

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

Calpine Corporation, Dynegy Inc.,)	
Eastern Generation, LLC, Homer City)	
Generation, L.P., NRG Power Marketing)	
LLC, GenOn Energy Management, LLC,)	
Carroll County Energy LLC,)	Docket No. EL16-49
C.P. Crane LLC, Essential Power, LLC,)	
Essential Power OPP, LLC, Essential)	
Power Rock Springs, LLC, Lakewood)	
Cogeneration, L.P., GDF SUEZ Energy)	
Marketing NA, Inc., Oregon Clean)	
Energy, LLC and Panda Power)	
Generation Infrastructure Fund, LLC)	
 v.)	
 PJM Interconnection, L.L.C.)	
PJM Interconnection, L.L.C.)	Docket No. ER18-1314
PJM Interconnection, L.L.C.)	Docket No. EL18-178
)	(Consolidated)

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE
ORGANIZATION OF PJM STATES, INC. TO
MOTION FOR LEAVE TO ANSWER AND ANSWER OF
PJM INTERCONNECTION, L.L.C.**

On December 11, 2020, PJM Interconnection, L.L.C. (“PJM”) submitted its Motion for Leave to Answer and Answer (“Answer”) to the Organization of PJM States, Inc. (“OPSI”) Protest of December 4, 2020.¹ Contrary to both PJM’s November 13

¹ Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C., Docket Nos. EL16-49 et al. (Dec. 11, 2020) (“PJM December 11 Answer”).

Compliance Filing² and PJM’s Answer, PJM’s proposed tariff language that would allow or require sellers to submit offers exceeding the applicable Market Seller Offer Cap is not compliant or consistent with the Commission’s October 15 Order. Such language cannot be approved in this Federal Power Act (“FPA”) section 206³ proceeding because, as the Commission previously explained in the October 15 Order, it is out of scope.⁴

I. MOTION FOR LEAVE TO ANSWER

Although an answer to an answer is not a matter of right under the Commission’s regulations, the Commission permits such answers when the answer provides useful and relevant information that will assist the Commission in its decision-making process, corrects factual inaccuracies and clarifies the issues, assures a complete record in the proceeding, provides information helpful to the disposition of an issue, or permits the issues to be narrowed. This Answer satisfies these criteria, and accordingly OPSI respectfully requests that the Commission grant leave and accept this Answer.⁵

II. ANSWER

A. Background

In its March 18 Compliance Filing, PJM proposed that when the applicable MOPR Floor Offer Price is greater than the applicable Market Seller Offer Cap, PJM would allow, or require, capacity sellers to submit an offer above the applicable Market

² Compliance Filing Concerning the Minimum Offer Price Rule and Motion to Reinstate the Deadline for a Certain RPM Pre-Auction Activity of PJM Interconnection, L.L.C., Docket Nos. EL16-49 et al. (Nov. 13, 2020) (“November 13 Compliance Filing”).

³ 16 U.S.C. § 824e.

⁴ *Calpine Corp. v. PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,061 (2020) (“October 15 Order”), at P 104.

⁵ See, e.g., *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,108 at P 66 (2014); *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,103 at PP 14-15 (2014); *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,652 at P 59 (2014); *First Energy Solutions Corp., et al. v. PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,209 at P 39 (2014).

Seller Offer Cap.⁶ In response to Protests and Comments filed by OPSI and other parties, the Commission rejected PJM's proposal in its October 15 Order.⁷ The Commission found PJM's Market Seller Offer Cap proposal to be outside the scope of this FPA section 206 proceeding, explaining that:

We reject PJM's proposal because revisions to the market seller offer cap have never been a subject of this FPA section 206 proceeding and are therefore beyond the scope of the compliance directive. [footnote omitted] Neither the December 2019 Order nor the Rehearing Order directed changes to the market seller offer cap provisions . . .⁸

In its November 13 Compliance Filing, PJM again proposed that when the resource-specific MOPR Floor Offer Price is greater than the applicable Market Seller Offer Cap, PJM would allow, or require, capacity sellers to submit an offer above the applicable Market Seller Offer Cap.⁹ Specifically, without being directed, PJM proposed to add the following sentence to Tariff, Attachment DD, section 5.14(h-1)(2):¹⁰

In the event the resource-specific MOPR Floor Offer Price is greater than the applicable Market Seller Offer Cap, the Capacity Market Seller of such Capacity Resource may only submit an offer for such resource equal to the resource-specific MOPR Floor Offer Price into the relevant RPM Auction notwithstanding the provisions in Tariff, Attachment DD, section 6.4(a) or Tariff, Attachment DD, section 6.5(a).

To be clear, the above language proposes a requirement to submit an offer higher than the applicable Market Seller Offer Cap. In its March 18 Compliance Filing, PJM proposed to achieve this result through revisions to Tariff, Attachment DD, sections 6.4(a) and 6.5(a)(i). OPSI protested that proposal and the Commission correctly rejected

⁶ Compliance Filing Concerning the Minimum Offer Price Rule, Request for Waiver of RPM Auction Deadlines, and Request for an Extended Comment Period of at Least 35 Days of PJM Interconnection, L.L.C., Docket Nos. EL16-49 et al., at Proposed Tariff, Attachment DD, sections 6.4(a) and 6.5(a)(i) (Mar. 18, 2020).

⁷ October 15 Order, at P 104.

⁸ *Id.*

⁹ November 13 Compliance Filing, at 6-9.

¹⁰ *Id.*

it in the October 15 Order. In its November 13 Compliance Filing, PJM proposed to achieve the same previously-prohibited result—this time through revisions to Tariff, Attachment DD, section 5.14(h-1)(2). OPSI, again—in its December 4, 2020 filing—protested PJM’s Market Seller Offer Cap proposal.¹¹ The Commission should again reject PJM’s proposal, and again for the same reasons it previously rejected it. While the tariff section chosen by PJM as the vehicle to achieve its goal of requiring offers higher than the applicable Market Seller Offer Cap has changed, nothing else has changed. PJM’s proposal to require offers exceeding the applicable offer cap is still beyond the scope of this FPA section 206 proceeding and not required by any Commission compliance directive.

B. Response to PJM December 11 Answer Arguments

PJM states that the circumstances have now changed because, in response to the Commission’s directive, PJM will now be limiting sellers to submitting a resource-specific MOPR Floor Offer Price in circumstances where the default or resource-specific offer price floor for a particular resource is higher than the market seller offer cap for such resource, and will no longer allow the seller to choose the default option.¹² But, OPSI was clear in its December 4 Protest that it was not taking issue with that Commission directive or protesting that element of PJM’s November 13 Compliance Filing.¹³ The Commission directed the submission of a resource-specific offer in this instance, and, accordingly, PJM made that change in its compliance filing. But the fact that the seller will now be limited to the resource-specific method for calculating its

¹¹ Protest of the Organization of PJM States Inc., Docket Nos. EL16-49 et al. (Dec. 4, 2020) (“OPSI Protest”).

¹² PJM December 11 Answer, at 3-4.

¹³ OPSI Protest, at 2 (specifying OPSI’s protested language).

MOPR Floor Offer Price (rather than having the default value as an option) in circumstances where the resource-specific offer price floor is higher than the applicable market seller offer cap for such resource does not change the fact that PJM is again improperly proposing to require the seller in that circumstance to submit an offer higher than the applicable market seller offer cap. OPSI was clear that it is that part of PJM's compliance filing that OPSI is protesting.¹⁴

In its October 15 Order, the Commission explained its rationale for requiring use of the resource-specific MOPR floor offer price calculation method (rather than the default option) in circumstances where the applicable MOPR Floor Offer Price is higher than the applicable Market Seller Offer Cap. Specifically, the Commission noted its recently adopted decision to require PJM to utilize a forward-looking energy and ancillary services offset and explained that, "With this change, we find that the resource-specific market seller offer cap will always be higher than the resource-specific offer price floor"¹⁵ This Commission statement demonstrates that the Commission's intention is not to permit offers at prices higher than the applicable Market Seller Offer Cap. Rather, the Commission's solution was aimed at lowering the applicable MOPR Floor Offer Price.

In its November 13 Compliance Filing PJM pointed out correctly that the Commission's directive for use of the resource-specific offer floor calculation method will not always result in the resource-specific MOPR Floor Offer Price being lower than the applicable Market Seller Offer Cap.¹⁶ Because of that, PJM expressed concern that

¹⁴ *Id.* at 3-4.

¹⁵ October 15 Order, at P 105 n.192.

¹⁶ PJM November 13 Compliance Filing, at 6-7.

there may still be instances in which a seller may not be able to submit a valid offer, *i.e.*, an offer that complies both with the requirement not to be lower than the resource-specific MOPR Floor Offer Price and the requirement not to exceed the applicable Market Seller Offer Cap.¹⁷ While PJM has shown that—mathematically—this circumstance can conceivably happen, the Commission clearly did not direct PJM to submit a compliance filing that requires the applicable Market Seller Offer Cap to be exceeded.

Because PJM cannot claim that it has been directed by the Commission to require a seller to submit an offer higher than the applicable Market Seller Offer Cap in the circumstance where the resource-specific offer price floor is higher than the applicable market seller offer cap, PJM instead claims that its proposal is “consistent with” the Commission’s directive that the seller be limited only to using the resource-specific method for calculating its MOPR Floor Offer Price in that circumstance.¹⁸ When the resource-specific calculation produces a MOPR Floor Offer Price that is greater than the applicable Market Seller Offer Cap, requiring an offer at that higher resource-specific MOPR Floor Offer Price necessarily means that the offer would exceed the applicable Market Seller Offer Cap. But, when the Commission directed the use of the resource-specific method for calculating the MOPR Floor Offer Price, the Commission was under the impression—wrongly, as it turns out—that such a directive would always result in a MOPR Floor Offer Price lower than the applicable Market Seller Offer Cap. PJM cannot now rely on the Commission’s directive to use the resource-specific method for

¹⁷ November 13 Compliance Filing, at 7; PJM December 11 Answer, at 4 (“it is uncontested that there may be times where a resource-specific MOPR Floor Offer Price may exceed either the default or unit-specific Market Seller Offer Cap.”).

¹⁸ PJM December 11 Answer, at 4.

calculating MOPR Floor Offer Price to justify PJM’s proposal to require an offer at a price higher than the applicable Market Seller Offer Cap, because the Commission’s intent behind that directive is clear and that intent aligns directly with its express rejection of alterations to the market seller offer cap as being out of scope. The Commission’s finding that “revisions to the market seller offer cap have never been a subject of this FPA section 206 proceeding and are therefore beyond the scope of the compliance directive”¹⁹ remains inarguable.

III. Conclusion

In conclusion, OPSI again requests that the Commission reject PJM’s proposal to require price offers that exceed the applicable Market Seller Offer Cap and direct PJM to delete the sentence cited above which PJM proposed to add to the end of Tariff, Attachment DD, section 5.14(h-1)(2). If the Commission is concerned that sellers may not be left with a valid offer in circumstances where the resource-specific MOPR Floor Offer Price is greater than the applicable Market Seller Offer Cap, it should direct PJM to accept an offer equal to the applicable Market Seller Offer Cap. Under no circumstances should PJM be permitted to change its tariff in this FPA section 206 case to allow or require price offers that exceed the applicable Market Seller Offer Cap.²⁰

¹⁹ October 15 Order, at P 104.

²⁰ This Answer was adopted by the OPSI Board of Directors on December 17, 2020. States in support: Delaware PSC; PSC of District of Columbia; Illinois CC; Indiana URC; Kentucky PSC; Maryland PSC; Michigan PSC; New Jersey BPU; North Carolina UC; Tennessee PUC; Virginia SCC; PSC of West Virginia. Abstain: Pennsylvania PUC, and PUC of Ohio.

Respectfully Submitted,

/s/ Gregory V. Carmean

Executive Director

Organization of PJM States, Inc.

700 Barksdale Road, – Suite 1

Newark, DE 19711

Tel 302-266-0914

Email: greg@opsi.us

Dated: December 18, 2020

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served in accordance with 18 C.F.R. Section 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

Gregory V. Carmean

s/s Gregory V. Carmean

Executive Director
Organization of PJM States, Inc.

700 Barksdale Road - Suite 1

Newark, DE 19711

Tel: 302-266-0914

Dated at Newark, Delaware this December 18, 2020.