

125 FERC ¶ 61,135
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.

Pepco Energy Services, Inc.

Docket No. EL08-58-001

v.

PJM Interconnection, L.L.C.

ORDER ON CLARIFICATION

(Issued October 31, 2008)

1. Pepco Energy Services, Inc. (PES) requests clarification, or in the alternative rehearing, of the Commission's July 2, 2008 order regarding PES's complaint challenging the provisions of the PJM Interconnection, L.L.C. (PJM) open access transmission tariff (OATT) related to the market rules governing the peak-hour-period availability charge for infrequently-run generating resources.¹ The July 2 Order determined to hold a decision on the complaint in abeyance pending the conclusion of PJM's ongoing stakeholder process examining this issue. We provide clarification, as discussed in the body of this order.

I. Background

2. PJM's capacity market rules include a section addressing peak-hour-period availability metrics. The peak-hour-period performance metric provides a means to assess whether generation resources committed as capacity actually are available at expected levels during critical peak hours of the delivery year,² and by crediting or charging resources to the extent that they either exceed or do not meet the expected

¹ *Pepco Energy Services, Inc. v. PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,008 (2008) (July 2 Order).

² Peak-hour-periods are defined as the hours between 1500 and 1900 on non-holiday weekdays in the summer (June through August), and the hours between 0700 and 0900, and between 1800 and 2000 on non-holiday weekdays in the winter (December through January). PJM OATT, Attachment DD, section 10(b). For a delivery year, the peak-hour-period total hours equals approximately 500 hours.

availability. The peak-hour-period availability charges and credits are calculated by comparing a unit's actual availability during peak-hour-periods with the expected availability. For any unit that has at least 50 service hours during peak-hour-period, a unit's actual peak-hour-period availability is determined by assessing its availability during the 500 peak hours of the delivery year. Units performing below their expected availability pay a charge per MW, while units with peak-hour-period performance better than their expected availability receive a credit, funded by charges paid by other capacity suppliers. For generating resources with fewer than 50 service hours during peak-hour-period (infrequently-run units), peak-hour-period performance is assessed using the resource's annual performance which includes all 8760 hours in the delivery year. Both charges and credits are assessed after the end of a delivery year (the annual delivery year is June 1 through May 31) and are calculated and billed by PJM after the close of the delivery year.

3. On April 22, 2008, pursuant to sections 206 and 306 of the Federal Power Act,³ PES requested that the Commission find provisions of the PJM OATT unjust, unreasonable and unduly discriminatory as they relate to rules governing the peak-hour-period availability charges and credits for generation resources with fewer than 50 service hours during peak-hour-periods in a delivery year. PES argued that the Commission should waive the market rules imposing peak-hour-period availability charges for infrequently-run generation resources for the 2007-2008 delivery year ending May 31, 2008, provide an interim mechanism for the upcoming 2008-2009 delivery year, and provide a long-term solution for the 2009-2010 and beyond delivery years.

4. In the July 2 Order, the Commission took no position on the merits of PES's complaint, and recognized that the PJM markets implementation committee and the Reliability Pricing Model working group had established a process to consider possible changes to the market rules for infrequently-run generation resources. Further, the Commission noted that this stakeholder process is supported by PES and virtually all the commenters to this proceeding. To allow this stakeholder process to continue its discussions, the Commission held PES's Complaint in abeyance pending the outcome of the stakeholder discussions. The Commission directed PJM to file a report on the disposition of the stakeholder discussions by December 31, 2008.⁴

II. Request for Clarification and Answer

5. PES requests that the Commission "clarify that the July 2 Order does not take any position with respect to [the Peak-Hour Period Availability Charges] for infrequently-run generation resources for the 2007-2008 Delivery Year or the 2008-2009 Delivery Year,

³ 16 U.S.C. §§ 824(e) and 825e (2006).

⁴ July 2, 2008 Order at P 24.

and that these issues will be addressed in PJM's report on the stakeholder proceedings and in the subsequent Commission order in this proceeding regarding the merits of, and the relief requested in, PES's Complaint." In the alternative, PES requests rehearing of the July 2 Order.

6. PJM answers that the Commission should deny PES's requested clarification as to the 2007-2008 delivery year.⁵ PJM argues that the Commission deferred to the stakeholder process, and that this process has only considered possible future changes to the PJM tariff.⁶ PJM states that by deferring to a stakeholder process that was considering only future changes to the PJM Tariff, the Commission "implicitly rejected PES's request" for the 2007-2008 delivery year.⁷

III. Commission Determination

A. Procedural Matters

7. We will accept PJM's answer to PES's request for clarification. In addition, the Public Service Commission of Maryland (Maryland PSC) has filed an-out-of-time motion to intervene. Given the early stage of the proceeding, its interests, and the absence of undue prejudice or delay, we will grant the late-filed motion to intervene of the Maryland PSC.

B. Clarification of the July 2, 2008 Order

8. As the Commission noted in the July 2 Order, the PJM markets implementation committee and the RPM working group have a process in place to consider possible changes to the market rules for infrequently-run generating resources. In the July 2 Order, the Commission held PES's complaint in abeyance to permit this stakeholder process to proceed. We clarify that in deferring our ruling on the complaint, we have not taken any position with respect to the peak-hour-period availability charges for infrequently-run generation resources for the 2007-2008 and 2008-2009 delivery years and will rule on PES's complaint after PJM has filed its report on December 31, 2008 with the results of the stakeholder process.

⁵ Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 213(a)(3) (2008).

⁶ PJM states that stakeholders may agree to include the 2008-2009 delivery year.

⁷ PJM Answer at 7.

The Commission orders:

Clarification of the July 2 Order is provided as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.