

155 FERC ¶ 61,260
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

PJM Interconnection, L.L.C.

Docket Nos. ER15-623-006
ER15-623-007
ER15-623-008
EL15-29-004

Advanced Energy Management Alliance Coalition

Docket No. EL15-80-001

v.

PJM Interconnection, L.L.C.

ORDER ON REHEARING AND COMPLIANCE

(Issued June 16, 2016)

1. Talen Companies (Talen) seeks rehearing of an order issued July 22, 2015, requiring PJM Interconnection, L.L.C. (PJM) to revise its Open Access Transmission Tariff (OATT) to allow Annual Demand Resources to participate in Capacity Performance Transition Incremental Auctions (Transition Auctions).¹ For the reasons discussed below, we deny rehearing of the July 22 Order. We also accept the compliance filings submitted by PJM on July 28, 2015, in Docket No. ER15-623-006, and October 27, 2015, in Docket No. ER15-623-008, in response to the July 22 Order.

¹ *PJM Interconnection, L.L.C.*, 152 FERC ¶ 61,064 (2015) (July 22 Order). As discussed below, the Commission initially accepted the tariff provisions at issue here, subject to conditions, in an order issued June 9, 2015. See *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (Capacity Performance Order), *order on reh'g and compliance*, 155 FERC ¶ 61,157 (2015) (Capacity Performance Rehearing and Compliance Order).

I. Background

2. In the Capacity Performance Order, the Commission accepted, subject to conditions, PJM's Capacity Performance proposal, consisting of reforms to PJM's capacity market construct and related energy market changes. As relevant here, the Capacity Performance Order accepted PJM's proposed transition mechanism, including PJM's proposal to hold two Transition Auctions to procure Capacity Performance Resources covering a portion of PJM's capacity requirements for the 2016-17 and 2017-18 delivery years.² As proposed by PJM, a seller seeking to participate in the Transition Auctions "may offer any Generation Capacity Resource that has not been committed in [a Fixed Resource Requirement] Capacity Plan, that qualifies as a Capacity Performance Resource . . . and that [meets certain operational requirements]."³

3. Joint Consumer Representatives (Joint Consumers) sought clarification of the Capacity Performance Order, regarding the right of Annual Demand Resources and any other resource that qualifies as a Capacity Performance Resource to participate in PJM's Transition Auctions, pursuant to Attachment DD, sections 5.5A(a) and 5.14D of the PJM OATT.⁴ Similarly, on June 29, 2015, the Advanced Energy Management Alliance Coalition (AEMA) filed a complaint, in Docket No. EL15-80-000, seeking a determination that, under the same tariff provisions relied upon by the Joint Consumers, Annual Demand Resources and Annual Energy Efficiency Resources are permitted to participate in the Transition Auctions.⁵ In the alternative, AEMA sought a determination that, absent this reading of PJM's OATT, the relevant provisions are unjust, unreasonable, and unduly discriminatory.

² See PJM OATT at Attachment DD, section 5.14D.

³ *Id.* at section 5.14D(B)(3).

⁴ Joint Consumers consist of the following entities: the PJM Industrial Customer Coalition, the New Jersey Board of Public Utilities, the New Jersey Division of Rate Counsel, the Public Power Association of New Jersey, Maryland Office of People's Counsel, the Office of the People's Counsel for the District of Columbia, the Pennsylvania Office of Consumer Advocate, the Delaware Division of the Public Advocate, Duquesne Light Company, the Illinois Citizens Utility Board and the West Virginia Consumer Advocate Division.

⁵ AEMA is comprised of the following entities: the Advanced Energy Management Alliance, CPower, EnergyConnect, Inc., EnerNoc, Inc., and EMC Development Company, Inc.

4. In the July 22 Order, the Commission found that while the relevant tariff provisions cannot be read as granting the right claimed by the Joint Consumers and AEMA, excluding Annual Demand Resources and Annual Energy Efficiency Resources from participating in the Transition Auctions was unjust, unreasonable and unduly discriminatory.⁶ The Commission therefore held that technically-capable resources willing to perform as a Capacity Performance Resource, including Annual Demand Resources and Annual Energy Efficiency Resources, must be permitted to participate in the Transition Auctions.⁷

II. Request for Rehearing

5. Relying on a U.S. Court of Appeals ruling addressing demand response participation in PJM's energy market,⁸ Talen argues on rehearing that the Commission in the July 22 Order exceeded its jurisdiction in finding that Annual Demand Resources may participate in the Transition Auctions. However, the ruling on which Talen relies has since been reversed by the U.S. Supreme Court.⁹ Accordingly, we dismiss Talen's rehearing request as moot.¹⁰

III. Compliance Filings

6. The July 22 Order required PJM to submit a compliance filing, including tariff revisions applicable to Attachment DD, section 5.14D(B)(3), to allow for participation by non-generation resources in PJM's Transition Auctions, to the extent these resources are otherwise eligible to participate as a capacity performance resource, pursuant to Attachment DD, section 5.5A(a).¹¹ The July 22 Order also required PJM to submit a

⁶ July 22 Order, 152 FERC ¶ 61,064 at P 33.

⁷ *Id.*

⁸ *Elec. Power Supply Assoc. v. FERC*, 753 F.3d 216 (D.C. Cir. 2014).

⁹ *FERC v. Elec. Power Supply Assoc.*, 136 S. Ct. 760 (2016).

¹⁰ The Commission made a similar finding in addressing Talen's request for rehearing of the Capacity Performance Order. *See Capacity Performance Rehearing and Compliance Order*, 155 FERC ¶ 61,157 at P 60.

¹¹ July 22 Order, 152 FERC ¶ 61,064, at PP 33 and 41.

revised timeline to conduct its Transition Auctions.¹² On July 28, 2015, as supplemented on October 27, 2015, PJM submitted compliance filings in response to the July 22 Order.

A. Compliance Proposal

7. PJM states that its compliance filings include the revised tariff changes, as required by the July 22 Order. Specifically, PJM proposes to modify its OATT at Attachment DD, section 5.14D(B)(3) to strike the language that limits participation in the Transition Auctions to Generation Capacity Resources. PJM also submits a revised schedule to support participation in its Transition Auctions by all qualifying resources. Finally, PJM submits proposed conforming changes to its OATT and the Reliability Assurance Agreement among Load Serving Entities (RAA) correcting the assumption rejected by the July 22 Order that demand response resources and energy efficiency resources may not be committed as capacity performance resources for the 2016-17 and 2017-18 delivery years.¹³

B. Notice of Filings and Responsive Pleadings

8. Notice of PJM's filings was published in the *Federal Register*, with interventions, protests and comments due on or before August 18, 2015 and November 17, 2015, respectively. A protest was timely submitted by AEMA. On December 2, 2015, answers were submitted by PJM, PJM Power Providers Group (P3), and Independent Market Monitor for PJM (Market Monitor).

9. AEMA, in its protest, objects to PJM's compliance filing as it relates to performance measurement, i.e., as it concerns those provisions of PJM's OATT and RAA addressing the manner in which PJM will measure and verify the quantity of non-summer load reduction provided by a demand response resource participating in PJM's Transition Auctions. AEMA notes that it has objected to these provisions in its request for rehearing of the Capacity Performance Order. AEMA urges the Commission to reject these provisions and require PJM to utilize a consistent measurement and verification methodology to measure demand responses resource performance with respect to Transition Auction commitments in both the summer and winter.

¹² *Id.* P 42.

¹³ As PJM notes in its October 27, 2015 compliance filing, these conforming changes are made to two separate sets of provisions addressing: (i) Non-Performance Charges; and (ii) performance measurement provisions.

C. Procedural Matters

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers submitted by PJM, P3, and the Market Monitor and therefore reject them.

D. Commission Determination

11. We find that PJM's compliance filings satisfy the requirements of the July 22 Order and therefore accept them. AEMA objects to an unrelated issue—the manner in which PJM will measure and verify demand response resource participation in PJM's Transition Incremental Auctions. However, the tariff provisions to which AEMA refers were not required by the July 22 Order; rather, PJM proposed them and the Commission accepted them in the Capacity Performance Order, with issues relating to these requirements addressed by the Commission on rehearing of that order.¹⁴ Accordingly, we dismiss AEMA's protest as beyond the scope of this compliance proceeding.

The Commission orders:

(A) Talen's request for rehearing of the July 22 Order is hereby denied, as discussed in the body of this order.

(B) PJM's compliance filings are hereby accepted, as discussed in the body to this order.

By the Commission. Commissioner Clark is concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁴ See Capacity Performance Rehearing and Compliance Order, 155 FERC ¶ 61,157 at P 165.

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CLARK, Commissioner, *concurring*:

I concur in this order and agree in its finding to dismiss as moot the rehearing request now before us. I write separately to note my policy and procedural disagreements with the underlying order as fully explained in my separate statement of July 22, 2015.

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For these reasons, I respectfully concur with this order.

Tony Clark
Commissioner

¹ See my dissent in *PJM Interconnection, L.L.C.*, 152 FERC ¶ 61,064 (2015) (Clark, Comm'r, dissenting).