123 FERC ¶ 61,233 UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, and Jon Wellinghoff.

PJM Interconnection, L.L.C.

Docket Nos. ER07-1050-000 and ER07-1050-001

ORDER ON TECHNICAL CONFERENCE AND COMPLIANCE FILING

(Issued May 30, 2008)

1. We address, below, issues raised at a technical conference, held September 28, 2007, regarding a proposal made by PJM Interconnection, L.L.C. (PJM) to implement a capacity export charge, effective June 1, 2008. For the reasons discussed below, we accept PJM's proposed charge, subject to the submittal of a compliance filing.

2. We also address, below, a compliance filing made by PJM in response to the Commission's initial order in this proceeding issued August 17, 2007.¹ In the August 17 Order, the Commission accepted and suspended revisions proposed by PJM to its Open Access Transmission Tariff (OATT) and Reliability Assurance Agreement (RA Agreement), subject to the submittal of a compliance filing clarifying PJM's procedures applicable to the delisting of a resource. For the reasons discussed below, we accept PJM's compliance filing, subject to the submittal of an additional compliance filing.

Background

3. On December 22, 2006, the Commission accepted a settlement implementing RPM as a replacement for PJM's pre-existing capacity obligation rules (RPM

¹ *PJM Interconnection, L.L.C.*, 120 FERC ¶ 61,169, at P 57 (2007) (August 17 Order).

Settlement).² Under PJM's RPM protocols, PJM has held auctions, beginning in April 2007, to secure commitments of future capacity and determine the price of such capacity on a locational basis, i.e., in a way that allows capacity in different locations within the PJM to be priced differently, consistent with system planning realities and system reliability needs. PJM's RPM protocols, however, did not address the charges and credits that would be appropriate to reflect congestion effects of capacity exports. This issue, rather, was reserved for the instant proceeding.³

4. Under RPM, a Locational Deliverability Area may experience elevated capacity prices if the area's "capacity emergency transfer objective" exceeds its "capacity emergency transfer limit."⁴ If the PJM generator that is being used for the export is not located in the particular area from which the export exits the PJM system, then the export will exacerbate any capacity constraint that the area faces. In this instance, the area will need more internal capacity to meet the area's total load and export requirements than the area would need without the export. Under PJM's existing RPM protocols, the costs attributable to the increased demand for internal capacity are borne only by the load serving entities in the constrained area, even though an export drawing from that area also contributes to these higher costs.

5. In its initial filing in this proceeding, PJM stated that to address this issue, an export customer that draws capacity from a constrained area should be required to pay the capacity congestion charge that its export helped create and an export customer with firm transmission service should receive some credit against higher locational capacity prices based on its firm transmission service. PJM stated that its proposed tariff revisions accomplish this objective.

² See PJM Interconnection, L.L.C., 117 FERC ¶ 61,331 (2006).

³ *Id.* P 128.

⁴ The capacity emergency transfer objective, or CETO, describes the area's need for capacity under peak conditions, while the capacity emergency transfer limit, or CETL, describes the area's ability to import capacity during peak conditions. PJM's system load growth can increase an area's capacity emergency transfer objective, but so too can an export of capacity from PJM to another control area that is electrically adjacent to the area. In other words, a capacity export from PJM will draw from a particular area in PJM based on the PJM system topography and internal system limitations under capacity transfer conditions, whether or not the PJM generation identified as supporting that export is within that particular area.

6. The Commission, in the August 17 Order, set PJM's proposed capacity export charge for technical conference. In doing so, the Commission identified seven issues to be considered: (i) whether the proposed charge is a prohibited through-and-out rate; (ii) why a customer exporting capacity from PJM is not ensured that PJM can deliver that capacity under emergency conditions; (iii) whether the proposed charge applies to exports from fixed reliability requirement generators; (iv) why the proposed charge will compensate generators for the locational value of their capacity just as PJM congestion charges compensate generators for the locational value of their energy; (v) how the proposed charge will be calculated for a transaction that traverses multiple zones; (vi) why the proposed charge relies on a flow analysis; and (vii) why the proposed charge limit of a constrained zone where the export flows through multiple zones subject to differing capacity prices.⁵ The technical conference was held on September 28, 2007.

7. PJM, in its initial filing, also proposed minor clarifying changes to the PJM OATT and RA Agreement addressing PJM's Reliability Pricing Model (RPM). PJM proposed, among other things, clarifications addressing the "delisting" of a capacity resource, i.e., the circumstances pursuant to which a generator may terminate its status as a PJM capacity resource.

8. The August 17 Order accepted, subject to a nominal suspension, refund and conditions, PJM's proposed correcting and clarifying changes to the PJM OATT and RA Agreement. With respect to delisting, the August 17 Order directed PJM to revise its OATT to: (i) explain the types of transactions and ownership arrangements that would qualify a resource to be delisted; (ii) clarify its rules for exporting; and (iii) explain whether section 5.6.6(d) of the PJM OATT requires a generation resource to continue to bear the obligations of a capacity resource when that resource does not have a "unit-specific bilateral transaction for service to load located outside of PJM," but the resource has not chosen to participate in the PJM capacity market, or is not selected in an RPM auction.⁶

⁶ *Id.* P 53.

⁵ August 17 Order, 120 FERC ¶ 61,169 at P 57.

Discussion

A. <u>Compliance Filing</u>

9. In the August 17 Order, the Commission directed PJM to clarify, in its OATT, the types of transactions and ownership arrangements that will qualify a resource to be delisted. In its compliance filing, PJM proposes to revise section 5.6.6(d) of Attachment DD to the PJM OATT to state that a unit may be delisted from capacity resource status if the market seller shows that the resource has a "financially and physically firm commitment to an external sale."

10. Notice of PJM's compliance filing was published in the *Federal Register* with interventions and protests due on or before October 9, 2007.⁷ Comments in support of PJM's filing were submitted by Duke Energy Corporation (Duke). In addition, American Municipal Power-Ohio (AMP-Ohio) submitted comments seeking additional clarifications. AMP-Ohio argues that PJM's proposed revision fails to include language clarifying that a PJM resource committed to serve external load is not required first to offer into the RPM auction and then fail to clear before the resource is allowed to serve the external load.

11. In a response submitted by PJM on October 29, 2007, PJM proposes additional OATT clarifications addressing AMP-Ohio's concerns. Specifically, PJM proposes to revise Attachment DD, at section 5.6.6(d), to state that a resource may delist provided that it is not committed to PJM loads under RPM or FRR. PJM states that its proposed revisions also clarify that a resource not so committed may delist prior to a PJM auction by satisfying one of the exceptions to the must-offer rule (including showing a financially and physically firm commitment to an external sale). PJM also proposes to clarify that a resource may be designated for service to external load.

12. PJM also proposes clarifying language allowing a party to show an external firm sale by showing the bilateral transaction, showing that the PJM resource is designated as a network resource under the tariff applicable to the external load, or by providing an equivalent demonstration of a financially and physically firm commitment to an external sale. PJM asserts that this language preserves the intent of the delisting and must-offer provisions of its OATT while allowing flexibility for a party such as AMP-Ohio to rely on its arrangements to use its own PJM resources to meet its own external member loads, even in the absence of a bilateral contract or network resource designation.

⁷ 73 Fed. Reg. 55,761 (2008).

13. We accept PJM's compliance filing, as modified by PJM's additional OATT compliance revisions submitted on October 29, 2007. PJM's OATT revisions satisfy the requirements of the August 17 Order. Accordingly, we direct PJM to refile the relevant tariff provisions within 30 days of the date of this order.

B. <u>Technical Conference</u>

14. The technical conference, as noted above, was held September 28, 2007. By notice published in the *Federal Register*, the Commission established post-technical conference comment procedures. Initial comments were due on or before October 29, 2007 and reply comments due on or before November 13, 2007.⁸ Initial comments and reply comments were timely submitted by the entities noted below. In addition, motions to intervene out-of-time were filed on September 17, 2007, by Old Dominion Electric Cooperative (ODEC), on September 26, 2007, by the Constellation Energy Group Companies (Constellation), on September 28, 2007, by Consolidated Edison Energy, Inc. (ConEd), on October 3, 2007, by PSEG Companies (PSEG), and on October 25, 2007, by the New Jersey Board of Public Utilities (New Jersey Board). On November 29, 2007, the Long Island Power Authority (LIPA) filed an answer responding to PJM's reply comments.

15. We will accept the unopposed late-filed interventions submitted by ODEC, Constellation, ConEd, PSEG, and the New Jersey Board. Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a) (2007), prohibits an answer not otherwise permitted under this provision. Accordingly, we reject LIPA's answer.

1. <u>Technical Conference Positions</u>

a. <u>PJM's Position</u>

16. PJM filed a presentation responding to the seven questions raised by the Commission in the August 17 Order.⁹ These responses are summarized below.

17. *Whether the Proposed Charge is a Prohibited Through-and-Out Rate*. PJM denies that its proposed charge is a prohibited through-and-out rate. PJM notes that its border rate, under the PJM OATT at schedules 7 and 8, for point-to-point transactions leaving

⁹ See supra P 6.

⁸ 72 Fed. Reg. 55,952 (2007).

PJM, remains inapplicable to transactions with a delivery point of the Midwest Independent Transmission System Operator (Midwest ISO). PJM asserts, however, that firm transmission service between PJM and the Midwest ISO remains subject to congestion charges and that its proposed capacity export charge is analogous to this charge. PJM argues that such a charge is not based on an arbitrary corporate boundary but rather on capacity resource price differential arising from the reliability limitations within PJM. PJM further argues that these reliability limitations equally confront internal and external transactions that must pass into capacity constrained PJM zones.

18. Why a Customer Exporting Capacity from PJM is Not Ensured that PJM can Deliver that Capacity Under Emergency Conditions. PJM states that when it evaluates whether it can provide a requested point-to-point service on a firm basis, it considers peak conditions but not capacity emergency conditions. PJM states that to comply with reliability criteria established by the North American Electric Reliability Corporation (NERC), PJM evaluates requests for new firm point-to-point transmission service assuming forecast peak loads that have a 50 percent chance of being exceeded. PJM states that, by contrast, PJM's load deliverability test to determine its Capacity Emergency Transfer Objective (CETO) and CETL assumes a higher forecasted peak load level that has only a 10 percent chance of being exceeded. PJM adds that under RPM, network loads in constrained LDAs pay locational reliability charges, offset partially by a credit based on the benefit of a *pro rata* share of the CETL into the constrained LDA. PJM notes that exports should be treated similarly.

19. Whether the Proposed Charge Applies to Exports From Fixed Reliability Requirement Generators. PJM notes that any generator that can show a unit-specific export and whose resource is not committed in an RPM auction or in a Fixed Resource Requirement (FRR) capacity plan, is eligible to export its capacity outside PJM. PJM adds that whether the export will incur a charge depends on whether the export has a locational impact on the cost of capacity in PJM, just as charges to PJM loads depend on these impacts.

20. Why the Proposed Charge Will Compensate Generators for the Locational Value of their Capacity Just as PJM Congestion Charges Compensate Generators for the Locational Value of their Energy. PJM states that RPM already compensates generators for the locational value of their capacity while its currently effective OATT provisions ignores this locational value for the subset of these transactions involving exports. PJM argues that there is no justification supporting this disparate treatment. PJM asserted that a capacity transfer from a lower-priced PJM zone to a constrained PJM border zone typically has the same reliability and cost effects regardless of whether this capacity serves PJM loads in that zone or only passes through that zone to serve external loads.

PJM submits that both transactions rely on the limited CETL into that constrained PJM zone.

21. *How the Proposed Charge will be Calculated for a Transaction that Traverses Multiple Zones.* PJM states that when there are multiple border zones, PJM will calculate the price differences between the LDA where the PJM exporting resource is located and each of these border zones and then weigh the results based on the percentage share of the export transaction that flows through each of these border LDAs under capacity emergency study conditions. PJM adds that there are very few scenarios in which this charge would apply under current capacity pricing conditions.

22. Why the Proposed Charge Relies on a Flow Analysis. PJM states that the flow analysis it proposes to use are not day-to-day actual energy flows in the PJM region. Rather, PJM clarifies that its proposed flow analysis relies on the percentage flow calculated under the study assumptions used to determine CETO and CETL, i.e., capacity emergency study conditions. PJM asserts that relative impacts under the assumed study conditions that are used to determine each zone's CETO and CETL provides the most reasonable measure to apportion these impacts among the affected zones.

23. Why the Proposed Charge Should Apply to an Export Transaction that Increases the CETL of a Constrained Zone Where the Export Flows Through Multiple Zones Subject to Differing Capacity Prices. PJM states that, in most cases, an export transaction will decrease CETL. PJM adds that the only circumstance in which an export could increase CETL is when the limiting constraint that defines the CETL into a PJM zone is at the zone's interface with the external control area (rather that at its interface with the rest of the PJM region). PJM notes in that hypothetical scenario, the export's transfer from the PJM border zone to the external control area could provide counter flow that allows more capacity to enter the constrained PJM border zone from that external control area. PJM states that even then, CETL will be increased only if the export's loading of the constraints from the rest of the PJM region into the PJM border zone does not make that interface the binding constraint that defines the CETL into the zone.

24. PJM states that these conditions are not present for the PJM border LDA that currently shows price separation, i.e., the eastern MAAC LDS that borders the New York Independent System (New York ISO). PJM adds that the capacity export charge will not apply to exports from a PJM border zone directly to an external control area that do not flow through other PJM border zones because the charge can only arise if the export flows through multiple PJM zones with differing capacity prices.

b. <u>Initial Intervenor Comments</u>

25. Post-technical conference comments were submitted by PSEG, LIPA, American Electric Power Service Corporation (AEP), and AMP-Ohio.

26. Comments in support of PJM's proposed capacity export charge were filed by PSEG. PSEG argues that every transmission customer must be responsible for fully bearing the reliability costs associated with its use of the system and that no party should be permitted to free ride on such costs at the expense of other transmission customers.

27. Comments in opposition to PJM's proposed capacity export charge were filed by AMP-Ohio, AEP, and LIPA. AMP-Ohio argues that a capacity export charge would impose an unwarranted burden on AMP-Ohio and similarly-situated entities that have long-standing agreements to export capacity outside of PJM. AMP-Ohio also argues that this charge is unwarranted because PJM has studied and approved the transmission service associated with AMP-Ohio's exports.

28. AMP-Ohio also disputes PJM's assertion that capacity exports lower the CETL by making less CETL available to the PJM loads in that constrained LDA. AMP-Ohio argues that it has not decreased available CETL because the size of its capacity exports has not changed. AMP-Ohio adds that if certain LDAs become constrained in the future, it will be because of other factors such as growth in load or retirement of generation, not because of AMP-Ohio's pre-exiting capacity exports. AMP-Ohio concludes that if a capacity export charge is approved in this case, it should not apply to pre-existing transactions.

29. AEP disputes PJM's assertions regarding the effect of its proposed capacity export charge. Specifically, AEP questions whether, as PJM suggests, no capacity export charge would be assessed for transactions leaving AEP and delivered to entities outside of PJM. AEP asserts that the potential exposure will be unclear for transactions of this sort once RPM has transitioned to 23 LDAs beginning with the 2010-11 delivery year.

30. AEP also asserts that PJM's proposed capacity export charge is a prohibited through-and-out rate. AEP argues that, unlike congestion costs in the energy markets, the PJM market does not provide a way for market participants to hedge the financial exposure that would be inherent in PJM's proposed charge.

31. AEP also notes that the proposed capacity export charge would be calculated based on all loop flow paths modeled for the export transaction. AEP asserts, however, that this approach is contrary to the Commission's policy on loop flows which recognizes

that the existence of loop flows do not necessarily entitle the affected system to compensation.¹⁰ AEP adds that not all loop flows have a negative impact on PJM's system because some transactions, such as exports from PJM, may act a counter flows and help alleviate thermal overload. AEP also asserts that if the Commission is inclined to allow for the calculation of a capacity export charge based on the resulting loop flows, the response, i.e., the percent flow, of the individual transmission facility that defines the constraining CETL value, rather than the response of the entire export interface zone to the export transaction, should be used in calculating the charge. In addition, AEP asserts that for voltage-limited CETLs, appropriate response calculations would have to be developed that properly account for the non-linear characteristics of voltage limits.

32. AEP also asserts that if PJM is of the belief that an export transaction that is sourced in an adjacent LDA is found to exacerbate the export interface zone's ability to import capacity, and thus merits an export charge, PJM would also be required to concede that when an adjacent LDA is serving its own load and that action exacerbates the export interface zone's ability to import capacity, the adjacent LDA would also merit an appropriate charge based on the same loop flow arguments the Commission has already rejected.

33. LIPA challenges the PJM's proposed allocation of its capacity export charge. LIPA notes that, under PJM's proposal, capacity transfer credits (CTRs) would be allocated to capacity export transmission customers in a lesser value relative to CTRs provided to internal PJM load. LIPA notes that, unlike capacity export transmission customers, load serving entities within the PJM footprint are granted CTRs based on a simple *pro rata* allocation of the available rights. LIPA adds that by contrast, a capacity export transmission customer only receives an allocated share of the CETL between the zone where its export originates and the export interface zone.

34. LIPA notes that the allocated share, in turn, is determined by: (i) multiplying the megawatts of unforced capacity imported in the export interface zone from the zone in which the resource designated for export is located by the capacity export transmission customer's reserved point-to-point capacity; and (ii) dividing that product by the sum of the export customer's reserved firm point-to-point capacity and the daily unforced capacity obligations of all load serving entities in the export interface zone. LIPA argues that unlike a load serving entity inside the PJM imprint, a capacity export transmission

¹⁰ AEP comments at 4, *citing American Electric Power Service Corporation*, 49 FERC ¶ 61,377, at 62,381 (1989) (*AEP I*); *Southern Company Services*, 60 FERC ¶ 61,273, at 61,289 (1992) (*Southern*); and *American Electric Power Service Corporation*, 93 FERC ¶ 61,151, at 61,474 (2000) (*AEP II*).

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customer does not receive the full benefit of all the unforced capacity that can be imported into an LDA. LIPA asserts that, instead, the capacity export customer will only receive the benefit of the unforced capacity that can be imported along a single path between the resource zone and export interface zone, even though there might be several paths of import into an LDA. LIPA concludes that PJM should be required to grant firm export customers a *pro rata* allocation of CTRs in a manner similar to the *pro rata* allocation of CTRs given to internal load serving entities.

35. LIPA argues that even if the Commission determines that the CTR allocation to firm export customers should be limited to an allocation of capacity between the export originating zone and the export interface zone, PJM should be required to revise its calculation to ensure that firm export customers receive a fair, *pro rata* allocation of that capacity. Specifically, LIPA argues that a firm export customer should receive a *pro rata* share of the export path import based on the proportion of its firm reservation to the sum of all firm reservations between the originating zone and the export interface zone and the amount of power determined to flow across that interface for the benefit of load serving entities inside the export interface zone.

c. PJM's Initial Comments and Tariff Clarifications

36. PJM, in its October 29, 2007 post-technical conference comments, proposed certain tariff clarifications in response to questions raised at the technical conference. We summarize these proposed revisions below. First, PJM proposes to revise the PJM Operating Agreement, at section 1.10.1A(d). PJM notes that under this provision, the output of a capacity resource must be offered into the day-ahead market if the resource is committed to PJM loads through an RPM auction or FRR capacity plan. PJM states, however, that this provision should also reflect the possibility that a resource could be committed to load by designation as replacement capacity to correct an actual or expected deficiency. PJM states that its proposed revision accomplishes this objective.

37. PJM also proposes to revise the PJM Operating Agreement, at section 1.10.4, to clarify that PJM's existing right to recall energy sold off-system during a maximum generation emergency applies to resources committed to PJM loads by designation as a replacement resource (not simply to commitments identified through the RPM auction or an FRR capacity plan).

38. PJM also proposes to revise its existing provision addressing forced outages. PJM states that under its existing provision a forced outage is deemed to have occurred when a capacity resource does not deliver energy as scheduled. PJM asserts that consistent with the provision that only committed capacity resources are required to offer into the PJM energy market, only committed capacity resources that fail to meet their energy schedules should be deemed to be on a forced outage.

39.

PJM also proposes to revise its existing requirements regarding forecasted capacity. PJM states that its existing provision requiring a generator to submit a forecast of a capacity resource's availability for the next seven days need only apply to resources that PJM is depending upon for reliable service to loads, i.e., for those resources whose commitments arise through the RPM or FRR process.

40. Finally, PJM proposes to revise its existing eligibility requirements regarding start-up and no-load credits. PJM states that its existing provision applies only to capacity resources but should apply to all self-scheduled resources, whether committed or not.

d. **Intervenor Reply Comments**

Intervenor reply comments were submitted by the Public Service Commission of 41. Maryland (Maryland Commission), Constellation, and the New Jersey Board. On November 15, 2007, ODEC submitted a motion to file reply comments two days out-oftime. We will grant ODEC's unopposed motion.

42. Constellation raises arguments similar to those summarized above regarding through-and-out rates and the allocation of CTRs. Specifically, Constellation asserts that PJM proposed charge, if approved, would re-introduce an unhedgeable through-and-out rate that is based on loop flow. In addition, Constellation asserts that PJM's proposed charge fails to allocate CTRs to capacity exporters in a manner that is consistent with PJM's RPM allocation methodology.

43. The New Jersey Board supports the imposition of capacity export charges. However, the New Jersey Board asserts that PJM's proposed charge fails to fully offset the cost impact on loads in the exporting LDA, especially for customers within smaller LDAs bordering PJM. The New Jersey Board asserts that under PJM's proposal, if the capacity resource being exported is located in the same LDA as the one that encompasses the export interface, the capacity export charge is zero. The New Jersey Board argues, however, that this charge should fully offset the increased capacity costs for the exporting LDA, regardless of whether the exported resource is located in the same LDA as the one encompassing the export interface. The New Jersey Board argues that PJM should be required to determine the precise cost impact of capacity exports by performing planning studies prior to the RPM auction.

44. ODEC's reply comments support PJM's proposed charge and adopt PJM's comments by reference. The Maryland Commission, while taking no position on PJM's proposed charge, urges the Commission to consider reliability impacts.

e. <u>PJM's Reply Comments</u>

45. PJM, in its reply comments, responds to the arguments summarized above, as raised by AMP-Ohio, AEP and LIPA. In response to AMP-Ohio's argument that a capacity export charge is unwarranted because PJM has both studied and approved the transmission service use by AMP-Ohio to make its exports, PJM notes that this approval status is equally true with respect to its network customers. PJM further asserts that firm transmission service and capacity are two separate products, subject to different considerations and analyses. PJM adds that an export that is capacity-backed, because it will not be curtailed during a capacity emergency, relies on a portion of the CETL needed to ensure delivery of capacity to loads and should be treated no differently than the other firm loads that rely on that limited resource.

46. PJM also responds to AMP-Ohio's alternative argument that any capacity export charge approved by the Commission should exempt from the charge capacity export transactions that were entered into before the start of the RPM settlement negotiations. PJM argues that its evaluation of point-to-point service does not consider capacity emergency conditions. In addition, PJM asserts that it is required to assume that any capacity-backed export transaction, regardless of when the transaction may begin, relies upon and uses a portion of the CETL into the border zone.

47. PJM also takes issue with AMP-Ohio's assumption that network loads are exposed to RPM charges only because of their potential load growth and its asserted conclusion that exports of a fixed megawatt quantity should be exempt from RPM charges. PJM responds that network loads on its system pay RPM charges based their entire loads, not merely based on load growth occurring after some arbitrary date.

48. PJM also responds to AEP's allegation that PJM's proposed charge is a prohibited through-and-out rate. PJM argues that when the Commission eliminated the regional through-and-out service rate between PJM and the Midwest ISO, it left in place PJM's charges to through-and-out customers for locational energy price differences within PJM, i.e., congestion charges.¹¹ PJM adds that AEP's argument also implies, incorrectly, that the RPM charges assessed on PJM loads are a prohibited intra-RTO pancake. In addition, PJM rejects AEP's argument that a capacity export charge is unwarranted to the extent that it cannot be hedged. PJM responds that whether a charge can be hedged was not a consideration cited by the Commission in its orders eliminating the PJM/Midwest ISO through-and-out rates. Moreover, PJM argues that AEP's underlying assumption

¹¹ PJM reply comments at 5, *citing Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,168, at P 31, n.43 (2004).

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(that energy congestion charges can be hedged but that capacity congestion charges cannot), is incorrect. PJM asserts that the latter charge can be hedged with CTRs.

49. PJM also responds to AEP's argument that a capacity export charge, if approved, would compensate for loops flows in a way that is inconsistent with Commission policy. PJM argues that in the precedents relied upon by AEP, the Commission merely declined to provide compensation to transmission providers for loop flows caused by neighboring transmission system providers. PJM adds that in this case, by contrast, there is a single RTO involved comprising a single transmission system under a signal tariff. PJM concludes that, here, the proposed charge is not based on any claimed loop flow effects from external system transactions on PJM and does not seek compensation from external systems for any claimed loop flow effects.

50. PJM also responds to LIPA's argument regarding the credit provided to capacity export customers. With respect to LIPA's assertion that this credit should not focus solely on the path between the PJM generator that is the source of the export and the PJM zone where the export leaves the PJM system, PJM argues that LIPA's proposal (to give export customers a credit based on the PJM export zone's ability to receive capacity from any PJM zone) would result in a mismatch between the charge and the credit.

51. Finally, PJM challenges LIPA's assertion that the proposed export charge does not provide a reasonable *pro rata* allocation of that import among all parties that benefit from that import. PJM notes that its allocation calculates the ratio between: (i) the export customer's firm transmission reservation and (ii) the sum of the capacity obligations of all load-serving entities in the zone plus the export customer's firm reservation. PJM asserts that the numerator of this ratio calculation represents the total requirement for capacity in the constrained border zone, including the megawatt amount that the export customer must bring into the constrained zone and then export to an external control area. PJM notes that this ratio is then multiplied by the export path import, i.e., the amount of lower-cost capacity imported into the constrained border zone from the zone where the export customer's PJM generation source is located. PJM concludes that, as such, this method allocates the constrained zone 's limited ability to import lower-cost power among all customers in the constrained zone that create the need to import such lower-cost power.

2. <u>Commission Determination</u>

52. We find that PJM has satisfactorily supported its proposed capacity export charge. Under PJM's existing RPM protocols, the costs that may be incurred in a constrained Locational Deliverability Area as a result of a given export are borne only by the load serving entities in that area. As a consequence, export customers are currently insulated from the costs attributable to these transactions.

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53. The following example illustrates the point. Assume there were two Locational Deliverability Areas, or zones, within PJM (Zone A and Zone B) and that, due to differential transmission capacity constraints, the Zone A RPM price is \$50, while the Zone B RPM price is \$75. A load serving entity internal to PJM in Zone B purchasing capacity from Zone A would be required to pay the \$75 price, i.e., the congestion cost (or price differential) between the zones for all purchases above its allocated portion of the transmission capacity. However, under PJM's existing rules, a load serving entity external to PJM using a capacity resource in the lower priced zone and having to transmit power through the higher price zone would not be required to pay this congestion premium, i.e., it would pay only the \$50 charge, not the \$75 charge.

54. Given this existing differential treatment, we agree with PJM that an export customer that draws capacity from a constrained area should be required to bear the capacity price premium that its export helped create. We also agree that an export customer with firm transmission service should receive a credit against higher locational capacity prices based on its firm transmission service. Accordingly, we accept PJM's proposed charge and credit mechanism, effective June 1, 2008, as requested. We also accept PJM's proposed tariff clarifications, as submitted in its initial comments. We direct PJM to file these clarifications in a compliance filing to be made within 30 days of the date of this order.

55. We reject AMP-Ohio's argument that a capacity export charge is unwarranted because, as AMP-Ohio claims, PJM has already studied and approved the feasibility of providing the transmission service used by AMP-Ohio to make its exports. As PJM correctly points out, the approval process to which AMP-Ohio alludes is the same approval process to which PJM's network customers are subject and thus is not comparable to the analysis conducted for capacity exports. Moreover, the analysis PJM uses to approve an export transmission service, considers peak conditions but does not consider capacity emergency conditions.

56. In addition, we agree with PJM that an export that is capacity-backed, because it will not be curtailed during a capacity emergency, relies on a portion of the CETL needed to ensure delivery of capacity to loads and should be treated no differently than other firm loads that rely on that limited resource. Accordingly, we find that AMP-Ohio's requested exemption for export transactions entered into before the start of the RPM settlement negotiations is unwarranted.

57. We also reject AMP-Ohio's argument that network loads are exposed to RPM charges only because of their potential load growth and that, accordingly, exports of a fixed megawatt quantity should be exempt from RPM charges. In fact, network loads pay RPM charges based on their entire loads, not merely based on load growth occurring after some arbitrary date. Under RPM, then, network loads in constrained LDAs pay

locational reliability charges, offset partially by a credit based on the benefit of a *pro rata* share of the CETL into the constrained LDA. We agree with PJM, then, that exports should be treated in comparable manner.

58. With respect to the asserted through-and-out claim raised by AEP and Constellation, we note that PJM's border rate for point-to-point transactions leaving PJM, under schedules 7 and 8 of the PJM OATT, remains inapplicable to transactions with a delivery point within the boundaries of the Midwest ISO. However, firm transmission service between PJM and the Midwest ISO remains subject to congestion charges and a capacity export charge is similar to such a charge. A capacity export charge is not based on an arbitrary corporate boundary but rather on a capacity resource price differential arising from the reliability limitations within PJM. These reliability limitations equally confront internal and external transactions that must pass into capacity constrained PJM zones. Moreover, contrary to the assertions made by AEP and Constellation, this charge can be hedged through CTRs.

59. AEP questions whether a capacity export charge will be assessed for transactions leaving AEP and delivered to entities outside of PJM once RPM has transitioned to 23 Locational Deliverability Areas beginning with the 2010-11 delivery year. We note that the results of the 2010-11 and 2011-12 auctions have shown that there were no separate capacity zones and that PJM as a whole cleared as one Locational Deliverability Area. If however, there are more Locational Deliverability Areas in the future, AEP will not incur this charge when its direct exports cross its ties with non-PJM systems without flowing (under capacity study conditions) on other PJM border zones. If AEP exports capacity that flows in part across another PJM border zone, the export charge could apply only to the extent prices in the other border zone exceed prices in the AEP zone.

60. With respect to AEP's argument that a capacity export charge, if approved, would compensate for loop flows in a way that is inconsistent with Commission policy, we agree with PJM that in the precedents relied upon by AEP (*AEP I, Southern*, and *AEP II*), the Commission merely declined to provide compensation to transmission providers for loop flows caused by neighboring transmission system providers. Here, by contrast, there is a single RTO at issue comprising a single transmission system under a signal tariff. As such, PJM's proposed charge is not based on any claimed loop flow effects from external system transactions on PJM and does not seek compensation from external systems for any claimed loop flow effects.

61. AEP also argues that not all loop flows have a negative impact on PJM's system. AEP asserts that this is so because some transactions (e.g., exports from PJM) may act as a counterflow and thus help alleviate thermal overload. However, as PJM has shown, in most cases, an export transaction will decrease CETL. The only circumstance in which an export could increase CETL is when the limiting constraint that defines the CETL into

a PJM zone is at the zone's interface with the external control area (rather than at its interface with the rest of the PJM region). In that case, the export's transfer from the PJM border zone to the external control area could provide counterflow that allows more capacity to enter the constrained PJM border zone from that external control area. However, even in this instance, CETL will be increased only if the export's loading of the constraints from the rest of the PJM region into the PJM border zone does not make that interface the binding constraint that defines the CETL into the zone. Moreover, the capacity export charge will not apply to exports from a PJM border zone directly to an external control area that do not flow through other PJM border zones because the charge can only arise if the export flows through multiple PJM zones, with differing capacity prices.

62. We reject LIPA's argument regarding the credit provided to capacity export customers. LIPA asserts that this credit should not focus solely on the path between the PJM generator that is the source of the export and the PJM zone where the export leaves the PJM system. However, we agree with PJM that LIPA's proposal to give export customers a credit based on the PJM export zone's ability to receive capacity from any PJM zone would result in a mismatch between the charge and the credit.

63. Nor are we persuaded, as LIPA asserts, that PJM's proposed export charge fails to provide a reasonable *pro rata* allocation of that import among all parties that benefit from the import. PJM's allocation calculates the ratio between: (i) the export customer's firm transmission reservation and (ii) the sum of the capacity obligations of all load-serving entities in the zone plus the export customer's firm reservation. As such, we agree with PJM that this methodology allocates the constrained zone's limited ability to import lower-cost power among all customers in the constrained zone that create the need to import such lower-cost power.

The Commission orders:

(A) PJM's compliance filing is hereby accepted, subject to the requirement that PJM make an additional compliance filing within 30 days of the date of this order and include, therein, its proposed tariff clarifications, as discussed in the body of this order.

(B) PJM's proposed capacity export charge is accepted, effective June 1, 2008, subject to the requirement that PJM make an additional compliance filing within 30 days of the date of this order and include, therein, its proposed tariff clarifications, as discussed in the body of this order.

By the Commission. Commissioner Moeller not participating.

(SEAL)

Kimberly D. Bose, Secretary.