become up-to congestion transactions. Effective September 2009, the tariff included limited references to up-to congestion transactions, but the core provision continues to define up-to transactions as “bilateral transactions” that must contemplate the physical transfer of energy.⁸

⁵ Provision for “bilateral transactions” are set forth in OA Schedule 1 § 1.7.10, which states at subsection (a)(i), “In addition to transactions in the PJM Interchange Energy Market, Market Participants may enter into *bilateral contracts for the purchase or sale of electric energy to or from each other or any other entity*, subject to the obligations of Market Participants to make Generation Capacity Resources available for dispatch by the Office of the Interconnection. *Such bilateral contracts shall be for the physical transfer of energy to or from a Market Participant and shall be reported to and coordinated with the Office of the Interconnection in accordance with this Schedule and pursuant to the LLC’s rules relating to its eSchedules and Enhanced Energy Scheduler tools,*” and at subsection (a)(vi), “Bilateral contracts that do not *contemplate the physical transfer of energy to or from a Market Participant* are not subject to this Schedule, shall not be reported to and coordinated with the Office of the Interconnection, and *shall not in any way constitute a transaction in the PJM Interchange Energy Market*” [emphasis added].

⁶ Effective, June 1, 2009, certain tariff revisions that referred to “up to congestion” but did not define term became effective. *Black Oak Energy, et al. v. PJM Interconnection, LLC.*, 128 FERC ¶ 61,262 (2009). Effective September 17, 2010, the reference to “up to congestion” in OA Schedule 1 § 5.5 was removed; another non-definitive reference to “up-to congestion” was added to OA Schedule 1 § 1.10.1. *PJM Interconnection, LLC.*, 132 FERC ¶ 61,244 (2010).

⁷ See *DC Energy, LLC, et al. v. PJM Interconnection, LLC.*, 128 FERC ¶ 61,165 at PP 75–81 (2012).

⁸ PJM at 5, citing *Black Oak Energy v. PJM Interconnection, LLC.*, 128 FERC ¶ 61,262 (2009).

Despite the lack of foundation for such activity in the core section of the tariff, for most if not all of the entire period since 2000 to present, Market Participants have scheduled and PJM has accepted up-to congestion transactions that were purely virtual.

The failure, on the one hand, to acknowledge and implement the requirement that up-to congestion transactions exist only as bilateral transactions that contemplate the physical transfer of energy, and the failure, on the other hand, to include in the tariff any definition for “up-to congestion transactions” or “virtual transactions,” had an important consequence for the allocation of operating reserves charges.⁹ Section of 3.2.3 the PJM Tariff assigns operating reserves charges for deviations to all types of transactions which PJM has interpreted to include Incremental Bids (“INCs”) and Decremental Bids (“DECs”). The OATT omits specific allocation to up-to congestion transactions. This is unsurprising given that the term up-to congestion transactions remained undefined.

Up-to congestion transactions have never been defined as “virtual transactions” in the tariff. There has been no general definition of “virtual transactions” in the tariff. Virtual transactions have been represented only as INCs and DECs. PJM’s filing redefines up-to congestion transactions as virtuals, and defines virtual transactions to also include INCs and DECs.

The tariff provision assigning responsibility for operating reserves should have been corrected to assign operating reserve charges to all virtual transactions.¹⁰ The result of the

⁹ The Market Monitor explains how PJM’s rules for allocating operating reserves work in its 2012 State of the Market Report for PJM (at 97–127).

¹⁰ See Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C. at 6 (March 4, 2008) (“Fundamentally, an up-to congestion transaction is nothing more than an Increment Bid and a Decrement Bid that clear together based on the price difference between the two nodes at which they are submitted. Therefore, identical financial positions can be established through the use of Increment Bids and Decrement Bids. The advantage of using an up-to congestion transaction as opposed to individual Increment Bids and Decrement Bids is that the two sides of the up-to congestion transaction are guaranteed to either both clear together or neither one clear at all. Hence, up-to congestion transactions offer in some instances a less risky means for Financial

failure to do so is that up-to congestion transactions are not treated like other virtual transactions under PJM's proposed changes.

There is no reason not to assign operating reserve charges to up-to congestion transactions in exactly the same way that operating reserve charges are assigned to INCs and DECs. The absence of such consistent treatment created, and will continue to create, a significant, arbitrary and uneconomic incentive to engage in up-to congestion transactions and an uneconomic incentive to shift away from INCs and DECs.

Until September 2010, the damage cause by the failure to assign operating reserve charges to up-to congestion transmissions like INCs and DECs was tempered by the requirement that up-to congestion transactions procure and pay for transmission service and the requirement that up-to congestion transactions source or sink at an interface. Neither requirement applies to INCs and DECs.

The requirement to pay for transmission was removed in September 2010. Prior to 2010, the tariff had required transmission reservations because the up-to congestion product was designed to facilitate imports, exports and wheel through transactions, all of which required transmission service.

Consistent with the theory that all transmission service customers should receive a share of the marginal loss surplus, the Commission required PJM to allocate a share of the marginal loss surplus to market participants who acquired transmission service for up-to congestion transactions. This unintentionally created an incentive to engage in up-to congestion transactions solely to obtain an allocation of the marginal loss surplus because PJM had overallocated marginal loss surplus to up-to congestion transactions such that the

Marketers to take a position than submitting individual Increment Bids and Decrement Bids. Financial Marketers have an opportunity to decide whether the higher cost of up-to congestion transactions is worth avoiding the higher risks involved with individual Increment Bids and Decrement Bids.”).

allocation of the surplus exceeded the actual congestion charge, an illogical allocation result.

PJM proposed to and did eliminate the requirement to obtain transmission service in support of up-to congestion transactions. The Market Monitor opposed this proposal because it would have made more sense to directly fix the allocation of marginal loss surplus to up-congestion transactions. PJM's proposal, as an emergency solution to the allocation of the marginal loss surplus, unnecessarily and without an appropriate membership process, converted up-to congestion transactions into a "spread bidding" product and failed to address the requirement to pay operating reserve charges. Stakeholders had rejected spread bidding on at least two prior occasions when it was squarely proposed and considered, most recently in 2009.¹¹

The other limitation on up-to congestion transactions was the requirement that virtual up-to congestion transactions source or sink at an interface.

II. COMMENTS

PJM states that it has filed "to define Up-to Congestion Transactions and Virtual Transactions" and to "clarify the rules concerning the use of such transactions." The Market Monitor supports these objectives, but this filing is about more than mere clarification and this filing fails to clarify all associated tariff rules. The June 10th Filing changes the tariff's definition of up-to congestion transactions to mean purely virtual transactions rather than bilateral transactions that contemplate the physical transfer of energy but does not correspondingly address the need to treat all virtual transactions in the same way, including the assignment of operating reserve charges, the assignment of Schedule 9 charges, and FTR forfeitures. The June 10th Filing also proposes to relax scheduling limitations on up-to congestion transactions that have protected the markets.

¹¹ MIC Meeting September 10, 2009.

The June 10th Filing fails to address the issue of whether up-to congestion transactions should pay a share of operating reserves charges for deviations as do other virtual transactions. Up-to congestion transactions affect dispatch, unit commitment, congestion and prices just as do other virtuals, and create deviations between day-ahead and real-time, and should therefore be treated in a comparable way. There is no reason to treat up-to congestion transactions inconsistently with other virtual transactions, including the responsibility for operating reserves charges for deviations.

The failure to address this issue unfairly concentrates responsibility for such charges on other market participants. The direct result has been that other virtual transactions have paid more operating reserve charges and that, as a direct result, market participants have begun to use up-to congestion transactions in place of INCs and DECs.

The direct consequence of PJM's discriminatory definition of virtuals has been that up-to congestion transactions have been given an artificial cost advantage over other virtuals and that the volume of up-to congestion transactions has surged and the volume of INCs and DECs has decreased as a result.

The June 10th Filing does not include the longstanding requirement that up-to congestion transactions source or sink at interfaces.

Operating reserves charges for deviations are assigned to INCs and DECs, which are widely recognized to be virtual transactions. Now that PJM proposes to clarify in the tariff that up-to congestion transactions are a type of virtual transaction, PJM should further clarify that because they are virtual transactions, they should pay operating reserves charges for deviations just like other virtual transactions.

INCs and DEC's affect the dispatch in the day-ahead market and create deviations between the day-ahead market and the real-time market. This creates costs, and it is appropriate to assign responsibility for those costs accordingly.¹²

Up-to congestion transactions operate exactly like a combination of an INC and a DEC with a cap on the level of congestion. If a participant offered an INC and a DEC, and an up-to congestion transaction for the same time interval, and both cleared, they would have an identical effect on the day-ahead dispatch, and the deviation between the day-ahead dispatch and real-time dispatch. Without clarification of the June 10th Filing, if a participant used an INC and a DEC identical to both sides of an up-to congestion transaction, the participant would pay deviations on both the INC and the DEC and the participant with the up to congestion transaction would pay no such charge. This is illogical, and skews participants towards up-to congestion transactions and away from INCs and DEC's.

The broader solution to operating reserve charges is to define the level of total charges correctly and to spread the charges over all transactions that should pay a share, resulting in a low per MWh charge for all virtual transactions.

The Market Monitor is aware that one of the concerns about maintaining consistency between the assignment of operating reserves charges for deviations among all types of virtual transactions is the level of operating reserves charges that would then apply to up to congestion transactions. Some have raised concerns that the level of charges could be so high that it would render a substantial number of up-to congestion transactions uneconomic. The Market Monitor opposes the definition of products which provides discriminatory treatment for one product over another. While it is clear that the level of charges paid by up-to congestion transactions does affect their volume, it is not clear that

¹² INCs and DEC's do not pay operating reserves charges associated with reliability measures taken in real-time. This is also reasonable.

maximizing the volume of such transactions is or should be a goal. The volume of up-to congestion transactions exploded when transmission charges were removed. Now PJM proposes an arbitrary limit on the volume of such transactions rather than recognizing that if such transactions paid their share of operating reserve charges, the resultant volume would no longer cause issues for PJM clearing markets.

There is no support for the claim that charging operating reserves to up-to congestion transactions would not be efficient. Up-to congestion transactions implemented by PJM during the 2000–2012 period included significant limitations.

PJM required that market participants procure transmission service to support up to congestion transactions. Effective September 17, 2010, PJM eliminated this requirement in order to address market participants using up-to congestion transactions in order to obtain a portion of the funds collected as a result of PJM’s recently implemented marginal loss pricing.¹³ With this change, PJM essentially converted virtual up-to congestion transactions to the spread bidding product that had previously been rejected twice by stakeholders when the proposal was considered directly.

In 2012, PJM unilaterally removed a requirement that market participants source or sink up-to congestion transactions at an interface. Previously, the rules had prohibited both sourcing and sinking up to congestion transactions within the PJM Region, but not the tariff. The PJM Tariff, which made no provision for virtual up-to congestion transactions, made no provision about whether such transactions could only be scheduled to source or sink at interfaces.

Because PJM was operating without a filed tariff provisions to govern virtual up-to congestion transactions, it could implement a requirement limiting such transactions to source or sink at an interface for twelve years (2000–2012), and, then, at its sole discretion and without meaningful stakeholder review or consideration, remove the requirement.

¹³ See *PJM Interconnection, LLC.*, 132 FERC ¶ 61,244 (2010).

On October 25, 2012, PJM unilaterally removed, with no stakeholder discussion and without a filing with the Commission, the requirement that up-to congestion transactions source or sink at an interface.¹⁴ PJM justified removing the requirement in this manner, which had been effective since 2000, because the requirement was nowhere included in the PJM Tariff. The Market Monitor raised concerns that the removal of this requirement would continue the transformation of up-to congestion transactions into a practically unrestricted spread bidding product with the potential for unintended impacts on the market.

The up-to congestion product was created in response to FERC's requirement for PJM to offer market participants the ability to hedge real-time bilateral transaction congestion costs.¹⁵ PJM implemented the up-to congestion product in the enhanced energy scheduling (EES) application. The EES user interface is the PJM tool that market participants utilize to schedule cross border interchange transactions. Had PJM envisioned the up-to congestion product to be a purely virtual transaction, the implementation of the product would have occurred via the eMarket tool coincident with all other virtual transactions. Further, up-to congestion transactions were initially required to procure transmission prior to submission. This requirement was put in place to limit the amount of up-to congestion transactions (as well as "fixed" and "dispatchable" day-ahead external transactions) to a quantity that would physically be capable of flowing in the real-time, as

¹⁴ See Email dated October 25, 2012, from Arlene Noonan to the Market Implementation Committee, which read in full: "Sent on behalf of Keyur Patel and Mike Ward. This email contains important information concerning the requirement of Up To Transaction bids into the Day Ahead Market. Starting on Nov 1, PJM is removing the requirement of having an interface point as either source or sink of submitted up-to transactions. Participants will be able to submit Up To Transactions into the Day Ahead Market thru eMKT using any combination of points listed in the 'Up-To Source-Sink List' tab of the file 'OASIS Source/Sink List' posted at <http://www.pjm.com/markets-and-operations/etools/oasis/oasis-reference.aspx> with the exception of the points listed in tabs 'Not Eligible for Up-To Sink' and 'Not Eligible for Up-To Source'."

¹⁵ See *Atlantic City Electric Company, et al.*, 86 FERC ¶ 61,147 at 61,529 (1999); see also PJM Interconnection, L.L.C., et al., 81 FERC ¶ 61,257 (1997), order on reh'g, 92 FERC ¶ 61,282, mimeo at 14 (2000).

the available transfer capability would limit the quantity of transactions submitted in the Day-Ahead Markets. This requirement to procure transmission also added additional costs to the product, in the form of a \$0.67/MWh non-firm transmission charge. When PJM removed the requirement to acquire transmission service, PJM modified the product from a bilateral transaction that contemplated the physical flow of energy to a virtual transaction. In fact, coincident with this modification, PJM also moved the submission of up-to congestion transactions out of the EES application and into the eMarket application. After these changes, the volume of up-to congestion transactions increased dramatically. The removal of the requirement to have the source of an import up-to congestion bid (or sink for an export up-to congestion bid, or a source and sink for a wheel through up-to congestion bid) be at an interface further modified the product from a mechanism for market participants to hedge real-time congestion charges, to a purely virtual transaction.

Up-to congestion transactions affect dispatch, unit commitment, congestion and prices just as do other virtuals and should therefore be treated in a comparable way. PJM's proposal fails to treat comparable products in a comparable way and should be rejected until so modified. PJM should be required to submit an additional filing that consistently applies operating reserve charges to all virtual transactions, as PJM has defined such transactions. PJM should also be required to limit up-to congestion transactions to source or sink at an interface, consistent with the definition and implementation of up-to congestion transactions from their inception until 2012.

III. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to these comments as the Commission resolves the issues raised in this proceeding.

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Dated: July 1, 2013

Respectfully submitted,



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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 Eagleville, Pennsylvania,
this 1st day of July, 2013.



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