



STATE OF NEW JERSEY
Board of Public Utilities
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ENERGY

IN THE MATTER OF A MOTION FOR) ORDER OF APPROVAL
RECONSIDERATION REGARDING FERC'S JANUARY)
30, 2012 ORDER ACCEPTING, REJECTING, AND)
SUSPENDING PJM'S PROPOSED CHANGES TO RPM)
AND ESTABLISHING SETTLEMENT PROCEEDINGS) DOCKET NO. ER12010002

BY THE BOARD:

The New Jersey Board of Public Utilities ("Board") HEREBY RATIFIES a Motion for Reconsideration ("Motion") filed with the Federal Energy Regulatory Commission ("FERC" or "Commission") on February 29, 2012, under FERC Docket No. ER12-513.

The motion asserts an erroneous reading of the PJM Interconnection L.L.C. ("PJM") Open Access Transmission Tariff ("Tariff") regarding the administratively determined Gross Cost of New Entry ("CONE") and Net CONE values. These values are used to calculate both the Reliability Pricing Model ("RPM") clearing price and the Minimum Offer Price Rule ("MOPR"). The RPM clearing price determines the amount paid to all generators that clear the RPM auction, while the MOPR defines economic entry into the PJM Market.

On December 1, 2011, PJM submitted proposed changes to its Tariff revising certain aspects of the capacity auction rules associated with RPM. PJM's proposal specifically alters the RPM demand curve, the Variable Resource Requirement Curve ("VRR Curve") and two inputs of the VRR Curve, the Gross CONE, and the Net Energy and Ancillary Services Revenue offset ("EAS Revenue").

On January 30, 2012, FERC issued an Order ("January 30 Order") rejecting PJM's proposal for establishing the region-wide Net CONE and region-wide Gross CONE, finding that the proposal was unsupported and not shown to be just and reasonable.¹ As a predicate to this finding, the

¹ PJM Interconnection L.L.C., 138 FERC ¶ 61,062 (2012) at PP 63-64.

January 30 Order states that "region-wide Net CONE is calculated by subtracting region-wide EAS Revenues from the lowest Gross CONE value of any CONE Area."² However, the region-wide Gross CONE in PJM's Tariff is a stated, static value of \$112,868 per MW/year, as opposed to a dynamic calculation of the lowest Gross CONE areas in PJM. Thus, FERC's finding is based on an incorrect interpretation of PJM's Tariff. The January 30 Order further compounds the error by rejecting this aspect of PJM's filing when the proposal was not shown to be patently deficient.

It is well established that the Commission may only dismiss a filing if "no genuine issue of material fact material to the decision" exists.³ However, FERC's January 30 Order rejected PJM's filing as "unsupported," despite the fact that the January 30 Order contains a lengthy discussion of PJM's reasoning behind its proposal, and a detailed review of other parties' proposed alternative methods for calculating region-wide CONE values.⁴ It therefore appears that genuine issues of material fact exist as to the proper Gross CONE values and as to what methodology should be used to calculate region-wide Gross and Net CONE values.

FERC's January 30 Order also sets for hearing PJM's proposal for calculating Gross CONE in all five RPM-wide CONE Areas, while outright dismissing PJM's proposed Net CONE calculation methodology. This creates a fundamental disconnect between these interconnected elements of PJM's proposal and alters the basis of PJM's filing.

On February 29, 2012, the Board as a member of the RPM Load Group⁵ requested rehearing of the rejection of PJM's region-wide CONE proposal because this specific aspect of the January 30 Order was erroneous. The RPM Load Group also requested that FERC set the issue for evidentiary hearing procedures, and suspended the hearing pending the outcome of ongoing settlement discussions.

WHEREFORE, after consideration of all pertinent materials submitted in this matter, and review by Board Staff, the Board HEREBY FINDS that the actions discussed herein properly effectuate the Board's goals regarding the ongoing settlement proceedings associated with FERC's January 30 Order. Therefore, according to the provisions of this Order, the Board HEREBY RATIFIES this

² *Id.* at P 62 (citing PJM Open Access Transmission Tariff, Attachment DD, sections 2.42 and 5.10(a)(iv-v)(emphasis added)).

³ See, e.g., *ANR Pipeline Corp. v. FERC*, 931 F.2d 88, 92 (D.C. Cir. 1991); 18 C.F.R. § 385.217.

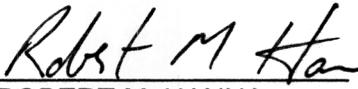
⁴ *Id.* at PP 62-64; see also PJM's justification for its proposed revisions at PP 47-48.

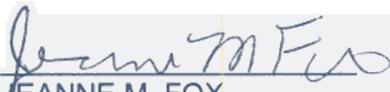
⁵ The RPM Load Group includes the PJM Industrial Customer Coalition; Old Dominion Electric Cooperative; Public Power Association of New Jersey; Delaware Division of Public Advocate; Southern Maryland Electric Cooperative, Inc.; North Carolina Electric Membership Corporation; DC Office of People's Counsel; American Municipal Power, Inc.

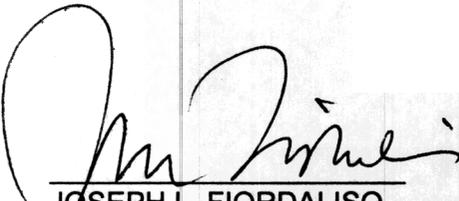
Motion for Reconsideration filed with the Commission pursuant to a FERC imposed deadline, on February 29, 2012.

DATED: 3/12/2012

BOARD OF PUBLIC UTILITIES
BY:

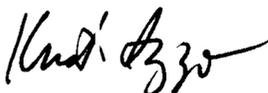

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COMMISSIONER


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COMMISSIONER

ATTEST:

KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities


Curve ("VRR Curve") and two inputs of the VRR Curve, the Gross CONE, and the Net Energy and Ancillary Services Revenue offset ("EAS Revenue"). The January 30 Order, *inter alia*, rejects PJM's proposal for establishing the region-wide Net CONE and region-wide Gross CONE, finding that the proposal is unsupported and has not been shown to be just and reasonable.¹ As a predicate to this finding, the January 30 Order states that "region-wide Net CONE is calculated by subtracting region-wide E&AS Revenues *from the lowest Gross CONE value of any CCNE Area.*"² This statement is factually incorrect because the region-wide Gross CONE in PJM's Tariff is a stated value of \$112,868 per MW/year. The January 30 Order compounds the factual error by rejecting this aspect of PJM's filing when PJM's proposal was not shown to be patently deficient.

By this filing, the RPM Load Group respectfully requests rehearing of the rejection of PJM's region-wide CONE proposal because this specific aspect of the January 30 Order is erroneous. Instead of rejecting PJM's region-wide CONE proposal, the Commission should have set the issue for evidentiary hearing procedures, and suspended the hearing pending the outcome of settlement judge proceedings, as the Commission did for other CONE issues that were addressed by the January 30 Order.

II. STATEMENT OF ISSUES AND SPECIFICATIONS OF ERROR

Pursuant to Rule 713(c) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(c), the PJM Load Group respectfully states the following issues and specifies the following error in the Commission's January 30 Order:

The January 30 Order is erroneous because it rests on a misunderstanding that region-wide Net CONE is, currently, calculated by subtracting region-wide E&AS Revenues from the lowest Gross CONE value of any CONE

¹ See January 30 Order at PP 63-64.

² *Id.* at P 62 (citing PJM Open Access Transmission Tariff, Attachment DD, sections 2.42 and 5.10(a)(iv-v)(emphasis added)).

area. *See, e.g., So. Cal. Edison Co.*, 805 F.2d 1068, 1072 (D.C. Cir. 1986) (agency determinations must be based on reasoned analysis and evidence in the record).

The January 30 Order is erroneous because it rejected the PJM proposal instead of setting the issue for evidentiary hearing. *See, e.g., ANR Pipeline Corp. v. FERC*, 931 F.2d 88, 92 (D.C. Cir. 1991)(stating standard for outright rejection of filings); 18 C.F.R. § 385.217.

III. REQUEST FOR REHEARING

A. THE COMMISSION'S CONCLUSION REGARDING PJM'S REGION-WIDE CONE PROPOSAL IS PREMISED UPON AN INCORRECT UNDERSTANDING OF THE PJM TARIFF.

PJM states that its proposal to modify the region-wide Gross CONE and region-wide Net CONE values is necessary because the current Tariff, in PJM's terms, permits a situation where an "unreasonably" low region-wide CONE value is not representative of the entire PJM footprint, and could lead to insufficient capacity investments.³ To correct this purported deficiency, PJM proposes two modifications. First, PJM proposes to set the region-wide Net CONE equal to the median of the Net CONE values of the five CONE Areas. Second, PJM proposes to set the region-wide Gross CONE equal to the Gross CONE component of the selected median Net CONE. The region-wide Gross CONE value would be used only to calculate the maximum price on the region-wide VRR Curve, consistent with the "higher of" approach to constructing the VRR Curve that was approved by the January 30 Order.

The January 30 Order rejects the entirety of PJM's region-wide CONE proposal because, according to the Order, "PJM has failed to demonstrate that its proposal is needed to encourage entry in other, higher-cost, but unconstrained CONE Areas."⁴ The January 30 Order also observes that "PJM's justification for changing the region-wide Net CONE calculation is based

³ See Transmittal Letter at 14.

⁴ January 30 Order at P 64.

on only one of these components – Gross CONE."⁵ However, in rejecting the PJM proposal, the Commission incorrectly bases its analysis and its ultimate conclusion on an incorrect reading of the PJM Tariff. Specifically, the January 30 Order operates on the premise that the Gross CONE component of the current approach for calculating region-wide Net CONE is always equal to the lowest Gross CONE value of any CONE Area. However, that premise is not correct.

The PJM Tariff provides that the "Cost of New Entry for the PJM Region shall be \$112,868 per MW year."⁶ The Gross CONE in the current Tariff, therefore, is a specified value and is not tied to any specific CONE Area's Gross CONE value. In accordance with the Tariff, this specified value escalates over time "based on changes in the applicable H-W Index."⁷ PJM's filing attempted to make clear that "the stated Gross CONE value for the PJM region now in the Tariff corresponds to the lowest Gross CONE value for any CONE Area, but nothing in the Tariff or in any Commission order requires PJM to base the region-wide Gross CONE on the lowest CONE Area CONE value."⁸ PJM's attempted clarification is particularly appropriate in light of PJM's proposed changes to all five CONE Area CONE values. Because the Commission's ultimate determination – *i.e.*, rejection of PJM's region-wide CONE proposal – stems from this misunderstanding of the status quo, the ultimate determination in the January 30 Order does not constitute reasoned decision-making and is otherwise unsupported by the evidence in the record.⁹ The RPM Load Group, therefore, respectfully requests that the

⁵ *Id.* at P 62.

⁶ See PJM OATT, Attachment DD, § 5.10(a)(iv). It is true that the region-wide Gross CONE number is identical to the lowest Gross CONE of any CONE Area - \$112,868/MW year – currently in effect. That Gross CONE number is currently specified in the OATT for CONE Areas 2, 4, and 5. However, FERC accepted PJM's proposed changes to the Gross CONE values for each of the five specified CONE Areas, while keeping the region-wide Gross CONE number fixed, thus fundamentally changing the relationship between region-wide CONE and the Area CONEs that currently exists in the PJM OATT.

⁷ *Id.* at § 5.10(a)(iv) B).

⁸ PJM Transmittal Letter at 14 (emphasis added).

⁹ *Cf. So. Cal Edison Co.*, 805 F.2d 1068, 1072 (D.C. Cir. 1986).

Commission grant rehearing and, as discussed below, add PJM's region-wide CONE proposal to the list of issues set for a hearing and settlement judge process.

B. THE COMMISSION ERRED BY REJECTING THE PJM REGION-WIDE CONE PROPOSAL INSTEAD OF SETTING THE ISSUE FOR EVIDENTIARY HEARING.

As discussed above, the January 30 Order rejects PJM's proposal to revise the methodology for establishing a region-wide Net CONE and region-wide Gross CONE, finding that PJM's filing was "unsupported."¹⁰ In rejecting this portion of PJM's filing, and not setting the issue for evidentiary hearing along with other issues at stake in this proceeding, the January 30 Order errs by ignoring precedent as well as Commission regulations. The Commission should grant rehearing and set this issue for evidentiary hearing.

The Commission may only dismiss a filing if there is "no genuine issue of material fact material to the decision."¹¹ Put another way, a filing must be "patently either deficient in form or a substantive nullity" in order to be rejected outright.¹² The January 30 Order claims that the PJM filing is "ur supported," thus warranting rejection.¹³ However, in its discussion of the PJM proposal to revise the region-wide Gross CONE and region-wide Net CONE, the Commission explains at some length PJM's reasoning for making its proposal, and also explains other parties' concerns and notes their proposed alternative methods for region-wide Gross CONE and Net CONE calculations.¹⁴ For example, PJM sets forth evidence and argument in an attempt to justify its proposal on the grounds that the current Gross CONE value "is unreasonably low relative to the rest of the PJM Region" and that its new proposal would "make the PJM Region

¹⁰ See January 30 Order at P 17.

¹¹ See, e.g., *ANR Pipeline Corp. v. FERC*, 931 F.2d 88, 92 (D.C. Cir. 1991); 18 C.F.R. § 385.217.

¹² See *United Gas Line Co. v. FERC*, 707 F.2d 1507, 1511-12 (D.C. Cir. 1983).

¹³ See January 3 Order at P 17.

¹⁴ *Id.* at PP 62-64; see also PJM's justification for its proposed revisions at PP 47-48.

price more representative of pricing throughout the PJM footprint."¹⁵ In response, and as indicated by the January 30 Order, several parties objected to the PJM proposal and some submitted potential modifications to the proposal for calculating region-wide CONE values.¹⁶ Moreover, at least one party argued in favor of retaining the current methodology.¹⁷

Considering the fact that the competing proposals for the Gross CONE values in the five CONE Areas contain different proposed Gross CONE values, it is evident that a genuine issue of material fact exists as to the proper Gross CONE values. It is also evident that a genuine dispute exists as to how the region-wide Gross CONE and region-wide Net CONE values should be calculated relative to the varying Gross CONE values for the five CONE Areas. The January 30 Order sets for hearing PJM's proposals for calculating Gross CONE in all five CONE Areas. Setting the Gross CONE values for the CONE Areas for hearing, without simultaneously considering region-wide CONE values, creates a fundamental disconnect between the region-wide CONE values and the values that will be determined for each of the five CONE Areas. The January 30 Order errs in not explaining the disparate treatment accorded the region-wide CONE values. Consistent with Commission regulations and precedent, and consistent with the Commission's treatment in the January 30 Order of Gross CONE proposals for all five CONE Areas in PJM, the Commission should grant rehearing and set the issues of region-wide Net CONE and region-wide Gross CONE for evidentiary hearing and settlement judge procedures.

¹⁵ See Transmittal Letter at 14.

¹⁶ See, e.g., Motion to Intervene and Protest of LS Power Associates, L.P. at 13 (Dec. 22, 2011).

¹⁷ See, e.g., Motion to Intervene, Comments, Protest, and Motion for Suspension and Evidentiary Hearing of PSEG Companies at 4 (Dec. 22, 2011).

IV. CONCLUSION

WHEREFORE, the RPM Load Group respectfully requests that the Commission grant rehearing and set for evidentiary hearing the issue of region-wide CONE calculations.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

/s/ Robert A. Weishaar, Jr.

By _____

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Counsel to the PJM Industrial Customer Coalition
and on behalf of the RPM Load Group

Dated: February 29, 2012

CERTIFICATE OF SERVICE

hereby certify that I have this day served, via first-class mail, electronic transmission, or hand-delivery the foregoing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this 29th day of February, 2012.

/s/ Robert A. Weishaar, Jr.

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