

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

First Energy Service Company)
)
) Docket No. ER09-1589-000

**MOTION FOR CLARIFICATION
AND RECONSIDERATION**

Pursuant to Rule 212 of the Commission’s Rules and Regulations, 18 C.F.R. §§ 385.21 (2009), Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM¹ (“Market Monitor”), submits this motion for clarification and reconsideration in the above captioned proceeding. By order issued December 17, 2009, the Commission approved, subject to conditions, American Transmission Systems, Incorporated’s (“ATSI”) petition to withdraw from participation in the Midwest Independent System Operation, Inc. (“Midwest ISO”) and integrate into PJM, as well as ATSI’s associated “FRR plan” for transitioning to participation in PJM’s capacity market.² A key component of this plan are special integration auctions to be conducted in March of 2010 (“Integration Auctions”) for the Delivery Years 2011/2012 and 2012/2013, and the December 17th Order included a number of clarifications to the

¹ PJM Interconnection, L.L.C., a FERC approved Regional Transmission Organization. Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”) and/or the PJM Reliability Assurance Agreement (“RAA”).
² *American Transmission Systems, Inc.*, 129 FERC ¶61,249 (“December 17th Order”).

proposed specific rules and parameters applicable to the Integration Auctions. The Market Monitor seeks clarification of the scope of the must offer rule and reconsideration of the options available to market participants for the calculation of the Market Seller Offer Caps.

I. MOTIONS

A. The Commission Should Clarify that the Must Offer Rule in the Commission-Approved PJM Market Rules Is Among the Rules for Integration Auctions Applicable to Generation in the ATSI Zone.

PJM and the Market Monitor both recommended that, consistent with current RPM rules, the Commission require that all uncommitted generation capacity in the ATSI Zone and in PJM be required to offer in the Integration Auctions.³ This recommendation would apply the “must offer” rule, which means that suppliers are forbidden from exercising market power by physically withholding capacity from the market. Physical withholding means the failure to offer available supply to the market. Supply is unavailable if it has already been sold or is committed to be sold. The must offer rule for physical withholding complements the offer cap rules for economic withholding. Economic withholding means physically offering available supply to the market, but doing so at prices above competitive levels. The prerequisites for a competitive auction

³ See Comments of the Independent Market Monitor for PJM in ER09-1589 at 5–6, filed September 25, 2009, citing OATT Attachment DD § 6.6; Comments of PJM Interconnection, L.L.C. in ER09-1589 at 9 (September 25, 2009), citing OATT Attachment DD § 6.6(e).

are met when the must offer rule is satisfied and the supplier offers to sell available supply and the offer cap rules are met when these offers are at competitive levels. Sellers may meet the must offer rule by providing an explanation for why the capacity is unavailable, per Section 6.6(e) of Attachment DD of the OATT.

The Market Monitor argued that this would appropriately recognize the symmetry fundamental to the just and reasonable operation of the centralized capacity procurement model. The obligation of supply to offer all capacity that is available should complement the obligation of load to procure capacity.⁴ The Market Monitor recommended that if the Commission approved FE's application, ATSI and its affiliates, ATSI Zone LSEs and ATSI Zone resource owners should follow PJM rules in accordance with the integration schedule.⁵ The Market Monitor noted that this approach would be consistent with the approach approved for the contingent special auction that was approved in the settlement of Duquesne Light Company's re-integration proceeding.⁶

The Commission found (at P 81):

We agree with PJM and the PJM MMU that Section 6.6(e) should be applied to all generation that was offered into the base residual auction for the delivery year. Under Section 6.6(e), generators that offered into a base residual auction are required to offer uncommitted capacity into all incremental auctions and we agree

⁴ *Id.*

⁵ *Id.*

⁶ *See Duquesne Light Co., et al.*, 126 FERC ¶¶61,074, at P 36 (Jan. 29, 2009), *order on reh'g*, 127 FERC ¶¶61,187 (May 28, 2009).

that the transitional auction is sufficiently similar to the incremental auctions to require such offers in that auction as well.

The Commission also found (at P 82) that “[a]ll current RPM market power mitigation rules will apply for the Integration Auctions.”

The Commission further found (at P 83):

We agree that ATSI-zone generators will be considered internal to PJM. As the Commission discussed in the *Duquesne Withdrawal Order*, if a generator is selected in the transitional auction, PJM will be obligated to pay that generator based on the auction.⁷ PJM also would have the right to dispatch that generator. Should ATSI renege on its commitment to join PJM, the generator would continue to be entitled to payment based on the RPM auction. PJM and the Midwest ISO would have to coordinate any transmission issues that arise, but the generator would not be required to obtain any additional transmission from the Midwest ISO.

Taken together, these three findings would appear to confirm that the rule included in the RPM mitigation rules at Section 6.6 of the Attachment DD to the OATT would apply in its entirety to the Integration Auctions. However, the Commission also included a fourth finding (at P 81) that could be interpreted to conflict with that conclusion:

However, we will not require that all generators in the ATSI zone be required to offer into the transition auction. The RPM rules do not require all generators within the PJM footprint to offer into a base residual auction or an initial auction. Section 6.6, rather, deals with different issues, i.e., the ability of a generator to withhold capacity from the initial base residual auction and then offer such capacity in

⁷ *Duquesne Withdrawal Order*, 122 FERC ¶ 61,039 at PP 91-97.

incremental auctions and the ability of a generator that has already manifested its desire to participate in an auction to withhold uncommitted capacity in a later auction. These requirements, however, do not obligate all generators within PJM to participate in capacity auctions. Moreover, neither PJM nor the PJM MMU provides a basis upon which PJM could require a generator to participate in the capacity market of the RTO in which its zone is located.⁸

The Market Monitor is concerned that this passage could be interpreted to specifically contradict, with respect to generation located in the ATSI zone, the general finding (at P 82) that “[a]ll current RPM market power mitigation rules will apply for the Integration Auctions.”

The must offer requirement in the tariff applies to all capacity resources for each Base Residual Auction and each subsequent Incremental Auction. The Transition Auctions are analogous to Base Residual Auctions in that they are the first auctions for the ATSI LDA and they otherwise use the rules applicable to Base Residual Auctions including the application of a demand curve based on the PJM-determined reliability requirement.

If the Commission intended to highlight the specific exceptions to the must offer rule of Section 6.6, this potential conflict could be appropriately reconciled if clarified. Section 6.6(e) of Attachment DD excepts from the must offer rule generation that “as

⁸ For example, in the *Duquesne Withdrawal Proceeding*, the Commission made clear that even if Duquesne moved to the Midwest ISO, generators within the Duquesne zone could continue to participate in PJM’s RPM auctions. See *Duquesne Light Company*, 123 FERC ¶61,060 at P 15 (2008).

shown by appropriate documentation, (i) is reasonably expected to be physically unable to participate in the relevant auction; (ii) has a financially and physically firm commitment to an external sale of its capacity; or (iii) was interconnected to the Transmission System as an Energy Resource and not subsequently converted to a Capacity Resource.” If this was the Commission’s determination, the Market Monitor requests that the Commission clarify that the must offer rule of Section 6 of Attachment DD, inclusive of the exceptions included in Section 6.6(e), applies to the Integration Auctions.

For example, if a generation unit located in ATSI previously sold its capacity in an RPM auction, that meets the must offer requirement.

B. The Commission Should Clarify the Scope of Generation Capacity Resources Eligible to Calculate Cost Offers on the Basis of a Default Offer Cap and Reconsider the Appropriate Level for Such a Default Offer.

The December 17th Order found (at P 90) that “because a generator will not have the opportunity to obtain replacement capacity in the transitional auction, the offer cap options for the third incremental auction approved in the *Mirant Settlement Order* are appropriate for the transition auction.”⁹ The rule from the uncontested *Mirant Settlement Order*,¹⁰ codified as Section 6.4(g) of Attachment DD to the OATT, states:

⁹ See *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 (2009), *order on clarification and reh’g*, 128 FERC ¶ 61,157 (2009), *PJM Interconnection, L.L.C.*, 129 FERC ¶ 61,090 (2009).

¹⁰ 124 FERC ¶ 61,140 (2008).

For any Third Incremental Auction, the Market Seller Offer Cap for an existing Generation Capacity Resource shall be determined pursuant to paragraph (a) of this Section 6.4, or if elected by the Capacity Market Seller, shall be equal to 1.1 times the Capacity Resource Clearing Price in the Base Residual Auction for the relevant LDA and Delivery Year.

This rule was developed in order to address the possibility that an existing Generation Capacity Resource that had cleared in the BRA would be required to offer additional unforced capacity that becomes available as a result of improved availability (due to a reduced EFORd) into the Third Incremental Auction at a price below the BRA clearing price, where it could clear at a price below the BRA clearing price.

RRI Energy, Inc. (“RRI”) argued that the problem addressed by section 6.4(g) of Attachment DD is a general inability to obtain replacement capacity after a third Incremental Auction.¹¹ While the Commission set the issue for hearing, the Commission recognized that there were market power concerns. The most comprehensive characterization of the issue in that matter is that the market rules could have resulted in a price that was not competitive because it was artificially too low.

RRI argued for and the December 17th Order required a default Offer Cap equal to 110 percent (1.1 times) the BRA clearing price on the basis of an alleged analogy

¹¹ Motion for Leave to Answer and Answer of RRI Energy, Inc. in Docket No. ER09-1589-000 at 4–6 (October 13, 2009).

between the Third Incremental Auctions, to which 6.6(g) applies, and the Integration Auctions.

In this matter, RRI fails to recognize that the significant differences in structure between Base Residual Auctions and Third Incremental Auctions make their argument irrelevant. There is no PJM VRR curve (reliability based demand curve) in the Third Incremental Auction. Rather, the demand curve in the Third Incremental Auction is determined by the buy bids of individual participants. The concern addressed by Section 6.4(g) was that there was an incentive for owners of generation to over sell capacity in the BRA (by using a low EFORD) and then cover the position in the Third Incremental Auction at an artificially low price. The solution, reached by settlement, was that offer capped sellers could use an offer price up to 1.1 times the clearing price for the relevant BRA, ensuring that the capacity would not be sold for less than the value established in the BRA and that generation owners buying capacity could pay a 10 percent penalty in addition, creating an incentive for such generation owners to not be short in the Third Incremental Auction. The fact that the demand curve in the ATSI Transition Auctions is determined by the reliability requirement and not by the bids of individual participants means that there should be no penalty in the Transition Auctions and that an incentive to generation owners buying capacity would be irrelevant. It would be unjust and unreasonable to apply a punitive price to load in the Integration Auctions.

However, the MMU does agree that units which cleared in prior PJM BRAs for the delivery years covered in the ATSI Transition Auctions should not be required to make offers into the Transition Auctions at less than the clearing price in the relevant prior PJM BRA. Thus, if a unit with a net ACR of \$5 per MW-day cleared at \$100 per MW-day in the PJM BRA for the 2011/2012 DY and its EFORD decreases, it should not be required to offer the additional MW into the Transition Auctions at \$5 per MW-day, when it is less than the BRA clearing price. The BRA established the economic value of that unit. The generation owner should have the option to offer such additional MW at the BRA clearing price of \$100 per MW-day.

The rationale for a default Offer Cap equal to 110 percent of the BRA clearing price does not apply to the Integration Auctions. There is no point in the application of this behavioral incentive because there are no generation owners purchasing capacity in the Transition Auctions and thus no potential impact of such an incentive. This approach would simply add an extra ten percent to the Market Seller Offer Cap with no supporting rationale. The result could be capacity prices in the Integration Auctions ten percent higher than competitive levels.

The MMU requests that the Commission reconsider the 110 percent default Offer Cap in order to avoid the possibility of unjust and unreasonably high clearing prices in the Transition Auctions.

The Market Monitor believes the highest reasonable default Offer Cap is the Capacity Resource Clearing Price in the relevant Base Residual Auction. This would allow Generation Capacity Resources to offer additional capacity that becomes available due to performance increases at a level based on the BRA clearing price received on the same unit.

The MMU also requests that the Commission clarify the December 17th Order to limit the scope of Generation Capacity Resources eligible to use such default Offer Caps for the relevant LDA and Delivery Year to those resources that have cleared in prior BRAs for the relevant delivery years. The Offer Caps for Generation Capacity Resources that did not clear in a prior BRA for the delivery years covered by the Transition Auctions should be the Offer Caps defined in Attachment DD at Section 6.4. The Market Monitor believes that the “relevant LDA” necessarily means the LDA in which a specific Generation Capacity Resource has a pre-existing obligation for the relevant Delivery Year. However, the Market Monitor requests that the Commission clarify that the “relevant LDA and Delivery Year” refers to the pre-existing obligation for the existing Generation Capacity Resources in an LDA other than the ATSI zone. The chart below lists the relevant Offer Caps based on the status of Generation Capacity Resources. (The CRCP Auction Option refers to the 1.1 times the prior BRA clearing price option.)

CHART 1

Category of Units	ACR Cap Option	CRCP Cap Option
Units located in a PJM LDA with pre-existing RPM capacity obligations	Yes	Yes
Units located outside of both PJM LDAs and the ATSI zone with pre-existing RPM capacity obligations	Yes	Yes
Units located in the ATSI zone with pre-existing RPM capacity obligations	Yes	Yes
Units in the ATSI zone with no pre-existing obligations	Yes	No
Units located in PJM LDAs with no preexisting RPM capacity obligations in a relevant Delivery Year because they failed to clear	Yes	No
Units that did not exist at the time of the relevant BRAs, which are located in a PJM LDA	Yes	No
Planned Generation Capacity Resources, regardless of location	N/A	N/A

There are external Generation Capacity Resources, including some in the ATSI zone that will become subject to the PJM market rules for the first time in the Integration Auctions, that did not participate in the Base Residual Auctions for the 2011/2012 and/or 2012/2013 Delivery Years and have no pre-existing capacity obligations to PJM.

There is, thus, no “relevant LDA and Delivery Year.” Such resources should be required to make competitive offers in the Transition Auctions, based on the definition of competitive offers in the tariff, the net ACR. The Commission should clarify that only Generation Capacity Resources with pre-existing obligations are eligible to submit cost offers on the basis of a default Offer Cap.

II. CONCLUSION

The Market Monitor requests that the Commission grant its motion for clarification and reconsideration consistent with the Market Monitor’s recommendations above.

Respectfully submitted,



Jeffrey W. Mayes

Joseph E. Bowring
Independent Market Monitor for PJM
President
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Valley Forge Corporate Center
Eagleville, Pennsylvania 19403
(610) 271-8051
joseph.bowring@monitoringanalytics.com

General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Valley Forge Corporate Center
Eagleville, Pennsylvania 19403
(610) 271-8053
jeffrey.mayes@monitoringanalytics.com

Dated: January 15, 2010

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 15th day of January, 2010.



Jeffrey W. Mayes
General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Valley Forge Corporate Center
Eagleville, Pennsylvania 19403
(610) 271-8053
jeffrey.mayes@monitoringanalytics.com