

138 FERC ¶ 61,160  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

PJM Interconnection, L.L.C.

Docket No. ER11-2875-000

PJM Power Providers Group

Docket No. EL11-20-000

v.

PJM Interconnection, L.L.C.

ORDER REJECTING MOTION FOR CLARIFICATION  
AS AN UNTIMELY REQUEST FOR REHEARING

(Issued March 5, 2012)

1. On February 17, 2012, the Independent Market Monitor for PJM (IMM) filed a pleading which it called a motion for clarification in this proceeding pursuant to Rule 212 of the Commission's Rules and Regulations. The IMM's motion addresses two Commission orders, issued on April 12, 2011<sup>1</sup> and November 17, 2011,<sup>2</sup> involving PJM Interconnection, L.L.C.'s Minimum Offer Price Rule (MOPR). We reject this pleading as an untimely request for rehearing of the Commission's prior determinations.

2. The IMM argues that the Commission should, among other things, bar sellers from using any levelization method other than nominal levelization and generally from altering any of the "modeling assumptions" embedded in the benchmark unit, regardless of the justification provided for such a departure from the benchmark. While the IMM denominates its pleading as a motion for clarification, it is, in fact, a late-filed request for rehearing of a specific Commission determination. In the November 17 Order, the Commission determined that, during the unit-specific review process, PJM had to consider methodologies other than the nominal levelization methodology if the applicant

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<sup>1</sup> *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 (2011).

<sup>2</sup> *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,145 (2011) (November 17 Order).

could justify the use of the alternative.<sup>3</sup> Moreover, the Commission accepted PJM's tariff provisions, which required the IMM and PJM to consider individual evidence presented by the applicant if it is consistent with a competitive market.<sup>4</sup>

3. Pursuant to section 313(a) of the FPA<sup>5</sup> and the Commission's Rules of Practice and Procedure,<sup>6</sup> an aggrieved party must file a request for rehearing within thirty (30) days after the issuance of the Commission's order. The Commission and the courts have established that the 30-day time period cannot be waived.<sup>7</sup> In this proceeding, that time period was no later than December 19, 2011. Accordingly, the IMM's pleading must be rejected as untimely.

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<sup>3</sup> See November 17 Order, 137 FERC ¶ 61,145 at P 74.

<sup>4</sup> See *id.* P 242-244.

<sup>5</sup> 16 U.S.C. § 825l(a) (2006).

<sup>6</sup> 18 C.F.R. § 385.713(b) (2011).

<sup>7</sup> *City of Campbell v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985) ("The 30-day time requirement of the [FPA] is as much a part of the jurisdictional threshold as the mandate to file for a rehearing."); *Boston Gas Co. v. FERC*, 575 F.2d 975, 977-98, 979 (1st Cir. 1978) (describing identical rehearing provision of Natural Gas Act as "a tightly structured and formal provision. Neither the Commission nor the courts are given any form of jurisdictional discretion."); *Louisiana Energy and Power Authority*, 117 FERC ¶ 61,258 (2006); *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,211, at P 10 (2005); *Texas-New Mexico Power Company*, 107 FERC ¶ 61,316, at P 22 (2004); *California Independent System Operator Corporation*, 105 FERC ¶ 61,322, at P 9 (2003); *American Electric Power Service Corporation*, 95 FERC ¶ 61,130, at 61,411-12 (2001).

The Commission orders:

The IMM's February 17<sup>th</sup> pleading is hereby rejected as an untimely request for rehearing, as described in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.