

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

PJM Interconnection, L.L.C.

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Docket Nos. ER17-1138-000
ER17-1138-001

**REQUEST FOR REHEARING BY
AMERICAN MUNICIPAL POWER, INC.**

Pursuant to section 313(a) of the Federal Power Act (“FPA”)¹ and Commission Rule 713,² American Municipal Power, Inc. (“AMP”) respectfully requests rehearing of the November 17, 2017 Order on Tariff Revisions (“Order”) in this proceeding.³ The Order accepted, subject to conditions and a further compliance filing, the proposed revisions to the Open Access Transmission Tariff (“Tariff”) and Reliability Assurance Agreement Among Load Serving Entities in the PJM Region (“RAA”) that PJM filed with the Commission on March 9, 2017 and amended on September 17, 2017 (“March 9 Filing”). The March 9 Filing was intended to establish (1) “pseudo-tie requirements for new external resources that wish to participate in PJM’s forward capacity auctions; and (2) a transition period with deliverability requirements to allow for existing pseudo-tied resources that had previously cleared a forward capacity auction to comply with the new requirements.”⁴ The Order established May 9, 2017 as the effective date for PJM’s proposal.

AMP seeks rehearing of the Order because a number of terms and conditions included in PJM’s proposal are unjust, unreasonable and unduly discriminatory. Therefore, the Commission

¹ 16 U.S.C. § 825l(a).

² 18 C.F.R. § 385.713.

³ *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,197 (2017).

⁴ Order P 1.

erred in conditionally accepting PJM's proposal. The grounds for AMP's rehearing request are detailed below.

I. STATEMENT OF ISSUES AND SPECIFICATION OF ERRORS

A. Statement of Issues.

In compliance with Commission Rule 713(c)(2),⁵ AMP provides the following statement of the issues raised on rehearing, AMP's position with respect to each issue, and representative authority on which AMP relies.

1. Issue: Was it error for the Commission to accept PJM's proposed Electrical Distance requirement? AMP's Position: Yes. The Commission's acceptance of PJM's Electrical Distance test was based on erroneous and unsupported findings. In particular, the Commission's finding that PJM's Electrical Distance test "strikes an appropriate balance" between reliability and participation by external resources in PJM's capacity auctions is conclusory in nature and is not substantiated by any explicit weighing of the competing interests. The Commission is not at liberty to rely on such conclusory findings as a basis for its action. 5 U.S.C. § 706(2)(A); *Sinclair Broadcast Group Inc v. FCC*, 284 F.3d 148 (2002); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983).
2. Issue: Was it error for the Commission to accept PJM's proposed Market-to-Market Flowgate test? AMP's Position: Yes. In accepting the Market-to-Market Flowgate test, the Commission relied on PJM's speculative and unsubstantiated claim that redispatching an external resource to control congestion on an impacted flowgate would be inadequate, and that reliance on native (within-PJM) resources would be necessary to avoid the imposition of excessive costs on PJM customers. Because the Commission relied on this speculative and unproven claim in accepting the Market-to-Market Flowgate test, its action was not supported by substantial evidence and was, for that reason, arbitrary and capricious. 5 U.S.C. § 706(2)(A); *Sea Robin Pipeline Co. v. FERC*, 795 F.2d 182 (D.C. Cir. 1986).
3. Issue: Was it error for the Commission to accept PJM's proposed Modeling Consistency requirement? AMP's Position: Yes. The Commission's determination that the Modeling Consistency requirement is just and reasonable is not supported by substantial evidence in the record because PJM did not provide the Commission with a rational basis to conclude that internal and external resources are comparably treated under the modeling consistency requirement and the Commission based its determination on such a finding of comparable treatment; instead, the record shows that PJM's proposal is unduly

⁵ 18 C.F.R. § 385.713(c)(2).

discriminatory because it imposes an unnecessarily punitive burden on pseudo-tied resources that is not faced by internal resources. The Commission's determination reflects an irrational balancing of interests because the facts recited by the Commission in support of its determination to allow PJM to penalize external resources for something within the RTOs' control do not rationally relate to that determination. 16 U.S.C. § 824d; *Florida Gas Transmission Company v. FERC*, 604 F.3d 636, 645 (D.C. Cir. (2010)); *Louisiana Pub. Serv. Comm'n v. FERC*, 184 F.3d 892, 898 (D.C. Cir. 1999); *Philadelphia Gas Works v. FERC*, 989 F.2d 1246, 1251 (D.C.Cir.1993).

4. Issue: Was it error for the Commission to accept PJM's proposed Firm Flow Entitlement requirement? AMP's Position: Yes. The Commission erred by invoking the potential for external generation resources to cause construction of additional transmission facilities as mitigation for the discriminatory hurdles imposed by the Firm Flow Entitlement in the case of existing pseudo-tied generators because doing so contradicts the Commission's "and" pricing prohibition and the Commission failed to provide a rational explanation for its decision. 16 U.S.C. § 824d; *Entergy Servs., Inc. v. FERC*, 319 F.3d 536, 542 (D.C. Cir. 2013); *Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act*, Policy Statement, FERC Stats. & Regs. ¶ 31,005 (1994), Order on Reconsideration, 71 FERC ¶ 61,195 (1995).
5. Issue: Was it error for the Commission to accept PJM's proposed firm transmission service requirement that includes rollover rights and therefore generally entails a five year transmission service commitment? AMP's Position: Yes. The Commission erred in approving PJM's firm transmission service and rollover rights requirement because it will usurp the authority vested in neighboring RTOs pursuant to Order No. 888 and Order No. 2000, which require each RTO to act as the independent administrator of its regional transmission tariff, as argued by AMP in its protest. *Louisiana Pub. Serv. Comm'n v. FERC*, 184 F.3d 892, 894 (D.C. Cir. 1999); *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999); *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996).

B. Specification of Errors.

In compliance with Commission Rule 713(c)(1),⁶ AMP specifies the following errors in the Commission's Order:

1. The Commission committed error in accepting PJM's proposed Electrical Distance requirement.

⁶ 18 C.F.R. § 385.713(c)(1).

2. The Commission committed error in accepting PJM's proposed Market-to-Market Flowgate test.
3. The Commission committed error in accepting PJM's proposed Modeling Consistency requirement.
4. The Commission committed error in accepting PJM's proposed Firm Flow Entitlement requirement.
5. The Commission committed error in accepting PJM's proposed firm transmission service requirement that includes rollover rights.

II. ARGUMENT

A. The Commission Erred in Accepting PJM's Proposed Electrical Distance Requirement.

One of the most actively contested portions of the March 9 Filing is the proposed requirement that external Generation Capacity Resources satisfy the so-called "Electrical Distance" requirement, defined as "the measure of distance, based on impedance and in accordance with the PJM Manuals, from the Generation Capacity Resource to the PJM Region."⁷ In a nutshell, the Electrical Distance requirement demands that an external resource have either a minimum Electrical Distance impedance equal to or less than 0.065 or be situated within one station of a transmission bus that has a minimum Electrical Distance impedance equal to or less than 0.065.⁸ According to PJM, the Electrical Distance requirement "helps resolve" certain challenges claimed to affect the operational modeling of resources physically located outside the PJM Region. PJM stated in support of the proposal that "if a resource meets the Electrical Distance test, that resource and its affected area can be included in the EMS or market model

⁷ PJM Tariff, Definitions (*see* Attachment A to the March 9 Filing).

⁸ March 9 Filing at 14.

without raising undue risk that a real time assessment of model failure or model performance solution problems could not be performed.”⁹

In its November 17 Order, the Commission accepted the proposed Electrical Distance requirement, subject only to a direction that PJM include the requirement in its filed Tariff rather than in its unfiled manuals.¹⁰ The Commission’s acceptance relied on two key findings concerning the Electrical Distance test, both of which are erroneous and unsupported. Rehearing of these findings is requested.

First, the Commission stated that “[w]e find that the Electrical Distance requirement is just and reasonable because it strikes an appropriate balance between allowing external resources to participate in PJM’s capacity auctions, while providing PJM with a level of reliability assurance.”¹¹ The “appropriate balance” finding, however, is wholly conclusory in nature; it is not substantiated by any comparison or weighing of, on the one hand, the adverse impacts on competition within the PJM region that will result from application of the Electrical Distance test¹² versus, on the other hand, the benefits to reliability claimed by PJM. The Commission, however, is not at liberty to rely on such conclusory findings as a basis for its action. As the U.S. Court of Appeals for the District of Columbia Circuit stated in rejecting another federal regulatory agency’s unsupported claim that its action struck an “appropriate balance” between

⁹ *Id.*

¹⁰ Order P 62. The Commission directed PJM to revise Tariff Attachment DD, section 5.5A(b)(i)(A) to state that “An external Generation Capacity Resource that seeks to pseudo-tie must have a minimum Electrical Distance impedance equal to or less than 0.065 p.u.; or is within one station of a transmission bus that has a minimum Electrical Distance impedance equal to or less than 0.065 p.u.”

¹¹ Order P 60.

¹² By limiting the number of external resources eligible to offer into PJM’s capacity auctions, the Electrical Distance requirement necessarily will suppress price competition, resulting in higher prices for capacity within the PJM Region. *See* AMP, Protest at 2, 6, 15 (Mar. 30, 2017).

competing interests, “notwithstanding the substantial deference to be accorded to the Commission's line drawing, the Commission cannot escape the requirements that its action not ‘run[] counter to the evidence before it’ and that it provide a reasoned explanation for its action.”¹³ Merely enumerating the competing interests, as the Commission did here, is not a substitute for expressly weighing those interests against one another and finding, based on substantial evidence, that the chosen course provides the greatest benefit to the public. The Commission’s failure to do so in the Order is error.

Second, in response to objections that PJM had failed to support the “values, modeling, and explanations” for its Electrical Distance test, the Commission accepted PJM’s contention that

the electrical distance is an analytical measurement that communicates the amount of operational and compliance risk that PJM is willing to take on when expanding its State Estimator to incorporate pseudo-tied resources. A higher impedance value increases the risk to PJM’s State Estimator.

Order P 61. What this rationale ignores, however, is that PJM never established any functional relationship between the value selected as the Electrical Distance threshold (0.065 p.u.) and the purported adverse impact of including resources with higher Electrical Distance values in the PJM State Estimator. Rather, the Electrical Distance test effectively operates as a numerical limitation; it limits the number of eligible external resources to as many as are consistent with the level of “operational and compliance risk” PJM is willing to tolerate. Conceivably, PJM could have achieved the same result by offering pseudo-tie slots to external resources on a first-come, first-served basis, with the number of slots offered capped at whatever quantity fits within the

¹³ *Sinclair Broadcast Group Inc. v. FCC*, 284 F.3d 148, 162 (D.C. Cir. 2002), quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

level of modeling risk PJM is willing to accept. And while a first-come, first-served approach undoubtedly would have problems of its own (and AMP is not recommending such an approach), the point is that PJM presented no strictly analytical rationale for the Electrical Distance test or for the specific 0.065 p.u. value selected as the cut-off.¹⁴ The Commission's own reliance on PJM's deficient analysis, and its failure to test PJM's analysis by requiring consideration of alternative values, causes the Order to fall short of satisfying the requirement that it lay out a discernable path between the facts found and the choices made in the Order.¹⁵

For these reasons, AMP requests rehearing of those portions of the Order in which the Commission accepted PJM's proposed Electrical Distance requirement for external Capacity Resources.

B. The Commission Erred in Accepting PJM's Proposed Market-to-Market Flowgate Test.

In its March 9 Filing, PJM proposed to take responsibility for coordinating a new flowgate to facilitate a pseudo-tie only if at least one generation resource internal to PJM has a flow impact on the new flowgate of 1.5% or more (the "M2M Flowgate Test").¹⁶ PJM stated in

¹⁴ This deficiency is not remedied by the Commission's consideration of the DFAX analysis discussed in PJM's submittals. As the Commission itself explained, "[u]sing this analysis, PJM developed an Electrical Distance threshold that would include facilities that were previously identified as feasible and in a manner that mitigates the risk associated with expanding the State Estimator." Order P 61. In the end, this is simply another way of saying that the purpose of the Electrical Distance test is to limit *the number* of external resources PJM is willing to include in its State Estimator based on its tolerance for asserted "operational and compliance risk." It is not an independent validation of the method or the threshold selected.

¹⁵ "[U]nder the applicable arbitrary and capricious standard of review, 'the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.'" *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014), quoting *Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins.*, *supra*, 463 U.S. at 43.

¹⁶ See Attachment DD, section 5.5A(b)(i). According to PJM, the 1.5% value corresponds to the flow impact threshold PJM now uses to identify resources that may be dispatched to help alleviate congestion on coordinated flowgates. March 9 Filing at 14-15.

its Filing that the purpose of the M2M Flowgate Test is “to ensure that PJM has adequate dispatch options to manage congestion on the external flowgate.” According to the Filing:

PJM should not have to take on responsibility for coordinating a flowgate to accommodate a Pseudo-Tie unless PJM has adequate options to manage congestion on that flowgate in addition to reducing the output of the pseudo-tied resource itself. If PJM’s only option was to reduce the Pseudo-Tie flow, that simply *may not be enough dispatch control* to protect PJM loads from the cost of congestion on that flowgate.¹⁷

PJM also points out that the M2M Flowgate Test “is an eligibility test’ and that, if a proposed pseudo-tie would require PJM to add a coordinated flowgate that fails the test, “then the external resource will not qualify to become pseudo-tied, and therefore will not be able to offer into the RPM Auction.”¹⁸

In protesting PJM’s March 9 Filing, AMP argued that PJM’s ability to redispatch an external pseudo-tied resource provides sufficient protection against excessive congestion on coordinated flowgates and that the additional eligibility requirement of the M2M Flowgate Test is unnecessary, discriminatory and anticompetitive.¹⁹ AMP also pointed out that PJM’s arguments in support of the M2M Flowgate Test relied on vague concerns regarding excess MISO congestion costs that it might experience in the event the flowgate requirement is not adopted, but that PJM had not explained the source of these costs or why controlling resources other than the pseudo-tied resource would be necessary to avoid those costs.²⁰

¹⁷ March 9 Filing at 14-15 (emphasis added).

¹⁸ *Id.* at 15. Making the test even more restrictive, the internal resource must have a usable dispatch range, as identified by an historic economic minimum offer lower than its historic economic maximum offer. *See* Order at n.115.

¹⁹ AMP, Protest, at 8-9 (Mar. 30, 2017); *see also* AMP, Protest, at 10 (Oct. 10, 2017).

²⁰ AMP, Motion and Answer, at 4 (Nov. 17, 2017).

Notwithstanding these various objections, the Order accepts PJM's M2M Flowgate Test, subject only to the condition that the 1.5% threshold be placed on file as part of the PJM Tariff.²¹ In accepting the test, however, the Commission expressly relied on PJM's speculative contention that redispatch control over the pseudo-tied resource might prove insufficient to avoid some undefined level of congestion costs deemed to be "excessive."²² Specifically, in explaining why it views the M2M Flowgate Test as a necessary tool, PJM stated in its Filing that "[i]f PJM's only option was to reduce the Pseudo-Tie flow, that simply *may not* be enough dispatch control to protect PJM loads from the cost of congestion on that flowgate."²³ In the Order, the Commission found that the M2M Flowgate Test is "appropriate as it will prevent PJM customers from facing undue excessive costs resulting from congestion on coordinated flowgates, whether those flowgates are coordinated with MISO or any other Balancing Authority."²⁴ That finding, however, necessarily is rooted in the speculative proposition posited by PJM that control over the pseudo-tied resource itself "may not" be sufficient to avoid excessive congestion costs.

It was arbitrary and capricious for the Commission to accept PJM's speculative assertion concerning the efficacy of control over a pseudo-tied resource in mitigating congestion costs. PJM offers no proof that redispatch of a pseudo-tied resource necessarily would be insufficient to mitigate congestion on a flowgate on which the resource is modeled as imposing real-time flow; indeed, PJM carefully hedged its assertion in this regard (reduction of pseudo-tie "may not" be sufficient) but then proceeded to adopt an eligibility standard that speculatively assumes

²¹ Order PP 76-79.

²² See Order P 76.

²³ March 9 Filing at 15 (emphasis added).

²⁴ Order P 76.

additional control will be necessary. The Commission’s reliance on PJM’s speculative claim thus falls short of satisfying the requirement that its actions be supported by substantial evidence in the record.²⁵ On rehearing, the Commission should require PJM to substantiate its claim that redispatch of a pseudo-tied resource is an insufficient means of preventing “undue excessive costs” resulting from congestion on coordinated flowgates.²⁶ Failing the submission of such evidence, the Commission should reverse its acceptance of PJM’s proposed M2M Flowgate Test.

C. The Commission Erred in Accepting PJM’s Proposed 2% Modeling Consistency Requirement.

1. Description of the Proposal and PJM’s Rationale.

PJM’s proposed addition of new subsection (b) to section 5.5A of Tariff Attachment DD includes, *inter alia*, its proposed modeling consistency requirement that will apply to all external generation resources offering into RPM auctions, in the event these resources do not qualify as Prior CIL Exception External Resources. The seller of capacity from such external generators must:

demonstrate[] to PJM, by no later than five (5) business days prior to the commencement of the offer period for the relevant RPM Auction, that . . . *each external entity* with which PJM may be required to coordinate flowgates under an agreed congestion management process *maintains a network model that produces results for such flowgates that are within two percent of the results produced by the PJM network model* for such flowgates.²⁷

²⁵ See *Sea Robin Pipeline Co. v. FERC*, 795 F.2d 182 (D.C. Cir. 1986) (Commission’s reliance on conjectural observations did not satisfy substantial evidence test). Moreover, to the extent the Commission generally eschews reliance on speculative claims, it applies that practice inconsistently in the Order. Thus, as explained in text, it relied on PJM’s speculative assertions about the efficacy of redispatch in accepting the M2M Flowgate Test; but, in another portion of the Order, the Commission rejected AMP’s position on the issue there at hand as being based on “speculative” arguments. See Order P 176. It is arbitrary and capricious for the Commission to accept PJM’s expressly speculative assertions while also rejecting arguments presented by AMP for being “speculative.”

²⁶ Order P 76.

²⁷ March 9 Filing, Attachment A, Tariff Revisions (emphasis added).

PJM’s March 9 Filing stated concisely that this requirement is intended to “better ensure effective coordination of flowgates needed to support a Pseudo-Tie” between entities such as PJM and MISO and “would help avoid modeling errors between the two coordinating entities, and promote consistency, certainty, and transparency in that coordination.”²⁸ That was the extent of explanation PJM provided for the modeling consistency requirement in the March 9 Filing.

PJM, however, generally noted that pseudo-tie modeling challenges arise because of:

- modifications to the external physical [bulk electric system] that are not reflected in the PJM [Energy Management System] model;
- unplanned and planned outages of data links with external entities; and
- external telemetry data quality and availability.²⁹

In its April 25, 2017 answer, PJM described the two-percent model consistency requirement as a “reasonable criterion that it and the other market or system operator have tight alignment (within 2%) in their respective models”³⁰ PJM stated that “PJM and MISO already have this 2% standard in place as part of a process for existing Pseudo-Tied resources.”³¹ PJM argues that this standard is reasonable, noting that “for internal resources, there is zero difference between model results, because there is only PJM’s model.”³² Finally, PJM observed that:

use of different models by the different coordinating entities inherently can result in some amount of difference, but that difference should be as little as possible. The 2% standard recognizes that *by working together* on modeling result variances,

²⁸ March 9 Filing at 15.

²⁹ *Id.* at 7-8.

³⁰ PJM, Answer, at 3 (Apr. 25, 2017).

³¹ *Id.* at 19.

³² *Id.*

*coordinating entities can reduce those variances to relative insignificance. The proposed Electrical Distance and the M2M flowgate tests, in addition to their other benefits, will ensure that there is no inherent technical obstacle that precludes reducing model variances to 2% or less; mutual commitment to coordinating at that level is the main controlling factor.*³³

The Commission posed two questions to PJM regarding the model consistency requirement in its deficiency letter dated May 5, 2017. One of these asked whether, in PJM's experience, any external entity (*i.e.*, Balancing Authority) with which PJM coordinates flowgates actually "maintain[s] a network model that produces results for such flowgates that are within two percent of the results produced by the PJM network model."³⁴ PJM elected to avoid answering this question in its September 18, 2017 response and stated instead that: "All modeling associated with flowgates that are being added to accommodate a Pseudo-Tie must be within two percent."³⁵ The Commission also inquired "how PJM determined that two percent is the appropriate standard."³⁶ PJM stated in response that the 2% variance limit was "negotiated and memorialized in a PJM/MISO operating guide."³⁷

2. The Commission's Approval of PJM's Modeling Consistency Requirement is in Error.

a. *The Commission's determination is not supported by substantial evidence in the record and is unduly discriminatory.*

In the Order, the Commission determined that "PJM's two-percent modeling consistency requirement is just and reasonable because it provides for comparable treatment of external

³³ *Id.* (emphasis added).

³⁴ Deficiency Letter at 3.

³⁵ Deficiency Response at 15.

³⁶ Deficiency Letter at 3.

³⁷ Deficiency Response at 14.

capacity resources seeking to pseudo-tie to PJM and internal capacity resources”³⁸ The Commission’s determination is in error because PJM did not provide the Commission with a basis to conclude that internal and external resources are comparably treated under the modeling consistency requirement.³⁹ Instead, PJM demonstrated that external resources are treated quite differently from internal resources, and failed to provide a rational explanation for treating external resources unfavorably as compared to internal resources. Therefore, the modeling consistency requirement is unduly discriminatory.⁴⁰

PJM noted that modeling consistency issues do not arise in the case of internal resources because the single model involved belongs to PJM. As a result, internal resources are not subjected to a modeling consistency requirement. Internal resources need not prove to PJM that PJM’s own modeling and the modeling of MISO, for example, produce results that are consistent within two percent or within any other tolerance. Internal resources do not face the possibility that, for example, system topologies change over time and that one Balancing Authority’s modeling is not updated, creating a variance greater than 2% and resulting in a situation in which the external resource cannot be used to provide capacity to serve load in PJM. Unlike internal resources, external resources would face this possibility in advance of every RPM auction.

PJM admitted that PJM and MISO can work together to reduce model variance down to an insignificant level. PJM identified the RTOs’ mutual commitment to coordinating their modeling as “the main controlling factor” in “reducing model variances to 2% or less.”⁴¹ PJM

³⁸ Order P 87.

³⁹ *Florida Gas Trans. Co. v. FERC*, 604 F.3d 636, 645 (D.C. Cir. 2010) (“The substantial evidence inquiry turns . . . on whether that evidence adequately supports [FERC’s] ultimate decision.”).

⁴⁰ 16 U.S.C. § 824d.

⁴¹ PJM, Answer, at 19 (Apr. 25, 2017).

identified specific factors, such as PJM’s own failure to model external system modifications, data link outages, and access to telemetry data as causing modeling “challenges” for PJM. All of these factors are *within the control* of PJM and the native Balancing Authority, but are *outside the control* of the pseudo-tied external resource.

Inexplicably, PJM seeks to require the external resource, in advance of every RPM auction, to certify to PJM that the variance between PJM’s own modeling and the native Balancing Authority’s modeling is less than 2%. AMP argued in its March 30, 2017 protest that “PJM’s model[ing] consistency requirement inappropriately shifts the burden of accurate modeling from the RTOs to the pseudo-tied generators.”⁴² From the RTOs’ perspective, the burden of modeling is the commitment of resources to perform the modeling. Under PJM’s new requirement, the pseudo-tied generator bears the burden of inaccurate modeling in the event the RTOs shirk their responsibility to model their systems consistently; if the RTOs fail in that duty, it is the generator that suffers the consequences by being *prohibited from participating in RPM auctions*. PJM has provided no rational explanation for shifting to resource owners the burden of ensuring modeling consistency, especially when reducing modeling variances to insignificant levels is conceded by PJM to be fully within the RTOs’ control.

PJM argued in its answer that the modeling consistency requirement will “help ensure that the two coordinating entities are, as much as reasonably practical, ‘on the same page.’”⁴³ The opposite is true. The requirement provides an opportunity for the RTOs to escape responsibility for accurate modeling by allowing PJM to preclude the external resource from participating in RPM auctions in lieu of PJM working with the native Balancing Authority to

⁴² AMP, Protest, at 10 (Mar. 10, 2017).

⁴³ PJM, Answer, at 18 (Apr. 25, 2017).

reduce model variance. An affirmative requirement placed on the RTOs to ensure that their modeling is accurate, within 2% or some other bandwidth, would be far more likely to keep the RTOs “on the same page.” Instead, PJM’s proposal penalizes the pseudo-tied resource — which, of all the involved parties, is the least capable of mitigating the modeling variance — and provides no incentive to promote accurate modeling by the RTOs. Resources internal to PJM, on the other hand, face no such needlessly punitive burden. PJM’s modeling variance requirement thus is revealed to be unduly discriminatory, in violation of the Federal Power Act.

b. The Commission’s balancing of interests is flawed.

The Commission’s finding in the Order that “the two percent threshold strikes a reasonable balance in allowing for sufficient modeling variance between an external Balancing Authority and PJM”⁴⁴ is unsupported, inconsistent with the facts, and therefore flawed. The Order states that the burden on external resources is not undue “because the external resources are not required to do any of the modeling under this proposal.”⁴⁵ While it may be the case that the Balancing Authorities rather than the external resources will be performing the actual modeling, this superficial logic ignores the true burden on external resources, which is a prohibition from participation in RPM as a result of the RTOs’ failure to accurately model their systems. AMP agrees with PJM and the Commission that modeling “variance should be minimized to the extent practical.”⁴⁶ The Commission commits error, however, in failing to explain how the combination of (i) the fact that modeling is performed by the Balancing

⁴⁴ Order P 87.

⁴⁵ *Id.*

⁴⁶ *See id.*

Authorities, and (ii) the desire to minimize modeling variance, justifies penalizing external resources for something wholly within the RTOs' control.⁴⁷

D. The Commission Erred in Accepting PJM's Proposed Firm Flow Entitlement Requirement.

1. Description of the Proposal and PJM's Rationale.

PJM's proposed addition of new subsection (b) to section 5.5A of Tariff Attachment DD includes, *inter alia*, PJM's proposed firm flow entitlement requirement that will apply to all external generation resources offering into RPM auctions, in the event these resources do not qualify as a Prior CIL Exception External Resources. The seller of capacity from such external generators must:

demonstrate[] to PJM, by no later than five (5) business days prior to the commencement of the offer period for the relevant RPM Auction, that . . . [it] has *secured written acknowledgement from the external Balancing Authority Areas . . . that firm allocations associated with any coordinated flowgates* applicable to the external Generation Capacity Resource *under any agreed congestion management process then in effect between PJM and such Balancing Authority Area will be allocated to PJM.*⁴⁸

PJM's March 9 Filing explained that "[t]his requirement simply reflects that a pseudo-tied resource is capacity committed to PJM load, and therefore, PJM load should be assigned the firm flow allocation from that coordinated flowgate."⁴⁹ In response to the Commission's deficiency letter, PJM indicated that MISO and PJM "have coordinated application of rules associated with Firm Flow Entitlements specifically associated with Pseudo-Ties as part of the

⁴⁷ *La. Pub. Serv. Comm'n v. FERC*, 184 F.3d 892, 898 (D.C. Cir. 1999) (quoting *Phila. Gas Works v. FERC*, 989 F.2d 1246, 1251 (D.C. Cir. 1993) ("For FERC to utter the words 'unique facts and circumstances' and 'equity,' . . . as a wand waved over an undifferentiated porridge of facts, leaves regulated parties and a reviewing court completely in the dark as to the core of FERC's reasoning . . .")). Simply as a matter of equity, it is improper to impose penalties on parties unable to avoid those penalties by modifying their own behavior.

⁴⁸ March 9 Filing, Attachment A, Tariff Revisions (emphasis added).

⁴⁹ March 9 Filing at 15-16.

solution to Pseudo-Tie over-lapping congestion counting”⁵⁰ PJM reported that the RTOs were making certain adjustments to the “transfer of the Pseudo-Tie Firm Flow Entitlement impacts from the Native BA to the Attaining BA before the day-ahead model run, so that congestion and Day-ahead Energy Market prices for pseudo-tied external generation resource [*sic*] will better reflect actual congestion.”⁵¹ This, PJM asserted, would ensure that “the Firm Flow Entitlements associated with Pseudo-Ties will be properly accounted for in both the PJM and MISO model.”⁵² Finally, PJM stated that “PJM, MISO, and members of the Congestion Management Process Group . . . are also developing a solution to the longstanding Freeze date initiative that includes updates to the Firm Flow Entitlements between entities.”⁵³

2. The Commission’s Approval of PJM’s Firm Flow Entitlement Requirement is in Error.

In the Order, the Commission acknowledges that “the prevailing allocations of Firm Flow Entitlements, particularly between MISO and PJM based on the freeze date, may create a challenge for new resources seeking to obtain these rights”⁵⁴ The Commission, however, dismissed arguments that existing impediments to obtaining Firm Flow Entitlements render this provision unjust and unreasonable; it did so on the basis that “additional Firm Flow Entitlements can be created by transmission upgrades that expand the capability of the system. Such upgrades are often required to accommodate requests for long-term firm transmission service.”⁵⁵

⁵⁰ PJM, Deficiency Response, at 8 (Sep. 18, 2017).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Order P 101.

⁵⁵ *Id.*

The reasoning set forth in this portion of the Order is invalid. The Commission’s error lies in failing to consider the effect of this provision on existing pseudo-tied generators that are not currently eligible, or that in the future may become ineligible, for treatment as Prior CIL Exception External Resources. These generators already have obtained firm transmission service from the native transmission provider in order to participate as Capacity Performance Resources in RPM. To the extent the external transmission provider charges a rolled-in rate and additionally requires the generator to pay for network upgrades in order to retain the ability to meaningfully utilize its existing transmission service reservations, the result is impermissible “and” pricing.⁵⁶ In the Order, however, the Commission provided no explanation for departing from the prohibitions contained in its prior transmission pricing policies. Its failure to provide such an explanation is reversible error.⁵⁷

Apart from being at odds with FERC pricing policies, PJM’s proposal unduly discriminates against external capacity resources. Under PJM’s proposal, external generating resources would face the risk that PJM may bar their participation in RPM auctions based on the unavailability of entitlements to flowgate rights and would do so in advance of every RPM auction. Resources internal to PJM, however, are not subject to any corresponding risk. No internal resource faces the prospect of having its ability to participate in RPM held hostage for

⁵⁶ See, e.g., *Entergy Servs., Inc. v. FERC*, 319 F.3d 536, 542 (D.C. Cir. 2013) (“the Commission provided a reasoned explanation for the change in policy. . . . the Commission was clarifying inadvertent statements in prior orders that would have allowed ‘and’ pricing, where a customer pays for use of the grid at its incremental expansion cost and later is also charged for use of the grid at its average cost.” (citing *Penn. Elec. Co.*, 58 FERC ¶ 61,278, *reh’g denied*, 60 FERC ¶ 61,034, at 61,127 (1992))); *Inquiry Concerning the Commission’s Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act*, Order on Reconsideration, 71 FERC ¶ 61,195, at 61,690 (1995) (“we have allowed the utility to charge transmission-only customers the higher of embedded costs or legitimate and verifiable opportunity costs, but not the sum of the two (‘or’ pricing).”).

⁵⁷ *Id.*

the payment of ransom in the form of additional network upgrade costs. In alluding to the possibility that MISO and PJM may someday file revisions to the JOA to address the allocation of Firm Flow Entitlements in relation to pseudo-ties, PJM has demonstrated that the ability to address allocations of flowgate entitlements is fully within the RTOs' control. Until the RTOs address this issue in a manner that ensures these rights are reasonably and equitably available to external generators seeking to participate in RPM auctions, PJM's Firm Flow Entitlement requirement will unduly discriminate against external resources by imposing a hurdle that may be impossible to overcome (at least in a manner consistent with the Commission's transmission pricing policies).

E. The Commission Erred in Accepting PJM's Proposed Firm Transmission Service Requirement that Includes Rollover Rights.

1. Description of the Proposal and PJM's Rationale.

PJM's proposed addition of new subsection (b) to section 5.5A of Tariff Attachment DD includes, *inter alia*, its proposed firm transmission service and roll-over rights requirement that will apply to all external generation resources offering into RPM auctions, in the event these resources do not qualify as a Prior CIL Exception External Resources. The seller of capacity from such external generators must:

*for transmission outside PJM, obtain[] long-term firm point-to-point transmission service (evaluated for deliverability from the unit-specific physical location of the resource to PJM load pursuant to a study that is reviewed and approved by PJM in accordance with PJM deliverability criteria to ensure uniformity for internal and external resource deliverability requirements), with rollover rights for the term of the transmission service that is confirmed by the Balancing Authority for the Balancing Authority Area where such resource is geographically located;*⁵⁸

⁵⁸ March 9 Filing, Attachment A, Tariff Revisions (emphasis added).

PJM’s March 9 Filing described this as requiring “transmission service that supports deliverability of capacity from that external resource to PJM load in a manner comparable to the deliverability of capacity required from PJM-internal resources to PJM load.”⁵⁹ PJM asserted that, under the RAA, “deliverability” is measured “from the Capacity Resource to *PJM load*.”⁶⁰ PJM argued that this RAA requirement should apply equally to internal and external resources.

The Commission’s deficiency letter questioned, *inter alia*, “how PJM will coordinate the process of Transmission Service Reservations between PJM and the other Balancing Authorities.”⁶¹ The Commission instructed PJM to “explain who will perform the studies, who will pay for any necessary transmission upgrades, and how rollover rights will be managed.”⁶² While, for the most part, the deficiency letter’s questions sought to elicit information about coordination between the host Balancing Authority and PJM in the evaluation of a resource’s request for long-term transmission service, PJM’s responses reveal an objective very different from coordination — specifically, that PJM seeks to effectively usurp the authority of the RTO where the resource is located to evaluate and grant transmission service. As PJM stated in its deficiency response:

- PJM will provide the other BA its criteria for studying transmission service requests and will “help those conducting the studies to understand the criteria and provide guidance where needed.”⁶³
- PJM will conduct its own studies “to determine if PJM sees any potential impacts to external entities using a DFAX screen method,” and, if PJM identifies any potential impacts, “PJM will ask the

⁵⁹ March 9 Filing at 16.

⁶⁰ *Id.* (emphasis in the original).

⁶¹ Deficiency Letter, Item 6.

⁶² *Id.*

⁶³ Deficiency Response at 15.

external entity to screen its system to determine whether there are any violations requiring reinforcement on the external entity's system." PJM claims that this step has the purpose of "alerting those entities of the need to examine their system for impacts."⁶⁴

- PJM would impose this process on MISO and all other Transmission Providers in Balancing Authority Areas that host resources seeking to pseudo-tie into PJM to offer into PJM's capacity market. PJM states that it "does not anticipate this process would be any different as between PJM and MISO compared to any other neighboring BAs."⁶⁵

2. The Commission's Approval of PJM's Firm Transmission Service and Rollover Rights Requirement is in Error.

The Commission erred in approving PJM's firm transmission service and rollover rights requirement because the Commission failed to address the issues raised in AMP's protest of PJM's response to the Commission's deficiency letter. Specifically, AMP demonstrated that PJM's proposal would usurp the authority vested in neighboring RTOs pursuant to Order Nos. 888⁶⁶ and 2000,⁶⁷ which require each RTO to act as the independent administrator of its regional transmission tariff.⁶⁸ The Commission is in error because it failed to explain its decision to allow PJM to infringe the rights and responsibilities of its neighboring RTOs (as well as non-RTO

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at pp. 31,730-31 (1996) (ISO Principles).

⁶⁷ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at p. 31,047 (1999) ("the principle of independence is the bedrock upon which the ISO must be built"); *id.* at p. 31,108 ("we adopt the NOPR's requirement that the RTO be the sole provider of transmission service and sole administrator of its own open access tariff.").

⁶⁸ That PJM intends for its study results to trump those of the neighboring Transmission Provider is made explicit in PJM's response to Deficiency Item 7e. There, in responding to the question as to why an external resource with firm transmission service might not be fully deliverable into PJM, PJM states in part: "For all new external generation resources seeking to be a Capacity Resource in PJM, PJM anticipates *the studies conducted under the proposed enhancements in this filing* will be robust such that the resource would be fully deliverable in to PJM." Deficiency Response at 18 (emphasis added).

transmission providers), contrary to the principles established in the Commission's prior orders.⁶⁹

Although PJM clothes its description of this process in terms suggestive of collaboration, in reality PJM seeks to dictate the study criteria a neighboring Transmission Provider would use in evaluating the pseudo-tied resource's transmission service request. If the neighboring Transmission Provider's study would confirm the reservation but PJM's own analysis of the neighboring system indicates an issue, PJM would be positioned to simply reject the pseudo-tie as "undeliverable." In effect, PJM's analysis would override that of the neighboring Transmission Provider.

If the Transmission Provider in the neighboring area judges that firm transmission service may be granted based on the application of its own study criteria, that should end the matter; PJM should be required to accept that determination and grant the pseudo-tie (assuming the resource also clears the various other hurdles PJM would put in its path). Allowing PJM to (in effect) reject another Transmission Provider's study results—by denying a pseudo-tie based on its own evaluation of an adjacent system—would give PJM a level of super-RTO authority for which there is neither precedent nor justification. That is essentially what the Commission endorsed in approving PJM's firm transmission service/rollover rights requirement. The Commission committed error in doing so without explaining why it diverged from the independence principles the Commission established in Order Nos. 888 and 2000.

⁶⁹ *La. Pub. Serv. Comm'n v. FERC*, *supra*, 184 F.3d at 894 ("We hold that it was arbitrary and capricious for the Commission to assess capacity costs for interruptible service without an explanation for departing from its own precedent.").

III. CONCLUSION

For the reasons and to the extent stated above, AMP seeks rehearing of the November 17 Order. On rehearing, the Commission should: (i) find the Tariff and RAA “enhancements” for pseudo-tied external resources that PJM proposed in the March 9 Filing and that AMP has addressed above are unjust, unreasonable and unduly discriminatory; (ii) reject these proposed Tariff and related RAA changes; (iii) direct PJM to submit a further compliance filing consistent with the Commission’s determinations on rehearing; and (iv) take such other action as the Commission may deem warranted in the circumstances presented.

Respectfully submitted,

/s/ Gary J. Newell

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December 18, 2017

CERTIFICATE OF SERVICE

I hereby certify that I have on this date caused a copy of the foregoing document to be served on each person included on the official service list maintained for this proceeding by the Commission's Secretary, by electronic mail or such other means as a party may have requested, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated at Washington, D.C., this 18th day of December, 2017.

By: /s/ Anna Williamson
Anna Williamson
Administrative Legal Assistant