

132 FERC ¶ 61,219
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Exelon Generation Company, LLC

Docket No. ER10-1418-000

ORDER ACCEPTING AND SUSPENDING TARIFF FILING, SUBJECT TO
REFUND AND ESTABLISHING HEARING AND SETTLEMENT PROCEDURES

(Issued September 16, 2010)

1. On June 9, 2010, Exelon Corporation, on behalf of its wholly owned subsidiary, Exelon Generation Company, LLC (Exelon) filed a proposed Reliability Must-Run Rate Schedule (RMR Rate Schedule).¹ The RMR Rate Schedule will govern the operation of two generating units in southeastern Pennsylvania that PJM Interconnection, L.L.C. (PJM) has determined will be needed past the date of their planned deactivation to maintain transmission system reliability pending the completion of scheduled upgrades to the transmission system. In this order, the Commission accepts and suspends the proposed RMR Rate Schedule for a nominal period, subject to refund, to be effective on June 1, 2011, as requested, and sets the proposed RMR Rate Schedule for hearing and establishes settlement procedures.

I. Background

2. The deactivation of generating units in the PJM region is governed by Part V of the PJM Open Access Transmission Tariff (PJM Tariff).² According to these provisions, a generation owner must provide PJM with notice of its intent to deactivate a unit at least ninety days prior to the unit's proposed deactivation date. PJM will then study the transmission system to determine if the proposed deactivation could adversely affect

¹ Exelon Generating Company, LLC, Electric Rate Schedule FERC No. 20.

² PJM Tariff, FERC Electric Tariff, Sixth Revised Volume No. 1, Part V, *Generator Deactivation*.

system reliability and will then notify the generation owner within 30 days of the specific reliability concerns and an estimate of the period of time needed to construct needed transmission upgrades.³

3. The generation owner has a right to deactivate a generating unit, following timely notification to PJM, even if PJM determines that there are reliability concerns. However, the generation owner may elect to continue to operate the unit past its planned deactivation date to maintain system reliability pending the completion of necessary transmission system upgrades. If the generation owner chooses to continue to operate the unit, it is entitled to file a cost of service recovery rate with the Commission in order to recover the entire cost of operating the unit beyond its proposed deactivation date.⁴

II. RMR Rate Schedule Filing

4. On December 9, 2009, Exelon provided notice to PJM of its intention to deactivate Cromby Unit Nos. 1 and 2 and Eddystone Unit Nos. 1 and 2, effective May 31, 2011.⁵ Exelon states that these units are uneconomic due to the combined effect of market conditions and relatively high capital and operating costs caused by their age. In addition, Exelon anticipates that future cash flows will be significantly negative for these units because they will require costly project investment to maintain their operability and because their dispatch will be limited due to environmental restrictions. Moreover, these units failed to clear in the PJM capacity auctions to supply capacity for the 2011/2012 and 2012/2013 planning years.

5. PJM conducted a deactivation study and determined that Cromby Unit No. 2 and Eddystone Unit No. 2 (the RMR Units) would be needed past their planned deactivation date to manage localized reliability issues pending completion of transmission system upgrades. On May 10, 2010, PJM notified Exelon that the proposed retirement of RMR Units could have an adverse effect on reliability without upgrades to the transmission

³ *Id.* at section 113, *Notices*.

⁴ *Id.* at sections 113.2, and 119.

⁵ Cromby Unit No. 1 is a 144 MW coal unit and Cromby Unit No. 2 is a 201 MW peaking unit capable of running on either natural gas or fuel oil (also included for deactivation is a 2.7 MW diesel generator used for operational support of the other Cromby units (Cromby Diesel)). Eddystone Unit Nos. 1 and 2 are coal units with nameplate capacities of 279 MW and 309 MW, respectively. Exelon states that it will continue to operate other generating units at the Eddystone site. Exelon June 9, 2010 Filing at 2.

system; and therefore, would be needed for reliability purposes until December 31, 2011 for Cromby (including the Cromby Diesel) and until December 31, 2012 for Eddystone.⁶

6. Exelon notified PJM that it would continue to operate the RMR Units as needed to maintain system reliability pending the completion of necessary transmission system upgrades, provided that Exelon obtained an acceptable reliability must run agreement, and could reach an agreement with the Pennsylvania Department of Environmental Protection (Pennsylvania DEP) allowing for the continued operation of the RMR Units resolving certain environmental litigation and permitting issues relating to the RMR Units.

7. Exelon states that during the spring of 2010, Exelon and PJM worked with the Pennsylvania DEP to resolve environmental and operating issues regarding the continued operation of the RMR Units. Exelon and PJM developed operating protocols, in the form of PJM Operating Procedures, for the RMR Units to be operated for reliability purposes that balance the need for system reliability and address Pennsylvania DEP's environmental concerns.⁷ On April 16, 2010, Exelon and Pennsylvania DEP entered into a Consent Decree that provided for continued operation of the RMR Units for system reliability dispatch.⁸

8. Exelon states that its proposed RMR Rate Schedule will allow Exelon to recover the entire cost of operating the RMR Units until they are deactivated. Under the RMR Rate Schedule, Exelon will recover its costs of operating the RMR Units beyond May 31, 2011 through a three-part Cost of Service Recovery Rate composed of: (1) a Monthly Fixed-Cost Charge established through a traditional cost of service analysis; (2) a project investment tracker mechanism to recover Exelon's actual project investment costs; and

⁶ Exelon June 9, 2010 Filing at 4. PJM originally notified Exelon on January 5, 2010, that its preliminary deactivation analysis indicated all four units would be needed for reliability until June 1, 2014. *Id.* at Attachment B.

⁷ *Id.* at Attachment C. The PJM Operating Procedures (a) identify the reliability circumstances under which PJM may call upon the RMR Units after May 31, 2011; and (b) delineate the operating characteristics and parameters under which Exelon may be requested to operate those units. The PJM Operating Procedures were filed for informational purposes and not as part of the proposed RMR Rate Schedule. *Id.* at n.11.

⁸ The Consent Decree is an appendix to the PJM Operating Procedures. The Consent Decree permits reliability dispatch of the units pursuant to the PJM Operating Procedures.

(3) a variable cost reimbursement mechanism to recover Exelon's variable fuel, emissions, chemicals, auxiliary power, and incremental insurance costs.

9. Exelon proposes Cost of Service Recovery Rates that include monthly fixed-cost charges, using a traditional cost-of-service analysis, that are based on annual revenue requirements of \$31,548,701 for Cromby Unit No. 2, \$96,577,979 for Eddystone Unit No. 2, and \$154,053 for the Cromby Diesel, respectively.

10. Exelon states that the second component of its Cost of Service Recovery Rate, a project investment tracker, will recover Exelon's project investment that are or may later become necessary to maintain the reliable operation of the RMR Units.⁹ Exelon states that under the project investment tracker mechanism, Exelon will be reimbursed for its costs of project investment on an amortized basis over the remaining term of the RMR Rate Schedule, plus a carrying charge. The RMR Rate Schedule establishes a mechanism by which Exelon will submit informational filings to PJM and the Commission with respect to project investment beyond the currently-identified inventory of project investment if the need for other project investment arises in the future.

11. Exelon states that the third component of its Cost of Service Recovery Rate, a cost reimbursement mechanism, allows for Exelon's recovery of variable fuel, emissions, chemicals, incremental insurance, and auxiliary power costs. Under its variable expense recovery mechanism, Exelon states that it will be reimbursed its actual costs, which Exelon will provide to PJM through the submission of invoices with appropriate supporting data.

12. Section 3.2 of the RMR Rate Schedule provides that PJM will not dispatch the RMR Units on the basis of economic considerations and section 3.3 provides that Exelon shall not be obligated to operate the RMR Units in a manner that will violate the Consent Decree. As such, the RMR Units will not be required to offer into PJM-administered markets, such as, for the sale of capacity, energy, ancillary services, or any other product. Exelon also states that continued operation of the RMR Units beyond May 31, 2011 will subject it to possible violations of the consent decree; and, as such, section 6.1 of the RMR Rate Schedule indemnifies Exelon from claims and damages arising from violations of the Consent Decree in response to a PJM dispatch instruction.

⁹ Exelon estimates that to keep the RMR Units operating safely and reliably from their planned May 31, 2011 deactivation date until December 31, 2011 for Cromby and December 31, 2012 for Eddystone as requested by PJM would require \$19.3 million in project investment.

III. Procedural Matters

13. Notice of Exelon Generation's filing was published in the *Federal Register*, 75 Fed. Reg. 35,010, with comments due by July 1, 2010.

14. On July 1, 2010, Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., and Constellation Power Source Generation, Inc. (Constellation) filed a joint motion of an extension of time to file comments. In its motion, Constellation states that additional time needed to fully evaluate the breadth of materials included in Exelon's proposed RMR Rate Schedule. On July 6, 2010, the Commission granted an extension of time until July 15, 2010 for filing comments.

15. Timely motions to intervene were filed by Constellation; PJM; Monitoring Analytics, LLC;¹⁰ American Municipal Power, Inc. (AMP); Dominion Resources Services, Inc. (Dominion); Baltimore Gas and Electric Company (BGE); Allegheny Energy Companies; Shell Energy North America (US), L.P.; PJM Industrial Customer Coalition; Philadelphia Area Industrial Energy Users Group; Duke Energy Corporation; Old Dominion Electric Cooperative; Public Power Association of New Jersey; Pepco Holdings, Inc. (PHI); PSEG Energy Resources & Trade LLC; PECO Energy Company; and Hess Corporation. Untimely motions to intervene were filed by Mirant Parties, New Jersey Division of Rate Counsel (New Jersey Rate Counsel); New Jersey Board of Public Utilities, FirstEnergy Service Company (FirstEnergy), and the Public Service Commission of Maryland.

16. Comments or protests were filed by Constellation, PJM, PJM Market Monitor, AMP, Dominion, New Jersey Rate Counsel, and BGE.¹¹ Exelon requested leave to respond to the protest and comments. PJM filed for leave to answer the comments of New Jersey Rate Counsel and Constellation. PJM Market Monitor filed for leave to answer the answer of Exelon. Exelon filed for leave to answer the response of the PJM Market Monitor, to which the PJM Market Monitor filed for leave to answer.

¹⁰ As the Independent Market Monitor for PJM (PJM Market Monitor).

¹¹ BGE states that PHI joined in its protest.

IV. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹² the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Given the lack of undue prejudice or delay and the parties' interest, we find good cause to grant the unopposed, untimely motions to intervene of Mirant Parties, New Jersey Rate Counsel, New Jersey Board of Public Utilities, FirstEnergy, and the Public Service Commission of Maryland.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,¹³ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers of Exelon, PJM, and PJM Market Monitor because they provided information assisting us in our decision making process.

B. Cost of Service Recovery Rate

1. Comments and Protests

19. Protestors raise concerns with Exelon's proposed cost of service and question whether the figures put forth by Exelon in its filing are justified. In expressing its concern about the proposed cost of service, the PJM Market Monitor calls for a technical conference or other form of additional scrutiny to address factual and technical issues including the justification for assigned allocation factors and assumptions regarding the level of fuel inventories.¹⁴

20. AMP and Dominion state that they generally support Exelon's proposed RMR Rate Schedule. AMP further states that it takes no position on the specific costs, credits, allowances, charges, allocations or other rate elements reflected in Exelon's proposed RMR Rate Schedule.¹⁵ In support of Exelon's filing, PJM states that it determined that the immediate deactivation of Cromby Unit No. 2 and Eddystone Unit No. 2 would adversely affect the reliability of the PJM transmission system absent upgrades to the

¹² 18 C.F.R. § 385.214 (2010).

¹³ 18 C.F.R. § 385.213(a)(2) (2010).

¹⁴ PJM Market Monitor July 15, 2010 Comments at 2-3.

¹⁵ AMP July 1, 2010 Comments at 3.

transmission system that could not be completed prior to the proposed deactivation date. Therefore, PJM requested that Exelon continue to operate the units beyond May 31, 2011.¹⁶ PJM also states that Exelon's proposed RMR Rate Schedule filing is consistent with the PJM Tariff.¹⁷

2. Responsive Pleadings

21. Exelon states that the protests do not question the need for the RMR Rate Schedule nor do they raise specific substantive issues with respect to the Cost of Service Recovery Rate established by Exelon as part of the RMR Rate Schedule, nor do they raise a single issue of material fact.¹⁸ Specifically, Exelon states that the PJM Market Monitor has failed to establish the need for its requested technical conference, given the lack of definitive questions that it seeks to have resolved through the course of such a proceeding.¹⁹

22. In response to Exelon's July 29, 2010 Answer, the PJM Market Monitor details the issues it has with Exelon's responses and the need for more detailed explanations of the components of the proposed cost of service, particularly Exelon's calculation of depreciation for the RMR Units. PJM Market Monitor states that Exelon's expert testimony does not explain and justify the 36 and 24 month remaining lives of the RMR Units.²⁰ Exelon responds by stating that beginning with its decision to deactivate the RMR Units, it adjusted the depreciation expense to fully depreciate the RMR Units over the remaining life, i.e. until May 30, 2011, consistent with generally accepted accounting principles. Exelon further states that a useful life beyond the term of the RMR Rate

¹⁶ PJM June 30, 2010 Comments at 3.

¹⁷ PJM specifically states that the PJM Tariff, section 113.2 provides that a generation owner who continues to operate a generating unit beyond its proposed deactivation date is entitled to file a cost of service rate to recover the entire cost of operating the generating unit until such time as the generating unit is deactivated. *Id.*

¹⁸ Exelon July 29, 2010 Answer at 1.

¹⁹ *Id.* at 3.

²⁰ *See* PJM Market Monitor August 13, 2010 Answer at 2 (citing Exelon June 10, 2010 Filing, EXG-1 at P 22).

Schedule would not be reasonable because the units will not operate after their respective retirement dates.²¹

3. Commission Determination

23. The Commission accepts and suspends, for a nominal period, the RMR Rate Schedule, subject to refund, to become effective June 1, 2011, as requested. The RMR Rate Schedule was properly filed by Exelon in accordance with the deactivation provisions of the PJM Tariff. Section 119 of the PJM Tariff states that the Cost of Service Recovery Rate allows the unit owner to recover the “entire cost of operating the generating unit until such time as the generating unit is deactivated.”²² Exelon proposes a Cost of Service Recovery Rate for each RMR Unit that is developed using traditional cost of service methods. Exelon also proposes to include in its Cost of Service Recovery Rate the expenditures for reliability projects required to provide reliable service, but which due to their useful lives would normally be capitalized. The Commission previously accepted a similar provision in *PSEG* and finds this provision to be acceptable here as well.²³

24. Exelon’s proposed cost of service formula however contains elements that have not been satisfactorily explained. For example, it includes a return on existing investment and depreciation of the unit’s current book value including the proposed recovery of negative salvage value. Exelon asserts its entitlement to adjust its depreciation expense in order to fully depreciate the RMR Units over the remaining life of the RMR Rate Schedule.²⁴ Therefore, it would appear, from the proposed Cost of Service Recovery Rate that Exelon is proposing to write down such existing assets at a faster rate, than would otherwise have occurred for ratemaking purposes, i.e., if the units would continue to operate for the remainder of a reasonable amortization period. In *PSEG*, the Commission also addressed a lack of clarity in depreciating assets in a similar proposal.²⁵ The Commission finds insufficient supporting information with regard to this and other components of the Cost of Service Recovery Rate that raise issues of material

²¹ Exelon August 26, 2010 Answer at 3.

²² PJM Tariff, First Revised Sheet No. 224H, section 119.

²³ See *PSEG Energy Resources & Trade, LLC, et al.*, 111 FERC ¶ 61,121 (2005) (*PSEG*).

²⁴ Exelon August 26, 2010 Answer at 3.

²⁵ *PSEG*, 111 FERC ¶61,121 at P 23.

fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement procedures ordered below.

25. The Commission's preliminary analysis therefore indicates that the proposed rate in the Exelon RMR Rate Schedule has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful.²⁶ Accordingly, the Commission establishes a hearing and settlement procedures to determine whether the proposed rate is just and reasonable.²⁷

26. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.²⁸ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.²⁹ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

²⁶ In addition, the Commission has identified two errors in the ROE exhibits. First, the preliminary analysis indicates that the median was not calculated consistent with Commission precedent. *See Southern California Edison Company*, 131 FERC ¶ 61,020, n.152 (2010). Second, the preliminary analysis indicates that the ROE exhibits use incorrect *Value Line* data for UIL Holdings Corp.

²⁷ As a matter of practice, the Commission does not set rate issues for technical conference. The hearing process will allow for discovery regarding the cost of service issues brought forth by parties in this proceeding; thereby potentially providing the more detailed information requested by the PJM Market Monitor in its filings in this proceeding.

²⁸ 18 C.F.R. § 385.603 (2010).

²⁹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

C. Indemnification Provision

1. Protest

27. BGE and PHI, as well as Constellation state that the indemnification provision in Exelon's proposed RMR Rate Schedule unjustly shifts all risk of unit operation to the PJM load service entities and the customers that they serve. BGE and PHI assert that the indemnification provision, if approved, could set an unmerited precedent of the pass-through of risk and that section 16.4 of the PJM Operating Agreement imposes an absolute bar against the imposition of indemnification liability on PJM members.³⁰ Additionally, BGE and PHI raise the issue of whether there exists any reason for Exelon to be indemnified from claims and damages arising from operating the RMR Units since they state that according to the PJM Operating Procedures, Exelon will not be obligated to operate the RMR Units in a manner that violates the Consent Decree.³¹

2. Answer of Exelon

28. Exelon states that BGE and PHI misconstrue the RMR Rate Schedule indemnification provision and overstate its potential impact. Exelon explains that the indemnification provision is narrowly tailored to address only the unique risk that continued operation of the RMR Units will expose Exelon to a penalty for a Consent Decree violation. Exelon states this is appropriate because PJM will control the dispatch of the RMR Units during the term of the RMR Rate Schedule. Exelon further states that, while it has the right not to operate the RMR Units in response to a PJM dispatch instruction if doing so would cause it to violate the Consent Decree, in practice, Exelon will not have time to react and investigate in real-time PJM's instructions. As such, Exelon argues that PJM should bear consequences if it issues a faulty dispatch instruction that causes Exelon to violate the Consent Decree and suffer a penalty.³²

29. Exelon also responds to the claim by BGE and PHI that the indemnification provision is not consistent with section 16.4 of the PJM Operating Agreement. Exelon states that the PJM Operating Agreement limits the liability of PJM members among each other in connection with the performance of their obligations under the PJM Operating

³⁰ BGE and PHI Protest at 5, (citing PJM Interconnection, L.L.C., Third Revised Rate Schedule FERC No. 24 (PJM Operating Agreement), Second Revised Sheet No. 53, section 16.4, *Limitation of Liability*).

³¹ *Id.* at 4.

³² Exelon July 29, 2010 Answer at 9-10.

Agreement or the ownership, operation, or maintenance of their systems. Exelon states that it does not shield PJM members from liability that might arise if PJM acts contrary to its obligations, such as dispatching the RMR Units in a manner inconsistent with the RMR Rate Schedule and the Consent Decree.³³ Furthermore, Exelon states that the provision will not create a harmful precedent because it only applies to the unique circumstance of the Consent Decree that PJM has agreed to honor.

3. Commission Determination

30. The proposed rate schedule contains an indemnification provision that states:

PJM shall indemnify, hold harmless, and defend Exelon Generation from any fines, penalties, judgments, or other forms of economic sanction levied against Exelon Generation, and Exelon Generation's costs of defending against any enforcement actions or other forms of action, arising from Exelon Generation's operation of the Units in response to a PJM dispatch instruction that causes Exelon Generation to violate the Consent Decree.³⁴

The Commission finds that the Consent Decree does not unjustly shift cost to rate payers instead of Exelon. PJM effectively controls the operation of the RMR Units and PJM has agreed to honor the Consent Decree as spelled out in detail in the PJM Operating Procedures. Exelon is required to respond to PJM dispatch orders and therefore if a PJM dispatch order results in a violation of the Consent Decree, holding PJM responsible for its dispatch decision is reasonable.

31. We do not find that the indemnity provision of the RMR Rate Schedule violates section 16.4 of the PJM Operating Agreement. Section 16.4 limits the liability of one member for the acts of another member, but does not insulate members for liability from PJM's actions. The indemnity provision in the rate schedule requires PJM to indemnify Exelon for PJM's failure to honor the Consent Decree as it obligated itself to do.

³³ *Id.* at 11-12.

³⁴ RMR Rate Schedule, section 6.1, *Indemnification*.

D. Market Design Issues**1. Protests**

32. Constellation states that it has identified, and Exelon has verified, a market design issue regarding the treatment of capacity from RMR resources in the PJM Tariff that may require tariff modifications and should be addressed through the PJM stakeholder process. Specifically, Constellation states that PJM might over-procure capacity because the RMR resources are exempt from consideration as capacity resources in the PJM capacity market; and therefore, it argues the tariff should be amended to set procedures for offering RMR resources as price-takers. Constellation also questions whether PJM should be required to publicly disclose the written explanation it offers to Exelon of the need for the RMR Units.

33. The New Jersey Rate Counsel states that PJM does not explain why the capacity market auctions for years 2011/2012 and 2012/2013 did not separately model the zone where the RMR Units are located to account for the apparent need for localized capacity resources for reliability reasons. Additionally, the New Jersey Rate Counsel requests that Exelon and PJM fully explain and justify the costs for any reliability-required resources that are needed to ensure reliable service in the PECO zone (the PJM load zone where the RMR Units are located), i.e., are there other lower cost resources.³⁵

2. Responsive Pleadings

34. Exelon states that while it concurs with Constellation in that the implications of reliability must run generation for the PJM incremental capacity auction processes is an appropriate subject for discussion in PJM's stakeholder processes, the Commission has no basis to use this proceeding as a vehicle for a broader consideration of the capacity auction protocols and the implications of reliability must run generation for the capacity market.³⁶ Exelon states that the New Jersey Rate Counsel failed to identify any specific deficiencies in PJM's analysis or process when it, in effect questioned whether the RMR Units are needed for system reliability and whether other resources could be used in their place to ensure system reliability.³⁷

³⁵ New Jersey Rate Counsel July 15, 2010 Comments at 6.

³⁶ *Id.* at 8.

³⁷ *Id.* at 5-6.

35. In response to Constellation, PJM states that in accordance with the PJM Tariff, a capacity resource is not subject to the must offer requirements if it is expected to be physically unable to participate in the delivery year.³⁸ PJM states that it considers a generating unit physically unavailable if the owner has submitted a notice to deactivate in accordance with section 113.1 of the PJM Tariff. Additionally, PJM states that the New Jersey Rate Counsel incorrectly assumes that the analysis used to qualify a generating unit for the capacity market is the only analysis used in the deactivation study to determine whether a unit is needed for reliability. PJM states that in this particular case, the constraints requiring the retention of the RMR Units are related to NERC violations that are local in nature and dependent to a large degree on the specific RMR Units. PJM also states that, consistent with PJM procedures, the reliability analyses completed by PJM that examined whether other resources that did not clear in the capacity auctions, could be used in lieu of the RMR Units included all available resources to alleviate identified constraints.³⁹

3. Commission Determination

36. The Commission finds that the examination of the PJM capacity market as requested by Constellation and the New Jersey Rate Counsel is outside of the scope of this proceeding. As discussed earlier, we find that the RMR Rate Schedule was properly filed in accordance with applicable PJM Tariff provisions that the Commission has previously approved.⁴⁰ If stakeholders determine that modifications to the tariff are desired to address a specific issue, such as whether RMR units should be required to offer into the capacity market, the changes should be initiated and accomplished through the PJM stakeholder process. Similarly, we find that the protest of the New Jersey Rate Counsel that questions the way in which the capacity markets are modeled is outside the scope of this proceeding. The issue of whether local reliability constraints should be modeled in the capacity market can be addressed in the PJM stakeholder process. Further, PJM has demonstrated that, pending the completion of specific transmission upgrades, the RMR Units are required to address specific localized reliability needs that cannot be met with any other resource.

³⁸ PJM July 30, 2010 Answer at 3, (citing PJM Tariff, Attachment DD, section 6.6(g)).

³⁹ *Id.* at 2-3.

⁴⁰ *See generally, PSEG*, 111 FERC ¶61,121.

The Commission orders:

(A) Exelon Electric Rate Schedule FERC No. 20 is hereby accepted for filing and suspended for a nominal period, to be effective on June 1, 2011, subject to refund.

(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 Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Exelon's proposed Reliability Must Run Cost of Service. As discussed in the body of this order, the hearing will be held in abeyance to give the parties time to conduct settlement judge negotiations.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is hereby authorized to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If the settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions

(except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.