

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.

)

Docket No. EL15-29-000

**MOTION FOR LEAVE TO RESPOND AND ANSWER
OF OLD DOMINION ELECTRIC COOPERATIVE,
SOUTHERN MARYLAND ELECTRIC COOPERATIVE, INC.,
AND AMERICAN MUNICIPAL POWER, INC.**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“FERC” or the “Commission”) Rules of Practice and Procedure,¹ Old Dominion Electric Cooperative, Southern Maryland Electric Cooperative, Inc., and American Municipal Power, Inc. (hereafter “Joint Protestors”) hereby request leave to respond and submit this Answer to certain arguments made in the Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C. (“PJM”) filed on February 13, 2015 (“PJM Answer”).²

I. OVERVIEW

On December 12, 2014, pursuant to Sections 205 and 206 of the Federal Power Act (“FPA”),³ PJM filed proposed revisions to its Amended and Restated Operating Agreement (“Operating Agreement”) and related revisions to the PJM Open Access Transmission Tariff (“OATT” or “Tariff”) to address what PJM refers to as “deficiencies” in those documents on matters related to resource performance and excuses for resource performance in PJM markets (“Section 206 Filing”).⁴ The PJM Section 206 Filing was made in conjunction with a companion

¹ 18 C.F.R. § § 385.212 and 385.213 (2014).

² *PJM Interconnection, L.L.C.*, Docket No. EL15-29-000, “Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C.” (Feb. 13, 2015).

³ 16 U.S.C. §§ 824d and 824e, respectively.

⁴ Although PJM’s December 12, 2014 filing in this docket was submitted pursuant to both Sections 205 and 206 of the FPA, PJM must meet an FPA section 206 burden to implement the proposed changes to the Operating Agreement, under which, PJM acknowledges, the energy market rules it seeks to change “principally arise.” *See* PJM Answer at 2-3.

filing in Docket No. ER15-623-000, in which PJM seeks approval for a new Capacity Performance (“CP”) Resource, and related revisions.⁵ PJM requests an effective date of April 1, 2015 for the Section 206 Filing.

In their January 20, 2015 Protest, Joint Protestors established that PJM’s Section 206 Filing must be rejected for failing to meet the dual burden under FPA Section 206 to demonstrate: (1) that PJM’s existing energy market rules are unjust and unreasonable; and (2) that PJM’s proposed changes are just and reasonable and not unduly discriminatory.⁶

Among the issues raised in the Joint Protest were PJM’s proposed changes to Parameter Limited Schedules (“PLS”).⁷ In its Answer, PJM clarified its proposals with respect to the determination of PLS values, but as discussed below, PJM has not remedied its failure to carry its burden of proof under FPA Sections 205 and 206, as applicable, and the proposed changes to its energy market rules remain unjust and unreasonable, and should be rejected. Alternatively, if the Commission is inclined to accept any of PJM’s proposals, such acceptance should be conditioned upon clarifying that: (1) the historical operating data utilized in making a determination of the unit-specific PLS for a resource must take into account natural gas transmission system pipeline constraints; and (2) Balancing Operating Reserve (“BOR”) make whole payments are still available to such units. Further, acceptance of the Operating Agreement and Tariff changes proposed by PJM in this docket should also be conditioned on the outcome of

⁵ *PJM Interconnection, L.L.C.*, Docket No. ER15-623-000, “Reforms to the Reliability Pricing Market (‘RPM’) and Related Rules in the PJM Open Access Transmission Tariff (‘Tariff’) and Reliability Assurance Agreement Among Load Serving Entities (‘RAA’)” (Dec. 12, 2014) (“CP Filing”).

⁶ *See PJM Interconnection, L.L.C.*, Docket No. EL15-29-000, “Protest of Old Dominion Electric Cooperative, Southern Maryland Electric Cooperative, Inc. and American Municipal Power, Inc.” at 5-7 (Jan. 20, 2015) (“Joint Protest”). Joint Protestors also argued that PJM had failed to meet its FPA Section 205 burden, as applicable. *See id.*

⁷ *See* Joint Protest at 8-15.

the proceeding in Docket No. ER15-623 since, as PJM acknowledges in its filing, the instant proceeding is premised in large part on approval of the CP proposal.

Finally, PJM's 14 hour/one-hour start-up and notification proposal should be rejected and the Commission should direct PJM to work with stakeholders to develop a viable and workable solution to the matters raised in PJM's Section 206 Filing. At a minimum, the proposed 14-hour/one-hour start-up and notification limits should be adjusted to permit generating resources to utilize their contracted gas transportation rights.

II. MOTION FOR LEAVE TO ANSWER

Commission Rule 213(a)(2) prohibits the filing of an answer to an answer "unless otherwise ordered by the decisional authority." The Commission has found good cause to accept an answer where the pleading will assist in clarifying and explaining the issues in the case and help to frame the issues in dispute, or where the answer provides information that will assist the Commission in making its decision.⁸ Joint Protestors submit that good cause exists to accept this Answer as it provides information that will assist the Commission in considering new arguments raised by PJM concerning its PLS proposals. If the Commission grants leave to accept the PJM Answer, then it should also grant leave to accept this Answer to same.

III. ANSWER

A. PJM's Section 206 Filing Should be Rejected.

In their Joint Protest, Joint Protestors established that PJM's Section 206 Filing must be rejected for failing to meet the dual burden under FPA 206 to demonstrate: (1) that its existing energy markets rules are unjust and unreasonable; and (2) that PJM's proposed changes to the

⁸ See, e.g., *Midwest Independent System Operator Corp.*, 121 FERC ¶ 61,132 at P 12 (2007); *Westar Energy, Inc.*, 121 FERC ¶ 61,108 at P 18 (2007) (accepting answers to answers).

PJM Operating Agreement and Tariff are just and reasonable and not unduly discriminatory.⁹ Nothing in the PJM Answer cures this deficiency.

Although the Answer filed by PJM and the comments submitted by the PJM Independent Market Monitor (“IMM”)¹⁰ introduce new concepts and provide new details in an effort to support the proposed energy market rule revisions, neither of these filings (nor any other filing in this docket) offers new and relevant information that would enable the Commission to determine that the current PJM rules are no longer just and reasonable.¹¹

Additionally, the pleadings of PJM and the IMM reveal new, previously-unconsidered details underlying the proposed new rules, as well as a significant difference of opinion between the PJM and the IMM on certain important aspects of implementing the new rules. One such example is found in PJM’s proposal to develop a unit-specific PLS with input from Market Sellers. In its Answer, PJM says that it intends to establish unit-specific PLS values with input from the owner of the generation resource. PJM states that it “...will develop the unit-specific PLS with input from the Market Sellers who offer the resources into PJM’s markets and from the IMM.”¹² PJM states that it will continue to employ the same process it currently utilizes in the PLS exception process and “...will in addition utilize historical information it already has in its

⁹ Joint Protest at 5-7. Joint Protestors also argued that PJM had failed to meet its FPA Section 205 burden for the proposed OATT changes, to the extent applicable. *See id.*

¹⁰ *See PJM Interconnection, L.L.C.*, Docket No. EL15-29-000, “Comments of the Independent Market Monitor for PJM” (Jan. 20, 2015) (“IMM Comments”).

¹¹ Recent information presented by PJM of operational performance during the recent January and February cold spells reveals record low temperatures, record high demands, forced outage rates roughly half those of January 2014 and local marginal prices nowhere near the original or interim revised offer cap. Operational performance has improved regardless of PJM’s proposed modifications to its administrative resource adequacy construct. This improved performance during peak periods absent higher energy prices begs the question as to whether PJM would be better served assessing its energy market price formation than modifying its administrative capacity construct. *See* Winter Operations January 2015, slide 4 (available at <http://www.pjm.com/~media/committees-groups/committees/toa-ac/20150203/20150203-winter-update.ashx>) and February Cold Weather Review, February 2015 slide 4 (available at <http://www.pjm.com/~media/committees-groups/subcommittees/sos/20150225/20150225-item-02a-february-2015-cold-weather-update.ashx>).

¹² PJM Answer at 12.

systems and obtain additional historical information from Market Sellers as necessary, for Existing Generation Capacity Resources.”¹³

However, the IMM, in its comments submitted in this docket, states that “Under the Capacity Performance approach, the physical operation of the unit based on historic operation and historic investment or disinvestment is no longer the metric for determining whether a unit performs or should be paid uplift. Under Capacity Performance, the role of parameters is not [sic] measure what a unit can do, but the standard of performance that a unit must meet to deliver capacity.”¹⁴ PJM, in response to the IMM comments, states that it disagrees with the IMM that PJM should only use original equipment manufacturer operating parameter specifications for resources rather than historical operating data in making its determination of the unit-specific PLS for a resource.¹⁵

This difference in approach by PJM and its IMM raises concerns for Joint Protestors, as it reveals significant implementation details not previously considered by PJM, the IMM or the PJM stakeholders on the important issue of determining PLS values. The conflicting positions of PJM and the IMM serve to highlight the Joint Protestors’ position that the energy market rule changes proposed under this filing are premature at best and have not met the two-part burden under FPA Section 206, regardless of the Commission’s decision in the companion Docket No. ER15-623.¹⁶

¹³ *Id.* at 14.

¹⁴ IMM Comments at 29.

¹⁵ PJM Answer at 14.

¹⁶ *See* Joint Protest at 2-7.

B. If the Commission Does Not Reject PJM’s Filing, the Commission Should Clarify that Past Natural Gas Transmission System Pipeline Constraints Must Be Included in the PLS History and that Balancing Operating Reserve Make Whole Payments are Still Available

Even with PJM’s clarification that historical PLS values will be used, irreparable harm to generation resources could still occur if PJM’s proposal is allowed to go into effect and PJM determines the initial PLS values for Generation Capacity Resources prior to the commencement of the upcoming May 2015 Base Residual Auction. The history used by PJM to establish PLS must include past gas pipeline constraints where a generating unit had no alternative but to operate ratably, and the PJM rules must allow such units to receive make-whole payments via Balancing Operating Reserve credits for such periods of ratable operation beyond the PJM dispatch request.

1. PJM’s Answer Recognizes that Resource Owners Cannot Always Obtain Relief From Physical Gas Pipeline Constraints, Yet Ignores the Draconian Impact Such Physical Constraints Can Cause.

Joint Protestors, in their initial Protest, noted that PJM’s proposed energy market changes would impose costs on generators that are outside their control. PJM recognizes this concern when it states in its Answer that “PJM is very much aware that firm natural gas transportation does not ensure reliability and that resource owners cannot always obtain relief from physical gas pipeline restraints.”¹⁷ However, PJM’s response to this concern is merely to state that a resource owner is in the best position to “...manage these risks and make necessary investments to ensure that PJM has the same flexibility to call on their resources on both critical and non-critical days (such as through the installation of dual fuel capability in order to address non-deliveries of gas).”¹⁸

¹⁷ PJM Answer at 15.

¹⁸ *Id.*

PJM also acknowledged this issue in responding to Commissioner Moeller's inquiry into natural gas trading in Docket No. AD14-19-000. In that Docket, PJM expressed a strong desire for the Commission to tackle and address pipeline scheduling issues plaguing power generators.¹⁹ For example PJM stated:

One such traditional service provision that should be examined by the Commission is the common utilization of ratable take provisions in pipeline tariffs which impede the ability of a unit owner to obtain gas supply in more flexible, non-ratable quantities to meet the variation in electric generation gas loads during relevant operating periods. These provisions should be further examined by the Commission, on an individual pipeline basis, to determine whether they still make sense given today's natural gas market needs or whether less onerous provisions can be adopted to address legitimate pipeline concerns associated with maintaining pressure and ensuring pipeline system integrity under stress conditions.²⁰

However, in the instant proceeding PJM merely states that "PJM does not attempt to demonstrate that the run-time, start-up time and notification time limitations are consistent with the operational characteristics of resources that are participating in RPM."²¹ For PJM, on the one hand to recognize a substantial gas-power mismatch in its Docket No. AD14-19 comments, and on the other hand, in this proceeding, to effectively argue that such issues are irrelevant is an inconsistency that could have draconian impacts on a unit where no amount of money can remedy physical gas pipeline constraints. There are situations where dual fuel capability cannot be installed on existing resources and such resources must remain as they are: single fuel, gas-fired.

There is no dispute that physical natural gas pipeline constraints are a significant concern to electric reliability; PJM's ignoring this reality will diminish reliability and cause unjust and unreasonable outcomes. And, while Joint Protestors understand PJM's goal is to provide an

¹⁹ See Docket No. AD14-19-000, "Comments of PJM Interconnection, L.L.C." (Oct. 1, 2014).

²⁰ *Id.* at 3.

²¹ PJM Answer at 12.

incentive to secure a firm fuel supply via its proposed changes to its resource adequacy construct, Joint Protestors submit that there are some circumstances where no amount of reasonable investment will be able to alleviate fuel supply constraints due to physical gas pipeline limitations. As such, if the Commission accepts PJM's Section 206 Filing, it should clarify that historical information should be permitted in the review and determination of a unit-specific PLS and that such history must include past gas pipeline constraints where a generating unit had no alternative but to operate ratably to reflect a pipeline's enforcement of its tariff. Additionally, the PJM rules must allow such units to receive make-whole payments via Balancing Operating Reserve credits for such periods of ratable operation beyond the PJM dispatch request.

2. PJM's Proposal to Deny Make Whole Payments to Units Subjected to the Physical Limitations of a Natural Gas Pipeline Is Patently Unjust and Unreasonable

In its Section 206 Filing, PJM proposes a unit specific PLS so PJM knows what to expect of each unit: "...Capacity Resources will be required to meet minimum flexibility requirements. The minimum flexibility requirements are proposed to be specific to each resource, and to reflect the design characteristics and flexibility the resource is capable of achieving. The expectation is for the resource to be available when called upon, **consistent with its unit-specific parameter limited schedule values**, irrespective of previous dispatch history."²²

As discussed herein, Joint Protestors assert that, in fact, a unit's dispatch history, as reflected in pipeline operating limitations, is a relevant factor to consider when PJM determines, with the IMM's inputs, a unit-specific PLS. However, PJM also proposes that when a resource exceeds its unit-specific PLS, for example when a resource cannot adhere to a "design" minimum run time due to gas pipeline restrictions, PJM will no longer provide the resource

²² PJM Section 206 Filing, Transmittal Letter at 9 (emphasis added).

credit for BOR make whole payments for the hours the resource was forced, by the pipeline, to buy gas beyond its PJM dispatch time. This aspect of the PJM filing is not just and reasonable since it would invalidate a resource's ability to recover costs that it may incur to follow a pipeline's enforcement of its FERC-approved tariff.

Thus, Joint Protestors request clarification that as long as the unit could adhere to its unit specific PLS (which, Joint Protestors request herein, would be determined using, if applicable, a resource's history of gas pipeline constraints), that such resource should not be denied eligibility for make whole payments.

C. PJM's 1-Hour Notification Proposal is Unjust and Unreasonable as Applied to Gas-fired Generating Capacity Resources.

In its Answer, PJM argues that a resource that cannot start within the shortened time frames proposed by PJM (a start-up and notification time of fourteen hours, and notification time of one hour, for Capacity Performance resources when a Hot Weather Alert or Cold Weather Alert has been issued) should be considered a Base Load Generation Resource.²³

PJM properly defines a Base Load Generation Resource as "a Generation Capacity Resource that operates at least 90 percent of the hours that it is available to operate, as determined by the Office of the Interconnection in accordance with the PJM Manuals."²⁴ However, PJM adds to this definition of a Base Load Generation Resource that "[s]uch resources are not, and should not be, scheduled by PJM. Rather, they run whenever they are available to run so their startup and notification time should be irrelevant. PJM does not need to commit

²³ PJM Answer at 11.

²⁴ *Id.* (quoting PJM Tariff, Attachment DD, Section 2.3).

these resources in advance, unlike non-Base Load Generation Resources which it does need to commit.”²⁵

PJM’s suggestion that units that are unable to meet the shortened start-up and notification times should be deemed to be “Base Load Generation Resources” fails to address the operational reality that gas-fired generating resources, even those with firm transportation contracts, cannot make nominations on interstate gas pipelines with a one hour notification limit. Thus, PJM’s proposal remains unjust and unreasonable as applied to gas-fired resources.

The operational reality is that gas-fired generation resources located on interstate, FERC-jurisdictional pipelines typically must make pipeline nominations in order to schedule gas so that the units can operate. No gas pipeline nomination can be made with a one-hour notification. PJM’s response to this operational reality, which is merely to state that the gas unit should “...run whenever they are available to run...” is wholly insufficient to correct the unjust and unreasonable nature of its proposal.

Moreover, PJM’s response that such resources “...should not be scheduled by PJM...” suggests that PJM believes that gas-fired generation resources need to be on-line all the time to avoid the 14-hour/one-hour start-up and notification time limits. Joint Protestors note that in reality, many gas-fired generators are combustion turbines that typically serve as peaking resources and are not Base Load Generation Resources, just as PJM earlier suggests.

PJM’s proposal to add notification time as a PLS parameter and reduce this notification time parameter to one-hour during hot and cold weather alerts is simply not workable or wise as a matter of policy. If the Commission adopts PJM’s proposal on this item it would invalidate the

²⁵ PJM Answer at 11.

efficacy of the very asset that PJM, in its Docket No. ER15-623 Capacity Performance filing encourages gas-fired generators to acquire; namely, to subscribe to firm transportation contracts.

Accordingly, PJM's 14 hour/one-hour start-up and notification proposal should be rejected and the Commission should direct PJM to work with stakeholders to develop a viable and workable solution to the matters raised in PJM's filing. To the extent the Commission accepts PJM's Section 206 Filing, Joint Protestors request that the proposed 14-hour/one-hour start-up and notification limits be adjusted to permit generating resources to utilize their contracted gas transportation rights, *i.e.*, PJM's notification parameter must be adjusted to reflect the operational realities that gas resources interconnected to interstate pipelines require.

IV. CONCLUSION

For the foregoing reasons, Joint Protestors respectfully request that the Commission: (1) reject PJM's Section 206 Filing for the reasons discussed above and in the Joint Protest; or, in the alternative, (2) clarify that PJM's proposal will be implemented as discussed above. To that end, Joint Protestors submit that to the extent the Commission accepts PJM's proposal, it must require clarification that: (i) if a generating resource can provide PJM and the IMM a history of natural gas transmission system pipeline constraints (for example, pipeline critical notice issuances for storage and transportation, a history of specific guidance that non-ratable gas nominations will not be permitted, and/or similar data), such data will be used by PJM and the IMM in the determination of unit-specific PLS values; and, (ii) such a unit-specific PLS will not make the generator ineligible for Balancing Operating Reserve credits when it must operate to respect a pipeline constraint.

Further, PJM's 14 hour/one-hour start-up and notification proposal should be rejected and the Commission should direct PJM to work with stakeholders to develop a viable and workable solution to the matters raised in PJM's Section 206 Filing. At a minimum, the proposed 14-

hour/one-hour start-up and notification limits should be adjusted to permit generating resources to utilize their contracted gas transportation rights, *i.e.*, PJM's notification parameter must be adjusted to reflect the operational realities that gas resources interconnected to interstate pipelines require.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon each party on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington, D.C., this 2nd day of March 2015.

/s/ John E. McCaffrey

John E. McCaffrey