

167 FERC ¶ 61,069
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

PJM Interconnection L.L.C.

Docket No. ER17-2291-003

ORDER DENYING REHEARING IN PART AND GRANTING REHEARING IN
PART

(Issued April 23, 2019)

1. On August 11, 2017, as amended on December 7, 2017, PJM Interconnection, L.L.C. (PJM) filed, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² revisions to the Amended and Restated Operating Agreement (Operating Agreement) and the Open Access Transmission Tariff (Tariff) to clarify the requirements for dynamic transfers of external generation into the PJM Region and to incorporate three agreements, which included two *pro forma* pseudo-tie agreements and a *pro forma* system modification reimbursement agreement (Reimbursement Agreement) for adding pseudo-tied resources into the PJM Region.
2. On February 5, 2018, the Commission accepted the proposed revisions and the *pro forma* pseudo-tie agreements and Reimbursement Agreement, effective November 9, 2017, as requested, subject to condition, and required PJM to submit a compliance filing (February 2018 Order).³ On February 14, 2018, PJM submitted the required compliance filing. On March 7, 2018, American Municipal Power Inc. (AMP) filed a request for rehearing of the February 2018 Order, asserting that the Commission erred in accepting: (1) PJM's proposed Native Balancing Authority compensation provision in the *pro forma* pseudo-tie agreements; (2) PJM's proposed suspension and termination provisions in the *pro forma* pseudo-tie agreements; and, (3) PJM's proposed Reimbursement Agreement

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. pt. 35 (2018).

³ *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,086 (2018) (February 2018 Order).

indemnification provisions. We deny rehearing, in part, and grant rehearing, in part, as discussed below.

I. Background

3. A Balancing Authority generally serves the functions of a control area, maintaining grid system balance between generation, load, frequency control, and other services. A pseudo-tie is a means of delivering energy produced by a generation resource located within one balancing authority (the Native Balancing Authority) to load in another balancing authority (the Attaining Balancing Authority), in real time.⁴ When a pseudo-tie has been implemented, the Attaining Balancing Authority controls and dispatches the resource in the Native Balancing Authority. By contrast, in a “dynamic schedule” the Native Balancing Authority retains responsibility for the control and dispatch of the generation within its footprint.⁵

4. In 2015, the Commission accepted PJM’s proposal that, in order to qualify as a Capacity Performance Resource in PJM, an external resource must, *inter alia*, be pseudo-tied into PJM.⁶ In response, between June 2015 and July 2017, external resources pseudo-tied into the PJM Balancing Authority increased from 560 MW to 5,577 MW.⁷ PJM explained that after implementing this influx of new pseudo-tied resources, it realized that it needed to improve the process to address and clearly delineate the roles and responsibilities of all parties involved in a pseudo-tied resource into the PJM Balancing Authority.⁸ PJM proposed two *pro forma* pseudo-tie agreements (Attachments MM and NN) and a Reimbursement Agreement (Attachment MM-1) as part of PJM’s effort to improve the processes for implementing and coordinating pseudo-tied resources in the PJM Region.

5. Attachments MM and NN are *pro forma* pseudo-tie agreements that set forth the provisions for implementing and operating pseudo-ties under two different scenarios: (1) when there is no joint operating agreement addressing pseudo-tie implementation and operation between PJM and the Native Balancing Authority (Attachment MM), and

⁴ *Id.* PP 2-6 (internal citations omitted).

⁵ *Id.* P 2.

⁶ *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, at P 97 (2015), *order on reh’g*, 155 FERC ¶ 61,157 (2016).

⁷ February 2018 Order, 162 FERC ¶ 61,086 at P 4 (internal citations omitted).

⁸ *Id.* P 4.

(2) when PJM and the Native Balancing Authority have executed a joint operating agreement addressing pseudo-tie implementation and operation (Attachment NN).⁹ The agreements are largely similar; however, under proposed Attachment MM, PJM requires both the pseudo-tying entity and the Native Balancing Authority to be parties to the agreement with PJM, whereas under proposed Attachment NN, only the pseudo-tying entity enters the agreement with PJM, and the Native Balancing Authority is not required to be a party.

6. Attachment MM-1 is the Reimbursement Agreement, which addresses the recovery of costs associated with performing studies and modifying PJM's models or systems to establish and accommodate a pseudo-tie.¹⁰ It sets forth the terms and conditions for effectuating any necessary system and model modifications; addresses confidentiality, limitations on liability, assignment, notices, waiver, amendments; and adds an administrative fee to cover PJM's cost to perform the study to determine the feasibility of the pseudo-tie.

7. As relevant to AMP's rehearing request, section 4 of the *pro forma* pseudo-tie agreements provides that, unless agreed upon by the Native Balancing Authority, the pseudo-tied entity, not PJM, will compensate the Native Balancing Authority for the costs associated with implementing the pseudo-tied resource.¹¹ In addition, Sections 17 and 18 of the *pro forma* pseudo-tie agreements set forth the circumstances under which PJM or the Native Balancing Authority may suspend or terminate a pseudo-tied resource, and the processes to be followed for such suspensions or terminations.¹²

8. The Reimbursement Agreement sets forth the terms and conditions, including Costs, for conducting the pseudo-tie studies. Section 15 of the Reimbursement Agreement is an indemnification provision that generally requires the pseudo-tied resource to indemnify PJM from any and all third-party damages, losses, or claims arising out of or resulting from PJM's performance of its obligations under the Reimbursement Agreement.¹³

⁹ *Id.* P 8.

¹⁰ *Id.* P 9.

¹¹ *Id.* P 125 (describing this provision).

¹² *Id.* PP 67-68 (describing these provisions).

¹³ *Id.* PP 133-134 (describing the Reimbursement Agreement); *id.* P 137 (AMP's arguments regarding section 15 of the Reimbursement Agreement).

II. American Municipal Power Request for Rehearing

9. First, AMP argues that the Commission erred when it accepted Section 4 of the *pro forma* pseudo-tie agreements, which is the Native Balancing Authority compensation provision, to the extent the provision addresses terms and conditions of service provided by entities other than PJM.¹⁴ AMP claims that if “a Native Balancing Authority such as [the Midcontinent Independent System Operator, Inc. (MISO)] participates in the implementation and operation of a pseudo-tie into PJM, that Native Balancing Authority is providing a form of jurisdictional transmission service.”¹⁵ According to AMP, the Commission erred by accepting a rate for jurisdictional transmission service without the requisite rate filing from the Native Balancing Authority. AMP contends that a rate filing is required pursuant to FPA section 205(c).¹⁶ AMP states that it “is not appropriate for the Commission to endorse PJM’s specification, in its own section 205 filing, of the rates terms and conditions that will apply to service supplied by MISO or any other Native Balancing Authority.”¹⁷ AMP also alleges that the provision may result in “conflicting terms and conditions governing the charges imposed on pseudo-tied entities because the charges MISO imposes under its own agreement may be different than the charges PJM purports to impose on behalf of MISO under PJM’s agreement.”¹⁸

10. Second, AMP claims that the Commission erred in accepting PJM’s “impermissibly vague” suspension and termination provisions in the *pro forma* pseudo-tie agreements (Attachments MM and NN).¹⁹ For example, AMP asserts that it was an error for the Commission to accept the suspension provision despite its lack of an express definition of the term “suspension” and lack of specifically delineated consequences of suspension.²⁰ AMP also asserts that it was an error for the Commission to accept the termination provision despite its “open-ended” standard for when PJM may terminate a pseudo-tie in its “sole discretion,” and asserts that the Commission erred in failing to

¹⁴ AMP Request for Rehearing at 4.

¹⁵ *Id.* at 5.

¹⁶ *Id.* at 4-5.

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 10, 12.

²⁰ *Id.* at 12.

require PJM to specify that PJM would not terminate a pseudo-tie absent reliability concerns.²¹

11. Third, AMP argues that the Commission erred when it accepted section 15 of the Reimbursement Agreement (Attachment MM-1), which is that agreement's indemnification provision.²² AMP points out that the PJM *pro forma* pseudo-tie agreements provide a pseudo-tying entity the option to specify that its indemnification obligation applies only to the extent permitted by state law.²³ AMP believes this same optional limitation should be included in the Reimbursement Agreement. AMP faults as "speculative" PJM's rationale for not including the optional limitation, which was that the indemnification provision of the Reimbursement Agreement is "unlikely to be triggered."²⁴

III. Commission Determination

A. Implementation Costs

12. We deny rehearing on AMP's claim that the Commission erred when it accepted section 4 of the *pro forma* pseudo-tie agreements (Attachments MM and NN).²⁵ Section 4 of PJM's *pro forma* pseudo-tie agreements does not "prescribe rates and charges that will be collected by Native Balancing Authorities," as AMP suggests.²⁶ Rather, section 4 provides:

Unless otherwise agreed by Company and Native Balancing Authority, Company will compensate the Native Balancing Authority for the reasonable implementation and operations

²¹ *Id.* at 12-13.

²² *Id.* at 7.

²³ *Id.*

²⁴ *Id.* at 8.

²⁵ AMP Request for Rehearing at 4.

²⁶ *See id.* at 2.

related costs by the Native Balancing Authority as a result of this Agreement, if any.²⁷

13. The decision to establish a pseudo-tie is voluntary²⁸ and can only occur if there is agreement between the resource, the Native Balancing Authority, and the Attaining Balancing Authority. Section 4 recognizes that compensation for any costs incurred by the Native Balancing Authority must be paid by the Company seeking to pseudo-tie resources into PJM, unless the pseudo-tied resource and the Native Balancing Authority agree otherwise.²⁹ In order to collect the FERC-jurisdictional pseudo-tie implementation and operations related costs referenced in section 4, a Native Balancing Authority that is a public utility subject to FPA section 205(c) must have on file a Commission-approved rate.³⁰ The *pro forma* pseudo-tie agreements AMP challenges here do not authorize a Native Balancing Authority to collect or invoice the FERC-jurisdictional pseudo-tie implementation and operations related costs referenced in section 4 from the pseudo-tied resource. Rather, as indicated in the February 2018 Order, the Commission anticipates that the pseudo-tied entity and the Native Balancing Authority may provide a mechanism for the Native Balancing Authority to recover such costs through a separate agreement or by filing a non-conforming pseudo-tie agreement with additional provisions, beyond those in the *pro forma* agreements accepted in this proceeding.³¹

²⁷ PJM Tariff, Attachment MM § 4; Attachment NN § 4.

²⁸ February 2018 Order, 162 FERC ¶ 61,086 at P 88 (“We agree with PJM that the choice to participate in PJM’s capacity market utilizing a pseudo-tie is a voluntary decision made with the knowledge of the risks and requirements involved.”).

²⁹ See *Southwest Power Pool, Inc.*, 123 FERC ¶ 61,062, at P 34 (2008) (determining that “source balancing authorities should not be responsible for the costs of implementing the pseudo-tie arrangement”).

³⁰ For example, the Commission recently accepted, subject to condition, MISO’s proposed *pro-forma* pseudo-tie agreements, which generally provide that MISO will invoice the pseudo-tied resource for costs incurred by MISO as a result of implementing and operating the pseudo-tied resource. See *Midcontinent Indep. Sys. Operator, Inc.*, 165 FERC ¶ 61,190 (2018). AMP has requested rehearing of that order as well, and the Commission will address that request in a future order.

³¹ February 2018 Order, 162 FERC ¶ 61,086 at P 131 n.231 (“PJM’s proposal does not preclude the pseudo-tie entity and the Native Balancing Authority from entering a separate agreement or filing a non-conforming agreement.”). Where a FERC-jurisdictional Native Balancing Authority seeks to collect the costs specified in section 4

14. AMP also asserts that the Commission erred because section 4 of the *pro forma* pseudo-tie agreements may result in “conflicting terms and conditions governing the charges imposed on pseudo-tied entities because the charges MISO imposes under its own agreement may be different than the charges PJM purports to impose on behalf of MISO under PJM’s agreement.”³² We find that it would be unjust and unreasonable for the Native Balancing Authority and Attaining Balancing Authority to collect conflicting or duplicative charges. Doing so conflicts with the purpose of the agreements at issue here, which require three parties (the resource, the Native Balancing Authority, and the Attaining Balancing Authority) to resolve how a resource will be pseudo-tied into an external balancing authority. Where the pseudo-tied entity and FERC-jurisdictional Native Balancing Authority reach agreement on the collection of the pseudo-tie implementation and operations related costs referenced in section 4, whether in a separate agreement or a non-conforming pseudo-tie agreement, those agreements (which are not before the Commission in this proceeding) may not authorize the collection of conflicting or duplicative charges.

B. Suspension and Termination

15. As to AMP’s claim on rehearing that the Commission erred in accepting impermissibly vague suspension and termination provisions in the *pro forma* pseudo-tie agreements (Attachments MM and NN), we deny rehearing. For the reasons set forth in the February 2018 Order, we affirm our finding that PJM’s suspension and termination provisions are just and reasonable and “provide a sufficient degree of specificity and clarity regarding the circumstances in which they apply.”³³

of the *pro forma* agreements, such an arrangement is subject to Commission jurisdiction. *See* 18 C.F.R. § 35.1(a) (2018). Where a non-conforming Attachment MM or NN agreement is utilized, sections 15 and 16 of those agreements provide for PJM to file the agreement on behalf of itself, the Native Balancing Authority (a required party under Attachment MM) and the pseudo-tied entity. *See* PJM Tariff, Attachment MM §§ 15, 16; Attachment NN § 15, 16; *see also* 18 C.F.R. § 35.1(a) (provision for filing by a designated representative where two or more public utilities are parties to the same agreement). Accordingly, AMP’s concern that the filing requirements of FPA section 205(c) may not be satisfied is misplaced.

³² AMP Request for Rehearing at 4-5.

³³ February 2018 Order, 162 FERC ¶ 61,086 at P 88.

16. Regarding suspension, under section 17 of the *pro forma* pseudo-tie agreements, PJM reserves the right to suspend under specific stated circumstances—namely, if PJM reasonably determines that the pseudo-tie “poses a risk to system reliability or risk of violation of established reliability criteria”; if the pseudo-tying entity no longer satisfies PJM’s pseudo-tie requirements, criteria for participation in PJM’s markets as an external resource, or other legal or regulatory requirements; or if the entity commits a material default under its pseudo-tie agreement or fails to cure any breach thereof.³⁴ In addition, section 17 of the same agreements states that PJM may suspend where the pseudo-tying entity fails to provide real-time pseudo-tie megawatt values in a timely manner pursuant to applicable tariff or business rule requirements.³⁵

17. Both sections 17 and 18 of the *pro forma* pseudo-tie agreements address termination. Section 17 provides that in the event of two suspensions within a thirty-day period, the pseudo-tie agreement may be terminated “by mutual agreement of the Native Balancing Authority and PJM.”³⁶ In that event, notice of a party’s intent to terminate must be provided within 180 days of the second suspension. Section 18 of both *pro forma* pseudo-tie agreements provides that either the pseudo-tying entity or PJM may terminate the pseudo-tie agreement in their sole discretion upon 42 months’ notice prior to the commencement of a capacity market delivery year.³⁷ In addition, PJM has the right to terminate a pseudo-tie agreement upon 60 days’ notice and upon the filing of a notice of cancellation:

[I]f PJM experiences an emergency or other unforeseen condition which may impair or degrade the reliability of the Transmission System, a transmission constraint that impairs the reliability of PJM’s or another transmission provider’s system, or any adverse condition(s) or if the emergency condition causes the Facility to become undeliverable or unable to be restored, such as a major long-term transmission outage for example, and as a result in each case reliability issues arise such that the referenced Pseudo-Tie of the Facility raises concerns with regional reliability coordinators or NERC, or if Company no longer satisfies the PJM Governing

³⁴ PJM Tariff, Attachment MM § 17; Attachment NN § 17.

³⁵ *Id.*

³⁶ *Id.*

³⁷ PJM Tariff, Attachment MM § 18; Attachment NN § 18.

Document requirements for Pseudo-Ties, criteria for participation in PJM's markets as an external resource, or other applicable regulatory, legal or reliability requirements, or Company commits a material default under this Agreement or has failed to cure any breach of this Agreement . . . , upon acceptance of such notice of cancellation by the Commission if required.³⁸

18. Based on these provisions, we affirm our finding that the *pro forma* pseudo-tie agreements provide a sufficient level of detail regarding the circumstances surrounding suspension and termination of a pseudo-tie. These provisions belie AMP's general argument that the provisions are "impermissibly vague" and its specific assertion that there is an "absence of governing criteria" for the termination of a pseudo-tie.³⁹

19. Regarding AMP's specific argument that PJM should be required to define the term "suspension" as it is used in the PJM *pro forma* pseudo-tie agreements, we find that the use of the word "suspension" in the *pro forma* pseudo-tie agreements is consistent with the common usage of the term. As noted in the February 2018 Order, we recognize that "suspension is a temporary state involving coordination among the Balancing Authorities, while termination is a permanent measure."⁴⁰ Further, section 17 of the *pro forma* pseudo-tie agreements details the operative consequences of suspension.⁴¹ We find the meaning of the term suspension as applied to PJM's implementation and operation of pseudo-tied resources, as well as the consequences of suspension, are sufficiently clear.

³⁸ *Id.*

³⁹ AMP Request for Rehearing at 10-13.

⁴⁰ February 2018 Order, 162 FERC ¶ 61,086 at P 88.

⁴¹ PJM Tariff, Attachment MM § 17 ("Except as otherwise expressly permitted under the PJM Governing Documents, the suspension of the Pseudo-Tie of the Facility shall not relieve the Company of any of its obligations owed to PJM, specifically including but not limited to, any energy market or RPM must-offer requirements or any capacity obligations for which it has committed the Facility to PJM in an RPM Auction or FRR Capacity Plan. During any suspension period, the Facility shall remain under the operational control of the Attaining Balancing Authority and shall not be under the operational control of the Native Balancing Authority."); Attachment NN § 17 (same).

20. AMP supports the Commission’s statement in the February 2018 Order that, during suspension, “a pseudo-tied resource would retain any existing rights to participate in its native markets in accordance with that market’s applicable market rules.”⁴² However, AMP believes that pursuant to the “rule of reason,” a resource’s retention of existing rights, if any, should be recited in PJM’s Tariff, as “practices that affect rates and service significantly, that are realistically susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous.”⁴³ We disagree. The PJM Tariff specifies that the suspended resource maintains all of its existing rights to participate in its native market. It is not necessary for PJM to relist those rights in the suspension provision. During suspension, as PJM has explained, PJM, the Native Balancing Authority and the resource work collaboratively to resolve the underlying issues triggering the suspension.⁴⁴ As the Commission explained in the February 2018 Order in response to arguments that the *pro forma* pseudo-tie agreements should specifically address the effects of force majeure, “PJM and the Native Balancing Area Authority must have sufficient flexibility to address system conditions or reliability concerns.”⁴⁵ Thus, further specification in the Tariff of the consequences of or procedures during suspension is not necessary, where the relevant procedures are further explained in the record and otherwise “permit adaptability.”⁴⁶

21. In addition, contrary to AMP’s claim on rehearing, we affirm our finding that it is appropriate for PJM to retain, pursuant to the language of the *pro forma* pseudo-tie agreements, “sole discretion” to terminate a pseudo-tie, given that PJM should have sufficient tools to safeguard reliable operation of the grid.⁴⁷ We rely on PJM, in its role

⁴² AMP Request for Rehearing at 11 (quoting February 2018 Order, 162 FERC ¶ 61,086 at P 93).

⁴³ AMP Request for Rehearing at 11 (citing *City of Cleveland, Ohio v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985)) (internal quotations omitted).

⁴⁴ PJM Deficiency Response at 7.

⁴⁵ February 2018 Order, 162 FERC ¶ 61,086 at P 90.

⁴⁶ *City of Cleveland, Ohio*, 773 F.2d at 1377 (holding that, although the utility’s procedures “could certainly have been spelled out,” further detail was not necessary where the procedures were “extensively explained in the record,” were not “open-ended,” and were “necessarily general to permit adaptability to changing day-to-day operations”).

⁴⁷ February 2018 Order, 162 FERC ¶ 61,086 at P 87 (citing 18 C.F.R. § 35.34(j)(3)-(4) (2018); *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999) (cross-referenced at 89 FERC ¶ 61,285),

as the transmission provider, to appropriately identify risks to its reliable operation of the bulk power system and take necessary actions to safeguard against such risks, including those that may be posed by pseudo-tie arrangements.⁴⁸ AMP faults the Commission for failing to require PJM to specify in its Tariff that PJM would not terminate a pseudo-tied resource absent reliability concerns.⁴⁹ However, we find that sections 17 and 18 of the *pro forma* pseudo-tie agreements sufficiently delineate the reasons that PJM may terminate a pseudo-tied resource upon fewer than 42-months' notice, and make clear that for other grounds for termination, the pseudo-tying entity is afforded at least 42 months' notice prior to the delivery year. These provisions thus provide PJM with sufficient flexibility to address system conditions or reliability concerns, while providing pseudo-tying entities with sufficient time to plan contingencies and, if necessary, seek redress from the Commission related to a planned termination. The Commission underscored its expectation that, as a matter of course, suspension or termination of a pseudo-tied resource would not occur absent reliability concerns,⁵⁰ thereby providing guidance to PJM and parties regarding PJM's implementation of the suspension and termination provisions.

22. We emphasize that PJM cannot terminate a pseudo-tie agreement unilaterally without notifying the Commission, pursuant to section 35.15 of the Commission's regulations.⁵¹ This notification provides interested parties and the Commission an opportunity to evaluate the merits of such termination. AMP argues that this mechanism is insufficient, given the "absence of governing criteria" for termination in the *pro forma* pseudo-tie agreements. However, for the reasons discussed above, we disagree, and find that sections 17 and 18 of the *pro forma* pseudo-tie agreements sufficiently specify the circumstances surrounding suspension and termination of a pseudo-tied resource. Further, AMP can address any PJM termination of a pseudo-tied resource when PJM

order on reh'g, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000) (cross-referenced at 90 FERC ¶ 61,201), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish Cty., Wash. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001)).

⁴⁸ We note that PJM also safeguards reliability as a reliability coordinator and balancing authority pursuant to NERC reliability standards.

⁴⁹ AMP Request for Rehearing at 12-13.

⁵⁰ February 2018 Order, 162 FERC ¶ 61,086 at P 87 ("We underscore PJM's commitment that suspension or termination of a pseudo-tied resource would not, as a matter of course, be used absent reliability concerns.").

⁵¹ 18 C.F.R. § 35.15 (2018).

notifies the Commission that it seeks to terminate a pseudo-tie agreement pursuant to section 35.15.⁵²

C. Indemnification

23. As discussed below, we agree with AMP that PJM should include in section 15 of the Reimbursement Agreement language that exempts governmental entities from indemnification arrangements if they are prohibited from entering into such arrangements. Such revised language would make the indemnification provision in the Reimbursement Agreement consistent with the indemnification provision set forth in section 20 of the *pro forma* pseudo-tie agreements. PJM agreed that, should the Commission think such clarification necessary, it would be willing to include the alternate language.⁵³

24. Therefore, we grant rehearing on this issue and direct PJM to submit Tariff revisions, within 30 days of the date of this order, to add to section 15 of the Reimbursement Agreement the revised language, consistent with section 20 of the *pro forma* pseudo-tie agreements.⁵⁴ Specifically, section 15 of the Reimbursement Agreement should be revised to include the underlined language provided below:

Indemnification and Consequential Damages. [**Include the following for any Company for which there is a law that prohibits that entity from indemnifying other parties:** To the extent permitted by applicable law, including but not limited to state law governing the activities of municipalities or political subdivisions.] Company shall at all times indemnify, defend, and save all other Parties to this Agreement harmless from any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting

⁵² February 2018 Order, 162 FERC ¶ 61,086 at P 92.

⁵³ See PJM Answer at 44.

⁵⁴ See February 2018 Order, 162 FERC ¶ 61,086 at P 137 n.240. The United States Court of Appeals for the District of Columbia Circuit has held that, in certain circumstances, the Commission has “authority to propose modifications to a utility’s [FPA section 205] proposal *if the utility consents to the modifications.*” *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017).

from such Party's performance of its respective obligations under this Agreement, except in cases of gross negligence or intentional wrongdoing by the other Party.

The Commission orders:

(A) The request for rehearing is denied, in part, and granted, in part, as discussed in the body of this order.

(B) PJM is directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)

ER17-2291-003.DOCX.....1-13