

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

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Midwest Independent Transmission System  
Operator, Inc. and Duquesne Light Company

Docket No. ER08-1235-000

Duquesne Light Company

Docket Nos. ER08-194-001  
and ER08-194-002

ORDER ADDRESSING CONDITIONAL RTO WITHDRAWAL  
REQUEST, AS REVISED, PROPOSED INTEGRATION PLAN,  
REQUESTS FOR REHEARING,  
AND COMPLIANCE WITH PRIOR RULINGS

(Issued September 3, 2008)

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## I. Introduction

1. In this order, we address a revised proposal jointly made by the Duquesne Light Company (Duquesne) and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) (collectively, Applicants), allowing for the transfer of Duquesne's membership in the PJM Interconnection, L.L.C. (PJM) regional transmission organization (RTO) to the Midwest ISO RTO, effective October 1, 2008.<sup>1</sup> In this order, we also address a compliance filing made by Duquesne, in Docket No. ER08-194-002, in response to the January 17 Order. In its compliance filing, Duquesne addresses its financial liability, as a withdrawing member of the PJM RTO, including its cost responsibility for transmission expansions approved and constructed pursuant to PJM's regional transmission expansion plan (RTEP). Finally, we address in this order issues presented on rehearing of the January 17 Order.

2. For the reasons discussed in sections III.D and E of this order, below, we agree that Duquesne will be permitted to withdraw from PJM and join the Midwest ISO, subject to certain conditions and pending authorizations. First, we find that Applicants' integration plan, while generally acceptable, fails to provide interested parties sufficient notice of Duquesne's firm, i.e., non-contingent, intent to withdraw from PJM and join the Midwest ISO. Accordingly, we require Duquesne to provide 60 days notice of its withdrawal date.

3. We also agree with intervenors that Applicants' integration plan fails to address, in sufficient particularity, market participants' existing and interim period rights to hedge costs attributable to transmission congestion, including their costs relating to their Auction Revenue Rights (ARRs) and seasonal Fixed Transmission Rights (FTRs). Accordingly, we direct PJM and the Midwest ISO to address these issues, as they relate to their respective tariffs. We also find that to the extent PJM and the Midwest ISO are unable to mitigate unreasonable impacts associated with partial-year ARRs and FTRs, Duquesne can and should be required to indemnify affected customers.

4. We also find that issues relating to Applicants' resource adequacy obligations need not be addressed here, given our pending consideration of PJM's Reliability Pricing Model (RPM) capacity portability filing, in Docket No. ER08-1345-000, PJM's capacity payment filing, in Docket No. ER08-1339-000, and any remaining implementation issues relating to the Midwest ISO's resource adequacy requirements, as presented in Docket No. ER08-394-000. For this same reason, we decline to address here Duquesne's request

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<sup>1</sup> In an order issued January 17, 2008, in Docket No. ER08-194-000, the Commission addressed Duquesne's initial RTO withdrawal proposal. *See Duquesne Light Company*, 122 FERC ¶ 61,039 (2008) (January 17 Order).

for clarification that it should and will be permitted, following its integration, to sell any RPM capacity that may not be required to satisfy its resource obligations in the Midwest ISO.

5. We also address, in section IV of this order, Duquesne's RTEP obligations, i.e., the liabilities addressed by Duquesne in its compliance filing in Docket No. ER08-194-002. For the reasons discussed below, we find that upon Duquesne's withdrawal from PJM, the Duquesne zone will not be subject to PJM's future-period, annually-updated RTEP allocations. However, we also find that project costs that have been allocated to the Duquesne zone, i.e., established and made binding on the Duquesne zone pursuant to PJM's current-year RTEP cost allocations, will continue to apply to the Duquesne zone and may be collected by PJM through the current calendar year.

6. Finally, we address, in section V of this order, requests for rehearing and clarification of the January 17 Order. For the reasons discussed below, we deny rehearing, but grant certain requested clarifications.

## **II. Background**

### **A. Duquesne's Initial RTO Withdrawal Request**

7. On November 8, 2007, Duquesne submitted a petition, in Docket No. ER08-194-000, requesting that the Commission grant its conditional request to withdraw from the PJM RTO, effective May 31, 2008.<sup>2</sup> Subject to conditions, Duquesne requested that the Commission approve its withdrawal as a transmission owner under the PJM Consolidated Transmission Owners Agreement (TO Agreement) and as a load serving entity under the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region (RA Agreement).

8. Duquesne stated that it intended to withdraw from PJM subject to its ability to join the Midwest ISO, the submission of an integration filing by the Midwest ISO, and on the ability of the Midwest ISO to implement centralized balancing by June 1, 2008.<sup>3</sup>

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<sup>2</sup> As explained below, Duquesne's requested withdrawal date was tied to the Midwest ISO's anticipated implementation of certain market revisions, including centralized balancing. Because the implementation of these market revisions has been delayed, the withdrawal date reflected in the instant filing has also been revised.

<sup>3</sup> The Midwest ISO's centralized balancing proposal was, and is, relied upon by Duquesne in support of its position that its withdrawal from PJM satisfies the requirements of section 3.2(i) of the PJM TO Agreement. Section 3.2(i) provides that "[a]ny [TO Agreement] Party may withdraw from this Agreement upon ninety (90) days advance written notice to PJM and the other [TOA] Parties; provided that such

(continued...)

Duquesne stated that if the Midwest ISO were not able to implement centralized balancing as of this date, Duquesne reserved the right to delay its withdrawal from PJM. Alternatively, Duquesne stated that it may choose to propose, in a future filing, a NERC-approved balancing authority for the Duquesne zone utilizing the services of another (as yet unidentified) Midwest ISO member capable of performing these services.

9. Duquesne stated that its intent to withdraw from PJM was also contingent on the Commission's consideration and resolution, to Duquesne's satisfaction, of Duquesne's liability to PJM and its remaining members for costs associated with Duquesne's capacity commitments under PJM's RPM protocols. Among other things, Duquesne requested a finding that Duquesne's liability for RPM capacity charges is limited to committed RPM supplies delivered by PJM in the applicable delivery year.

10. Duquesne stated that its request to withdraw from PJM is based, principally, on the adverse cost impact attributable to PJM's implementation of its new RPM procedures.<sup>4</sup> Duquesne stated that while it was not challenging the Commission's orders approving PJM's RPM protocols, the effects of these new rules, on Duquesne, have been severe. Specifically, Duquesne stated that while its existing retail rates are lower today than they were fifteen years ago and will continue to be lower through 2010, as a result of a retail rate freeze, RPM prices threaten to wipe out all of the savings attributable to these multi-year rate plans. In addition to its high RPM costs, Duquesne cited two additional bases supporting its determination to withdraw from PJM. First, Duquesne asserted that the Midwest ISO's governance model is more receptive to independent comments and criticisms. Second, Duquesne argued that the Midwest ISO's market monitoring procedures are better equipped to ensure a proper operation of its energy markets.

11. Duquesne stated that it had met with PJM in August 2007 to discuss its concerns regarding its rising RPM cost liability and to explore the possibility of its withdrawal from PJM for the purpose of avoiding the establishment of any further liability. Duquesne stated that it had also sought guidance from PJM regarding any alternative options it might have to avoid these costs. Duquesne stated that on September 12, 2007,

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withdrawal shall not be effective until the withdrawing Party has: (i) if its Transmission Facilities do not comprise an entire Control Area, satisfied all applicable standards of [the North American Electric Reliability Corporation (NERC)] and the Applicable Regional Reliability Council for operating a Control Area or being included within an existing Control Area." The Midwest ISO's planned implementation of centralized balancing is discussed below. *See supra* section II.C.

<sup>4</sup> *See PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 (2006), *order on reh'g and clarification*, 119 FERC ¶ 61,318, *order on reh'g*, 121 FERC ¶ 61,173 (2007).

it gave written notice to PJM of its intent to withdraw from PJM and, on September 13, 2007, gave written notice to its fellow transmission owners.<sup>5</sup> In addition, Duquesne stated that it had met and discussed its plans with stakeholders in the Duquesne zone, major load serving entities in the zone, customer and consumer advocates in Pennsylvania, and in both PJM and the Midwest ISO.

12. Duquesne stated that it was also in negotiations with the Midwest ISO to discuss its integration into the Midwest ISO RTO. Duquesne stated that it had been informed by the Midwest ISO that Duquesne can be integrated safely and efficiently, the optimum time being the second quarter of 2008. Duquesne stated that it chose May 31, 2008 as its requested withdrawal date, consistent with the Midwest ISO's recommended timeline and based on other operational and administrative needs. Duquesne noted, for example, that this withdrawal date coincides with the end of the 2007-08 RPM delivery year and other PJM yearly obligations, including the FTR and ARR allocation dates.<sup>6</sup>

### **B. January 17 Order**

13. In the January 17 Order, the Commission found that, under *Louisville Gas & Electric Co.*,<sup>7</sup> three requirements must be met, regarding Duquesne's RTO withdrawal request. First, the withdrawal proposal must satisfy the terms of the applicant's contractual obligations as they relate to RTO withdrawal. Second, applicant's proposed replacement arrangements must comply with Order No. 888<sup>8</sup>

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<sup>5</sup> Duquesne's written notice specified a withdrawal date of June 1, 2008.

<sup>6</sup> Duquesne adds that its requested withdrawal date will also benefit retail customers in the Duquesne zone as well as their suppliers because many of the retail contracts to which they are subject are based on a June 1<sup>st</sup> planning year.

<sup>7</sup> 114 FERC ¶ 61,282, at P 27, *order on reh'g*, 116 FERC ¶ 61,020 (2006) (LG&E Withdrawal Order).

<sup>8</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in part and rev'd in part sub nom.*, *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom.*, *New York v. FERC*, 535 U.S. 1 (2002).

(and now Order No. 890<sup>9</sup>) and the standard of review under those orders for proposed tariff provisions that differ from the *pro forma* OATT, i.e., proposed deviations must be shown to be “consistent with or superior to” the *pro forma* OATT. Third, the applicant’s replacement arrangements must be just, reasonable and not unduly discriminatory.

14. The January 17 Order also found that because Duquesne’s filing did not include its proposed replacement arrangements, the Commission’s review of Duquesne’s proposal would be based chiefly on the first consideration identified in the LG&E Withdrawal Order (i.e., on Duquesne’s contractual rights and obligations under the TO Agreement). The Commission also clarified, however, that because Duquesne’s requested approvals as they relate to these asserted contractual entitlements were submitted by Duquesne under FPA section 205, these approvals would also be subject to review under the Commission’s just and reasonable standard.

15. With respect to Duquesne’s TO Agreement withdrawal obligations, the January 17 Order found that Duquesne will satisfy these obligations, subject to conditions. Among other things, the Commission found that Duquesne’s withdrawal from the TO Agreement will require Commission review and approval of Duquesne’s proposed replacement arrangements, as required by section 3.2(ii) of the TO Agreement.

16. The Commission also found that Duquesne had not sufficiently addressed certain of the issues raised by its conditional request, namely the full extent of its remaining transmission function obligations, as required by section 3.4 of the TO Agreement.<sup>10</sup> Specifically, the Commission found that Duquesne had not adequately addressed its financial liability to PJM with respect to its allocated share of RTEP project costs.

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<sup>9</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats & Regs., ¶ 31,241 (2007), *order on reh’g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 31,299 (2008).

<sup>10</sup> Section 3.4 provides in relevant part:

Any [TO Agreement] Party that withdraws from, transfers, or assigns this Agreement in accordance with sections 3.2 and 3.3 hereof, shall remain liable for any and all obligations under this Agreement that such Party incurred, that were incurred on behalf of such Party, or that arose hereunder prior to the date upon which such Party’s withdrawal, transfer, or assignment became effective.

Accordingly, the Commission required Duquesne to address these obligations in a compliance filing.<sup>11</sup>

17. The Commission found that Duquesne will satisfy the withdrawal requirements of the RA Agreement, subject to its completion of its obligations, as required by section 5.1.2 of the RA Agreement.<sup>12</sup> The Commission found that these obligations include, among other things, Duquesne's RPM capacity obligations, i.e., Duquesne's RPM charges attributable to all RPM auctions in which its load forecasts have been, or will be, included. The Commission further required PJM to implement procedures allowing for the portability of all RPM obligations applicable to the Duquesne zone.

18. The Commission also granted Duquesne's request to withdraw from the May 2008 RPM auction, provided that it file with PJM and the Commission, by February 1, 2008, a written notice confirming its commitment to withdraw from PJM prior to the delivery year applicable to that auction.<sup>13</sup> Finally, the Commission clarified that Duquesne's withdrawal from PJM will have the effect of removing the Duquesne zone in its entirety from PJM, such that all other load serving entities in the Duquesne zone will also be removed from the May 2008 auction should Duquesne elect to withdraw.<sup>14</sup>

### C. Midwest ISO Market Developments

19. As noted above, the effective date relating to Duquesne's proposed integration into the Midwest ISO is tied, in part, to the Commission's approval of the Midwest ISO's centralized balancing proposal in Docket No. ER07-1372-000, *et al.* In addition, Applicants state, in the instant filing, that Duquesne's revised integration date of October 1, 2008 is also tied to the Midwest ISO's planned transition to a new long-term resource adequacy requirement, as proposed by the Midwest ISO in Docket No. ER08-394-000. The procedural status of both proceedings is briefly summarized here.

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<sup>11</sup> Duquesne's compliance filing is addressed below at section IV.

<sup>12</sup> Section 5.1.2 states, in relevant part, that "[a] Party's obligations hereunder shall be completed as of the end of the last month for which such Party's obligations have been set at the time a said notice is received ...."

<sup>13</sup> *Id.* P 142. Duquesne submitted its notice, as required, on February 1, 2008.

<sup>14</sup> *Id.* P 6.

## 1. Ancillary Services Market

20. On September 14, 2007, as amended on September 19, 2007, in Docket No. ER07-1372-000, *et al.*, the Midwest ISO proposed, in response to a Commission order:<sup>15</sup> (i) a day-ahead and real-time ancillary services market (ASM); (ii) a proposed centralization of its operating reserve requirements, i.e., a process allowing for the centralized procurement of operating reserves by the Midwest ISO in place of a prior protocol relying on each of the Midwest ISO's 24 balancing authorities to separately procure reserves; and (iii) the establishment of the Midwest ISO as the NERC-certified balancing authority for its region. In an order issued February 25, 2008, the Commission accepted the Midwest ISO's proposed market revisions, as modified, and ordered two compliance filings (a 30-day compliance filing and a 60-day compliance filing).<sup>16</sup> The Commission also directed that certain additional filings be submitted, including reports to be filed 60 and 180 days following the Midwest ISO's implementation of its ASM tariff, and informational and certification filings to be submitted no less than 90 and 45 days before the ASM start.<sup>17</sup>

21. In an order issued June 23, 2008, the Commission accepted the Midwest ISO's 30-day compliance filing, subject to certain additional 30-day compliance requirements.<sup>18</sup> The Commission also accepted the Midwest ISO's request that the ASM start be delayed until September 9, 2008.

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<sup>15</sup> *Midwest Independent Transmission System Operator, Inc.*, 107 FERC ¶ 61,191 (2004).

<sup>16</sup> *Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,172 (ASM Order), *reh'g granted in part and denied in part*, 123 FERC ¶ 61,297 (2008). *See also Midwest Independent Transmission System Operator, Inc.*, 124 FERC ¶ 61,074 (2008) (order conditionally accepting amended balancing authority agreement and requiring compliance filing).

<sup>17</sup> On February 29, 2008, the Midwest ISO submitted its Readiness Advisor Benchmark Report and Reversion Plan in compliance with the ASM Order. On March 26, 2008, as amended on March 27, 2008, the Midwest ISO made its 30-day compliance filing. On April 25, 2008, the Midwest ISO made its 60-day compliance filing. The Midwest ISO has also made filings further supplementing or refining certain aspects of its ASM provisions. *See, e.g., Midwest Independent Transmission System Operator, Inc.*, 123 FERC ¶ 61,135 (2008)

<sup>18</sup> *Midwest Independent Transmission System Operator, Inc.*, 123 FERC ¶ 61,296, at P 16 (2008).

22. On August 26, 2008, the Midwest ISO deferred ASM implementation, based on its review of market testing results and its consideration of comments received from stakeholders regarding the frequency with which scarcity pricing was being invoked for certain products.<sup>19</sup> In that submission, the Midwest ISO stated that a short delay was warranted to provide the Midwest ISO the opportunity to resolve any substantive issues, to facilitate a successful ASM launch, and to develop any potential tariff revisions that may be required. The Midwest ISO stated that pending further internal discussions as well as discussions with stakeholders, the Midwest ISO was unable to provide a revised implementation date at this time.

## 2. Resource Adequacy Requirements

23. On December 28, 2007, in Docket No. ER08-394-000, the Midwest ISO proposed, in response to a Commission order,<sup>20</sup> revisions to module E of its Transmission and Energy Markets Tariff (TEMT) to implement a new long-term resource adequacy requirement. Under the Midwest ISO's proposal, market participants serving load in the Midwest ISO region will be required to have and maintain access to sufficient planning resources during each planning year, with each load serving entity to be assigned a planning reserve margin based on a loss of load expectation study. Beginning June 1, 2009, each load serving entity will be required to demonstrate that it has sufficient resources to meet this assigned planning reserve margin. In an order issued March 26, 2008, the Commission conditionally accepted the Midwest ISO's proposed market revisions, subject to compliance filings.<sup>21</sup>

### III. Integration Plan

#### A. Requested Rulings

24. Subject to the integration process discussed below and certain stated contingencies, Applicants request that the Commission: (i) approve Duquesne as a

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<sup>19</sup> See *Midwest Independent Transmission System Operator, Inc.*, Docket No. ER07-1372-002, *et al.*, Notice of the Midwest Independent Transmission System Operator, Inc.'s Deferral of Effective Dates (filed August 26, 2008).

<sup>20</sup> *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163, *order on reh'g*, 109 FERC ¶ 61,157 (2004), *order on reh'g*, 111 FERC ¶ 61,143, *order on reh'g*, 112 FERC ¶ 61,086 (2005), *aff'd sub nom. Wisc. Pub. Power Inc. v. FERC*, 493 F.3d 239 (D.C. Cir. 2007).

<sup>21</sup> *Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,283 (2008) (Resource Adequacy Order).

member of the Midwest ISO, effective October 1, 2008; (ii) authorize Duquesne's contemporaneous withdrawal from PJM; and (iii) determine that the replacement arrangements that comprise Applicants' integration plan, herein, are comparable to Duquesne's existing RTO rights and obligations, consistent with a Commission-approved RTO, and are otherwise just, reasonable and not unduly discriminatory.

25. Applicants specify the following contingencies. First, Applicants state that Duquesne's integration will not occur unless and until Duquesne and the Midwest ISO are certified, by NERC and ReliabilityFirst, as a balancing authority and transmission operator. Second, Applicants condition Duquesne's withdrawal from PJM and integration into the Midwest ISO on a final determination, by the Commission, of Duquesne's financial liabilities, including Duquesne's: (i) RTEP-cost allocations (an issue we address in section IV of this order, below); (ii) final resolution of all issues concerning the PJM/Midwest ISO agreement on the portability of Duquesne zone capacity commitments (an issue that will be addressed in a separate order in Docket No. ER08-1345-000); and (iii) Duquesne's ability to sell its RPM-committed capacity to third parties, should there be any such capacity that is not needed to satisfy Duquesne's Midwest ISO resource adequacy obligations (an issue we address in section III.I, below).

26. Applicants note that a Commission order addressing its filing on or before September 3, 2008 will permit sufficient time for final integration activities to be completed in advance of Applicant's proposed integration date.

#### **B. Notice of Filing and Responsive Pleadings**

27. Notice of Applicants' filing was published in the *Federal Register*<sup>22</sup> with interventions and protests due on or before July 24, 2008. Motions to intervene, comments and protests were timely filed by the entities noted in the Appendix to this order.<sup>23</sup> On August 8, 2005, Duquesne filed an answer. On August 21, 2008, PJM filed an answer to Duquesne's answer.

#### **C. Procedural Matters**

28. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene submitted by the entities listed in the Appendix to this order serve to make them parties to this proceeding. Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R.

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<sup>22</sup> 73 Fed. Reg. 41,056 (2008).

<sup>23</sup> All abbreviations used to identify Intervenors throughout this order are identified in the Appendix.

§ 385.213(a) (2008), prohibits an answer to a protest or an answer to an answer unless otherwise permitted by the decisional authority. We will accept the answers submitted by Duquesne and PJM because they have provided information that assisted us in our decision-making process.

**D. Duquesne's Entitlement to Withdraw from PJM**

**1. Applicants' Proposal**

29. Applicants seek a determination that Duquesne is authorized to withdraw from PJM. Applicants assert that under the standard of review applied by the Commission in the January 17 Order, Duquesne's requested withdrawal from PJM must be granted if its proposed replacement arrangements are determined to be just, reasonable and not unduly discriminatory.<sup>24</sup> Applicants submit that this standard is fully met here under their proposed integration plan. Applicants note, in particular, that the Midwest ISO's policies and procedures have already been found by the Commission to be just and reasonable. Applicants further note that Duquesne will be integrated into the existing Midwest ISO the same as any other transmission-owning member.

30. Applicants further assert that, in the January 17 Order, the Commission agreed that Duquesne, upon its withdrawal from PJM, was not required to hold third parties harmless from the consequences of its withdrawal and the change from one Commission-approved RTO to another.<sup>25</sup>

**2. Responsive Pleadings**

31. Intervenors challenge Applicants' assertion that Duquesne has now satisfied its PJM withdrawal obligations. First, intervenors assert that Duquesne's replacement arrangements are not before the Commission here.<sup>26</sup> FirstEnergy and Pepco argue that in order for Duquesne to meet its required showing that its withdrawal from PJM is just and reasonable, Duquesne must demonstrate that the evolving Midwest ISO procedures to which it proposes to transition will afford fair and comparable treatment to parties that currently rely on Duquesne's transmission facilities. FirstEnergy adds that it is not enough simply to describe the general principles and provisions at issue without

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<sup>24</sup> Applicants' filing at 3, citing January 17 Order, 122 FERC ¶ 61,039 at P 28.

<sup>25</sup> *Id.*, citing January 17 Order, 122 FERC ¶ 61,039 at P 134.

<sup>26</sup> Intervenors' specific assertions regarding Applicants' integration plan are addressed in sections III.E-L of this order, below.

demonstrating that incorporating existing arrangements pursuant to these requirements will be workable and appropriate.

32. FirstEnergy argues that the portability of PJM capacity to the Midwest ISO, while an issue that need not be addressed here, is also critical to the determination of whether Duquesne's exit from PJM can be regarded as just and reasonable.

33. Intervenors also challenge Applicants' assertions regarding Duquesne's hold harmless obligations. EPSA argues that while the January 17 Order addressed this issue, the Commission noted that intervenors may, if they wish, present additional evidence regarding the specific effects of Duquesne's withdrawal on market participants at such time as these effects come into a clearer focus, i.e., at such time as Duquesne submits its replacement arrangements.<sup>27</sup> EPSA adds that because Applicants' filing is largely incomplete, it is not possible to present evidence on this issue at this time. DII agrees that further information is required, such as whether, and how, customers currently participating in PJM's load response programs will have the opportunity to participate in comparable programs under the Midwest ISO tariffs. DII argues that careful consideration of potential customer impacts is important because Duquesne's withdrawal presents, for the first time, issues relating to the continued viability of retail choice.

34. Reliant argues that it will incur costs associated with its RPM obligations that are directly attributable to Duquesne's departure from PJM. Reliant asserts that these costs could be attributable to: (i) transmission charges Reliant will be required to incur in order to meet its existing obligations to supply capacity to PJM as an external PJM resource; (ii) penalties if transmission is not available to fulfill its PJM capacity obligations; (iii) the shut down of any units if they cannot access PJM markets due to lack of transmission; (iv) stranded costs of new investment that cannot be recovered if Reliant is unable to obtain transmission into PJM to fulfill its capacity obligations; (v) the inability to hedge costs in the Midwest ISO during the first partial year of integration; and (vi) the lost value of any of its 2008-09 PJM ARR allocation. Reliant notes, however, that these costs cannot be fully known until after Duquesne and the Midwest ISO submit the additional components of their integration. RESA argues that there are clear impacts on it for which Duquesne should hold it harmless including the costs of updating IT systems from PJM to the Midwest ISO, of updating or revising third-party contracts to reflect the integration; and costs of obtaining Midwest ISO FTRs including posting additional credit.

35. Reliant argues that if Duquesne is not held responsible for any increase in costs shifted to Reliant and other market participants as a result of Duquesne's withdrawal

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<sup>27</sup> See also FirstEnergy protest at 26.

from PJM and integration into the Midwest ISO, there is likely to be a corresponding increase in the cost of forward bilateral contracts, forward capacity market clearing prices, and newly-established long term FTR market prices. Reliant argues that this is so because the risk of increased transmission costs and loss of ARR and FTR hedges caused by a transmission owner unexpectedly withdrawing from the RTO will have to be factored into those contracts and clearing prices.

36. Exelon, *et al.* argue that Applicants' integration proposal should be required to address concerns about ancillary services in the Duquesne zone. Exelon, *et al.* note that, to date, Applicants have not identified which units (i.e., those currently in the Midwest ISO or those currently in the PJM/Duquesne zone) will provide ancillary services to the Duquesne load zone. Exelon, *et al.* add that Applicants have also not addressed the potential for pancaking of ancillary service charges. Exelon, *et al.* argue that to avoid harming transmission customers in the Duquesne zone who will transmit electricity out of PJM to the Midwest ISO, the Commission should ensure that such customers are not charged rates higher than they would have been charged had Duquesne remained within PJM. Exelon, *et al.* further argue that Duquesne should be held responsible for any resulting price differential. Exelon, *et al.* argue that market participants should be held harmless for pancaking of rates for ancillary services and for changes in flowgate allocation.<sup>28</sup>

### 3. Duquesne's Answer

37. Duquesne responds to intervenors' assertions that, upon Duquesne's integration, new costs will be incurred by market participants of a sort not contemplated by the withdrawal rights under Duquesne's RTO agreements. Duquesne responds that none of these new costs differ in any material respect from the categories of costs previously considered and rejected as a legitimate hold harmless cost in the January 17 Order. Duquesne adds that these alleged costs are simply expenses that will arise under a new Commission-approved RTO tariff.

38. Specifically, Duquesne disputes the assertion made by FirstEnergy and Exelon, *et al.* that Duquesne should be required to hold market participants harmless from anticipated payments covering certain alleged pancaked ancillary service charges. Duquesne asserts that these charges are a known risk to be anticipated given a utility's contractual right to withdraw from one RTO and join another.<sup>29</sup>

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<sup>28</sup> See also *id.* at 27-28.

<sup>29</sup> Duquesne further notes that while certain transactions into PJM may incur new charges under the Midwest ISO TEMT, other transactions may ultimately trigger fewer charges.

#### 4. Commission Determination

39. We agree with Applicants that Duquesne is authorized to withdraw from PJM, subject to the conditions set forth below. In the January 17 Order, the Commission found that under its RTO withdrawal standard, as set forth in the LG&E Withdrawal Order, three requirements must be satisfied in connection with Duquesne's requested withdrawal from PJM.<sup>30</sup>

40. First, the Commission found that Duquesne's withdrawal proposal must satisfy Duquesne's contractual obligations as set forth in the TO Agreement and the RA Agreement. These obligations, the Commission found, had been met, in part, but also required, among other things: (i) our approval of the Midwest ISO's balancing proposal, in Docket No. ER07-1372-000, *et al.* (a requirement tied to section 3.2(i) of the TO Agreement); (ii) our approval of Duquesne's proposed replacement arrangements (a requirement tied to section 3.2(ii) of the TO Agreement); (iii) a compliance filing by Duquesne, identifying its RTEP cost responsibility and remaining PJM financial obligations (a requirement tied to section 3.4 of the TO Agreement); and (iv) a compliance submission by PJM, regarding the portability of Duquesne's RPM capacity commitments (a requirement tied to the parties' respective rights and obligations under the RA Agreement).<sup>31</sup>

41. Second, the Commission found that Duquesne's proposed replacement arrangements must comply with the Commission's *pro forma* OATT and/or the standard of review applicable to proposed tariff provisions that differ from the *pro forma* OATT, i.e., proposed deviations must be shown to be "consistent with or superior to" the *pro forma* OATT. Third, the Commission found that Duquesne's replacement arrangements must be just, reasonable and not unduly discriminatory.

42. With respect to this first requirement, we find that Duquesne has satisfied its contractual obligations under the TO Agreement and RA Agreement, subject to the remaining obligations set forth below. While Duquesne's initial filing, in Docket No. ER08-194-000, did not include its proposed replacement arrangements (a requirement

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<sup>30</sup> January 17 Order, 122 FERC ¶ 61,039 at P 28.

<sup>31</sup> As noted above, the Midwest ISO's balancing proposal has been accepted by the Commission, subject to condition. *See* ASM Order, 122 FERC ¶ 61,172 at P 6. In addition, PJM's portability filing was submitted by PJM on August 1, 2008, in Docket No. ER08-1345-000, and remains pending before the Commission. Finally, Duquesne's compliance filing, addressing its RTEP-cost allocations and remaining financial liabilities, was submitted by Duquesne on March 3, 2008, in Docket No. ER08-194-002, and is addressed in section IV of this order, below.

under section 3.2(ii) of the TO Agreement and the necessary predicate triggering our review of the second and third requirements applicable to Duquesne's withdrawal request), Applicants' jointly-sponsored filing herein sets forth the process and procedures pursuant to which Duquesne's transmission facilities will be integrated into the Midwest ISO RTO. In this regard, Duquesne, upon its integration, will be subject to the terms and conditions of the Midwest ISO TEMT, a Commission-authorized RTO tariff. As such, Applicants' integration plan, with the conditions adopted herein, complies with the Commission's *pro forma* OATT and/or the standard of review applicable to proposed tariff provisions that differ from the *pro forma* OATT.

43. With respect to the justness and reasonableness of Applicants' proposed withdrawal from PJM and integration into the Midwest ISO, the Commission found, in the January 17 Order, that this analysis would turn, among other things, on Duquesne's proposed replacement arrangements and on Duquesne's compliance with its contractual obligations regarding its right to withdraw.<sup>32</sup> The Commission also held that adverse effects on remaining RTO members must be considered.<sup>33</sup>

44. To ensure that remaining PJM members and their customers do not inappropriately assume costs that should be borne by Duquesne, the Commission, in the January 17 Order, addressed Duquesne's obligations as they concern Duquesne's RPM capacity commitments. In this order, we address additional issues concerning the appropriate apportionment of cost responsibility as between Duquesne and PJM's remaining members. Specifically, we address Duquesne's responsibility for PJM RTEP cost allocations and Duquesne's remaining financial obligations to PJM. Intervenors challenge additional, specific aspects of Applicants' integration plan (e.g., Applicants' proposed integration date and the process for obtaining and transferring ARRs and seasonal FTRs). We address these issues in section III.E of this order, below, and require that Duquesne's integration appropriately safeguard customers' legitimate right to hedge their congestion costs.

45. Intervenors assert that Duquesne should also be required to hold PJM's remaining members harmless for all other potential cost impacts attributable to Duquesne's withdrawal from PJM, including any cost increases that may be reflected in forward bilateral contracts, forward capacity clearing prices, FTR market prices, ancillary service rates, and flowgate allocations. We deny these claims. In the January 17 Order, the Commission found that because RTO withdrawal is expressly permitted under the TO Agreement, parties were on notice that withdrawal was a possibility and that, in the event

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<sup>32</sup> January 17 Order, 122 FERC ¶ 61,039 at P 127.

<sup>33</sup> *Id.* P 128.

of withdrawal, they might be required to enter into other transmission agreements and incur other costs.<sup>34</sup> The Commission further held that Duquesne was not obligated to hold parties harmless from all costs occasioned by a withdrawal contemplated under Duquesne's RTO agreements. Applying this measure here, we find that the asserted costs from which intervenors seek to be held harmless appear to be unrecoverable as a compensable, hold harmless expense under the parties' contractual agreements, i.e., we find that these asserted costs are of a sort contemplated by Duquesne's withdrawal rights.

46. With respect to DII's request that Applicants be required to remedy the lack of comparable load response programs in the Midwest ISO, as compared to PJM (presumably in the form of a proposed section 205 tariff revision), we note that the Midwest ISO operates pursuant to a Commission-approved RTO tariff. As such, we will not consider, here, in the context of an RTO integration proceeding, system-wide load response issues arising under the Midwest ISO TEMT.

47. Finally, intervenors argue that the representations that comprise Applicants' proposed integration plan are not also accompanied by each of the tariff revisions and executed membership agreements necessary to complete Duquesne's integration into the Midwest ISO. Intervenors point out, for example, that Applicants' filing does not include the PJM/Midwest ISO portability agreement, now pending in Docket No. ER08-1345-000, the formula rate that will apply to the Duquesne zone, upon Duquesne's integration, or a tariff schedule listing Duquesne's grandfathered agreement with AES Beaver Valley. Intervenors argue that, as such, the justness and reasonableness of Applicants' integration plan cannot be determined with any finality here.

48. We agree that the aforementioned filings and the remaining ministerial tasks identified by Applicants in their integration plan will be required in order to fully effectuate Duquesne's integration into the Midwest ISO. We also agree that to the extent Duquesne's integration into the Midwest ISO requires a tariff revision subject to our review, under FPA section 205, or a compliance filing required by a prior order, intervenors should, and will, have the opportunity to challenge this aspect of Applicants' integration plan in those forums. However, we also agree with Applicants that subject to these ministerial loose-ends and related proceedings, the broader contours of Applicants' proposed integration plan is ripe for our consideration here. On the merits of this plan, as it is presented here, we find Applicants' integration plan, subject to certain required revisions discussed below, is just, reasonable and not unduly discriminatory.

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<sup>34</sup> *Id.* P 134.

**E. Integration Date and Commitment to Withdraw from PJM****1. Applicants' Proposal**

49. Applicants propose that Duquesne be integrated into the Midwest ISO, effective October 1, 2008, i.e., on the first billing day of the month following the Midwest ISO's planned implementation of its ASM tariff (and centralized balancing proposal) on September 9, 2008.<sup>35</sup> Applicants state that on, or before, October 1, 2008, Duquesne will enter into all necessary documents and agreements establishing its status as a Midwest ISO transmission owner.<sup>36</sup> Applicants further state that, as of that date, Duquesne will have made its final determinations regarding its commitment to withdraw, assuming that the Commission has addressed these issues, as requested by Applicants herein.<sup>37</sup>

50. Applicants state that because both PJM and the Midwest ISO are existing RTOs, new policies and procedures applicable to Duquesne's integration will, as a general matter, not be required. Applicants add that while the Midwest ISO's ASM requirements have yet to be finalized, Duquesne's compliance with these requirements will be the same as that applicable to any other Midwest ISO member. Similarly, Applicants state that Duquesne will conform to the Midwest ISO's revised resource adequacy requirements, as finalized and approved in Docket No. ER08-394-000.

51. Applicants assert that market participants with an interest in the Duquesne zone have been provided sufficient notice regarding Duquesne's proposed integration date. Specifically, Applicants state that Duquesne has held stakeholder meetings with load serving entities located in the Duquesne zone. In addition, Applicants note that all load serving entities presently operating within the Duquesne zone have now been registered as Midwest ISO market participants. Applicants assert that these entities will be able to integrate reliably into the Midwest ISO.

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<sup>35</sup> As noted in section II.C of this order, above, the Midwest ISO's implementation of its ASM tariff has now been delayed beyond September 9, 2008. In its initial RTO withdrawal request, in Docket No. ER08-194-000, Duquesne proposed to join the Midwest ISO effective June 1, 2008.

<sup>36</sup> Applicants note that Duquesne's membership application will be addressed on August 21, 2008, i.e., at the next scheduled meeting of the Midwest ISO board of directors.

<sup>37</sup> Duquesne's commitment to provide notice of its unconditional commitment to withdraw is addressed in greater particularity, by Duquesne, in its answer, as summarized below.

52. Applicants state that, upon Duquesne's integration, all pending transmission reservations will be transferred to the Midwest ISO OASIS. Applicants state, however, that transmission requests that have achieved a confirmed status, under the PJM OATT, and that will expire prior to the effective date of Duquesne's integration will not be transferred.

53. Applicants state that in addition to the instant filing, additional filings will be required in order to complete Duquesne's integration into the Midwest ISO. Specifically, Applicants state that they intend to file: (i) an Attachment O TEMT revision, incorporating the transmission formula rate provisions applicable to the Duquesne zone;<sup>38</sup> (ii) an assignment of transmission service arrangements from the PJM OATT to the Midwest ISO TEMT for any contracts that bridge the October 1, 2008 implementation date, including an updated index of customers; and (iii) an Attachment P TEMT revision, listing all grandfathered agreements, including a transmission agreement dated August 28, 1985 between Duquesne and AES Beaver Valley, Inc.<sup>39</sup>

54. Finally, Applicants state that Duquesne's commitment to join the Midwest ISO is contingent on the Commission's order addressing the RPM portability proposal made by PJM and the Midwest ISO in response to the January 17 Order.<sup>40</sup>

## 2. Responsive Pleadings

55. Intervenors characterize Applicants' integration plan as deficient and incomplete. FirstEnergy, for example, asserts that Applicants' filing reads more like a work plan, not a section 205 filing. FirstEnergy adds that Applicants' proposed integration plan fails to address, among other things, arrangements for replacing PJM's role with the Midwest ISO in existing Duquesne interconnection agreements.

56. PSEG argues that the inability to measure the rate impacts associated with Duquesne's proposed formula rates (an issue also addressed below, in section III.L of this order) renders Applicants' filing deficient. Reliant adds that Applicants should also be required to file, herein, all assignments applicable to transmission service arrangements that will bridge Applicants' proposed integration date. Intervenors conclude that

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<sup>38</sup> This filing was made by the Midwest ISO, in Docket No. ER08-1309-000, on July 25, 2008.

<sup>39</sup> This filing was made by the Midwest ISO, in Docket No. ER08-1370-000, on August 7, 2008.

<sup>40</sup> This filing was made by PJM, in Docket No. ER08-1345-000, on August 1, 2008.

Duquesne's integration plan cannot be found just and reasonable and should therefore be rejected or made subject to a deficiency letter.

57. Intervenors also dispute the practicality and fairness of a contingent, October 1, 2008, integration date. Exelon, *et al.* argue that because Applicants have failed to provide market participants a date-certain for Duquesne's integration, these entities have been unable to plan accordingly. Intervenors further assert that an October 1, 2008 integration date, even if firm, leaves uncertain market participants' rights to acquire and/or retain FTRs and ARR. <sup>41</sup> Reliant points out that upon notice of Duquesne's firm commitment, significant alterations to its IT and other internal systems will be required for purposes of obtaining, serving, and billing retail load. FirstEnergy adds that its inability to plan has created substantial uncertainty for itself and other market participants and could distort the operation of markets in PJM and the Midwest ISO.

58. EPSA notes that under Applicants' proposed contingent integration date, market participants will be given less than a month to move their respective assets into the Midwest ISO and procure all necessary capacity. EPSA also asserts that Duquesne's stakeholder meetings have failed to provide market participants with the information needed to plan for Duquesne's integration, including needed information regarding the portability of Duquesne's RPM capacity commitments, i.e., the issue now pending in Docket No. ER08-1345-000. EPSA concludes that Duquesne's integration should be delayed until the start of the Midwest ISO's next planning year, i.e., June 1, 2009. Exelon, *et al.* concur, noting that given the contingencies outlined by Applicants in their filing, Duquesne will not be ready to join the Midwest ISO by October 1, 2008.

59. FirstEnergy agrees, asserting that Duquesne's proposed conditional approach is unjust and unreasonable. FirstEnergy argues that other parties have been required to devote resources and incur expenses to prepare for Duquesne's possible departure, but that market participants serving customers in the Duquesne zone have been unable to make forward arrangements for energy. FirstEnergy also raises the concern that Duquesne's load serving entity affiliate may be advantaged were it to learn of Duquesne's final firm commitment (when and if it comes) in advance of its competitors.

60. Pepco urges the Commission to impose minimum procedural measures designed to establish greater transparency with respect to Duquesne's final firm commitment. PSEG and Reliant request that Applicants' contingent requests be rejected or, in the alternative, made subject to a deficiency letter. Exelon, *et al.* and Reliant request that, at a minimum, Duquesne be required to make an unconditional decision regarding its

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<sup>41</sup> Applicants' integration plan, as it relates to FTRs and ARRs, is addressed in section III.H of this order, below.

proposed integration date. Exelon, *et al.* request that any such proposal be filed with the Commission at least 60 days in advance of the proposed effective date. Reliant argues that a date-certain for integration should be a minimum of 120 days after the approval of a complete integration filing.

### 3. Duquesne's Answer

61. Duquesne responds to intervenors' arguments that Duquesne's commitment to join the Midwest ISO should not be permitted to proceed on a contingent basis. Duquesne insists that it needs to know, with certainty, what its financial liability to PJM will be in connection with its withdrawal (as determined with respect to its rehearing requests and compliance filing made in response to the January 17 Order), the terms of PJM's RPM capacity portability requirement (as established in Docket No. ER08-1345-000), and its request, herein, regarding Duquesne's rights to resell capacity that will not be required under the Midwest ISO's resource adequacy protocols (i.e., the issue we consider in section III.I of this order, below).

62. Duquesne adds that its motives, in this regard, are not to intentionally delay its integration or somehow game the capacity market. Duquesne adds that it is unaware of any unnecessary or unfair market disruption caused by Applicants' proposed integration date (an integration that, from the beginning, has been linked to the Midwest ISO's implementation of its ASM tariff).

63. Duquesne states that subject to the Commission's ruling on all outstanding issues regarding Duquesne's financial liabilities, on or before September 3, 2008, Duquesne commits to make a final decision to join the Midwest ISO by no later than September 15, 2008. Duquesne asserts that this notice is sufficient to support the approval of its proposed integration date of October 1, 2008.<sup>42</sup>

64. Duquesne also responds to intervenors' arguments that Applicants, to date, have failed to provide market participants sufficient information relating to Duquesne's integration into the Midwest ISO. Duquesne responds that Applicants continue to meet with affected customers in order to fully inform them of any and all aspects of the integration and to answer any questions they might have. Duquesne states that Applicants have scheduled two meetings with generator owners in the Duquesne zone, one for generators to be pseudo-tied out of the Midwest ISO on August 7 and one for

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<sup>42</sup> Duquesne adds that all transition issues can be resolved by October 1, 2008, but that in the unlikely event they cannot be resolved, an additional 8-month delay (to coincide with the next ARR/FTR auctions) is unacceptable, given the allowance (discussed in section III.H of this order, below) for seasonal FTR allocations and auctions covering the period up to the June 1, 2009 planning year.

Midwest ISO generators to be held in mid-August. Duquesne states that all parties will have a full opportunity to raise any opportunity and transition issues they may have at these meetings.<sup>43</sup>

65. In answer to FirstEnergy's concern regarding potential disclosure of non-public information to Duquesne's load serving entity affiliate, Duquesne represents that it has excluded, and will exclude, its affiliate from participation in Duquesne's decision-making process applicable to its final, non-contingent commitment to join the Midwest ISO.

66. Duquesne also responds to Reliant's argument regarding the asserted need to consider, here, the assignment of transmission service arrangements that bridge Applicants' proposed October 1, 2008 integration date. Duquesne responds that information required to address the need for these assignments will not be known, in some cases, until late September. Duquesne argues that, regardless, the Commission need not see, here, a list of specific transmission service agreements in order to rule on the sufficiency of the process itself, as outlined by Applicants in their proposed integration plan, i.e., Applicants' representation and commitment that all bridging transmission agreements will be assigned to the Midwest ISO. Duquesne adds that should any party disagree with the list of transferred contracts, questions and/or objections may be raised at such time as all contracts have been identified.

67. Duquesne also responds to FirstEnergy's argument that consideration must be given in this proceeding to the issue of existing Duquesne-zone interconnection agreements. Duquesne responds that no party to this case, including FirstEnergy, has claimed that any such agreement must be modified or revised.

#### **4. Commission Determination**

68. We find, subject to conditions and revision, that Applicants' proposed integration plan sets forth a generally reasonable approach facilitating Duquesne's entry into the Midwest ISO. As discussed above, in section III.D of this order, Duquesne's integration will occur, in large part, pursuant to established RTO procedures previously determined to be just and reasonable by the Commission. Duquesne's integration will also occur subject to additional filings that have or will be made by Duquesne, individually, by

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<sup>43</sup> Duquesne notes that the Midwest ISO is also in the process of establishing written protocols for all operations within the Duquesne zone on and after the effective date of Duquesne's integration. Duquesne states that any updated operating documents or business practice manuals that may be established are not documents that are ordinarily filed with the Commission. Nonetheless, Duquesne commits that these operating procedures will be in place on or before the effective date so that affected parties will have full knowledge of the applicable requirements.

Applicants, jointly, or by the Midwest ISO and PJM, jointly. Many of these contingencies, including the Midwest ISO's planned implementation of its ASM tariff and new resource adequacy requirements, have already been substantially resolved in the proceedings in which these issues have been raised.<sup>44</sup>

69. Accordingly, we reject intervenors' arguments that Applicants' filing, herein, because it relies on related pending, or future, filings (including certain ministerial filings), is deficient and/or must be rejected, or should not otherwise be addressed at this time. Requiring Duquesne to submit each of these matters in a single, consolidated filing, under the circumstances presented here, would create unreasonable barriers to RTO exit. Moreover, such a requirement is not necessary in order to afford intervenors their full due process rights.

70. Duquesne's interests in completing its integration on an efficient, expeditious basis, however, must be balanced against market participants' legitimate interests. We agree with intervenors, in this regard, that Applicants' proposed integration date, as conditioned by Duquesne in Applicants' filing, and as further supplemented by Duquesne in its answer (reserving, until September 15, 2008, its final withdrawal decision), fails to provide market participants sufficient firm notice of Duquesne's commitment. We understand that Duquesne's ability to commit may be further affected by the Midwest ISO's latest announcement regarding its ability to implement its ASM tariff. We agree that, under these circumstances, additional firm notice will be required, as specified below, subject only to the receipt of final authorizations or approvals over which Duquesne will not be permitted to exercise its unilateral discretion.

71. Reliant asserts that upon Duquesne's firm commitment to join the Midwest ISO, revisions will be required to market participants' internal operations, for purposes of obtaining, serving, and billing retail load. EPSA adds that market participants will need time to move their respective assets into the Midwest ISO and make supply arrangements. We agree that market participants will require sufficient time to finalize their integration arrangements following Duquesne's notice of its firm commitment to join the Midwest ISO. While Duquesne argues that parties have already been given adequate notice of Duquesne's proposed integration, Duquesne's conditional notice, under the timing sequence outlined by Duquesne in its answer, fails to provide sufficient notice.

72. PJM and the Midwest ISO will also need additional time, pursuant to our requirements, in section III.H of this order, below, to prepare and submit, for Commission review, a proposal addressing partial-year ARRs and FTRs. For the reasons

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<sup>44</sup> See *supra* section II.C.

discussed below, Applicants' proposed mid-cycle integration date, as it relates to market participants' rights to retain and acquire ARRs and FTRs, triggers significant market participant interests that must be considered, and resolved, on a timely basis.

73. Based on the timing needs presented by each of these matters, we require Applicants to revise their integration plan as it relates to Duquesne's integration date. Specifically, we require Duquesne to give at least 60 days notice of its firm commitment to withdraw and to submit this notice to the Commission.<sup>45</sup> Because this notice requirement appropriately balances the parties' respective interests, we reject Reliant's request that Duquesne not be permitted to join the Midwest ISO until at least 120 days after the acceptance of a complete integration plan.

74. Finally, FirstEnergy argues that Duquesne's load serving entity affiliate may be unduly advantaged were it to gain access to non-public information related to Duquesne's final integration decision. We agree that Duquesne is subject to the Commission's standards of conduct rules as it relates to this issue.<sup>46</sup> However, we are satisfied with the representation made by Duquesne in its answer, that Duquesne's affiliate has, and will, be excluded from Duquesne's decision-making process as it relates to Duquesne's integration into the Midwest ISO.

## **F. Balancing Authority and Transmission Operator Certifications**

### **1. Applicants' Proposal**

75. Applicants state that a central component necessary to reliably integrate Duquesne into the Midwest ISO is certification of Duquesne as a local balancing authority. Applicants state that this objective will be accomplished by jointly registering with the Midwest ISO under the NERC joint registration organization and certification of Duquesne through an audit with participation from ReliabilityFirst and neighboring balancing authorities as required in the NERC Rules of Procedure.

76. Applicants note that in connection with the implementation of the Midwest ISO ASM and the consolidation and centralization of balancing authority functions within the Midwest ISO, the Midwest ISO, in April 2008, sought and received its own certification from NERC as a joint registered balancing authority. Applicants state that under this process, a review team consisting of representatives from NERC, the SERC Reliability

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<sup>45</sup> We note that with this required additional notice, Duquesne's integration will not occur until December 1, 2008, at the earliest, i.e., assuming that this date, consistent with Applicants' existing integration plan, is tied to the first day of the billing month.

<sup>46</sup> 18 C.F. R. § 358.5(a) (2008).

Corporation, ReliabilityFirst, Midwest Reliability Organization, as well as a number of industry experts examined the Midwest ISO's operations and determined that it had the necessary tools, processes and procedures to operate reliably as a balancing authority. Applicants state that with this process having been completed by the Midwest ISO, the process of certifying Duquesne as a local balancing authority under the NERC joint registration organization will be accomplished using the recently completed process by the Midwest ISO.

77. Applicants state that just as with the Midwest ISO certification, Duquesne and the Midwest ISO developed a balancing agreement certification schedule and established a balancing agreement certification team to oversee the certification of Duquesne as a balancing authority as part of its transition of the Duquesne zone from PJM to the Midwest ISO.<sup>47</sup> Applicants state that the balancing authority certification team began with a baseline functional overview of Duquesne's balancing authority activities and then examined each NERC and regional reliability requirement related to balancing authorities to ensure that Duquesne would have in place a comprehensive list of the functional requirements it would need to meet as a local balancing authority under the NERC joint registration organization.

78. Applicants state that Duquesne used these initial functional overviews to prepare documentation of the balancing authority activities Duquesne currently is performing on behalf of PJM. Applicants add that in June 2008, Duquesne completed and submitted an application requesting that it be registered as a local balancing authority using the NERC joint registration organization matrix.<sup>48</sup> Applicants state that, in addition, Duquesne and the Midwest ISO will enter into a balancing authority agreement addressing their respective roles and responsibilities.<sup>49</sup> Applicants state that NERC's approval is expected to follow in advance of Duquesne's October 1, 2008 integration date.

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<sup>47</sup> The team is comprised of NERC, PJM, the Midwest ISO, and ReliabilityFirst.

<sup>48</sup> Applicants state that, as part of this process, Duquesne submitted a self-certified form for all Critical Infrastructure Protection standards and developed a series of operating protocols detailing how it will comply with balancing authority functions as outlined in the NERC joint registration organization matrix.

<sup>49</sup> Duquesne must also be certified as a transmission operator within the Midwest ISO. Under the NERC reliability requirements, transmission operators must meet and comply with a number of reliability standards. The transmission operator certification process validates that Duquesne is able to meet the requirements, consistent with its membership in the Midwest ISO. A certification team conducted an on-site review of Duquesne documentation and protocols needed for compliance with balancing authority

(continued...)

## 2. Responsive Pleadings

79. FirstEnergy asserts that under the Midwest ISO's ASM reversion plan, Duquesne could be required to operate as a stand-alone balancing authority. FirstEnergy asserts that while likelihood of this reversion is slight, it must be addressed by Applicants in their integration plan.

80. FirstEnergy further notes that Duquesne's certification as a local balancing authority and transmission operator will impose operating obligations on FirstEnergy, including monitoring and reporting requirements. FirstEnergy asserts that in connection with these obligations, Duquesne should be required to agree, in its integration plan, to commit the personnel and put in place the systems and resources necessary to facilitate communications with FirstEnergy concerning these matters. FirstEnergy notes that, to date, it has had little contact with Duquesne and the Midwest ISO and, as a result, is not in a position to list the action items required of FirstEnergy in order for Duquesne to complete its balancing authority and transmission operator certification requirements.

## 3. Duquesne's Answer

81. Duquesne responds to FirstEnergy's assertion that Applicant's integration plan fails to address the contingency relating to the Midwest ISO's ASM reversion plan. Duquesne responds that in the unlikely event that this reversion were to arise, either PJM, Duquesne, or their designee, will take over balancing authority responsibilities for the Duquesne control area until such time as the Midwest ISO resumes its operations.

82. Duquesne also responds to FirstEnergy's concerns that Duquesne, to date, has not expended sufficient time or resources in coordinating with FirstEnergy regarding the operating obligations FirstEnergy will be required to assume in connection with Duquesne's certification as a local balancing authority. Duquesne responds that Applicants have invested a significant amount of time and resources into this matter and that, while work remains to be accomplished, Duquesne's balancing authority functions, including its communications with neighboring utilities such as FirstEnergy, are subject to audit and certification by both NERC and ReliabilityFirst.

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procedures and transmission provider requirements. During the week of June 23, 2008, a certification team consisting of three members from ReliabilityFirst, and one member each from NERC, PJM and the Midwest ISO conducted an audit for Duquesne to be transmission operator and local balancing authority in the Duquesne zone. In both cases, Applicants state that the team's recommendation was that certification be granted. Duquesne and the Midwest ISO expect that a final certification report will be obtained by mid-August.

#### 4. Additional Answers

83. PJM responds to Duquesne's commitment that in the unlikely event that reversion is required, either PJM, Duquesne, or their designees, will assume the required balancing authority responsibilities for the Duquesne zone control area until such time as the Midwest ISO is capable of resuming its balancing authority functions. PJM disagrees that it could be required to assume balancing authority responsibilities for the Duquesne zone on a reversionary basis, following Duquesne's withdrawal from PJM. PJM states that it only provides balancing service in connection with its role as an RTO and administrator of an energy market in the PJM region. PJM adds that it does not currently have any provisions or agreements in place to provide such service outside its region. Nonetheless, PJM states that it is open to discussing with Duquesne any assistance that PJM may be able to provide.

#### 5. Commission Determination

84. We agree that Applicants' integration plan, subject to conditions, appropriately addresses Applicant's obligations regarding Duquesne's certification as a local balancing authority and transmission operator. As Applicants note, in their filing, establishment and certification of Duquesne's readiness to operate as a local balancing authority will require coordination with neighboring balancing authorities, as well as with ReliabilityFirst and NERC. Duquesne, working with its neighboring balancing authorities, will be required to make coordinated changes to metering, data transmission and operating procedures to accommodate Duquesne's establishment as a local balancing authority.

85. FirstEnergy argues that Applicants' integration plan fails to address the contingency that may be presented in the event that the Midwest ISO is unable to implement its ASM tariff, including its centralized balancing proposal, i.e., the circumstances presented if Duquesne is required to operate as a stand-alone balancing authority. We agree. Accordingly, we require Applicants to file a reversion plan, 60 days prior to Duquesne's integration into the Midwest ISO, addressing the Midwest ISO's ability to analyze and monitor: (i) area control error in the event of a failure in the centralized regulation monitoring system; and (ii) contingency reserves in the event of a failure in the centralized reserve monitoring system.<sup>50</sup> In the event Duquesne seeks to join the Midwest ISO prior to the Midwest ISO's implementation of its ASM tariff, Duquesne will also be required to submit a balancing proposal applicable to the Duquesne zone.

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<sup>50</sup> See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 123 FERC ¶ 61,296, at P 49 (2008).

86. FirstEnergy also requests that Duquesne be required to commit sufficient time and resources to better coordinate with entities such as FirstEnergy regarding the new operating obligations that will be placed on FirstEnergy and others as a result of Duquesne's new balancing arrangements. We agree that Duquesne must coordinate with these entities and provide sufficient transparency regarding its consideration of matters that will have market impacts. We are not persuaded, however, that any specific problem has been identified, in this regard, to date. If, and when, a specific problem does arise regarding the extent, or nature, of this needed coordination, FirstEnergy may raise this issue, at that time, in an appropriate pleading with the Commission.

## **G. Transfer of Flowgates**

### **1. Applicants' Proposal**

87. Applicants state that upon Duquesne's integration into the Midwest ISO, Duquesne will transfer control of its flowgates from PJM to the Midwest ISO. To accomplish this objective, Applicants set forth a four-step process.

88. First, Applicants state that it will be necessary to update the list of existing flowgates to change the managing entity from PJM to the Midwest ISO. Applicants state that, second, the Midwest ISO will calculate available flowgate capability and post these calculations on its OASIS for use by other transmission providers when they sell transmission service. Third, Applicants state that the Midwest ISO will become the responsible party for managing congestion on the flowgates and that, in connection with this responsibility, the Midwest ISO will call for any transmission loading relief and handle the market to market coordination process. Fourth, Applicants state that the Midwest ISO will also become responsible for flowgate allocation between the Midwest ISO and PJM markets, including calculation of market flows and establishment of their priorities depending on the allocations (e.g., firm, non-firm, etc).

89. Applicants state that as part of this process, impact calculations will be run, in September 2008, with all regional entities, including the Mid-Continent Area Power Pool, Manitoba Hydro, the Midwest ISO, PJM, the Southwest Power Pool, and the Tennessee Valley Authority. Applicants state that due to Duquesne's location and small size relative to these regional entities, the only impact expected is to the Midwest ISO and PJM. Applicants state that these impact calculations are run on an as-needed basis when there is a change in flowgate allocations. Finally, Applicants note that the Midwest ISO does not anticipate any problems from the impact calculations or with the integration of Duquesne's flowgates into the Midwest ISO.

### **2. Responsive Pleadings**

90. EPSA argues that there are important elements of actual physical flows that will need to be studied prior to Duquesne's withdrawal from PJM and integration into the

Midwest ISO. EPSA requests that Applicants be required to submit a comprehensive report detailing, among other things, the actual flows along the PJM/Midwest ISO interface for both RTOs.

91. Exelon, *et al.* assert that if, as PJM has suggested, it will be able to grant transmission service across the new seam created by Duquesne's integration into the Midwest ISO without the need to perform any reliability studies, i.e., because no usage of the system will occur over and above the current use, there will be no change in the allocation of the flowgates. Exelon, *et al.* add, however, that if there is a change in system usage, interested entities, such as Exelon, *et al.*, must be given the opportunity to analyze and comment on these impacts.

### 3. Duquesne's Answer

92. Duquesne responds to EPSA's and Exelon, *et al.*'s concerns regarding the ability of market participants to access the PJM market, following Duquesne's integration, i.e., whether the changes in existing flows across the new PJM/Midwest ISO interface will allow for continued access. Duquesne answers that transmission flow modeling has now been performed and supports the conclusion that all Duquesne zone units will be deliverable to both PJM and the Midwest ISO based on their historic usage.<sup>51</sup> Duquesne adds that baseline system usage thus indicates no deliverability issue from the Duquesne zone to PJM following Duquesne's integration.<sup>52</sup>

### 4. Commission Determination

93. We agree that Applicants' integration plan appropriately addresses Applicant's obligations regarding the transfer of flowgate capacity. As Applicants state, in their filing, no problems are currently anticipated (and intervenors identify no such concerns) as they relate to the integration of Duquesne's flowgates into the Midwest ISO.

94. EPSA and Exelon, *et al.*, argue that issues could arise, depending on the data that will be analyzed in the Midwest ISO's forthcoming impact study, or if there is a change in system usage over the reconfigured seam resulting from Duquesne's entry into the

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<sup>51</sup> Duquesne notes that this conclusion was reached based on a combined deliverability test performed by PJM and the Midwest ISO in late 2007 to determine the units which would be deliverable to the combined PJM/Midwest ISO market.

<sup>52</sup> Duquesne states that any additional deliverability studies would need to involve specific source and sink evaluations attributable to specific circumstances, as may be presented. Duquesne states that should such a request be made, PJM and/or the Midwest ISO have existing procedures in place for evaluating that request to the extent required.

Midwest ISO. These concerns, however, are speculative at this time and therefore need not be addressed here.

## **H. Congestion Management**

### **1. Applicants' Proposal**

95. Applicants note that under the Midwest ISO TEMT, FTRs and ARRAs can be used to hedge any exposure market participants may have to transmission congestion in the day-ahead market between various source and sink pairings.<sup>53</sup> Applicants explain that ARRAs are acquired as part of a single annual allocation process covering eight periods, i.e., for peak and off peak periods for each of the four seasons. Applicants state that, by contrast, FTRs can be acquired through the annual FTR auction (which also covers the eight aforementioned periods) or through monthly auctions performed prior to the start of the effective month. Applicants state that FTRs may also be acquired through the bilateral secondary market, in connection with a new point-to-point service request, or by funding a new transmission project.<sup>54</sup>

96. Applicants state that Duquesne and all other Duquesne zone market participants will be able to participate in the Midwest ISO's ARR allocation process for the 12-month period commencing June 1, 2009, the preparations for which began in June 2008, i.e., with the collection of historical data for the seasonal FTR allocation. Applicants state, however, that because this auction is conducted on an annual basis, ARRAs will not be available to new market participants from the Duquesne zone to hedge congestion during the first partial year. Applicants state that market participants joining the Midwest ISO off-cycle will need to rely on FTRs to hedge their congestion costs during the partial year.

97. Applicants state that Duquesne zone market participants will be eligible to participate in a seasonal FTR allocation for the balance of the current allocation period if they were registered to do so as of June 2008. Applicants state that entitlements to request FTRs in this allocation will be derived from ARR entitlements determined through the ARR registration process (a process that must be completed by all Duquesne zone market participants by July 2008).

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<sup>53</sup> See generally Midwest ISO TEMT, sections 42 (types of FTRs and ARRAs) and 43 (allocation of ARRAs).

<sup>54</sup> The ARR annual allocation was most recently conducted in March and April for the 12-month period commencing June 1, 2008.

## 2. Responsive Pleadings

98. Intervenors express concern regarding the lack of details included in Applicants' integration plan regarding the rights that customers with transmission service in the Duquesne zone will be accorded with respect to FTRs and ARR. Dominion argues that Duquesne and the Midwest ISO have failed to provide sufficient details on FTR/ARR allocation during the initial Midwest ISO registration process. EPSA argues that Duquesne has not provided deliverability and impact studies for its withdrawal from PJM or its integration into the Midwest ISO. EPSA requests that the Commission order Applicants to provide a comprehensive study detailing actual flows along the PJM/Midwest ISO interface for both RTOs and the impact of Duquesne's mid-cycle integration on FTR funding, as applicable to both RTOs. FirstEnergy requests additional information regarding the treatment of Duquesne's grandfathered Beaver Valley agreement for purposes of FTR/ARR allocations.

99. Exelon, *et al.* assert that a full understanding of market participants' FTR/ARR rights is not possible given the lack of detail provided with respect to capacity portability. Exelon, *et al.* further note that while Applicants make the commitment that market participants from the Duquesne zone will be permitted to participate in the Midwest ISO's seasonal FTR allocations, market participants' ability to do so was made contingent on their registration and inclusion in the Midwest ISO's June 2008 commercial model and July 2008 ARR registration. FirstEnergy and EPSA conclude that unless this process is modified, Duquesne zone firm transmission service customers could be denied the right to obtain seasonal FTR allocations.

100. Pepco asserts that because the Midwest ISO conducts its ARR auction on an annual basis, ARRs will not be available to load serving entities in the Duquesne zone to hedge congestion during the first partial year. Pepco argues that the imposition of this unilateral forfeiture is being proposed without explanation and without compensation. Reliant and Strategic Energy concur, noting that ARRs acquired in PJM will be devalued upon Duquesne's migration.

101. Strategic and Pepco argue that the substitute rights proposed by Applicants, i.e., the balance-of-period FTR allocation process, will be of a lesser, uncertain value. Reliant concurs, noting that Applicants' proposed FTR substitutes cannot replace the superior rights afforded by ARRs. Reliant explains that ARRs provide a known value allowing load serving entities to price their retail product with greater certainty. Reliant adds that FTRs, by contrast, are more volatile because their value is highly dependent upon transitory factors such as daily load levels and transmission topology. Reliant concludes that because it is unknown how LMPs will change, if and when Duquesne's integration occurs, an off-cycle FTR allocation will not provide an equivalent congestion hedging opportunity for load serving entities in the Duquesne zone.

102. Finally, Exelon, *et al.* raise concerns regarding the possibility that Duquesne's withdrawal from PJM will result in a change in system usage, i.e., in flowgate allocations. Exelon, *et al.* explain that under Applicants' integration plan the Midwest ISO will be responsible for conducting impact studies, in September 2008, regarding flowgate allocations, with the apparent assumption that adjustments will be required. Exelon, *et al.* assert that if there is a change in system usage, customers must be given the right to comment and/or protest, and to seek payment from Duquesne for any cost resulting from any lost allocation.

### **3. Duquesne's Answer**

103. Duquesne responds to intervenors' argument that insufficient information has been provided in Applicants' integration plan regarding customers' ability to obtain seasonal FTRs in the Midwest ISO. Duquesne notes that Applicants already have a process in place that will provide load serving entities in the Duquesne zone with an effective means by which they can hedge their transmission costs against congestion during the transition period from October 1, 2008 to June 1, 2009.

104. Duquesne states that this process has been designed to permit an October 1, 2008 integration date for the Duquesne zone, and tariff provisions implementing the Midwest ISO's partial-year FTR allocations were filed on July 21, 2008, in Docket No. ER08-1285-000, to become effective July 22, 2008. Duquesne concludes that load serving entities, in the Duquesne zone, should be adequately hedged by these initially allocated FTRs even without recourse to ARR during the initial transition period.

105. Duquesne also responds to intervenors' assertion that market participants' ARRs will be devalued upon Duquesne's integration. Duquesne responds that while these ARRs will lose their current value, entities in the Duquesne zone will no longer have load in PJM. Duquesne notes that the ARRs at issue could only be used to hedge congestion related to PJM load. Duquesne adds that any ARRs that were previously purchased in PJM have already provided value during the PJM summer peak months.

### **4. Commission Determination**

106. We find that, subject to condition and revision, Applicants' integration plan will appropriately address market participants' legitimate ARR/FTR interests, as presented by Duquesne's proposed mid-cycle withdrawal from PJM. With respect to these interests, intervenors argue that Duquesne's proposed withdrawal from PJM during the middle of a planning year should either be avoided or mitigated, whether by Duquesne, directly, or through the implementation of necessary tariff authorizations allowing for the portability of these rights. We agree that transferring the process for obtaining these rights during the middle of the applicable planning cycles could unreasonably impact market participants' existing rights.

107. PJM's market participants in the Duquesne zone, for example, have been allocated ARR which have subsequently been converted, reconfigured, or auctioned into FTRs. Some have thus sold their transmission rights, i.e., their ARRs, in the FTR auctions, for a stream of revenues received in equal monthly installments over the term of the FTR. If PJM were to terminate such FTRs and ARRs on October 1, 2008, i.e., on the date of Duquesne's proposed integration, ARR holders could be adversely impacted. In turn, FTR holders could receive an unwarranted windfall to the extent that FTR payments (auction revenues) are prorated over the period June 1 through September 1, but where the FTR holder is permitted to receive the congestion revenue stream during the more valuable summer peak season.<sup>55</sup>

108. In addition, the Duquesne zone FTRs that have been created (converted) from ARRs may source or sink outside the Duquesne zone. Accordingly, if Duquesne joins the Midwest ISO in the middle of the PJM planning cycle, PJM FTRs may be rendered infeasible following Duquesne's proposed October 1, 2008 withdrawal date, depending on how the capacity on reciprocally-coordinated flowgates is transferred. This lack of feasibility, in turn, could result in the creation of additional uplift payable by others.

109. Applicants have addressed these issues, in part. For example, Applicants' filing discusses the process by which the Duquesne zone flowgate capacity will be transferred from PJM to the Midwest ISO. In addition, the Midwest ISO has proposed revisions to its TEMT and ASM tariff, in Docket No. ER08-1285-000, addressing the partial year allocation of FTRs, as applicable to its upcoming October 2008 FTR auction.<sup>56</sup> In its filing, the Midwest ISO explains that its proposed revisions are intended to accommodate Duquesne's integration into the Midwest ISO. PJM, however, has not filed a comparable proposal addressing these issues as they relate to PJM.

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<sup>55</sup> For example, consider the case of a Duquesne zone load serving entity that holds an ARR right for a flowgate that is expected to be binding for the summer season only (June through August) at an expected annual congestion cost of \$120,000/MW. Assuming that the FTRs auctioned by PJM will reflect this same value, the load serving entity, upon Duquesne's migration to the Midwest ISO, would receive \$40,000/MW in prorated PJM auction revenues for June through September 2008, but an FTR payout of \$0/MW under the Midwest ISO TEMT for the applicable period (October 2008 through May 2009). Thus, the ARR holder stands to lose the full annual value of its firm transmission right, i.e., it will receive only \$40,000/MW of the \$120,000/MW annual value.

<sup>56</sup> See *Midwest Independent Transmission System Operator, Inc.*, Docket No. ER08-1285-000 (filed July 21, 2008).

110. As noted in section III.D of this order, above, the Commission, in the January 17 Order, found that Duquesne is not obligated to hold parties harmless from all costs occasioned by a withdrawal contemplated under Duquesne's RTO agreements.<sup>57</sup> As such, Duquesne is not obligated to generally hold parties harmless from cost increases due to replacement arrangements that are otherwise just and reasonable. However, consistent with the January 17 Order, Duquesne's replacement arrangements must be just and reasonable and not unduly discriminatory. Based on the record presented here, we find that a withdrawal date tied to a mid-cycle ARR/FTR planning period could adversely impact market participants in a manner that can and should be mitigated in order to ensure that the treatment of partial-year ARRs and FTRs under each RTO's tariff is just and reasonable. Such mitigation is required as a just and reasonable condition applicable to Duquesne's withdrawal and will not otherwise deprive Duquesne of its contractual rights under the TO Agreement.

111. Accordingly, we direct the Midwest ISO and PJM to make a filing, at least 60 days prior to withdrawal from PJM, describing in greater particularity, how market participants' ARR- and FTR-related rights and obligations under their respective tariffs, including related flowgate capacity allocations between the two RTOs, will be treated for the partial-year period after Duquesne's withdrawal. We also direct the Midwest ISO and PJM to explain in that filing how their proposal will result in just and reasonable treatment of ARRs and FTRs for each partial-year period before and after Duquesne's withdrawal, and propose mitigation measures as necessary to ensure that the replacement arrangements related to ARRs and FTRs are just and reasonable. We further direct the Midwest ISO and PJM to address in this filing: (i) actual flows along the PJM/Midwest ISO interface for both RTOs; (ii) the impact of Duquesne's integration on FTR funding in each RTO; and (iii) the determination on capacity portability as described by EPSA and Exelon. To the extent that PJM and the Midwest ISO are unable to mitigate unreasonable impacts associated with partial-year ARRs and FTRs, we will hold Duquesne financially responsible for protecting customers. Finally, the Midwest ISO must clarify whether the registration procedures have been implemented to allow Duquesne zone transmission customers to obtain seasonal FTRs, in the event Duquesne transfers to the Midwest ISO during the current planning cycle.

## **I. Resource Adequacy**

### **1. Applicants' Proposal**

112. Applicants state that under Module E of the Midwest ISO TEMT, as accepted by the Commission in the Resource Adequacy Order, load serving entities in the Midwest

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<sup>57</sup> January 17 Order, 122 FERC ¶ 61,039 at P 134.

ISO will be required to meet a resource adequacy requirement beginning June 1, 2009. Applicants state that until that time, the reserve margin requirements established in the Midwest ISO's interim resource adequacy plan will remain in effect.<sup>58</sup>

113. Applicants state that beginning June 1, 2009, load serving entities will be required to demonstrate that they have acquired planning resources capable of meeting the resource adequacy requirements. Applicants note that Duquesne and PJM have discussed the procedures pursuant to which PJM will determine Duquesne's RPM payment obligations as a departing load serving entity. Applicants state that PJM and Duquesne will address this issue in a separate filing allowing Duquesne to pay RPM charges for the delivery years at issue over the course of those delivery years.<sup>59</sup>

114. Applicants state that portability issues notwithstanding, Duquesne and Duquesne zone load serving entities integrated into the Midwest ISO will be subject to the same resource adequacy requirements as other Midwest ISO customers taking service under the Midwest ISO TEMT, including the revised module E. Applicants state that these provisions will be those that are generally applicable to other load serving entities in the Midwest ISO and are thus appropriate for application to Duquesne and Duquesne zone load serving entities.

115. Finally, Duquesne requests clarification and seeks assurances that Duquesne, upon its withdrawal from PJM, will be permitted to mitigate its RPM exposure by selling any capacity that may not be required under the Midwest ISO's resource adequacy rules, to third parties. Duquesne notes that in the January 17 Order the Commission permitted existing RPM capacity to satisfy the Midwest ISO's module E requirements. Duquesne states that, as such, it is Duquesne's expectation that should there be any capacity that Duquesne has purchased through RPM that is not needed for module E requirements, then load serving entities should be able to monetize this unneeded capacity. Duquesne notes that load serving entities should also be permitted to meet their Midwest ISO capacity requirements through other means permitted by module E.

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<sup>58</sup> See Resource Adequacy Order, 122 FERC ¶ 61,283 at P 413.

<sup>59</sup> See *PJM Interconnection, L.L.C.*, Docket No. ER08-1339-000 (filed July 31, 2008) (proposed service agreements between PJM and all current load serving entities in the Duquesne zone, addressing payment arrangements, following Duquesne's withdrawal, for capacity previously committed to serve the needs of Duquesne zone load under PJM's RPM auctions).

## 2. Responsive Pleadings

116. EPSA asserts that Applicants' filing fails to address whether and how Duquesne will comply with the Midwest ISO's module E requirement, i.e., the requirement that its capacity be offered into the day-ahead market, while it still has obligations to RPM through May 2011. Some intervenors also request clarification regarding the issue of capacity portability, while others, for example FirstEnergy, argue that the PJM/Midwest ISO portability proceeding offers the appropriate forum to address and resolve these issues.

117. PJM objects to Applicants' request regarding the right to monetize any portion of Duquesne's RPM commitments. PJM argues that this asserted right is not provided for under the PJM OATT or the RA Agreement. PJM states that under the PJM OATT, the sale and commitment of capacity resources are treated as distinct from the payment of a locational reliability charge and the payment of this charge does not grant a load serving entity a tradable right to any quantity of capacity. PJM adds that the settlement establishing RPM does not provide for any such tradable right.

118. PJM also argues that even assuming it were authorized to extend these rights to Duquesne, there would be numerous practical issues raised, including issues relating to reliability. Specifically, PJM asserts that under a construct allowing Duquesne to monetize some portion of its RPM obligations, i.e., allowing Duquesne to transfer this obligation to other loads and other locations, PJM would be required to undertake a commitment that it has not agreed to undertake and that it may not be able to perform with the same assurance of reliability. PJM adds that extending any such rights to Duquesne would be discriminatory and unduly preferential *vis a vis* PJM's other load serving entities.

## 3. Duquesne's Answer

119. Duquesne responds to intervenors' arguments that clarification is required, in this proceeding, regarding resource adequacy portability. Duquesne responds that this issue, while critical, need not be a barrier to approval of Applicants' integration plan and, in any event, can be adequately addressed in the PJM/Midwest ISO portability proceeding, in Docket No. ER08-1345-000.

120. Duquesne adds that PJM's RPM capacity obligations will likely satisfy the Midwest ISO's module E requirements such that there will be no need for large capacity procurement for those entities in the Duquesne zone already assigned a PJM capacity obligation. Duquesne states that load serving entities have been instructed to work with the Midwest ISO to evaluate how to meet their module E requirements and that many, as prudent managers, have done just that to anticipate their requirements.

121. With respect to the procurement of energy, Duquesne asserts that this need can be satisfied either before or after September 15, 2008 and is a continuing obligation no matter which RTO the load serving entity serves.

#### **4. Commission Determination**

122. We find that Applicants' integration plan appropriately addresses Applicants' obligations regarding Duquesne's resource adequacy commitments, subject to: (i) our order addressing PJM's RPM portability filing, in Docket No. ER08-1345-000; (ii) our order addressing PJM's RPM capacity payment filing, in Docket No. ER08-1339-000; and (iii) the approvals and requirements established by the Commission in the Resource Adequacy Order.

123. PJM requests that we deny Duquesne's requested clarification that Duquesne, upon its withdrawal from PJM, will be permitted to mitigate its RPM exposure by selling any capacity that may not be required under the Midwest ISO's resource adequacy rules, to third parties. However, we need not rule on this issue here. Rather, Duquesne's rights and obligations with respect to its existing RPM capacity commitments is the subject of PJM's portability filing, in Docket No. ER08-1345-000, and should therefore be addressed in that proceeding.

124. For this same reason, we reject EPSA's protest, requesting that Duquesne be required to address, here, whether and how it will comply with the Midwest ISO's new resource adequacy requirements *vis a vis* Duquesne's remaining RPM commitments. This issue is also the subject of PJM's portability filing.

### **J. Grandfathered Agreements**

#### **1. Applicants' Proposal**

125. Applicants state that at the time that Duquesne joined PJM, in January 2005, there was (and still is) an existing transmission arrangement regarding up to 135 MW of capacity from the AES Beaver Valley (AES) generating station in Monaca, Pennsylvania. Applicants state that as of Duquesne's integration into PJM, AES was already making deliveries under this agreement to West Penn Power Company (West Penn). Applicants state that upon Duquesne's integration into PJM, this agreement was grandfathered.

126. Applicants state that Duquesne will request Commission authorization to treat this agreement as a Midwest ISO grandfathered contract. Applicants state that this designation will not result in any interruption of service to West Penn, or AES, and that AES Beaver Valley will remain fully deliverable into PJM consistent with existing commitments. Applicants state that Duquesne will not be seeking grandfathered treatment for any other contract.

## **2. Responsive Pleadings**

127. AES asserts that Applicants' filing lacks sufficient detail regarding its existing grandfathered transmission agreement between AES and Allegheny. FirstEnergy and PJM state that while Applicants' filing makes reference to a number of agreements that will be implicated by Duquesne's integration in the Midwest ISO, Applicants fail to address the status of Duquesne's interconnection agreements. PJM states that it will work with the Midwest ISO and other affected parties to transition these agreements to the Midwest ISO. FirstEnergy requests that Duquesne's integration plan address these matters.

## **3. Duquesne's Answer**

128. Duquesne notes that since Applicants' filing, herein, the Midwest ISO has filed to amend attachment P to its TEMT, for the purpose of listing the AES/Duquesne agreement as a grandfathered contract. Duquesne asserts that in that filing the Midwest ISO presents all necessary details regarding the parties' rights and obligations. Duquesne concludes that any remaining concerns AES may have regarding this agreement can be addressed in that proceeding.

## **4. Commission Determination**

129. We find that Applicants' integration plan appropriately addresses the issue of grandfathered agreements, subject to our ruling on the Midwest ISO's attachment P filing in Docket No. ER08-1370-000. We reject AES's request that Applicants be required to provide additional information, in this proceeding, regarding the AES/Duquesne agreement. This matter can and should be addressed in the context of the Midwest ISO Attachment P filing. Finally, Duquesne must address in its notice, 60 days prior to entry into the Midwest ISO, the plans it and PJM have adopted for addressing outstanding interconnection agreements.

### **K. Black Start Service**

#### **1. Applicants' Proposal**

130. Applicants state that, currently, Orion Power Holdings, Inc. (Orion) provides black start services for the Duquesne zone, from a power station located in Brunot Island, Pennsylvania. Applicants state that this service is provided pursuant to schedule 6A of the PJM OATT and an agreement entered into by Duquesne and Orion (Brunot Island Agreement). Applicants state that this service is expected to continue following Duquesne's integration into the Midwest ISO, pursuant to a new agreement to be entered into by Duquesne and Orion.

## **2. Responsive Pleadings**

131. FirstEnergy asserts that Applicants' integration plan fails to address how this service will be provided and how it will be priced. FirstEnergy notes, for example, that currently the Midwest ISO has no tariff mechanism for procuring and compensating generators for black start service. FirstEnergy notes that, instead, black start service is procured by individual control areas within the Midwest ISO footprint.

132. Reliant argues that it is premature to address these issues here, noting that Duquesne and Reliant are in negotiations regarding this issue.

## **3. Duquesne's Answer**

133. Duquesne responds to FirstEnergy's argument regarding the need for additional clarification regarding the provision of black start service following Duquesne's integration into the Midwest ISO. Duquesne represents that it is committed to the continuation of the existing service pursuant to the existing terms and conditions. Duquesne states that it has proposed this arrangement to Reliant.

## **4. Commission Determination**

134. We find that Applicants' integration plan appropriately addresses the issue of black start service. FirstEnergy notes that the Midwest ISO TEMT does not, currently, address the provision for this service, as it will be required and paid for in the Duquesne zone, and that Applicants' integration plan also fails to address the manner or means of conforming the Brunot Island Agreement to the needs of Duquesne's integration.

135. However, Applicants represent that the services provided under this agreement will continue, following Duquesne's entry into the Midwest ISO. Duquesne states in its answer that it has proposed to continue the existing agreement, without revision, and Reliant represents that the parties are still involved in negotiations regarding this matter. We agree with Reliant that, under these circumstances, it would be premature to address the merits of this issue here. However, we require Duquesne to update the Commission regarding the resolution of this matter in its 60-day notice filing.

### **L. Transmission Rates and Energy Prices**

#### **1. Applicants' Proposal**

136. Applicants state that, with respect to transmission rates, the Duquesne zone will operate within the existing framework of the Midwest ISO, subject to the existing provisions of the Midwest ISO TEMT. Rates for transmission service will be assessed

pursuant to Duquesne's formula rate authorizations, as made a part of the Midwest ISO's attachment O formula rate.<sup>60</sup>

137. Applicants state that the energy price stack for the Duquesne zone will rely on the Midwest ISO's existing generation stack, except in those instances where a pseudo-tied unit is called upon to back down or come on line due to a transmission constraint in the Duquesne zone. Applicants state that, in that case, market-to-market coordination rules will apply. Applicants add that, in this instance, there will be an impact on zonal prices in the Duquesne zones.

## **2. Responsive Pleadings**

138. PSEG argues that the absence of full price disclosure, in this proceeding, renders Applicants' integration plan deficient. PSEG argues that in considering Applicants' integration plan, the rate impact of Duquesne's proposed formula rates must be considered.

139. Exelon, *et al.* argue that Applicants' integration proposal should be required to address the manner in which clearing prices will be set in the Duquesne zone. Exelon, *et al.* note, for example, that market participants must have clarity regarding which RTO, using which commercial model, will set the energy clearing price for the Duquesne zone. Exelon, *et al.* add that Applicants must clarify whether zonal prices will be cleared using the Midwest ISO's current generation stack, or also using generators currently located within Duquesne's footprint in PJM.

## **3. Duquesne's Answer**

140. Duquesne responds to PSEG's assertion that Duquesne's proposed formula rates must be considered in assessing Applicants' integration plan. Duquesne asserts that intervenors will be permitted to raise any issues they may have regarding the composition and level of Duquesne's proposed rates in Docket No. ER08-1309-000, i.e., in the formula rate proceeding submitted by the Midwest ISO on July 25, 2008.

## **4. Commission Determination**

141. We find that Applicants' integration plan appropriately addresses rate and clearing price issues applicable to the Duquesne zone, subject to our review of the Midwest ISO's formula rate filing in Docket No. ER08-1309-000. Specifically, we agree with Duquesne that pursuant to these authorizations, Duquesne will charge transmission customers in the

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<sup>60</sup> Duquesne's proposed formula rate was filed by the Midwest ISO on July 25, 2008, in Docket No. ER08-1309-000.

Duquesne zone a Commission-accepted transmission rate consistent with the Commission-accepted rates, terms and conditions of the Midwest ISO TEMT, at attachment O. Clearing prices will be established pursuant to the Midwest ISO's existing market protocols.

142. We reject PSEG's argument that the rate impact, if any, associated with Duquesne's migration must be considered here. These issues can and should be raised in the context of Duquesne's formula rate filing. With respect to Exelon, *et al.*'s concern, we clarify that following Duquesne's integration into the Midwest ISO, the Midwest ISO will calculate the Duquesne zone nodal prices for the Midwest ISO energy and ancillary services markets, pursuant to the Midwest ISO's existing, Commission-approved procedures.

#### **IV. RTEP Allocations**

143. In the January 17 Order, the Commission required Duquesne to make a compliance filing, providing a full and complete accounting of its RTEP allocations and all other obligations under section 3.4 of the TO Agreement.<sup>61</sup> The Commission also required Duquesne to include in its compliance filing an identification of all RTEP-related costs that have been allocated to it by PJM.<sup>62</sup>

##### **A. Duquesne's Compliance Filing**

144. On March 3, 2008, Duquesne submitted its compliance filing, in Docket No. ER08-194-002. In its filing, Duquesne itemizes its projected RTEP cost obligations with respect to upgrades located both within and outside the Duquesne zone. With respect to reliability-based, RTEP-listed transmission upgrades located within the Duquesne zone, Duquesne states that it will complete these projects at a total estimated cost of \$335 million. Duquesne states that these costs will be borne exclusively by Duquesne zone load.

145. With respect to transmission upgrades located outside the Duquesne zone, Duquesne states that, under the PJM OATT, at schedule 12, PJM transmission owners are required to pay for the costs attributable to these projects where: (i) the voltage levels at

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<sup>61</sup> As noted above, section 3.4 provides, in relevant part, that a withdrawing transmission owner "shall remain liable for any and all obligations under this Agreement that such Party incurred, that were incurred on behalf of such Party, or that arose hereunder prior to the date upon which such Party's withdrawal, transfer, or assignment became effective."

<sup>62</sup> January 17 Order, 122 FERC ¶ 61,039 at P 52.

issue exceed 500 kV, or (ii) in the case of a lower voltage upgrade, the upgrade is necessary to support regional facilities.<sup>63</sup> Duquesne states that this payment obligation is apportioned according to the percentage of load each customer serves in PJM, i.e., on an annual load-ratio share basis. Duquesne states that the current estimated cost of these projects is \$5 billion. Duquesne adds that its allocated share of these costs would be approximately \$109 million were it to be required to pay for these costs based on its current-year load-ratio share.<sup>64</sup> Duquesne asserts, however, that it should not be held liable for these future-year costs. First, Duquesne asserts that the applicable tariff provision, schedule 12 of the PJM OATT, cannot be construed as imposing liability in this instance on a transmission owner that is no longer a member of PJM.<sup>65</sup>

146. Duquesne next addresses the precedent cited by the Commission in the January 17 Order regarding the RTEP obligations of the Midwest ISO transmission owners.<sup>66</sup> Duquesne argues that this precedent has no relevance to a departing PJM transmission owner. Specifically, Duquesne asserts that the obligations of the Midwest ISO's transmission owners are based on tariff language that differs from that applicable to PJM's transmission owners. In addition, Duquesne argues that the implicit context giving rise to the Midwest ISO obligation, i.e., an RTO withdrawal accompanied by the re-establishment of a transmission owner's stand-alone status, should not be applied here, where Duquesne is simply seeking to transfer its RTO membership and thus assume new, comparable obligations. Duquesne further asserts that there is no reason to believe that

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<sup>63</sup> See Duquesne compliance filing at 2, citing PJM OATT at schedule 12(b)(1).

<sup>64</sup> At the time that Duquesne submitted its compliance filing, Duquesne's then-existing load-ratio share was 2.08 percent, as reflected in PJM's schedule 12 appendix (addressing Required Transmission Enhancements, Responsible Customers and Associated Transmission Owner Revenue Requirements). See, e.g., substitute first revised sheet no. 270D.03. In Docket No. ER08-837-000, PJM filed updated load ratio shares for the calendar year beginning January 1, 2008. Duquesne's load ratio share, as a result, was reduced from 2.08 percent to 2.02 percent. See *PJM Interconnection, L.L.C.*, Docket No. ER08-837-000 (July 10, 2008) (unpublished letter order).

<sup>65</sup> The applicable provisions of schedule 12 are discussed below.

<sup>66</sup> See January 17 Order, 122 FERC ¶ 61,039 at P 52, n.50, citing *Midwest Independent Transmission System Operator, Inc.*, 120 FERC ¶ 61,080, at P 83-84 (2007) (Regionally Beneficial Projects Rehearing Order) (noting that under the Midwest ISO transmission owners agreement "[a]ll financial obligations incurred and payments applicable to time periods prior to the effective date of such withdrawal shall be honored by the Midwest ISO and the withdrawing Owner.").

the planning of regional facilities in PJM has been affected by Duquesne's PJM membership.

147. Finally, Duquesne argues, as a policy matter, that there is no direct relationship between the needs of, or benefits to, each transmission owner (including Duquesne) for regional facilities, on the one hand, and the responsibility by transmission owners for allocated portions of the RTEP costs, on the other hand, that would reasonably justify treating Duquesne as responsible for these expenditures long after it has departed from PJM.<sup>67</sup> Duquesne argues that, in fact, many of the most expensive regional facilities that drive RTEP costs function primarily to improve the ability to deliver electricity to loads in the eastern portion of PJM. Duquesne states that, as such, these projects are of no benefit to Duquesne and presumably would have been undertaken by their project sponsors with or without Duquesne's membership in PJM.

148. Duquesne's compliance filing also addresses the extent of Duquesne's asserted remaining obligations under section 3.4 of the TO Agreement.<sup>68</sup> Duquesne claims that its liability is limited to: (i) charges and credits, including administrative charges, assessed pursuant to schedule 9 of the PJM OATT; (ii) reconciliation charges and credits, and (iii) adjustments incurred in connection with service rendered prior to its withdrawal from PJM, i.e., the date on which it will no longer serve load under the PJM OATT. Duquesne states that because these charges depend on future events, Duquesne cannot calculate these charges precisely at this time. Duquesne states, however, that it has prepared an estimate of these costs, based on its PJM billing statement for January 2008 and a billing summary for calendar year 2007.<sup>69</sup> Finally, with respect to ARR and FTR charges, Duquesne states that it has sold all of these rights to a third party.

#### **B. Notice of Compliance Filing and Responsive Pleadings**

149. Notice of Duquesne's compliance filing was published in the *Federal Register*<sup>70</sup> with interventions and protests due on or before March 28, 2008. A notice of

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<sup>67</sup> Duquesne compliance filing at 3, citing *PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,082, at P 64 (2008) (facilities that operate at or above 500 kV will not necessarily provide equal benefits to all load).

<sup>68</sup> *See supra* section III.D.

<sup>69</sup> *See* Duquesne's compliance filing at exhibits 5-6. Duquesne notes that its typical pre-RPM monthly billing statement reflected a credit of approximately \$800,000. Duquesne states that, by contrast, its post-RPM billing statements reflect charges of approximately \$800,000 to \$1 million.

<sup>70</sup> 72 Fed. Reg. 14,462 (2008).

intervention was filed by the Illinois Commission. Protests and/or comments were filed by PJM, FirstEnergy, the Illinois Commission, Allegheny, PSEG, Pepco, Exelon, Dayton, and PPL.

150. The Illinois Commission agrees with Duquesne that because, as it claims, the Duquesne zone does not receive benefits from regional facilities, Duquesne should not be held responsible for any costs associated with these facilities. Dayton generally concurs that a departing transmission owner, such as Duquesne, should not be assessed for future-year project costs planned for construction by other participants in other zones for the sole benefit of other market participants. Dayton asserts, however, that a portion of these planned projects will have reliability benefits attributable to the Duquesne zone. Dayton concludes that Duquesne should be held liable for an appropriate share of these future-year costs.

151. Other intervenors assert that Duquesne should be held responsible for additional RTEP allocations, namely, that Duquesne, upon its exit from PJM, should be held liable for all future-year RTEP allocations covering projects that were approved while Duquesne was a member of PJM. PJM argues, in this regard, that the completion date of these projects is irrelevant as it relates to the issue of cost responsibility. PJM argues that once these projects have been approved by the PJM board and the Commission, the cost allocations relating to these projects have become established and are binding.<sup>71</sup> PJM argues that section 3.4 of the TO Agreement supports this conclusion because it states that all parties to the TO Agreement remain liable for all obligations incurred or that arose prior to the date of withdrawal.

152. PJM and PSEG also rely on two Midwest ISO cases addressing the Midwest ISO's cost allocation methodology applicable to certain economic upgrades, known as "Regionally Beneficial Projects."<sup>72</sup> PSEG argues that in the Regionally Beneficial Projects Order the Commission explicitly held, in the context of costs allocated under the Midwest ISO's planning process, that "[i]n principle, a transmission owner should not be able to avoid previously allocated costs by withdrawing from the [RTO]."<sup>73</sup> PJM adds

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<sup>71</sup> See also Pepco protest at 4; Exelon protest at 2; PSEG protest at 4; PPL protest at 10.

<sup>72</sup> *Midwest Independent Transmission System Operator Inc.*, 118 FERC ¶ 61,209 (Regionally Beneficial Projects Order), *order on reh'g*, 120 FERC ¶ 61,080 (2007).

<sup>73</sup> Regionally Beneficial Projects Order, 118 FERC ¶ 61,209 at P 193. PSEG also relies on *Illinois Power Co.*, 95 FERC ¶ 61,183 (2001) (requiring withdrawing transmission owners to pay a share of the Midwest ISO's start-up costs as a condition to their withdrawal).

that on rehearing the Commission explicitly rejected the argument that departing load from an RTO will no longer receive benefits from the transmission upgrades for which it was assigned a cost allocation.<sup>74</sup>

153. Intervenors also dispute Duquesne's claim that Duquesne will not receive benefits attributable to the regional projects at issue. PSEG characterizes Duquesne's argument as a collateral attack of the Commission's order approving PJM's socialized cost allocation methodology.<sup>75</sup> PJM and PPL concur, noting that in Opinion No. 494 the Commission took a regional approach to the issue of RTEP allocations, finding that for facilities 500 kV and above the benefits at issue are not limited to a particular zone and cannot be easily parsed as between zones.<sup>76</sup> PJM adds that the benefits flowing to the Duquesne zone will not simply disappear as a result of its departure from PJM. PJM argues that if the Commission is to achieve its goals, as expressed in Opinion No. 494, i.e., if the development of needed infrastructure within the PJM market is to be encouraged, along with a cost payment responsibility that will not discourage entities from joining and remaining in RTOs, entities such as Duquesne must not be permitted to opt out.<sup>77</sup>

154. PJM argues that while any RTEP costs allocated to Duquesne by PJM should not be double counted against Duquesne under the cross border cost allocations protocol between PJM and the Midwest ISO, i.e., under the regional planning joint operating agreement, Duquesne should not be able to avoid its approved allocated share of costs that will *not* be counted twice. PJM notes that the cost allocation processes, under the Joint Operating Agreement, may not accommodate previously planned projects, i.e., the regional facilities at issue here, and may not otherwise be appropriate in reassigning, to Duquesne, the costs for which it is currently responsible.<sup>78</sup>

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<sup>74</sup> See Regionally Beneficial Projects Rehearing Order, 120 FERC ¶ 61,080 at P 85.

<sup>75</sup> See *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063 (2007).

<sup>76</sup> *Id.* P 4, 46.

<sup>77</sup> PJM makes a substantially similar argument based on the Commission's findings in, *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266, FERC Stats Regs. ¶ 31,241 (2007).

<sup>78</sup> PJM notes that under the Joint Operating Agreement, each RTO's cost contribution is determined by considering the net effect of all generation to all load, a methodology that could reduce or eliminate Duquesne's allocation. PJM adds that under the Midwest ISO TEMT, the Midwest ISO may be required to allocate portions of any PJM projects initially allocated to Duquesne to other Midwest ISO customers.

155. FirstEnergy argues that Duquesne's submittal fails to comply with the January 17 Order. FirstEnergy notes that, in that order, the Commission required Duquesne to provide a full and complete accounting of its RTEP obligations and required Duquesne to explain any additional charges for which it was liable. FirstEnergy asserts that rather than providing this full accounting, Duquesne simply submitted a list of billing charges for service taken prior to its planned departure date. FirstEnergy argues that, as such, Duquesne's compliance filing failed to include: (i) its share of the financial obligations incurred and commitments made by PJM prior to its planned exit date, including all capital expenditures, expenditures attributable to PJM's construction of its alternative control center,<sup>79</sup> regulatory assets, debts, and other obligations as reflected on PJM's balance sheets as of Duquesne's planned withdrawal from PJM; (ii) charges attributable to member defaults occurring prior to Duquesne's planned withdrawal;<sup>80</sup> (iii) ARR/FTR obligations, as based on its actual departure date;<sup>81</sup> (iv) charges attributable to Duquesne's RPM obligations;<sup>82</sup> and (v) its obligations to indemnify Duquesne zone generators for the cost they will incur as a result of Duquesne's integration into the Midwest ISO.

### C. Duquesne's Answer

156. On April 14, 2008, Duquesne filed an answer to the protests. In its answer, Duquesne responds to intervenors' argument that Duquesne, upon its withdrawal from PJM, will remain liable for future-year RTEP charges collected pursuant to PJM's region-wide costs methodology. Duquesne argues that under schedule 12 of the PJM OATT, the obligation to pay for these costs is based on the annual load that a load serving entity serves within each PJM zone. Duquesne argues that, as such, an entity that serves load in a PJM zone will be responsible for these costs, even if the project at issue was approved prior to its membership in PJM. Duquesne argues that similarly, a departing entity, such as Duquesne, cannot be held liable for these costs once it ceases to serve load in a PJM zone. Duquesne also challenges the assertion that its position regarding its RTEP liability represents a collateral attack of Opinion No. 494. Duquesne argues that Opinion No. 494 does not address its post-withdrawal liability for RTEP costs.

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<sup>79</sup> See also PSEG protest at 7; PPL protest at 5; Exelon protest at 7.

<sup>80</sup> See also Exelon protest at 7-8.

<sup>81</sup> See also *id.* at 8.

<sup>82</sup> See also Allegheny protest at 3-5; PPL protest at 11.

157. Duquesne also disputes intervenors' argument that Duquesne, in its compliance filing, was required to identify the exact monetary amount owed by Duquesne to PJM in connection with Duquesne's withdrawal from PJM. Duquesne asserts that, in its compliance filing, it appropriately addressed each of its liabilities on an itemized basis, recognizing that the total amount due will be contingent on future events, most notably the level of future load served. Duquesne adds that intervenors, while objecting to the asserted lack of specificity provided by Duquesne, fail to specify the alleged unaddressed obligations to which their protests refer.

158. Duquesne also responds to intervenors' argument that Duquesne, upon its withdrawal from PJM, remains liable for its allocated share of the costs attributable to PJM's alternate control center. Duquesne argues that PJM has not identified any such costs for which Duquesne would be liable. Duquesne also argues that under the applicable tariff language, at schedule 9-6 of the PJM OATT, the costs of owning, leasing, and operating the alternate control center are required to be recovered by PJM from the users of these services based on the quantity of services used, i.e., not until the control center becomes operational.

159. Duquesne also responds to intervenors' argument that Duquesne, in its compliance filing, failed to list charges for member defaults occurring prior to Duquesne's withdrawal from PJM. Duquesne acknowledges that it is liable for these costs under section 15.2 of the PJM Operating Agreement and further concedes that under this provision, when a PJM member defaults on an obligation, PJM is permitted to collect that amount from other members, based on their activity in PJM during the period of the default. Duquesne states that in connection with these obligations, it has already been billed for recent member defaults and will pay any additional invoices, as may be required, prior to its withdrawal from PJM.

#### **D. Additional Answers**

160. On April 25, 2008, an answer to Duquesne's answer was filed by Exelon, in which it argues that the justness and reasonableness of Duquesne's withdrawal from PJM rests not only on compliance with PJM's tariffs, but also on an equitable impact on other members of the RTO.

#### **E. Procedural Matters**

161. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed notice of intervention submitted by the Illinois Commission serves to make it a party to this proceeding. Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a) (2007), prohibits an answer to a protest or an answer to an answer unless otherwise permitted by the decisional authority. We will accept the answers submitted by Duquesne and Exelon because they have provided information that assisted us in our decision-making process.

## F. Commission Determination

162. We find that upon Duquesne's withdrawal from PJM, the Duquesne zone will not be subject to PJM's future-period, annually-updated "Transmission Enhancement Charges" (a defined term under the PJM OATT discussed further, below). Project costs that have been allocated to the Duquesne zone, i.e., established and made binding on the Duquesne zone pursuant to PJM's current-year schedule 12 cost allocations, will continue to apply to the Duquesne zone and may be collected by PJM through the current calendar year, ending December 31, 2008, based on the current-period, load ratio shares on file with the Commission under schedule 12.

163. Our findings are based on our interpretation of the applicable tariff language, i.e., on the PJM OATT at schedule 12, beginning with an understanding of the term "Transmission Enhancement Charge." Schedule 12(a) and section 3E of the PJM OATT define the term Transmission Enhancement Charge as a charge established by PJM to recover the revenue requirement applicable to a "Required Transmission Enhancement," a defined term meaning a transmission project approved either through the RTEP process or under the PJM/Midwest ISO Joint Operating Agreement.<sup>83</sup> PJM's transmission owners are permitted to recover (and PJM is obligated to collect) these project costs, pursuant to one of three transmission owner filing options set forth at schedule 12(a).<sup>84</sup>

164. Schedule 12 also identifies the customers subject to a Transmission Enhancement Charge. As a general matter, cost responsibility for Required Transmission Enhancements is assigned on a region-wide basis, if the project at issue is either a

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<sup>83</sup> See PJM OATT at section 1.38C.

<sup>84</sup> Schedule 12(a) describes these filing options as follows:

If a Transmission Owner is designated by the [RTEP] or the Coordinated System Plan to construct and own and/or finance a Required Transmission Enhancement, such Transmission Owner may choose any of the following cost recovery mechanisms . . . : (1) Decline to seek to recover the costs . . . until such time as it makes a [FPA section 205] filing . . . to revise its Network Integration Transmission Service rates; (2) Make a [FPA section 205] filing . . . to establish the revenue requirement . . . without filing to revise its rates for Network Integration Transmission Service generally; or (3) Establish the revenue requirement . . . through the operation of a formula rate[.]

“regional facility” or a “necessary lower voltage facility.”<sup>85</sup> Cost responsibility is allocated annually, under schedule 12(b)(i)(A), “among Responsible Customers . . . on an annual load-ratio share basis using . . . the applicable zonal loads at the time of each Zone’s annual peak load from the 12-month period ending October 31 of the calendar year preceding the calendar year for which the annual cost responsibility allocation is determined.”<sup>86</sup> As such, a new transmission owner joining PJM would become subject to these charges, because it would be a zone in PJM with a zonal annual peak load, regardless of when the projects were approved and regardless of who these projects may have previously benefitted. And a departing transmission owner leaving PJM would, pursuant to this language, no longer be subject to these charges; it would not have a zonal annual peak load as it would no longer be a zone in PJM.

165. The defined term, “Responsible Customer,” further underscores this point. The term, Responsible Customer, is defined at schedule 12(b)(vii), a provision which addresses PJM’s obligation to submit, to the Commission, PJM’s RTEP reports. Schedule 12(b)(vii) states, in relevant part, that “within 30 days of the approval of each [RTEP] or an addition to such plan . . ., [PJM] shall designate [at the appendix to schedule 12,] and in a report filed with the [Commission, all Responsible Customers, i.e., those] customers using Point-to-Point Transmission Service and/or Network Integration Transmission Service and Merchant Transmission Facility owners that will be subject to each . . . Transmission Enhancement Charge . . . based on the cost responsibility assignments determined pursuant to [the aforementioned schedule 12(b)].” Accordingly, the schedule 12 appendix assigns cost responsibility to PJM’s zones on an evolving, superseding basis.

166. The appendix to schedule 12 lists, on a project-by-project basis, the Responsible Customer(s) for each project for the year at issue, the currently-effective annual load ratio share for each such Responsible Customer, and the applicable annual revenue

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<sup>85</sup> Schedule 12(b)(i) defines “Regional Facilities,” in relevant part, as “Transmission Facilities . . . that operate at or above 500 kV.” “Necessary Lower Voltage Facilities” are defined under this same provision as “new Transmission Facilities or expansions or enhancements to existing Transmission Facilities that operate below 500 kV that must be constructed or strengthened to support new Regional Facilities, based on the planning criteria used by [PJM] in developing the applicable [RTEP].”

<sup>86</sup> Schedule 12(b)(i) goes on to address, at subsection (B), cost responsibility as applicable to merchant transmission facilities.

requirement.<sup>87</sup> For illustrative purposes, consider the first such entry on PJM's currently effective schedule 12 appendix.<sup>88</sup> The project listed, project b0135, is sponsored by the Atlantic City Electric Company (Atlantic City). This project reflects: (i) an allocated cost responsibility, i.e., a Responsible Customer, obligating Atlantic City alone (i.e., the project is neither a regional facility nor a necessary lower voltage facility); (ii) a load ratio share of 100 percent (i.e., only the Atlantic City zone pays for these charges); and (iii) an annual revenue requirement, as listed in attachment H to the PJM OATT. By contrast, consider Atlantic City's project b0210.<sup>89</sup> Project b0210 reflects an allocated cost responsibility that includes *all* PJM zones, including for the current calendar year the Duquesne zone (i.e., the project at issue is a regional facility or a necessary lower voltage facility) with a load ratio share that, for the Duquesne zone for the currently-effective billing year, is 2.02 percent.

167. However, when PJM files its next, superseding schedule 12 appendix, to become effective for the annual period beginning January 1, 2009, PJM will be required to recalculate its load ratio shares, as provided by schedule 12(b)(i)(A), to reflect PJM's then-existing zones and loads. There is no provision under the schedule 12 formula, permitting PJM to supplement this required calculation with load data from a non-existent zone, i.e., by adding back in the now non-existent Duquesne zone. Specifically, given the language of the tariff, PJM is not permitted to allocate future-period project costs to a former transmission owner based on the fictional assumption that this former transmission owner's zone can or should remain a part of PJM for future-year schedule 12 purposes. Just as PJM would not be permitted to exclude, from its schedule 12 appendix, load data applicable to the entry of a new transmission owner's zone, it would not be allowed to continue to include a former transmission owner's zone.

168. For the reasons noted above, the costs assigned to regional facilities (those above 500 kV) are distinguishable from the costs of lower voltage facilities assigned under the beneficiary pays principle. With respect to lower voltage facilities, PJM assigns to each transmission owner, the proportion of costs applicable to that transmission owner during

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<sup>87</sup> The column entries reflecting the annual revenue requirement incorporate by reference information set forth in the annual transmission rates for each transmission owner, i.e., the information listed for each transmission owner at attachment H of the PJM OATT.

<sup>88</sup> *See* PJM OATT at schedule 12 appendix, first revised sheet no. 270D.02c.

<sup>89</sup> *Id.* at substitute second revised sheet no. 270D.03.

the RTEP process.<sup>90</sup> This assignment is fixed as of that point, and as such, Duquesne concedes that it is liable for these costs. By contrast, cost assignments for higher voltage facilities are not fixed during the RTEP process, consistent with the Commission's determination in Opinion No. 494 that the costs of higher voltage facilities enhance the security of the PJM system for all participants and therefore the costs of these facilities are to be spread among the transmission owners that are part of PJM on a load ratio share basis. The annual reallocation of these costs under schedule 12, moreover, is similar to the Commission's policy requirement regarding rate adjustments in the case of mergers or divestitures.<sup>91</sup> In this case, under the PJM tariff, Duquesne's exit will require a future reallocation of system-wide costs.

169. Similarly, our decision here not to allocate the costs of higher voltage facilities is consistent with the Commission's determination, in the January 17 Order, that Duquesne is responsible for the RPM costs incurred in the auctions conducted prior to Duquesne's exit from PJM. The Commission, in the January 17 Order, held Duquesne liable for the costs incurred in the prior auctions because the auctions were conducted while Duquesne was a member, the auction obtained capacity based on Duquesne's load in order to ensure the reliability of the Duquesne zone, and the costs to Duquesne were known as of the date of the auction. Thus, the RPM costs are similar to the costs of the lower voltage facilities approved through RTEP that have been specifically authorized to benefit Duquesne and were allocated to Duquesne by the RTEP process. The results from prior allocations and previously incurred costs (even if payable in the future) thus remain Duquesne's responsibility. The costs of the higher voltage facilities, however, are different. These new high voltage projects were not undertaken specifically to support Duquesne's load or the reliability of that load, but would have occurred regardless of whether Duquesne was a member of PJM, and the costs were not the result of a final allocation to Duquesne. Rather, these costs are treated under PJM's tariff as system costs (just like other PJM costs) that are allocated as they are incurred on a load ratio share basis to the then-existing members of PJM.

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<sup>90</sup> Schedule 12(b)(vi) provides for the finality of cost responsibility for lower voltage projects.

<sup>91</sup> See *Entergy Services, Inc.*, 62 FERC ¶ 61,073, *reh'g denied*, 64 FERC ¶ 61,001, *opinion authorizing merger and accepting amended system agreement*, Opinion No. 385, 65 FERC ¶ 61,332 (1993), *order on reh'g*, Opinion No. 385-A, 67 FERC ¶ 61,192 (1994), *petitions for review denied*, 290 F.3d 362 (D.C. Cir. 2002) (re-determining costs after a merger); *accord*, *Transcontinental Gas Pipe Line Corporation*, 96 FERC ¶ 61,246 at 61,972, *order on reh'g*, 97 FERC ¶ 61,298 (2001).

170. We therefore agree with Duquesne that PJM's asserted entitlement to rely on a fixed, historical snapshot for purposes of allocating its schedule 12 projects costs is not supported by the language of schedule 12 and does not appear to be otherwise logical or workable under the existing schedule 12 rubric.<sup>92</sup> As such, we find that the Duquesne zone, following Duquesne's departure from PJM, will not be liable for Transmission Enhancement Charges that have not been allocated under PJM's currently-effective schedule 12 cost allocations. Conversely, we hold that the Duquesne zone does remain liable for the annual year allocations reflected in PJM's currently-effective schedule 12 cost allocations for the period ending December 31, 2008.

171. Intervenors argue that an RTEP report, once filed with the Commission, becomes binding on all zones then existing in PJM, presumably until all such project costs have been submitted for filing and recovered by PJM. PJM relies on section 3.4 of the TO Agreement in support of this claim, i.e., the requirement that Duquesne, upon its withdrawal from PJM, remains liable for any and all obligations that have been incurred or that arose prior to the date of its withdrawal. Section 3.4, however, provides no guidance with respect to the central question presented here, i.e., it does not address whether PJM's future-year RTEP-allocations constitute obligations that have been incurred or arose prior to Duquesne's proposed withdrawal from PJM. It is the language of schedule 12 that must be looked to in answering this question. As discussed above, PJM has chosen an allocation method for the higher voltage projects included in its RTEP that treats these costs as system-wide costs that are imposed on any new transmission owners that may join PJM and, similarly, may not be imposed on departing members.

172. We also reject Dayton's argument that Duquesne, as a condition to its withdrawal, should be held liable for regional RTEP costs shown to have reliability benefits for the Duquesne zone. No such determinations of benefits to individual zones are required to be made under the current tariff. The costs of the higher voltage facilities are allocated during the year incurred to all transmission zones then-existing in PJM.

173. PJM and PSEG also rely on the Regionally Beneficial Projects Order, arguing that in that case the Commission held, in the context of costs allocated under the Midwest ISO's planning process, that "[i]n principle, a transmission owner should not be able to avoid previously allocated costs by withdrawing from the [RTO]."<sup>93</sup> However, the Commission's finding in that order was based on existing tariff provisions pertaining to

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<sup>92</sup> For example, what values should be used for the now non-existent zone, the last year's numbers or the last year's numbers updated in some undefined way or some other numbers?

<sup>93</sup> See Regionally Beneficial Projects Order, 118 FERC ¶ 61,209 at P 193.

financial obligations of withdrawing transmission owners, as reflected in the Midwest ISO Transmission Owners Agreement.<sup>94</sup> While we agree that it might be just and reasonable for PJM to adopt a similar requirement, in the future, we are required here to interpret PJM's tariff as currently drafted.

174. We also reject PJM's and PPL's reliance on Opinion No. 494, an order that, while addressing PJM's socialized cost allocation methodology, does not address schedule 12 as it relates to future-year cost allocations applicable to a former transmission owner.<sup>95</sup> For this same reason, we also reject PJM's reliance on Order No. 890, a final rule finding as a general matter, and thus not applicable to Duquesne's withdrawal proposal here, given the language of schedule 12, that transmission providers and customers cannot be expected to support the construction of new transmission unless they understand who will pay the associated costs.<sup>96</sup>

175. In response to the Commission's requirement, in the January 17 Order, that Duquesne provide a full and complete accounting of each of its other obligations under section 3.4 of the TO Agreement, Duquesne, in its compliance filing, submitted thirteen months of billing information. Duquesne asserts, in its answer, that this billing information is illustrative of its remaining financial liabilities. Duquesne further asserts that the precise amount due is contingent on future events, including the level of future load served up to the day of Duquesne's withdrawal. We accept Duquesne's submission with respect to this issue.

176. FirstEnergy argues that, in addition to Duquesne's RTEP cost allocations, Duquesne should be required to pay, as a condition of its withdrawal, an exit fee that reflects its share of existing PJM financial expenditures and commitments. FirstEnergy further argues that Duquesne is obligated to hold Duquesne zone generators harmless from, among other things, Midwest ISO administrative charges and transmission service costs under the TEMT for deliveries from the Duquesne zone to the new Midwest ISO/PJM border. We reject FirstEnergy's requests. The TO Agreement, as noted above, does not require Duquesne to pay an exit fee as a condition to its withdrawal. Moreover, we have addressed and rejected above, at section III.D of this order, intervenors' assertions regarding Duquesne's asserted hold harmless obligations.

177. Finally, we reject intervenors' argument that Duquesne should be held liable for the costs associated with PJM's new control center. The PJM OATT, at schedule 9-6,

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<sup>94</sup> Midwest ISO Transmission Owners Agreement at article V, section II.B.

<sup>95</sup> Opinion No. 494, 119 FERC ¶ 61,063 at P 58.

<sup>96</sup> Order No. 890, FERC Stats & Regs. ¶ 31,241 at P 559.

establishes the mechanism regarding the recovery of these costs.<sup>97</sup> Schedule 9-6 specifies that once the control center goes into service, the costs of owning, leasing, and operating the control center will be recovered from the users of PJM services according to the quantity of services consumed.

## V. Requests for Rehearing and Clarification

178. Rehearing and/or clarification of the January 17 Order is sought by Duquesne, Pepco, Reliant, FirstEnergy, Exelon, EPSA, DII, Strategic, and RESA. Answers to these requests for rehearing were filed by FirstEnergy (on March 5, 2008), PJM (on March 18, 2008 and April 10, 2008), and Duquesne (on April 1, 2008). Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2008), prohibits an answer to a request for rehearing. Accordingly, we reject the answers filed by FirstEnergy, PJM and Duquesne.

### A. Transition Issues

#### 1. January 17 Order

179. The January 17 Order found that Duquesne will satisfy the withdrawal requirements of the TO Agreement, subject to: (i) implementation of the Midwest ISO's centralized balancing proposal (filed in Docket No. ER07-1372-000), or a suitable alternative proposal; (ii) submission of replacement arrangements providing for comparable transmission services; (iii) submission of a proposal addressing grandfathered agreements; and (iv) a final determination of Duquesne's financial liabilities, including its RTEP allocations.<sup>98</sup> The *January 17 Order* also granted Duquesne's request to withdraw all Duquesne zone load from PJM's May 2008 RPM auction, provided that Duquesne file, by February 1, 2008, a written notice of its intent to withdraw from PJM prior to the delivery year applicable to the auction, i.e., prior to June 1, 2011.

#### 2. Requests for Rehearing and Clarification

180. FirstEnergy requests clarification that the TO Agreement, the PJM OATT, and all other applicable PJM agreements continue to apply to all Duquesne zone market

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<sup>97</sup> Schedule 9-6 was included as part of the settlement agreement submitted in Docket No. ER05-1181-000, establishing a stated rate for PJM. The Commission approved the settlement agreement on May 26, 2006. *See PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,249 (2006).

<sup>98</sup> January 17 Order, 122 FERC ¶ 61,039 at P 48-54.

participants until such time as Duquesne satisfies the requirements applicable to its departure from PJM. Similarly, RESA requests clarification that Duquesne will not be allowed to withdraw from PJM and join the Midwest ISO until such time as Duquesne has submitted a complete integration plan to the Commission.

181. Pepco asserts that the Commission erred in the January 17 Order by not requiring Duquesne to submit quarterly updates addressing its ability to meet the Commission's requirements regarding its withdrawal from PJM and integration into the Midwest ISO. Pepco also asserts as error the Commission's failure to require that Duquesne file a notice with the Commission, at least 60 days prior to its move to the Midwest ISO, affirming its unconditional commitment.

### **3. Commission Determination**

182. We grant FirstEnergy's request for clarification regarding the continued applicability of Duquesne's rights and obligations under the PJM RTO agreements, up to the time that Duquesne's withdrawal from PJM becomes effective. In addition to these obligations, and as we have discussed in this order, above, and in the January 17 Order, Duquesne will have additional PJM post-withdrawal obligations, including but not limited to its obligations relating to its RPM commitments and its current year RTEP allocations.

183. For the reasons discussed above, in section III of this order (addressing Duquesne's withdrawal obligations under the TO Agreement), we reject, in part, RESA's request for clarification that Duquesne is not permitted to withdraw from PJM and join the Midwest ISO until it has submitted a complete integration plan to the Commission in this proceeding. While Applicants will be required to obtain additional authorizations, as discussed above, and while related, pending compliance matters must be addressed (e.g., the PJM portability proposal in Docket No. ER08-1345-000), we have held that each of these matters need not be considered here in the context of a single filing, or on a consolidated basis. Intervenor due process rights will not be limited or otherwise prejudiced as a result.

184. We reject Pepco's request for rehearing regarding the asserted need to review quarterly updates applicable to Duquesne's progress towards integration. Pepco fails to support the need for these submissions and we see none, given, the numerous matters addressed and resolved in this order, and the related pending filings that have been or will be made in response to our rulings herein.

185. Finally, we dismiss, as moot, Pepco's request for rehearing regarding the need for 60-days advance notice of Duquesne's withdrawal date. As discussed in section III.E of this order, above, we have now imposed this requirement on Applicants as a revision to their integration plan.

**B. Financial Obligations****1. January 17 Order**

186. The January 17 Order explained that Duquesne's filing failed to address Duquesne's post-withdrawal RTEP obligations. The Commission also remarked that, in the Regionally Beneficial Projects *Rehearing Order*<sup>99</sup> it had addressed a similar commitment found in the Midwest ISO's transmission owner's agreement.<sup>100</sup>

**2. Requests for Rehearing**

187. Duquesne asserts that the Commission erred in suggesting that the Regionally Beneficial Projects Order may be controlling in this case. Duquesne asserts that this Midwest ISO precedent is distinguishable from the facts presented here (for the reasons given, which are discussed above, in section IV of this order).

**3. Commission Determination**

188. We dismiss, as moot, Duquesne's request for rehearing, based on our findings above, in section IV of this order, that the Regionally Beneficial Projects Order does not address the issue presented here regarding Duquesne's obligations for future-year RTEP obligations. These obligations are not governed by the Midwest ISO's transmission owner's agreement, but rather are governed by the PJM OATT at schedule 12.

**C. Capacity Commitments****1. January 17 Order**

189. The January 17 Order found that, under the RA Agreement, Duquesne and all other Duquesne zone load serving entities are responsible for paying for all capacity acquired by PJM on their behalf through and including all RPM auctions in which their load parameters have been included. The Commission also found that these obligations were established as of the date that these entities' loads were included by PJM in its RPM auction parameters.<sup>101</sup>

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<sup>99</sup> 120 FERC ¶ 61,080 at P 83-84.

<sup>100</sup> January 17 Order, 122 FERC ¶ 61,039 at P 52.

<sup>101</sup> *Id.* P 92.

190. The January 17 Order also held, however, that these capacity commitments are portable, i.e., that they can be used by the Duquesne zone load serving entities to satisfy their reliability requirements once Duquesne has joined the Midwest ISO. Accordingly, the Commission required PJM to negotiate with the Midwest ISO to address the implementation of these rights. The Commission also found that PJM would be required to mitigate, as possible, the cost of these capacity obligations through PJM's incremental RPM auctions. Accordingly, the Commission required PJM to work with affected stakeholders to address the implementation of these rights.<sup>102</sup>

## 2. Requests for Rehearing and Clarification

191. Duquesne and Strategic assert that the Commission erred in its ruling that Duquesne, following its withdrawal from PJM, will remain responsible for RPM charges attributable to the RPM auctions in which its load forecasts were included. Strategic argues that, at the time the RPM obligation is billed, the Duquesne zone load in PJM will be zero. Strategic also asserts that when the RPM rate is applied to zero load, there can be no rate assessed. Strategic concludes that under the Commission's traditional rate-making principles, a utility has never been guaranteed a revenue stream, only the opportunity to recover its revenue requirement.<sup>103</sup> Strategic requests that, on rehearing, the Commission order PJM to either re-run its RPM auction, reallocate the costs of RPM to those entities remaining in PJM, or require Duquesne to pay an exit fee that compensates PJM and other entities for Duquesne's withdrawal from PJM.

192. Strategic also asserts that the Commission's finding that load serving entities in the Duquesne zone remain liable for their RPM capacity commitments is unduly discriminatory as to load serving entities not currently serving load in the Duquesne zone. Strategic asserts that these entities, after Duquesne's departure from PJM, will have the ability to serve customers in the Duquesne zone and yet not be liable for the zone's previously incurred RPM commitments.

193. Duquesne challenges the Commission's finding that the RA Agreement, on this issue, is ambiguous. Duquesne argues, to the contrary, that the RA Agreement unambiguously provides that a load serving entity that serves no load within PJM during a given delivery year is not obligated to pay an RPM charge, i.e., a Locational Reliability

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<sup>102</sup> *Id.* P 93.

<sup>103</sup> See Strategic rehearing request at 7, citing *Sithe New Boston, LLC*, 98 FERC ¶ 61,164, at 61,612, *reh'g denied*, 100 FERC ¶ 61,106 (2002).

Charge. Specifically, Duquesne relies on section 7.2 of the RA Agreement.<sup>104</sup> Duquesne asserts that the plain language of section 7.2 is reinforced by the formula for calculating the Locational Reliability Charge, as contained in schedule 8 of the PJM OATT.

Duquesne submits that under schedule 8, if a load serving entity serves no PJM load, it pays no Locational Reliability Charge. Duquesne asserts that this language applies to both past and present PJM members.

194. Duquesne also takes issue with the Commission's finding, in the January 17 Order, that schedule 8 is essentially formulaic in its nature, of principal use to an accountant in calculating a final bill, but not to the Commission in divining the extent of a departing load serving entity's underlying commitment. Duquesne responds that this provision, while formulaic, cannot be ignored as it relates to the issue that is relevant here, i.e., the obligation of a load serving entity to pay Locational Reliability Charges.<sup>105</sup> Duquesne further asserts that this provision cannot be labeled ambiguous, simply because it does not address the obligations of a withdrawing load serving entity. Duquesne argues, to the contrary, that this provision does expressly provide that there is no charge if there is no load to be served.

195. In addition, Duquesne argues that the Commission's finding, as to ambiguity, ignores the overall structure of the RA Agreement, as well as the TO Agreement, as it relates to the issue of RTO withdrawal rights. Duquesne argues that neither the RA Agreement nor the TO Agreement provide for any proxy charge or exit fee, as it relates to RPM charges. Duquesne argues that, as such, the Commission cannot plausibly suggest that the provisions articulating the obligation to pay the Locational Reliability Charge are ambiguous simply because they do not include special obligations applicable to withdrawing parties.

196. Duquesne next asserts that, even assuming the RA Agreement is ambiguous with respect to its post-withdrawal capacity commitments, the Commission erred in filling this gap with an obligation that has no basis in the tariff language at issue, i.e., by finding that

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<sup>104</sup> Section 7.2 of the RA Agreement states as follows:

Except to the extent its capacity obligations are satisfied through the FRR Alternative, each Party shall pay, as to loads it serves in each Zone during a Delivery Year, a Locational Reliability Charge for each such Zone during such Delivery Year.

<sup>105</sup> See Duquesne rehearing request at 8, citing *Southern California Edison Co. v. FERC*, 415 F.3d 17, 21 (D.C. Cir. 2005); *PSE&G Energy Res. & Trade LLC v. FERC*, 360 F.3d 200, 205 (D.C. Cir. 2004) (holding that the Commission must enforce unambiguous tariff language).

the obligation to pay a Locational Reliability Charge attaches at the time of the load forecast. Duquesne asserts that while the Commission's interpretation of ambiguous tariff language is entitled to deference on appeal, this deference will only apply if the interpretation at issue involves a permissible construction of the applicable tariff language and must be consistent with the ambiguous provision, i.e., it must lie within the zone of ambiguity.<sup>106</sup> Duquesne adds that while the Commission may rely on extrinsic evidence to resolve an ambiguity, it may do so only to prove a meaning to which the language of the applicable tariff provision is reasonably susceptible.<sup>107</sup> In addition, Duquesne argues that this standard of review dovetails with the requirements of the FPA. Specifically, Duquesne asserts that the Commission may reasonably resolve ambiguous tariff language but may not alter or insert new tariff language without making the findings and following the procedures required by FPA sections 205 or 206.<sup>108</sup>

197. With respect to the portability of PJM's Duquesne zone capacity commitments, DII asserts as error the Commission's allowance of this right in the absence of any meaningful consideration regarding the impact of this requirement on price references. DII asserts that the remarketing and portability options authorized in the January 17 Order, particularly when coupled with the uncertainty surrounding the allocation of capacity costs among Duquesne zone load serving entities, will undermine retail choice customers' ability to see transparent and credible prices.

198. Reliant and RESA request clarification that Duquesne and other Duquesne zone load serving entities will have the right to participate in the negotiations concerning this issue. Exelon requests that the Commission clarify its intentions regarding the portability of Duquesne's capacity prior to the negotiations on this issue as between PJM and the Midwest ISO. At a minimum, Exelon requests clarification that parties will have an opportunity to meaningfully comment on and challenge any proposals that have an impact on other members of PJM before they become final and Duquesne is allowed to withdraw from PJM.

199. Exelon requests clarification regarding the rights and obligations all load serving entities located in the Duquesne zone have with respect to the opportunity to purchase

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<sup>106</sup> *Id.* at 11-12, citing *NLRB v. United Food and Commercial Workers Union*, 48 U.S. 112 (1987); *NLRB v. Federal Labor Relations Authority*, 952 F.2d 523, 530 (D.C. Cir. 1992).

<sup>107</sup> *Id.* at 12, citing *Consolidated Gas Transmission Corp. v. FERC*, 771 F.2d 1536, 1546 (D.C. Cir. 1985).

<sup>108</sup> *Id.*, citing *Papago Tribal Util. Author. v. FERC*, 723 F.2d 950, 952-53 (D.C. Cir. 1983).

energy in PJM's day-ahead market due to their ownership of portable capacity. Exelon also requests clarification regarding the rights and obligations of the identified "portable capacity" to offer energy into the day-ahead market. FirstEnergy requests clarification that the portability mechanism required by the January 17 Order must be developed and implemented in a manner that avoids or mitigates any adverse impacts to the Duquesne zone load serving entities. DII asserts that the Commission erred in the January 17 Order by requiring portability and the opportunity to re-market capacity allocated to Duquesne zone load serving entities without considering the impact of such requirements on PJM's ability to provide transparent and credible price references.

200. Finally, Exelon requests clarification regarding Duquesne's RPM-acquired capacity that may not be needed to meet the Midwest ISO's reliability requirement, i.e., whether Duquesne will be permitted to resell this capacity in the Midwest ISO.

### **3. Commission Determination**

201. We deny rehearing of the January 17 Order, and affirm our interpretation of Duquesne's RPM obligations under the RA Agreement. Specifically, we reaffirm our findings that the individual provisions of the RA Agreement are ambiguous with respect to member withdrawals and that these ambiguities must be resolved by reference to the contract, or tariff, taken as a whole and through extrinsic evidence addressing the intent of the parties. In particular, we reiterate that the various tariff provisions relied upon by Strategic and Duquesne must be interpreted in the context of the underlying purpose of PJM's RPM protocols. That purpose, as we construe it, is to obtain binding advance commitments of capacity in order to ensure reliability in the future and to create sufficient incentives for new generation projects and demand response to participate in PJM's markets. Duquesne was well aware, or should have been aware, of this purpose and was equally aware, or should have been aware, that PJM's RPM auctions are undertaken for the purpose of creating binding commitments applicable to any entity, including Duquesne, whose load forecasts are included.

202. Strategic argues on rehearing, as it did in its protest, below, that the billing provisions addressing the specific amount a load serving entity must pay, under section 7.2 of the RA Agreement, in a given RPM delivery year, is dispositive on the issue of that load serving entity's underlying RPM obligation, i.e., that no obligation is incurred until the delivery year. However, as the Commission found in the January 17 Order, the fact that bills are not sent until the delivery year has no impact on whether an obligation was incurred.<sup>109</sup> Moreover, Strategic does not challenge the Commission's analysis, in the

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<sup>109</sup> For example, a forward contract is a binding obligation to provide a commodity in the future even though the delivery obligation is postponed for months or even years.

January 17 Order, that the tariff language on which Strategic relies is, in fact, ambiguous regarding the establishment of a load serving entity's RPM capacity commitment. In fact, Strategic's interpretation (which would consider, as relevant, in establishing the load serving entity's obligation, only the delivery year) would ascribe no meaning to (and discount all reliance on) PJM's RPM auctions and the triggering events they set in place. For the reasons explained in the January 17 Order, however, we find that this asserted interpretation is neither logical nor warranted under the broader framework of PJM's RPM protocols.

203. Strategic also relies on the Commission's traditional rate-making principles, arguing that the RPM delivery year can be considered controlling here, regarding the issue of when the RPM obligation becomes binding. Strategic argues that this is so because a utility, with respect to its filed rates, is given no guarantee that the revenue requirement underlying these filed rates will, in fact, be recovered, in whole or in part. However, Strategic's focus on a billing provision, under the circumstances presented here, does not address the underlying RPM capacity commitment. What is critical, in this regard, is not the delivery year billing mechanism but the triggering event giving rise to the obligation to pay an RPM capacity charge, i.e., the commitment undertaken to participate in the auction giving rise to the delivery year obligation.

204. We also reject Strategic's contentions that the withdrawal of Duquesne can be permitted without imposing an RPM obligation on Duquesne because alternative solutions may be available regarding the reapportionment of these commitments. Strategic argues, first, that assuming its interpretation of the RA Agreement prevails, PJM's RPM auctions could be re-run. Alternatively, Strategic suggests that the Duquesne zone RPM costs could be reallocated to PJM's remaining members, or instead, that Duquesne could be required to pay an exit fee as a condition to its withdrawal. We are not persuaded, however, that Strategic's implementation options (the implications of which it fails to even address in its rehearing request) are either workable or fair.

205. Re-running the auction, for example, would defeat the very premise underlying PJM's RPM protocols, i.e., the acquisition of needed capacity far enough into the future to permit the participation of new generation projects and demand response. Any re-running of the auction, under these circumstances, would jeopardize the commitments that generators have already made in reliance on the results of completed auctions.

206. Nor are we convinced that Strategic's proposed options are otherwise authorized under the relevant agreements and tariffs. For example, the RA Agreement does not impose an exit fee obligation on load serving entities seeking to withdraw from PJM. Similarly, PJM's RPM protocols do not address, or require, the re-running of an RPM auction under the circumstances presented here. Finally, a reapportionment of costs to PJM's remaining members (Strategic's final proposed option) implicitly recognizes that these costs that will be reallocated to others have, in fact, been incurred in the first

instance by the Duquesne zone. Once incurred, however, we see no justification, or basis, for reapportioning these costs to others.

207. We also reject Strategic's argument that existing Duquesne zone RPM capacity commitments have been imposed on a discriminatory basis *vis a vis* new load serving entities without RPM commitments that may serve load in the Duquesne zone in the future, i.e., because these new entrants will not be burdened by these pre-existing obligations. However, we find no undue discrimination under this asserted hypothetical. In fact, new entrants serving load in the Duquesne zone will be subject to the rules and requirements of the Midwest ISO RTO tariffs and agreements, just as existing load serving entities are currently subject to PJM's RPM protocols. As such, there will be a rational basis for any differing obligations that may arise over time as between these two distinct tariffs. Load serving entities' existing commitments, within PJM, therefore, have been determined and established under PJM's RPM protocols. In the future, the Midwest ISO's resource adequacy requirements will apply, as triggered by Duquesne's voluntary decision (and contractual entitlement) to join the Midwest ISO. Even assuming that there was discrimination of any kind, under these circumstances, the application of new rules under a new RTO tariff is not unduly discriminatory under the FPA.<sup>110</sup>

208. We also reject Duquesne's argument that the RA Agreement contains specific and unambiguous provisions that govern its withdrawal. First, we reject Duquesne's argument that section 7.2 of the RA Agreement expressly ties Duquesne's RPM obligation to the RPM delivery year alone (and expressly disavows the incurrence of any such obligation prior to that time, i.e., an obligation attributable to PJM's RPM auctions).<sup>111</sup> Duquesne's argument, in effect, is that because section 7.2 expressly addresses a load serving entities' payment requirement "as to loads it serves in each Zone during a Delivery Year," this billing arrangement also serves to both establish the underlying obligation itself, i.e., the obligation to satisfy PJM's RPM requirements, and addresses any other contingency relating to the initial incurrence of this obligation (e.g., by ruling out any binding significance attributable to the auction process). Duquesne's

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<sup>110</sup> Indeed, to apply different rules to some Midwest ISO members but not others (i.e., Duquesne and the load serving entities serving load in its zone), as Strategic suggests should happen, would appear to be discriminatory.

<sup>111</sup> Section 7.2 of the RA Agreement, as noted above, provides that "[e]xcept to the extent [a load serving entity's] capacity obligations are satisfied through [PJM's self-supply alternative], each [such entity] shall pay, as to loads it serves in each Zone during the Delivery Year, a Locational Reliability Charge for each such Zone during such Delivery Year."

argument, however, is itself an interpretation of section 7.2, i.e., it cannot be inferred from the plain meaning of the language on which it relies.

209. We find that section 7.2 of the RA Agreement is a simplified billing provision that recognizes that, under PJM's RPM protocols, load serving entities may be responsible for additional RPM charges due to load growth, as determined in PJM's supplemental RPM auctions. Rather than billing load serving entities several times during the three-year period, as their load changes, section 7.2 creates a single bill payable as of the delivery year.<sup>112</sup> PJM's single payment billing mechanism, then, does not alter, supersede or otherwise negate the obligation incurred in this case by PJM, on behalf of Duquesne zone load, at the time that PJM ran its RPM auctions. In fact, under PJM's RPM protocols, even if Duquesne experiences reductions in load, it would not be entitled to reduction in its capacity commitment, under section 7.2. To the contrary, because these obligations are fixed as of the date of PJM's RPM auctions, PJM cannot reduce its obligation to the generators as a result of Duquesne's withdrawal.

210. Duquesne's argument, in effect, is that other parties within PJM should be held responsible for paying for capacity acquired specifically on Duquesne's behalf. However, we cannot find that section 7.2, when examined within the overall RPM construct, requires such a result, or even permits such a result. Nor do we find that such a result was contemplated by the settlement giving rise to PJM's RPM protocols.

211. While Duquesne also relies on the payment equation set forth at schedule 8.A of the RA Agreement, that formula lends no express support on the issue of when an RPM obligation is incurred and, in fact, the auction establishes such an obligation. While schedule 8.A does not address the withdrawal of a load serving entity, schedule 8.A also does not address the legally binding obligations that result from PJM's RPM auctions.

212. We also reject Duquesne's argument that the Commission's findings, as to ambiguity, ignore the overall structure of the RA Agreement. Again, Duquesne's argument supplies, and relies on, an interpretative gloss that undermines its own assertion that section 7.2 is unambiguous. Specifically, Duquesne argues that section 7.2 should be considered unambiguous by arguing that the RA Agreement provides no proxy charge or exit fee applicable to a withdrawing load serving entity. However, the lack of an exit provision itself suggests that the tariff is ambiguous with respect to withdrawing load serving entities and that this issue was not considered or addressed by the parties to the

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<sup>112</sup> Under a forward contract, parties enter into binding obligations even though payment and delivery may be delayed. In essence, PJM has entered into a similar obligation with generators and load. Specifically, PJM charges load and pays generators as of the RPM delivery year, based on the obligation established in the RPM auction.

RPM settlement. Gaps and/or ambiguities that may appear elsewhere in the RA Agreement, on the issue of member withdrawals, moreover, do not render section 7.2 express in its meaning regarding Duquesne's RPM obligations and the triggering event pursuant to which these obligations arise.

213. We also reject Duquesne's alternative arguments, i.e., the arguments that take, as assumed, the ambiguity of the RA Agreement as it relates to a load serving entity's RPM obligations. First, Duquesne argues that the Commission's finding that the RPM obligation exists at the time that PJM publishes its RPM auction forecasts has no basis in the tariff language at issue. We disagree. The Commission's interpretation is based on the tariff provisions establishing PJM's RPM auction procedures and is supported by the reasonable implications attributable to these procedures, i.e., that these auction procedures necessarily establish an RPM commitment. Duquesne's argument, by contrast, ascribes no meaning, or binding commitment, to these procedures, i.e., Duquesne implicitly assumes that this auction occurs without any binding consequence applicable to those entities on whose behalf capacity is acquired. However, for all the reasons cited by the Commission in the January 17 Order and reiterated above, we find this assertion to be unpersuasive.

214. We also reject DII's request for rehearing, regarding the Commission's asserted error in not considering, in this proceeding, the effect that an RPM portability requirement may have on energy prices. DII's argument is largely procedural, i.e., it suggests, implicitly, that there are issues relating to clearing prices and portability that can only be addressed here, as opposed to the PJM portability proceeding, in Docket No. ER08-1345-000. However, DII fails to demonstrate why this is so and we are not otherwise persuaded that DII's rights, in this regard, will be in any way limited or otherwise prejudiced. For this same reason, we also deny the requests for rehearing and clarification on all remaining RPM capacity portability issues, as raised by Reliant, RESA, FirstEnergy, and Exelon. These issues can and should be raised in Docket No. ER08-1345-000.

215. Finally, we dismiss, as moot, Exelon's request for clarification, regarding the rights of Duquesne zone load serving entities to resell RPM capacity if it is not required to satisfy the Midwest ISO's resource adequacy requirements. As we held above, in section III.I of this order, Duquesne zone entities' rights and obligations with respect to their existing RPM capacity commitments are the subject of PJM's portability filing, in Docket No. ER08-1345-000, and should therefore be addressed in that proceeding.

#### **D. Hold Harmless Obligations**

##### **1. January 17 Order**

216. The January 17 Order found that because RTO withdrawal is permitted under the TO Agreement, parties were on notice that withdrawal was a possibility and that, were

that to occur, new transmission arrangements might be required and costs might be incurred.<sup>113</sup> As such, the Commission found that on the record presented here, it could not find a general obligation to hold parties harmless. The Commission also distinguished its ruling from *Alliance Companies*,<sup>114</sup> noting that, in that order, a specific seams-related cost had been identified in connection with a transmission owner's request to join PJM. However, the Commission also found that intervenors may present additional evidence regarding Duquesne's asserted hold harmless obligations at such time as the effects of its withdrawal come into a clearer focus, i.e., at such time as Duquesne submits its proposed replacement arrangements.

## 2. Requests for Rehearing and Clarification

217. Reliant asserts as error the Commission's holding that parties were on notice that withdrawal was a possibility and that, as such, Duquesne is not obligated, as a general matter, to hold parties harmless for costs attributable to Duquesne's withdrawal from PJM. Reliant argues that this fair notice rationale is inconsistent with the reliance rationale as cited by the Commission in support of its holding that Duquesne is financially responsible for its RPM capacity commitments, i.e., the Commission's finding that Duquesne may not avoid its RPM capacity commitments due to the necessary reliance that market participants have placed on Duquesne's participation in the RPM process.<sup>115</sup>

218. Reliant, DII and Strategic also assert that the Commission's hold harmless holding does not address, or should not apply, to any capacity costs incurred by market participants as a result of Duquesne's withdrawal from PJM.

219. Intervenors also request clarification, or seek rehearing, regarding the Commission's hold harmless holding, as it relates to additional, specific cost categories that allegedly should be made subject to a hold harmless obligation. Specifically:

- Reliant seeks clarification that the Commission's hold harmless holding does not address, or should not apply, to costs that may be incurred by market participants for obtaining firm transmission;

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<sup>113</sup> January 17 Order, 122 FERC ¶ 61,039 at P 134.

<sup>114</sup> 102 FERC ¶ 61,214 (2003).

<sup>115</sup> Reliant asserts that in incurring its RPM obligations, it too relied on the inclusion of the Duquesne zone load in PJM's RPM auction parameters. Reliant asserts that, as such, it should be held harmless from all resulting costs or penalties.

- Exelon seeks clarification that the Commission's hold harmless holding does not address, or should not apply, to costs that may be attributable to the creation of a new seam across the reconfigured PJM/Midwest ISO interface;
- Reliant seeks clarification that the Commission's hold harmless holding does not address, or should not apply, to costs that may arise in the event Duquesne's withdrawal request is denied or withdrawn. Similarly, RESA seeks clarification that the Commission's holding does not address, or should not apply, to load serving entities' obligations applicable to any PJM penalty that may be imposed should Duquesne not withdraw from PJM prior to June 1, 2011; and
- Strategic asserts that the Commission's hold harmless holding does not address, or should not apply, to costs incurred by retail load serving entities.

### **3. Commission Determination**

220. We deny rehearing of the January 17 Order, regarding Duquesne's asserted hold harmless obligations under the TO Agreement. First, we reject Reliant's argument that the Commission's hold harmless determinations, under the TO Agreement, are inconsistent or otherwise invalid, given the Commission's interpretation of the RA Agreement, as it relates to Duquesne's RPM obligations (a holding that Reliant characterizes as a "reliance" rationale). The Commission's findings regarding Duquesne's RPM obligations were based not on reliance, *per se*, as Reliant asserts, but on a contractual analysis, i.e., on our interpretation of the RA Agreement, as it applies to Duquesne's RPM obligation. The Commission found that the RA Agreement imposed an obligation on Duquesne.

221. By contrast, the Commission made a separate contractual analysis under the TO Agreement, as it relates to Duquesne's alleged hold harmless obligations, and found that Duquesne had no general obligation to hold market participants harmless regarding the costs that might be incurred due to Duquesne's withdrawal. Again, the Commission's findings regarding Duquesne's obligations, were based on a contractual analysis under a separate, fully distinguishable agreement.

222. In any event, Reliant's asserted reliance on PJM's RPM protocols and their asserted, implied guarantee that Reliant would be held harmless from all resulting costs or penalties attributable to Duquesne's RTO withdrawal request, considered alone, cannot be the basis for imposing a hold harmless obligation on Duquesne. This obligation, rather, as the Commission correctly held in the January 17 Order, must first and foremost be considered in relation to the relevant contractual rights at issue. Under the TO Agreement, in this regard, there is no exit fee requirement nor is there a hold harmless provision. Considered in this context, we find that any weight that Reliant may have assigned to an asserted hold harmless guarantee has no reasonable basis in the TO

Agreement itself and therefore, for all the reasons explained by the Commission in the January 17 Order, cannot be a basis for obligating Duquesne.

223. We dismiss, as moot, all remaining requests for clarification and rehearing regarding specific cost categories for which Duquesne will, or will not, be required to hold market participants harmless. These cost categories are addressed above, in section III.D of this order.

**E. PJM's January and May 2008 RPM Auctions**

**1. January 17 Order**

224. The January 17 Order rejected Duquesne's argument that it should be permitted to withdraw from PJM's January 2008 RPM auction. The Commission noted that PJM had already gathered the information to establish the parameters for this auction, starting September 3, 2007, and had published these parameters on October 19, 2007. The Commission further found that once these auction parameters are posted, parties rely on this information.<sup>116</sup> The Commission also found, however, that PJM had not yet published its auction parameters for the May 2008 RPM auction. Accordingly, the Commission required that Duquesne's load forecasts be excluded from the May 2008 auction, provided that Duquesne file with PJM and the Commission a written notice that it commits to withdrawing from PJM before the delivery year for the May 2008 auction.<sup>117</sup>

**2. Requests for Rehearing and Clarification**

225. Duquesne asserts as error the Commission's finding that Duquesne's load forecasts could not have been removed from PJM's January 2008 RPM auction. Duquesne argues that no party materially changed its behavior in reliance on Duquesne's load being included in the parameters for this auction. Duquesne asserts that PJM's forecast parameters are released before load serving entities must elect the Fixed Resource Requirement alternative, an option that allows load serving entities to satisfy their RPM capacity obligations through bilateral contracts, and which would cause the load parameter for the upcoming auction to decrease. Duquesne argues that, as such, the load forecast is not a final figure for load that will be included in the auction.

226. Duquesne further asserts that under the RA Agreement, at section 5.1.2, a withdrawing party's obligations are terminated at the end of the month during which the

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<sup>116</sup> January 17 Order, 122 FERC ¶ 61,039 at P 92.

<sup>117</sup> *Id.* P 6, 142.

notice of that entity's withdrawal has been received. Duquesne submits that because it provided this notice in September 2007 and formally filed for withdrawal at the beginning of November 2007, reasonable market participants would have judged that Duquesne may very well not be a participant in the January 2008 RPM auction. Duquesne adds that at a minimum, they would have regarded the question as sufficiently doubtful such that they would not have placed any significant reliance on Duquesne's participation in the auction. Duquesne concludes that without a reasonable basis for its finding that parties actually, detrimentally relied on the October 26, 2007 publication of RPM parameters by PJM, the Commission's decision to include Duquesne in the January 2008 RPM auction cannot be upheld as reasoned decision-making.

227. Intervenors also assert that the Commission erred by requiring PJM to exclude Duquesne's load from the May 2008 RPM auction and all subsequent auctions. EPSA asserts that the Commission erred in granting this allowance without first finding that Duquesne's withdrawal from PJM is permitted under the TO Agreement and is otherwise just and reasonable.<sup>118</sup> Reliant asserts that the Commission erred in granting this allowance without first requiring Duquesne to submit its proposed replacement arrangements to the Commission demonstrating, among other things, that Reliant and other captive Duquesne transmission customers will continue to have firm transmission service from the Duquesne zone to PJM. FirstEnergy asserts that the Commission erred in granting this allowance without also obligating Duquesne to satisfy all other requirements for withdrawal from all relevant PJM tariffs and agreements by the May 2008 auction date.

228. Finally, Exelon requests clarification that all generation located in the Duquesne zone during the 2011-12 delivery year is required to satisfy all of the requirements that any other generator located in the Midwest ISO is required to satisfy as an external resource participating in the May 2008 auction.

### **3. Commission Determination**

229. We deny rehearing of the January 17 Order, regarding PJM's operation of the January and May 2008 RPM auctions. First, we deny Duquesne's request for rehearing regarding the Commission's rejection of Duquesne's request that its load forecasts be withdrawn from PJM's January 2008 RPM auction. Duquesne argues that the Commission erred in assuming that the Duquesne zone loads could not be removed from the auction, given the asserted reliance that market participants had placed in these load forecasts (as published on October 19, 2007). Duquesne argues, in response, that market

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<sup>118</sup> EPSA adds that Duquesne will not be exempt from its capacity payment obligations for the 2011-12 delivery year (the delivery year applicable to the May 2008 RPM auction), unless and until the Commission makes these determinations.

participants placed no such reliance on these forecasts because the load forecasts are released before entities interested in relying on PJM's self supply option, i.e., PJM's Fixed Resource Requirement alternative, are required to make their elections.

230. We disagree that market participants placed no reliance on PJM's published RPM forecasts, as applicable to the January 2008 auction. While entities may choose to self supply, this election has, in practice, been limited in its scope. In any event, it is an election that must be made one month prior to the start of the RPM auction in order to free that entity from its RPM obligations.<sup>119</sup> At the time that the *January 17 Order* was issued, therefore, these auction parameters had been set. As such, all loads included in the forecast, as of that time, were subject to the auction process.

231. The Commission's analysis, moreover, was based on a threshold finding that the RA Agreement is ambiguous as it relates to member withdrawals and the notice requirements applicable to these requests. The Commission found that given this ambiguity, and given the conditional nature of Duquesne's RA Agreement withdrawal request, PJM did not act unreasonably in not excluding Duquesne from the January 2008 auction parameters.

232. We also reject Duquesne's argument that, given Duquesne's notice of withdrawal provided September 12, 2007, market participants could not have reasonably expected that Duquesne's load forecasts would be included in the January 2008 RPM auction. However, Duquesne's intent to withdraw has, at all times, been conditional. Moreover, Duquesne's requested date of withdrawal has been subject to change. In Duquesne's September 2007 notice, for example, Duquesne stated that it intended to withdraw, effective January 1, 2008. In Duquesne's subsequent filing, in Docket No. ER08-194-000, this withdrawal date was moved to May 31, 2008. In Duquesne's most recent filing, in Docket No. ER08-1235-000, this withdrawal date has been changed yet again (to October 1, 2008). Under these circumstances, we disagree that either market participants, or PJM, had a reasonable basis to conclude that Duquesne's loads would not be included in the January 2008 RPM auction.

233. We also reject intervenors' requests for rehearing regarding the Commission's asserted error in finding that the Duquesne zone load forecasts could be withdrawn from PJM's May 2008 RPM auction, subject only to Duquesne's notice to the Commission regarding its commitment to withdraw from PJM prior to the applicable RPM delivery year. EPSA asserts that this allowance was unauthorized and otherwise unwarranted absent a finding under the TO Agreement, that Duquesne's contractual withdrawal obligations had been fully satisfied and that Duquesne's withdrawal from PJM is

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<sup>119</sup> See RA Agreement at schedules 7 and 8.1.

otherwise just and reasonable. Reliant and FirstEnergy make similar arguments relating to additional requirements associated with Duquesne's withdrawal from PJM and integration into the Midwest ISO.

234. Intervenors, however, point to no language in the TO Agreement that would impose a need for these final determinations in advance of the 2011-12 RPM delivery year, i.e., in advance of the market events applicable to the May 2008 RPM auction. Nor are we persuaded that the need for these final determinations barred our ruling regarding the May 2008 RPM auction, particularly where, as here, preliminary findings were made in the January 17 Order regarding Duquesne's contractual entitlement to withdraw, and where, as here, Duquesne fulfilled its requirement committing to withdraw as of the applicable delivery year.<sup>120</sup> Moreover, PJM's auction forecasts for the May 2008 RPM auction had not been published as of the date of Duquesne's notice. As such, market participants had not relied on the inclusion of the Duquesne zone load in PJM's auction. Under these circumstances, it was appropriate for the Commission to interpret Duquesne's withdrawal obligations in a manner that allowed Duquesne to avoid the incurrence of additional RPM capacity commitments.

235. Finally, we dismiss, as moot, Exelon's request for clarification that all generation located in the Duquesne zone, as a condition to its inclusion in PJM's future RPM auctions, will be required to satisfy PJM's RPM requirements as applicable to the participation of external resources. This issue was addressed by the Commission in an order issued April 18, 2008.<sup>121</sup>

The Commission orders:

(A) Applicants' integration plan, as submitted in Docket No. ER08-1235-000, is hereby accepted, subject to condition and revision, as discussed in the body of this order.

(B) Duquesne is hereby required to provide 60 days notice of its firm, unconditional withdrawal date, as discussed in the body of this order.

(C) PJM and the Midwest ISO are hereby directed to submit, for Commission review, a report addressing market participants' mid-cycle ARR/FTR processes, as discussed in the body of this order.

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<sup>120</sup> Duquesne provided its written notice, as required by the January 17 Order, on February 1, 2008.

<sup>121</sup> *Duquesne Light Company*, 123 FERC ¶ 61,060 (2008), *reh'g pending*.

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(D) Duquesne's compliance filing, in Docket No. ER08-194-002, is hereby accepted, subject to conditions, as discussed in the body of this order.

(E) Rehearing of the January 17 Order is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix****List of Intervenors  
In Docket No. ER08-1235-000**

AES Beaver Valley, LLC (Beaver Valley)\*  
Allegheny Energy Companies (Allegheny)  
Ameren Services Company (Ameren)\*  
Baltimore Gas and Electric Company  
Calpine Corporation (Calpine)  
Coalition of Midwest Transmission Customers (CMTC)  
Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., and  
Constellation Power Source Generation, Inc. (Constellation)\*  
Consumers Energy Company (Consumers)  
DC Energy Midwest, LLC (DC Energy)  
Detroit Edison Company (Detroit)  
Dominion Resources Services, Inc. (Dominion)\*  
Duquesne Industrial Intervenors (DII)\*  
Electric Power Supply Association (EPSA)\*  
Exelon Corporation (Exelon)\*  
FirstEnergy Service Company (FirstEnergy)\*  
Hess Corporation  
Midwest ISO Transmission Owners  
Midwest Stand-Alone Transmission Companies (MSAT)  
Mirant Parties  
Pepco Holdings, Inc. (Pepco)\*  
PJM Interconnection, L.L.C. (PJM)\*  
PSEG Companies (PSEG)\*  
Reliant Energy, Inc. (Reliant)\*  
Retail Energy Supply Association (RESA)\*  
Strategic Energy, LLC (Strategic)\*

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\* Intervenors submitting protests or comments

Document Content(s)

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