

178 FERC ¶ 61,021
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

Talen Energy Marketing, LLC	Docket Nos. ER22-474-000
EF Kenilworth, LLC	ER22-539-000
Chambersburg Energy, LLC	ER22-550-000
Rockford Power, LLC	ER22-551-000
Rockford Power II, LLC	ER22-552-000
Troy Energy, LLC	ER22-553-000
LSP University Park, LLC	ER22-554-000
University Park Energy, LLC	ER22-555-000
Energy Center Dover, LLC	ER22-704-000
	(not consolidated)
PJM Interconnection, L.L.C.	EL22-22-000

ORDER REJECTING ALTERNATIVE OFFER CAPS AND ESTABLISHING A
SHOW CAUSE PROCEEDING

(Issued January 21, 2022)

1. On November 24, 2021, pursuant to section 205 of the Federal Power Act (FPA),¹ Part 35 of the Commission's Rules of Practice and Procedure,² and section II.E.3 of Attachment M-Appendix³ and section 6.4(a) of Attachment DD to the PJM Open Access Transmission Tariff (Tariff),⁴ Talen Energy Marketing, LLC filed a letter agreement between itself and Monitoring Analytics, LLC, in its capacity as the Independent Market Monitor (IMM) for PJM Interconnection, L.L.C. (PJM). On November 26, 2021, EF

¹ 16 U.S.C. § 824d.

² 18 C.F.R. pt. 35 (2021).

³ PJM, Intra-PJM Tariffs, OATT, attach. M-app. (22.0.0), § II.E.3.

⁴ *Id.* at attach. DD, § 6.4 Market Seller Offer Caps (0.0.0), § 6.4(a).

Kenilworth, LLC filed a letter agreement between itself and the IMM. On November 29, 2021, Energy Center Dover, LLC filed three letter agreements between itself and the IMM and supplemented its filing on January 12, 2022. On December 6, 2021, Chambersburg Energy, LLC, Rockford Power, LLC, Rockford Power II, LLC, Troy Energy, LLC, LSP University Park, LLC, and University Park Energy, LLC each filed a letter agreement between itself and the IMM.⁵ These letter agreements concern alternative Market Seller Offer Caps (offer caps) for each Seller's offer into the Base Residual Auction (BRA) for the 2023/2024 delivery year. We reject the letter agreements and establish a show cause proceeding pursuant to section 206 of the FPA,⁶ as discussed below.

I. Background

2. Section 6.4(a) of Attachment DD to the Tariff establishes the process for determining the offer cap applicable to a resource in PJM's capacity market, the BRA. Relevant to this order, section 6.4(a) and duplicative language in attach. M-app., section II.E.3 (Alternative Offer Cap Provisions) allow any seller and the IMM to agree on an alternative offer cap under the following conditions:

Nothing herein shall preclude any Capacity Market Seller and the Market Monitoring Unit from agreeing to, nor require either such entity to agree to, an alternative market seller offer cap determined on a mutually agreeable basis. *Any such alternative offer cap shall be filed with the Commission for its approval.*⁷

II. Filings

3. Each Seller filed a letter agreement between itself and the IMM. The Sellers explain that the letter agreements memorialize their agreements on an alternative offer

⁵ The letter agreements were filed pursuant to section 205 of the FPA, Part 35 of the Commission's Rules of Practice and Procedure, and section II.E.3 of attach. M-app. and section 6.4(a) of attach. DD to the Tariff, with the exception of EF Kenilworth, LLC and Energy Center Dover, LLC, whose letter agreements were filed pursuant only to section 6.4(a) and section II.E.3 of the Tariff. We note that, while the letter agreements were filed individually, for purposes of readability of this order we refer to the filers jointly as Sellers.

⁶ 16 U.S.C. § 824e.

⁷ PJM, Intra-PJM Tariffs, OATT, attach. DD, § 6.4 Market Seller Offer Caps (0.0.0), § 6.4(a) (emphasis added); *id.* at attach. M-app. (22.0.0), § II.E.3.

cap for each resource's offer into the 2023/2024 BRA and specify that each Seller will use the net energy and ancillary services (E&AS) revenue values issued by the IMM on November 12, 2021 to calculate their respective alternative offer caps.

4. Each letter agreement provides the following description of the alternative offer caps:

Specifically, for the 2023/2024 BRA, Capacity Market Seller and the IMM mutually agree that the Market Seller Offer Caps ("MSOCs") will be (1) the MSOCs posted by the IMM on November 12, 2021, calculated using the recalculated projected net energy and ancillary services revenues (the "November 12 E&AS Values") for all of Capacity Market Seller's Existing Generation Capacity Resources for which it chose the default Avoidable Cost Rate ("ACR") option; and (2) the MSOCs posted by the IMM on November 12, 2021, calculated using recalculated alternative projected net energy and ancillary services revenues (the "November 12 Alternative E&AS Values") for all of Capacity Market Seller's Existing Generation Capacity Resources for which it chose the unit specific ACR option.

III. Notice of Filings

5. Notice of Talen Energy Marketing, LLC's filing was published in the *Federal Register*, 86 Fed. Reg. 68,246 (Nov. 24, 2021), with interventions and protests due on or before December 15, 2021. Timely motions to intervene were filed by PJM and the IMM. No protests were filed.

6. Notice of EF Kenilworth, LLC's filing was published in the *Federal Register*, 86 Fed. Reg. 71,256 (Dec. 15, 2021), with interventions and protests due on or before December 17, 2021. None was filed.

7. Notice of Chambersburg Energy, LLC's filing was published in the *Federal Register*, 86 Fed. Reg. 70,487 (Dec. 10, 2021), with interventions and protests due on or before December 27, 2021. Timely motions to intervene were filed by PJM and the IMM. No protests were filed.

8. Notice of Rockford Power, LLC's filing was published in the *Federal Register*, 86 Fed. Reg. 70,487 (Dec. 10, 2021), with interventions and protests due on or before December 27, 2021. Timely motions to intervene were filed by PJM and the IMM. No protests were filed.

9. Notice of Rockford Power II, LLC's filing was published in the *Federal Register*, 86 Fed. Reg. 70,487 (Dec. 10, 2021), with interventions and protests due on or before December 27, 2021. Timely motions to intervene were filed by PJM and the IMM. No protests were filed.

10. Notice of Troy Energy, LLC's filing was published in the *Federal Register*, 86 Fed. Reg. 70,487 (Dec. 10, 2021), with interventions and protests due on or before December 27, 2021. Timely motions to intervene were filed by PJM and the IMM. No protests were filed.

11. Notice of LSP University Park, LLC's filing was published in the *Federal Register*, 86 Fed. Reg. 70,487 (Dec. 10, 2021), with interventions and protests due on or before December 27, 2021. Timely motions to intervene were filed by PJM and the IMM. No protests were filed.

12. Notice of University Park Energy, LLC's filing was published in the *Federal Register*, 86 Fed. Reg. 70,487 (Dec. 10, 2021), with interventions and protests due on or before December 27, 2021. Timely motions to intervene were filed by PJM and the IMM. No protests were filed.

13. Notice of Energy Center Dover, LLC's filing was published in the *Federal Register*, 87 Fed. Reg. 82 (Jan. 3, 2022), with interventions and protests due on or before January 3, 2022. IMM filed a timely motion to intervene. No protests were filed.

IV. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁸ the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they sought to intervene.

B. Substantive Matters

15. We reject the letter agreements because the Sellers failed to provide the value of their proposed offer caps. As discussed above, the letter agreements state that the proposed offer caps reflect the IMM's most recent projected net E&AS revenues, issued on November 12, 2021, but the Sellers did not provide the value of their respective alternative offer caps. Therefore, the letter agreements do not comply with the Tariff

⁸ 18 C.F.R. § 385.214 (2021).

requirement that “[a]ny such alternative offer cap shall be filed with the Commission for its approval.”⁹ We find that, when filing these letter agreements, it is insufficient to merely reference the existence of a non-public offer cap posted by the IMM. We cannot evaluate an offer cap value that is not before us.¹⁰

V. Show Cause Proceeding

16. These filings raise questions regarding the Alternative Offer Cap Provisions.¹¹ As discussed below, we are concerned that these provisions may no longer be just and reasonable. We therefore institute a proceeding in Docket No. EL22-22-000 to investigate the lawfulness of the Alternative Offer Cap Provisions.

⁹ PJM, Intra-PJM Tariffs, OATT, attach. DD, § 6.4 Market Seller Offer Caps (0.0.0), § 6.4(a).

¹⁰ Further, on December 22, 2021, the Commission issued an order directing PJM to revert to backward-looking net E&AS revenue offsets for the 2023/2024 delivery year BRA. The Commission directed PJM to submit a compliance filing within 30 days of the date of the order proposing a new schedule for the BRA to accommodate the changes. *PJM Interconnection, L.L.C.*, 177 FERC ¶ 61,209, at P 2 (2021).

¹¹ Specifically, this portion of PJM Tariff, attach. DD § 6.4(a) states:

Nothing herein shall preclude any Capacity Market Seller and the Market Monitoring Unit from agreeing to, nor require either such entity to agree to, an alternative market seller offer cap determined on a mutually agreeable basis. Any such alternative offer cap shall be filed with the Commission for its approval. This provision is duplicated in Tariff, Attachment M-Appendix, section II.E.3.

Tariff, attach. M-app., section II.E.3. similarly states:

Nothing herein shall preclude any Capacity Market Seller and the Market Monitoring Unit from agreeing to, nor require either such entity to agree to, an alternative market seller offer cap determined on a mutually agreeable basis. Any such alternative offer cap shall be filed with the Commission for its approval. This provision is duplicated in Tariff, Attachment DD, section 6.4(a).

17. As an initial matter, the Alternative Offer Cap Provisions at issue here appear to be unnecessary. The Tariff currently provides sellers the flexibility to negotiate unit-specific offer caps with the IMM and PJM elsewhere in Attachment DD, section 6.4.¹² It is unclear why the Alternative Offer Cap Provisions, which appear to offer greater flexibility in a separate process, are necessary. Accordingly, we preliminarily find that the following sentences should be removed from Attachment DD, section 6.4(a):

Nothing herein shall preclude any Capacity Market Seller and the Market Monitoring Unit from agreeing to, nor require either such entity to agree to, an alternative market seller offer cap determined on a mutually agreeable basis. Any such alternative offer cap shall be filed with the Commission for its approval.

Similarly, we preliminarily find that the duplicative language in attach. M-app., section II.E.3 should be deleted, as well.

18. In addition, we find that the Alternative Offer Cap Provisions appear to be unjust and unreasonable because they require only that the individual seller and IMM agree to the alternative offer cap, but do not require that the alternative offer cap be determined in a manner that is consistent with how other resources' offer caps are determined under the Tariff. This would appear to allow, for example, a seller and the IMM to agree to an alternative offer cap that is based on a methodology other than the methodology defined elsewhere in the Tariff. Such an outcome may result in insufficient mitigation and therefore appears to be unjust and unreasonable.

19. We also find that the Alternative Offer Cap Provisions may be unjust and unreasonable because they do not set forth any criteria by which the alternative offer cap should be evaluated by the Commission beyond mere agreement between a seller and the IMM. Finally, the Tariff does not contain any requirements or deadlines for such filings, beyond that they include "such alternative offer cap" and that they be "approve[d]" by the Commission. As a result, there is significant ambiguity in how and when alternative offer caps should be filed, which may create uncertainty in the auction process and timing.

¹² PJM, Intra-PJM Tariffs, OATT, attach. DD, § 6.4 Market Seller Offer Caps (0.0.0), §§ 6.4(a), 6.4(b).

20. Based on the foregoing, we preliminarily find that the Alternative Offer Cap Provisions may be unjust and unreasonable. Accordingly, pursuant to section 206 of the FPA¹³ and Rule 209(a) of the Commission's Rules of Practice and Procedure,¹⁴ we direct PJM within 60 days of the date of this order either: (1) to show cause as to why its Tariff, with the Alternative Offer Cap Provisions, remains just and reasonable and not unduly discriminatory or preferential; or (2) to explain what changes to its Tariff it believes would remedy the identified concerns if the Commission were to determine that the Tariff, with the Alternative Offer Cap Provisions, has, in fact, become unjust and unreasonable or unduly discriminatory or preferential and, therefore, proceeds to order appropriate revisions.

21. Interested entities may respond within 30 days of PJM's filing, addressing either or both: (1) whether PJM's existing Tariff, with the Alternative Offer Cap Provisions, remains just and reasonable and not unduly discriminatory or preferential; and (2) if not, what changes to PJM's Tariff should be implemented as a replacement rate.

22. If PJM prefers to propose revisions to its Tariff on the subject of this order, then it may do so pursuant to its applicable FPA section 205 filing rights. In such a filing, PJM should state explicitly that it is submitting its proposal under FPA section 205 and make the filing through eTariff using a statutory code. If PJM wishes to have the Commission hold this proceeding in abeyance pending the Commission's consideration of any such FPA section 205 filing, PJM should submit an appropriate motion in this docket explaining the basis for the abeyance.

23. In cases where, as here, the Commission institutes a proceeding on its own motion under FPA section 206, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date of publication of the notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months after the publication date. Consistent with our general policy of providing maximum protection to customers, we will set the refund effective date at the earliest date possible, i.e., the date of publication by the Commission of its notice of initiation to initiate Docket No. EL22-22-000 in the *Federal Register*.

24. Section 206(b) of the FPA also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, the Commission shall state the reasons why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a

¹³ 16 U.S.C. § 824e.

¹⁴ 18 C.F.R. § 385.209(a) (2021).

decision. We estimate that we would be able to issue our decision within approximately four months of the filing of the Tariff revisions.

25. Any entity desiring to participate in this proceeding must file a notice of intervention or a motion to intervene, as appropriate, in Docket No. EL22-22-000 in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214, within 21 days of publication of notice in the *Federal Register* of the Commission's initiation of the section 206 proceeding.

The Commission orders:

(A) The letter agreements filed herein are hereby rejected, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), the Commission hereby institutes a proceeding in Docket No. EL22-22-000, as discussed in the body of this order.

(C) Pursuant to FPA section 206, we direct PJM within 60 days of the date of this order to submit a filing, as discussed in the body of this order, either: (1) showing cause as to why its Tariff, with the Alternative Offer Cap Provisions, remains just and reasonable and not unduly discriminatory or preferential; or (2) explaining what changes to its Tariff it believes would remedy the identified concerns if the Commission were to determine that the Tariff, with the Alternative Offer Cap Provisions, has, in fact, become unjust and unreasonable or unduly discriminatory or preferential and, therefore, proceeds to order appropriate revisions.

(D) Any entity desiring to participate in this proceeding must file a notice of intervention or a motion to intervene, as appropriate, in the docket number identified in the caption of this order in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214, within 21 days of publication of notice in the *Federal Register* of the Commission's initiation of the section 206 proceeding.

(E) Interested entities may respond within 30 days of PJM's filing, addressing either or both: (1) whether PJM's existing Tariff, with the Alternative Offer Cap Provisions, remains just and reasonable and not unduly discriminatory or preferential; and (2) if not, what changes to PJM's Tariff should be implemented as a replacement rate.

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(F) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the FPA section 206 proceeding in Docket No. EL22-22-000.

(G) The refund effective date established in Docket No. EL22-22-000 pursuant to section 206(b) of the FPA will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (F) above.

By the Commission. Commissioner Danly is concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

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(Issued January 21, 2022)

DANLY, Commissioner, *concurring*:

1. “Competitive power markets simply cannot attract the capital needed to build adequate generating infrastructure without regulatory certainty”¹ So cautioned the Commission in 2002, and twenty years later the Commission’s orders have so interfered with PJM Interconnection L.L.C.’s (PJM) markets that PJM routinely has to delay capacity auctions to sort out which rules still apply and which rules are defunct, obsolete, or superseded. Power markets simply cannot function when the rules constantly change, and for that, the blame lies squarely with the Commission.

2. I concur in today’s order rejecting nine separate filings of alternative market seller offer caps. We cannot determine whether the sellers remain entitled to have alternative market seller offer caps given our past order requiring unit-specific review of all seller offers.² We are not the only ones who cannot figure it out. For the same reasons, I

¹ *Nev. Power Co. v. Duke Energy Trading & Mktg., L.L.C.*, 99 FERC ¶ 61,047, at 61,190, *order on reh’g*, 100 FERC ¶ 61,273 (2002).

² *Indep. Mkt. Monitor for PJM v. PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,137 (2021) (Danly, Comm’r, dissenting).

support a show cause order to determine what our own rulings have done to section 6.4(a) of Attachment DD to the PJM Open Access Transmission Tariff.³

3. I write separately to highlight that for every dollar my colleagues think they are saving ratepayers by eviscerating the buyer-side market mitigation measures we had recently expanded,⁴ or imposing the Independent Market Monitor's (IMM) unit-specific review of all seller offers (thereby supplanting scores of carefully vetted and balanced offer provisions, including the ones at issue in today's order),⁵ or reversing ourselves on the inclusion of a 10% adder in the modeled energy market offers of the Reference Resource used to establish the Variable Resource Requirement Curve (the demand curve),⁶ or seeking voluntary remand from an appellate court to reverse ourselves on less than two-year-old orders finding that the Reserve Penalty Factors and two-step Operating Reserve Demand Curves (ORDCs) are unjust and unreasonable and consequently overturning the determination that the prior backward-looking energy and ancillary services offset (E&AS Offset) is unjust and unreasonable,⁷ we also impose ever-mounting regulatory risk.

4. Greater risk means greater costs, means more expensive power, means higher rates. In most markets, the cost of risk is passed on to customers. But we do not allow capacity sellers in PJM to offer according to their own assessment of risk, including the very real risk that the Commission will change fundamental market design elements immediately ahead of the next auction. We instead impose upon sellers the risk assessment of the IMM (who has himself assumed no risk), with PJM acting as the arbiter

³ PJM, Intra-PJM Tariffs, OATT, Attach. DD, § 6.4 Market Seller Offer Caps (0.0.0), § 6.4(a); *see also Talen Energy Mktg., LLC*, 178 FERC ¶ 61,021 (2022) (proposing to eliminate portions of same).

⁴ *See* September 29, 2021 Notice of Filing Taking Effect by Operation of Law, Docket No. ER21-2582-000; *see also* Statement of James P. Danly, Docket No. ER21-2582-000 (Oct. 27, 2021).

⁵ *See Indep. Mkt. Monitor for PJM v. PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,137 (Danly, Comm'r, dissenting).

⁶ *PJM Interconnection, L.L.C.*, 178 FERC ¶ 61,020 (2022) (Danly, Comm'r, dissenting).

⁷ *PJM Interconnection, L.L.C.*, 177 FERC ¶ 61,209 (2021) (Danly, Comm'r, dissenting).

of whether the seller's or the IMM's offer (and therefore risk assessment) will be allowed.⁸

5. The result is that the Commission creates unfettered regulatory risk and then sets it up so that sellers likely can only offer what the IMM tells them they can offer. This structure is not a market. It also is unsustainable. It "simply cannot attract the capital needed to build adequate generating infrastructure,"⁹ and the eventual result will be reliability crises, bankruptcies, and an eventual full retreat to cost-of-service ratemaking. Who does it ultimately harm the most? Ratepayers.

For these reasons, I respectfully concur.

James P. Danly
Commissioner

⁸ See *Indep. Mkt. Monitor for PJM v. PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,137 (Danly, Comm'r, dissenting).

⁹ *Nev. Power Co. v. Duke Energy Trading & Mktg., L.L.C.*, 99 FERC ¶ 61,047, at 61,190, *order on reh'g*, 100 FERC ¶ 61,273 (2002).

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