139 FERC ¶ 61,256
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C. Docket Nos. ER11-4106-001
ER11-4106-002

ORDER ON REHEARING AND COMPLIANCE

(Issued June 28, 2012)

1. On July 22, 2011, PJM Interconnection, L.L.C. (PJM) submitted a compliance filing and proposed tariff changes, to its Open Access Transmission Tariff (OATT) and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement),[1] addressing the demand response compensation requirements established by the Commission in Order No. 745.[2] On December 15, 2011, the Commission accepted PJM's compliance filing, subject to an additional compliance filing.[3]

2. On January 17, 2012, Electric Power Supply Association (EPSA) and PSEG Companies (PSEG) filed requests for rehearing of the Commission's December 15, 2011 Order. On March 14, 2012, PJM filed its compliance filing to revise its Operating

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[1] PJM's compliance filing is referred to herein as the July 22, 2011 Compliance Filing. PJM's market rules appear in identical form in both Schedule 1 to the Operating Agreement and the Appendix to Attachment K to the OATT. For convenience, in this order, we cite only to the Operating Agreement.

[2] *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, 76 FR 16,658 (Mar. 24, 2011), FERC Stats. & Regs. ¶ 31,322 (2011), *order on reh'g*, Order No. 745-A, 137 FERC ¶ 61,215 (2011).

[3] *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,216 (2011) (December 15, 2011 Order).

Agreement to comply with the Commission December 15, 2011 Order. For the reasons discussed below, the Commission denies rehearing, and accepts PJM's proposed tariff revisions, subject to conditions, and directs a filing of revised tariff provisions within 30 days of the date of this order.

I. Background

3. In Order No. 745, the Commission amended its regulations under the Federal Power Act (FPA), regarding compensation for demand response resources participating in wholesale energy markets, that is, the day-ahead and real-time markets, administered by Regional Transmission Organizations (RTO) and Independent System Operators (ISO). Specifically, Order No. 745 requires each RTO and ISO to pay a demand response resource the market price for energy, that is, the locational marginal price (LMP), when two conditions are met. First, the demand response resource must have the capability to balance supply and demand as an alternative to a generation resource. Second, dispatching the demand response resource must be cost-effective as determined by a net benefits test in accordance with Order No. 745. The net benefits test is necessary to ensure that the overall benefit of the reduced LMP that results from dispatching demand response resources exceeds the costs of dispatching and paying LMP to those resources. In order to implement the net benefits test, the Commission directed each RTO and ISO to develop a mechanism to approximate the price level at which dispatching demand response resources will be cost-effective.

4. As noted above, PJM filed its compliance filing on July 22, 2011 and on December 15, 2011, the Commission accepted PJM's compliance filing, subject to conditions. In the December 15, 2011 Order, the Commission found that PJM's proposal to eliminate its existing payment of LMP less certain generation and transmission (LMP-(G+T)) in the hours that were not covered by the net benefits test went beyond the scope of compliance with Order No. 745. Accordingly, the Commission directed PJM to reinstate its existing tariff provisions for payment of LMP-(G+T) in situations not addressed in Order No. 745.

5. The Commission also accepted PJM's proposed measurement and verification provisions, subject to condition. Specifically, the Commission directed PJM to provide guidelines, or parameters in its tariff governing PJM's unilateral right to set a customer baseline load (CBL) when a variable load and PJM cannot reach an agreement. Further, the Commission directed PJM to submit tariff language clarifying that its proposed 60-day data requirements apply to residential and small commercial participants only if they are not part of a direct load control program.

6. The Commission further directed PJM to clarify in its tariff that a requirement to supply 60 days of meter data at the time of registration does not apply to residential and small commercial customers if they are part of a direct load control program. In addition,

the Commission directed PJM to update its proposal to allocate costs of demand to areas where the load-weighted average LMP is greater than or equal to the price determined under the net benefits test.

7. In the December 15, 2011 Order, the Commission rejected arguments that customers should not be compensated at LMP for reductions in demand if such reductions are facilitated by the use of behind-the-meter generation.[4] The Commission stated that Order No. 745 did not require the elimination of such payments.[5] The Commission determined "the only proposed revision regarding on-site generation in Section 3.3A (§.2.02(i)) does not change the application of PJM's tariff to on-site generators."[6]

8. The Commission also denied a request for clarification that if a customer owning behind-the-meter generation reduces consumption from its customer baseline load, when prices are at, or above, the net benefits threshold, it would be entitled to receive LMP compensation "even though it is also running its behind-the-meter generation to export energy to the PJM system."[7] The Commission reiterated that PJM "proposed no changes regarding the eligibility of a resource with on-site generation to receive compensation for a demand reduction when the resource is exporting energy to the PJM system."[8] The Commission found that "Order No. 745 did not change the basis upon which on-site generation would be treated for purposes of determining demand response reductions."[9] Therefore, the Commission held that the request was "beyond the scope of compliance with Order No. 745."[10]

9. In addition, the Commission denied a request that the Commission analyze in the compliance proceeding the impacts of behind-the-meter generation on organized markets

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[4] December 15, 2011 Order, 127 FERC ¶ 61,216 at P 94.

[5] *Id.* P 94.

[6] *Id.* P 92.

[7] *Id.* P 93.

[8] *Id.*

[9] *Id.*

[10] *Id.*

and demand response programs, because the Commission found such request was beyond the scope of the compliance proceeding.[11]

10. Finally, the Commission rejected requests that the Commission require PJM to impose a "must offer" obligation on demand response resources in order for those resources to participate in the day-ahead market. The Commission found that such requests were beyond the scope of the compliance proceeding. The Commission stated that requesting parties had not demonstrated any necessity to require PJM to impose a "must-offer" obligation on demand response resources as part of its compliance with Order No. 745.[12]

II. Requests for Rehearing

11. On January 17, 2012, EPSA and PSEG filed requests for rehearing of the December 15, 2011 Order. As more fully discussed below, EPSA and PSEG assert that the Commission erred in the December 15, 2011 Order by permitting behind-the-meter generation to be compensated at the LMP. EPSA and PSEG argue that such action unfairly discriminates against wholesale generation and results in unduly preferential treatment of behind-the-meter generation. On January 23, 2012, Viridity Energy filed an answer to EPSA's and PSEG's requests for rehearing.

III. Compliance Filing

12. On March 14, 2012, PJM filed revisions to its Tariff and Operating Agreement to comply with the Commission December 15, 2011 Order in Docket No. ER11-4106-002 (March 14, 2012 Compliance Filing). PJM states that it revises its market rules to: (1) reinstate the pre-Order No. 745 provisions that compensate demand reductions at less than LMP in situations when the LMP is less than the threshold price established by the net benefits test of Order No. 745; (2) add guidelines or parameters governing PJM's unilateral right to set an alternative CBL when a Curtailment Service Provider (CSP) and PJM are unable to reach an agreement on the CBL for a variable load customer; (3) excuse residential and small commercial customers that are part of a direct load control program from the requirement to supply 60 days of meter data at the time of registration; and (4) allocate the costs of LMP-based payments for demand response load reductions when the net benefits test is satisfied to areas where the load-weighted average LMP is greater than or equal to the threshold prices established by the net benefits test. PJM proposes an effective date of April 1, 2012 for the changes, consistent with the effective date established by the December 15, 2011 Order.

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[11] *Id.* P 95.

[12] *Id.* P 33.

13. Notice of PJM's March 14, 2012 Compliance Filing was published in the *Federal Register*, 77 Fed. Reg. 16,827 (2012), with interventions and protests due on or before April 4, 2012. None were filed.

IV. Discussion

14. For the reasons discussed below, the Commission denies rehearing of the December 15, 2011 Order and accepts PJM's March 14, 2012 Compliance Filing, subject to conditions.

15. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2011), prohibits an answer to a request for rehearing. Accordingly, the Commission rejects the answer filed by Viridity Energy.

A. Rehearing

1. Behind the Meter Generation

a. Rehearing Requests

16. EPSA and PSEG contend that the Commission's determination in the December 15, 2011 Order results in unduly preferential treatment of behind-the-meter generation and unduly discriminatory treatment of supply-side generation. EPSA and PSEG assert that PJM's existing tariff and proposed clarification, treating behind-the-meter generation as demand response and allowing such generation to be eligible for LMP compensation, conflicts with the Order No. 745 definition of demand response.[13] EPSA argues that behind-the-meter generation does not provide demand response through load reduction but is, instead, an increase in energy supply. EPSA asserts that, as such, behind-the-meter generation should not be paid the LMP. EPSA also asserts that the Commission has mandated subsidization of behind-the-meter generation and that the Commission has offered no rationale that would support preferential treatment based solely on whether a generator is located behind or in front of the meter.

17. PSEG argues that the definition of demand response assumes a reduction in load and that a reduction in consumption would necessarily result in less use of electricity. PSEG asserts an end-user that has committed itself as a demand resource and that can generate electricity behind-the-meter has less incentive to reduce consumption than an end-user that lacks behind-the-meter generation. PSEG points out that, in some circumstances, behind-the-meter generation simply reduces load on the grid, given that

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[13] *See* PSEG Request for Rehearing at 5 (citing Order No. 745, 137 FERC ¶ 61,215 at P 2 & n.2).

consumption may still occur. Therefore, PSEG asserts that treating behind-the-meter generation as demand response undermines the Commission's policy goal to encourage economic load reductions.

18. EPSA and PSEG argue that PJM's demand response program results in unduly discriminatory treatment of wholesale generation because behind-the-meter generation can use the unit's output to serve its own load and, at the same time, sell the output as demand response. EPSA asserts that a wholesale generator must do one or the other and that this difference inappropriately subsidizes behind-the-meter-based demand response.

19. EPSA argues that behind-the-meter generation will receive comparatively higher compensation than generation in front of the meter because behind-the-meter generation will receive full LMP plus the savings from foregone retail or wholesale purchases. EPSA asserts this disparity will encourage generation to move behind-the-meter, lead to inefficient dispatch and market manipulation, harm reliability and competition, and have adverse environmental effects.

20. EPSA states that the asserted preferential treatment of behind-the-meter generation will "promote the operation of less efficient, more polluting [behind-the-meter generation]," which EPSA states is not subject to the same environmental laws and emissions controls as wholesale generation. EPSA asserts that the Commission should not require PJM to compensate behind-the-meter generation at LMP until further information on the range of environmental emissions of behind-the-meter generation is analyzed.

b. Commission Determination

21. The Commission denies EPSA's and PSEG's requests for rehearing regarding behind-the-meter generation.

22. EPSA and PSEG argue that behind-the-meter generation does not provide demand response through load reduction, but is instead an increase in energy supply and, therefore, should not be paid full LMP. We affirm our determination that this issue goes beyond the scope of compliance with Order No. 745. PJM's tariff prior to the issuance of Order No. 745 defined the terms under which load with behind-the-meter generation would receive compensation as demand response, and PJM proposed no substantive change in this provision.[14] Order No. 745 focused exclusively on the amount of the payment demand response would receive, and did not mandate any changes with respect

[14] December 15, 2011 Order, 137 FERC ¶ 61,216 at P 92 (PJM's "only proposed revision regarding on-site generation . . . does not change the application of PJM's tariff to on-site generators.").

to whether load relying on behind-the-meter generation would be entitled to demand response payments. Consistent with our prior findings, we again conclude that EPSA's and PSEG' arguments are beyond the scope of PJM's compliance filing.

2. Must-Offer Requirement

a. Rehearing Requests

23. PSEG states that under the PJM market rules, generators committed as capacity resources are required to bid into the day-ahead market. PSEG contends that the Commission should have required PJM to impose a similar "must-offer" obligation on demand response resources to participate in the day-ahead market when they are committed as capacity resources. PSEG asserts that demand response resources are not true alternatives to generation if they are given the option of participating only in the real-time market. PSEG reasons that such demand resources are not comparable to generation resources in terms of the benefits they provide to consumers or in terms of the obligations imposed on the resource owner. Therefore, PSEG requests the Commission direct PJM to impose a must-offer requirement on demand response resources as a condition of eligibility to receive LMP compensation.

b. Commission Determination

24. The Commission denies PSEG's request for rehearing concerning the Commission's decision not to require PJM to impose a "must-offer" obligation on demand response resources. In the December 15, 2011 Order, the Commission rejected requests that it require PJM to impose a "must-offer" obligation on demand response resources and found such requests to be outside the scope of the compliance proceeding. As the Commission stated in the December 15, 2011 Order, Order No. 745 was solely concerned with the amount of payment that demand response resources receive in the energy market and did not concern capacity markets.

25. PJM's current capacity market design requires that demand response reduce load when required by PJM. Any concern about whether additional obligations to submit energy bids are necessary should be addressed in an appropriate proceeding regarding the capacity market, not in a compliance filing regarding the energy market.

B. Compliance Filing

26. On March 14, 2012, PJM filed revisions to its Tariff and Operating Agreement to comply with the Commission December 15, 2011 Order, as further discussed below.

1. Filing

a. Reinstatement of LMP – (G+T)

27. As directed by the December 15, 2011 Order, PJM reinstates its pre-existing tariff provisions compensating load reductions that do not satisfy the net benefits test at LMP-(G+T). PJM also makes other conforming changes concerning these compensation provisions.

28. PJM revises sections 3.3A.5(a) and 3.3A.6(a) of its market rules, addressing demand response compensation in the real-time and day-ahead energy markets, respectively. PJM states its revisions restore compensation of dispatched load reductions at LMP-(G+T) when LMP is below the net benefits test threshold price.[15] Specifically, PJM revises both sections to clarify that compensation at LMP applies in situations where the applicable LMP is equal to or greater than the net benefits test threshold price. In addition, PJM states it revises sections 3.3A.5(a) and 3.3A.6(a) to provide that dispatched demand reductions when the applicable LMP falls below that threshold are compensated at the "Locational Marginal Price less an amount equal to the applicable generation and transmission charges."

29. PJM also revises the provisions relating to make-whole payments for demand resources that follow dispatch, which are compensated at the greater of LMP or the total value of their demand reduction offers. PJM states its revisions address when the total value of the offer should be based on LMP and when it should be based on LMP-(G+T). Specifically, PJM revises sections 3.3A.5(b) and 3.3A.6(b) to provide that when the demand reduction offer price is greater than or equal to the net benefits test price, the total value of the offer will be based on LMP.[16] PJM also adds a new subsection (b-1) to both of those sections to provide that the total value of the offer will be based on LMP-(G+T) only if the applicable LMP is less than the net benefits test price and the demand reduction offer price is less than the net benefits test price.

30. PJM reinstates language that it proposed to delete from section 1.5A.10 (Economic Load Response Participant Aggregation) in the July 22, 2011 Compliance Filing with the Commission. According to proposed section 1.5A.10(iv), "[if] all End-Use Customers in an aggregation are not subject to the same generation and transmission charges, the generation and transmission charge for the aggregation shall be the load weighted average of the generation and transmission charges for all End-Use Customers

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[15] *See* proposed Operating Agreement at Schedule 1, Section 3.3A (§§ .5(a), .6(a)).

[16] *See* proposed Operating Agreement at Schedule 1, Section 3.3A (§§ .5(b), .6(b)).

in the aggregation. The Economic Load Response Participant shall provide the load weighted average, the calculation of the load weighted average, and the supporting data to the Load Serving Entity [LSE] and PJM. For the purposes of this section, the applicable generation and transmission charges are the charges an End-Use Customer would have otherwise paid the Load Serving Entity absent the demand reduction."[17]

31. PJM also proposes to return the term "LSEs" to provision in section 3.3A.3(b) that allows certain affected parties ten days for data review and comment after a load reduction event is submitted to PJM for compensation. PJM explains, because it proposes to reinstate the program to compensate certain load reductions at LMP-(G+T) and to recover the costs of those payments from the LSE responsible for the relevant load, the LSE should again be provided the opportunity to be involved in this review process. PJM states, for the same reason, it proposes to reinstate the pre-existing reference to LSEs in the provisions of section 1.5A.3 concerning notice of proposed registrations and verification of applicable transmission or distribution charges. PJM also deletes from section 2.2(b) the qualifier that PJM will consider in the LMP calculation qualified offers from demand response participants "that satisfy the Net Benefits Test." According to PJM, since its proposed revisions in the March 14, 2012 Compliance Filing provide compensation to dispatched demand reduction offers that do not satisfy the net benefits test, the qualifier is now incorrect and should be deleted.

b. Guidelines Governing Unilateral Right to Set an Alternative CBL

32. In response the Commission's requirement that PJM provide guidelines or parameters governing PJM's unilateral right to set a CBL in the event a variable load and PJM cannot reach an agreement, PJM proposes to amend its tariff to require that its determination of an alternative CBL will be guided by the same objective standard used to evaluate participant-proposed CBL methodologies. PJM states that this methodology will result "in an hourly relative root mean square error of twenty percent or less compared to actually hourly values."[18]

c. 60-Day Data Requirement Exemption for Direct Load Control Residential & Small Commercial Participants

33. The December 15, 2011 Order directed PJM to clarify that the requirement to supply 60 days of meter data at the time of registration does not apply to residential and small commercial customers if they are part of a direct load control program. In the

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[17] *See* proposed Operating Agreement at Schedule 1, Section 1.5A (§ .10(iv)).

[18] Transmittal Letter at 6.

instant compliance filing, PJM revises section 1.5A.6 of its tariff to provide that the 60-day hourly data requirement "shall not be required on an individual customer basis for residential or small commercial customers that provide Economic Load Response through a direct load control program under which an electric distribution company, Load Serving Entity, or CSP has direct control over such customer's load, without reliance upon any action by such customer to reduce load."

d. Cost Allocation

34. In the December 15, 2011 Order, the Commission directed PJM to update its proposal to allocate costs of demand to areas where the load-weighted average LMP is greater than or equal to the price determined under the net benefits test. PJM proposes to reinsert language in new subsection (e) to both sections 3.3A.5 and 3.3A.6 to provide that costs for payment for dispatched load reductions when the applicable LMP is below the threshold price established under the net benefits test, in both the real-time and day-ahead energy markets, will be recovered from the LSE responsible for serving the load of the demand response resource. PJM also revises subsection (d) of both of those sections to clarify that the broader cost allocation only applies to recover the cost of payments to demand reductions at the full LMP.

2. Commission Determination

35. We accept PJM's compliance filing, subject to conditions. As noted above, the December 15, 2011 Order required PJM to allocate the cost associated with demand response compensation to all load in each area where the LMP is equal to or greater than the threshold price.[19] PJM has not fully complied with the December 15, 2011 Order. First, under sections 3.3A.5(d) and 3.3A.6(a), in the ratio share equation for an LSE at a given zone, PJM defines the total real-time load in all zones as where the LMP is greater than the Net Benefits Test price, rather than greater than <u>or equal to</u> the Net Benefits Test price. We will therefore require PJM to revise these two tariff provisions to make clear that they apply when LMP is equal to or greater than the Net Benefits Test price.

36. In addition, in section 3.3A.6(e), PJM used the term "LPM" rather than "LMP," and we require PJM to make a compliance filing to correct the typographical error.

37. PJM is directed to file an additional compliance filing to make these conforming revisions within 30 days of the date of this order.

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[19] December 15, 2011 Order, 137 FERC ¶ 61,216 at P 77.

The Commission orders:

(A) EPSA's and PSEG's requests for rehearing of the December 15, 2011 Order are hereby denied.

(B) The compliance filing is hereby accepted, subject to conditions, as discussed in the body of this order. Within 30 days of the date of this order, PJM is directed to file an additional compliance filing to make conforming revisions, as discussed in the body of this order.

By the Commission. Commissioner Moeller is dissenting.
Commissioner Clark is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.