

FERC Issues Order Accepting PJM Capacity Performance Proposal

FERC approves PJM's significant capacity market changes in an effort to ensure reliability in the region.

On June 9, 2015, the Federal Energy Regulatory Commission (FERC or the Commission) issued an order (the CP Order)¹ largely accepting proposed revisions (the CP Proposal) to enhance the reliability of the capacity market, known as the Reliability Pricing Model or RPM, operated by PJM Interconnection, L.L.C. (PJM). The CP Proposal was initially presented to FERC in filings PJM made in December 2014 in Docket Nos. ER15-623 and EL15-29 under Sections 205 and 206 of the Federal Power Act, respectively. The filings also included proposed changes to PJM's rules relating to its energy markets and rules for *force majeure* relief in certain cases of non-performance. Some of PJM's initially proposed revisions were modified in PJM's subsequent filings made in February and May 2015 in response to numerous protests and comments as well as FERC staff's questions raised in a deficiency letter issued in late March 2015. The Commission accepted most of PJM's CP Proposal, as modified throughout the proceeding, however, the Commission rejected some aspects, and ordered PJM to modify other aspects, of the CP Proposal.

2015 Base Residual Auction

PJM initially proposed implementing its CP Proposal commencing with the Base Residual Auction (BRA) that was to be held in May 2015 for the 2018-19 Delivery Year. Given the extended timing of the proceeding, PJM later sought and was granted a waiver to delay the BRA to be held within 30-75 days after the Commission issued its order (or by no later than the week of August 10, 2015).² In response to the Commission's order, PJM has indicated publicly that it intends to hold the BRA for the 2018-19 Delivery Year starting on August 10, 2015.³

Core Elements of CP Proposal Accepted by FERC

The Commission accepted most of the core elements of the CP Proposal, including:

- Generation capacity resources generally are required to participate in RPM auctions as Capacity Performance Resources (CP Resources), as defined in the CP Proposal.⁴
- CP Resources' capacity offers are subject to the default offer cap, which will equal the Net Cost of New Entry (Net CONE) multiplied by the Balancing Ratio (which is 0.85 for the 2018-19 Delivery Year),⁵ which is a determinant of a CP Resource's expected performance during hours in which PJM has declared an Emergency Action (Performance Assessment Hours).⁶

- CP Resources are permitted to submit sell offers (with justification) at levels above the applicable default offer cap, and such sell offers are permitted to include the cost of firm fuel supply and a risk component to account for the increased risk of being a CP Resource.⁷
- CP Resources are penalized for non-performance during Performance Assessment Hours at a rate equal to the annual Net CONE divided by 30.⁸
- There are very limited excuses for non-performance — for example, if a CP Resource is on a PJM-approved planned or maintenance outage (and PJM has not directed the CP Resource to return to service) or PJM did not schedule the resource to operate for reasons other than (i) any operating parameter limitations included in the offer or (ii) the resource submitted a market-based offer price higher than its cost-based offer price.⁹
- Revenues from Non-Performance Charges are allocated to over-performing resources.¹⁰
- There is an annual stop-loss for Non-Performance Charges applicable to a CP Resource equal to 1.5 multiplied by the annual Net CONE.¹¹
- There will be a transition mechanism whereby participation in RPM auctions for the 2016-17 and 2017-18 Delivery Years as a CP Resource is voluntary and the associated offer caps and penalties are reduced for those years;¹²
- There will also be a transition mechanism whereby certain resources (for example, renewable generation, electric storage resources, other generation resources that obtain an exemption) are permitted to participate in the auctions for the 2018-19 and 2019-20 Delivery Years as Base Capacity Resources.¹³
- CP Resources may only declare *force majeure* for purposes of RPM in instances of Catastrophic Force Majeure, defined as widespread failure of the transmission system or fuel delivery system in all of the PJM area.¹⁴

Elements of CP Proposal FERC Rejected or Modified

There are, however, important aspects of the CP Proposal that the Commission either rejected outright or directed PJM to modify in a compliance filing, including:

- **CP Resource Offer Representations:** PJM proposed requiring certain representations be given at the time of submitting a CP Resource offer into an RPM auction. These representations included that the resource has the capability to provide energy at any time when called upon by PJM throughout the Delivery Year. PJM also proposed that knowingly false representations could be determined to be a violation of PJM's and the Commission's market rules. The Commission rejected the proposed representations, finding that they did not add any value to the CP Proposal beyond the penalties for non-performance, were too ambiguous and could discourage offers.¹⁵
- **Monthly Stop-Loss:** PJM proposed a monthly stop-loss mechanism that was one-third of the annual stop-loss amount (or 0.5 times annual Net CONE), although PJM acknowledged in a later filing in the proceeding that it was willing to eliminate this stop-loss provision. The Commission rejected the monthly stop-loss mechanism, and, as such, only the annual stop-loss mechanism discussed above will apply.¹⁶

- **Financial Security Requirements:** As part of its initial filing, PJM proposed significantly increased financial security requirements for Planned Resources (*i.e.*, resources in development, but not in operation) to participate in RPM auctions. In a subsequent filing, PJM indicated that it was willing to allow this increased security requirement to be reduced as a project achieves certain development and construction milestones. The Commission accepted the increased security requirements, subject to PJM modifying them so that they can be reduced incrementally as a resource reaches certain development milestones.¹⁷

Other Provisions of the CP Proposal

There are other aspects of the CP Proposal that the Commission accepted. For example, the Commission allowed PJM to reject a sell offer for a CP Resource that is not reasonable. At the same time, however, the Commission directed PJM to modify its tariff to restrict PJM's discretion to reject a sell offer only when (i) the CP Resource cannot reasonably be relied on to perform during emergency conditions, (ii) the offer is purely speculative or (iii) the offer would otherwise undermine the intent of PJM's Capacity Performance construct.¹⁸ The Commission also rejected the request of PJM's Independent Market Monitor (IMM) to have authority to reject a sell offer.¹⁹

The Commission accepted PJM's proposal to allow Capacity Storage Resources, Intermittent Resources, Demand Resources and Energy Efficiency Resources to submit aggregated offers (including offers for these types of resources with different owners);²⁰ however, the Commission rejected aggregations across different Locational Deliverability Areas.²¹ The Commission directed PJM to allow aggregation with environmentally-limited resources.²²

The Commission also largely accepted PJM's proposal to allow Demand Resources to participate as CP Resources and required that such resources conform to the standards applicable to all CP Resources.²³ PJM previously reduced the amount of capacity it would procure in a BRA by 2.5% to allow this amount to be procured over the course of PJM's three Incremental Auctions (*i.e.*, on a date closer in time to the relevant Delivery Year) (the 2.5% Capacity Holdback). The Commission found PJM's request to eliminate the 2.5% Capacity Holdback provision to be reasonable.²⁴

Chairman Bay's Dissent

Chairman Bay dissented from the CP Order, indicating that he does not believe the CP Proposal as accepted will result in just and reasonable rates.²⁵ Chairman Bay stated that the capacity market is structurally non-competitive, and, with the Commission's approval, there is no mitigation for offers up to 0.85 times Net CONE.²⁶ He also indicated that a cost-benefit analysis would have been helpful in this proceeding (though not required for every market rule change), given the likelihood of significantly increased costs to consumers for the procurement of CP Resources in the RPM.²⁷ Chairman Bay argued that the CP Proposal is not based on incentivizing the development of new capacity and is not required to enhance performance and reliability.²⁸ Chairman Bay also took issue with using 30 performance assessment hours as the denominator when calculating the Non-Performance Charge rate, stating that actual performance assessment hours have historically been far lower, which equates to penalties that will be too low to work as intended.²⁹

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Endnotes

¹ *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (2015).

² *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,067 (2015).

³ PJM Capacity Performance Implementation Timelines, available at <http://www.pjm.com/~media/committees-groups/committees/elc/postings/20150610-capacity-performance-bra.ashx> (last visited June 16, 2015).

⁴ CP Order at P 354.

⁵ PJM Net CONE for CP Market Seller Offer Caps, available at <http://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/net-cone-for-market-seller-offer-cap-purposes.ashx> (last visited June 16, 2015).

⁶ CP Order at P 336.

⁷ *Id.* at P 352.

⁸ *Id.* at PP 159-63.

⁹ *Id.* at PP 167-72.

¹⁰ *Id.* at P 182.

¹¹ *Id.* at P 164.

¹² *Id.* at P 253.

¹³ *Id.* at P 355.

¹⁴ *Id.* at P 464.

¹⁵ *Id.* at PP 94-95.

¹⁶ *Id.* at P 165.

¹⁷ *Id.* at P 382.

¹⁸ *Id.* at P 92.

¹⁹ *Id.* at P 93.

²⁰ *Id.* at P 101.

²¹ *Id.* at P 103.

²² *Id.* at P 101.

²³ *Id.* at P 99.

²⁴ *Id.* at P 394.

²⁵ Bay Dissent at 1.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 1-2.

²⁹ *Id.* at 3-4.