

123 FERC ¶ 61,257  
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.

PJM Interconnection, L.L.C.

Docket No. ER08-824-000

ORDER ACCEPTING TARIFF REVISIONS,  
SUBJECT TO CONDITIONS

(Issued June 12, 2008)

1. On April 14, 2008, PJM Interconnection, L.L.C. (PJM) submitted for filing, pursuant to section 205 of the Federal Power Act (FPA), proposed revisions to the PJM Open Access Transmission Tariff (PJM OATT) and the PJM Operating Agreement (Operating Agreement). PJM states that its proposed revisions modify the economic demand response program in PJM to provide measurement and verification rules that ensure economic demand response reflects a true response to price. PJM explains that the revisions also propose changes to self-schedule notification and the bid parameter rule to provide greater flexibility for demand response participation in PJM's energy markets. For the reasons discussed below, we accept PJM's proposed tariff revisions, effective as requested, subject to the condition that PJM file revised tariff sheets applicable to the implementation of its required system enhancements 14 days in advance of its proposed implementation date.

**Background**

2. PJM states that beginning in 2006, it became aware that certain entities seeking compensation for load reductions, under PJM's economic demand response program protocols, were doing so based on load reductions that would have been made regardless of the price signals at play in PJM's energy markets. PJM states that, consequently, its existing economic demand response program protocols have been, and are, susceptible to gaming.

3. PJM states that this problem has been caused, in part, because its existing measurement and verification rules, including the provisions used to identify an end-use customer's expected load profile, or Customer Baseline Load (CBL), do not accurately identify end-use customer demand in every case. PJM states, for example, that a customer's CBL (currently based on the five highest usage days over a 10-day period, i.e., the "5 of 10 process"), fails to identify certain low usage periods occurring within this time period.<sup>1</sup> PJM states that, as such, the CBL may be overstated for the purpose of determining what a customer's load would have been absent a given load reduction.

4. To address these deficiencies, PJM proposes to revise the method used for establishing the CBL. Specifically, PJM states that under its proposed revisions, a CBL applicable to weekdays would be based on the highest 4 days out of the 5 most recent usage days within the 45-day period proceeding the event day, or a maximum of 60 days, depending on the number of excluded days (the "4 of 5 process").<sup>2</sup> The 4 of 5 process would be based on a period that includes the day immediately preceding the event, as opposed to the existing provision which excludes the day prior to the event day in question. PJM states that, by including this data, the accuracy of the CBL is enhanced because it is based on more recent load patterns, i.e., on days most proximate to the curtailment event. PJM states that the 4 of 5 process would also retain the existing exclusion applicable to a "low usage" day, but would reduce the low usage threshold from 75 percent to 25 percent (thus excluding only those days that are truly anomalous).<sup>3</sup>

5. In addition, PJM proposes to revise the definition of event day to exclude any days on which an economic load response participant's submitted settlement is denied by the relevant load serving entity or electric distribution company or is disallowed by PJM. PJM states that this change ensures that when a load reduction is based on normal operations and is not in response to price, it will be considered a normal day and will be

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<sup>1</sup> See PJM Operating Agreement at section 3.3A.2.

<sup>2</sup> If the 5 eligible days for the weekday CBL cannot be identified after looking back 60 days, the CBL would be based on only 4 days, provided there are 4 eligible days in the 60-day period. If there are not 4 eligible days, the highest load event within the 60-day period would be used as necessary to determine a 4-day period to calculate the CBL. A comparable matrix of eligible days would be applied to weekend CBL.

<sup>3</sup> See PJM Operating Agreement at section 3.3A.2.

included in the determination of CBL. PJM also proposes to calculate the CBL, for weekends and holidays, based on the high 2 of 3 usage days and to use distinct CBLs for Saturdays, Sundays and NERC holidays.

6. PJM also proposes to allow an economic load response participant, a load serving entity and an electric distribution company to negotiate alternative CBLs. PJM states that this is because load patterns can vary greatly, and the use of a standard CBL methodology may not always be the most appropriate means for calculating CBL. PJM states that these entities would have 30 days to reach agreement. If an agreement cannot be reached, PJM would resolve the conflict by establishing an alternate CBL within 20 days after the expiration of the 30-day period. PJM states that if existing alternatives are not applicable to a specific situation, PJM would develop a new alternate CBL based on empirical performance, simplicity, and overall market implementation and administrative costs. PJM states that if it were required to develop the alternate CBL, its decision would be binding on all parties unless the interested parties reach agreement before the 20-day period, allocated to PJM for developing the alternate CBL, expires.

7. In addition, the proposal sets a “code of conduct” that provides guidance as to which types of activity are not considered price responsive demand response, and therefore, not eligible for energy credits.<sup>4</sup> With respect to sanctions, PJM proposes tariff language authorizing PJM to suspend an economic load response participant’s demand response activity in PJM’s energy markets if that entity has continually submitted settlements for demand reductions that are not executed in response to locational marginal prices.

8. The proposal also establishes a review process based for contesting or denying demand response registrations and/or settlements.<sup>5</sup> PJM states that this is done in order to identify and resolve potential problems at an early stage in order to facilitate efficient participation of demand response in the PJM energy markets. Specifically, PJM states that it would be authorized to review demand response activity if an economic load response participant: (i) submits demand response registrations or settlements that are contested more than 10 percent of the time by the relevant load serving entity or electric distribution company; or (ii) submits energy settlements that are denied more than 10

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<sup>4</sup> See PJM Operating Agreement at section 3.3A6.c.

<sup>5</sup> *Id.* at section 3.3A7.

percent of the time. PJM also proposes to clarify that only demand reductions in response to price are eligible for demand response compensation. If any of these thresholds are met, PJM has 30 days to conduct the review and may refer any such matter to the Commission's Office of Enforcement.

9. PJM further proposes to establish express aggregation rules, including clarification that economic load response participants may aggregate multiple end-use customer sites. PJM states that its existing rules allow aggregation, but do so on the basis of a single defined term which does not describe how aggregated demand response participates in PJM's energy markets.<sup>6</sup> PJM states that these revisions, in order to be implemented, will require system enhancements.<sup>7</sup>

10. Finally, PJM proposes to establish flexible rules to enhance participation of self-scheduled and dispatchable demand response in the PJM energy markets. Specifically, PJM states that its proposed revisions clarify that demand response providers may participate in the PJM energy markets as self-scheduled or dispatchable resources and establishes flexible notification and bidding parameters that provide greater market opportunities for demand response by allowing parties to structure their bids consistent with the characteristics of the underlying resources.

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

11. Notice of PJM's filing was published in the *Federal Register*<sup>8</sup> with interventions and protests due on or before May 5, 2008. Motions to intervene and notices of interventions were timely filed by Baltimore Gas and Electric Company; the Public Service Commission of Maryland (Maryland Commission); EnergyConnect, Inc. (ECI); Exelon Corporation (Exelon); the PJM Industrial Customer Coalition; Pepco Holdings, Inc.; Old Dominion Electric Cooperative, PSEG Companies, and Dominion Resources

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<sup>6</sup> See PJM Operating Agreement at section 1.3.1B.02 (defining "Curtailed Service Provider" as "a Member or Special Member, which action on behalf of itself or one or more Members or non-Members, participates in the PJM Interchange Energy Market by causing a reduction in demand.").

<sup>7</sup> PJM proposes to notify the Commission when the system enhancements are completed and thus ready to be implemented.

<sup>8</sup> 73 Fed. Reg. 21,927 (2008).

Services, Inc. (ODEC, *et al.*); and Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. On May 6, 2008, a motion to intervene out-of-time was filed by American Municipal Power-Ohio, Inc. (AMP-Ohio). Comments generally supportive of PJM's filing were made by the Maryland Commission, Exelon, the PJM Industrial Customer Coalition, and ODEC, *et al.*

12. ECI protests PJM's filing. ECI argues that under PJM's proposed suspension authority,<sup>9</sup> a curtailment service provider, or CSP (e.g., an aggregator such as ECI), and each of ECI's many end-use customers could be suspended for a rule violation that may be attributable to only a single end-use customer. ECI also asserts that this suspension authority should not extend to all market activity. In addition, ECI argues that PJM's prior day exclusion should be retained, i.e., that PJM should not be permitted to include in a CBL calculation load data from the day before the curtailment event at issue. ECI asserts that this exclusion is necessary in order to give participants time to determine the expected CBL with more certainty prior to the event day.

13. ECI also objects to the proposed inclusion in CBL of event days that have been submitted but later denied. ECI argues that the right to deny a settlement is used primarily by electric distribution companies or by load serving entities for the purpose of addressing administrative errors (e.g., incorrect retail rates or metering discrepancies). ECI asserts that the mere fact that a settlement has been denied does not necessarily address whether the relevant load reduction was price responsive. Moreover, ECI asserts that these denials are often submitted weeks after the fact. ECI concludes that it would be inappropriate to base CBLs on these denials, particularly given that the entities in question (electric distribution companies and load serving entities) are entities with whom ECI competes.

14. ECI also objects to PJM's requested effective date. ECI argues that the requested date does not give it adequate time to develop and test the required software changes associated with its automated calculation of CBLs. ECI requests that the filing not be made effective until August 1, 2008. ECI also requests that the Commission order PJM to complete studies, within six months of the implementation of the provisions at issue

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<sup>9</sup> See PJM Operating Agreement at section 3.3A6.c.

here, to assess barriers to entry for demand response, as discussed by the Commission in its Notice of Proposed Rulemaking Issued in Docket No. RM07-19-000, *et al.*<sup>10</sup>

### **PJM's Answer**

15. On May 20, 2008, PJM filed an answer to ECI's protest and ODEC, *et al.*'s request for additional stakeholder procedures. First, PJM responds to ECI's argument that PJM's proposed authority to impose sanctions is overbroad, i.e., that PJM, in the case of a continuing violation attributable to a single end-use customer, should not be permitted to suspend all market activity on behalf of all of a CSP's end-use customers. PJM responds that it is the responsibility of the CSP, an entity that participates in PJM's economic demand response program as an economic load response participant, to ensure that all settlements it submits to PJM comply with the economic demand response market rules. PJM asserts that it is the CSP, in this context, not the end-use customer with whom it has a contractual relationship.

16. PJM also argues that it is inaccurate to suggest that all interchange energy market activities, including balancing services, would be suspended in the case of a rules violation. PJM states that its suspension authority would be limited to demand-response related activity in the PJM energy markets.

17. PJM also responds to ECI's argument that inclusion of load data from the day before a curtailment event will prevent CSPs from determining the expected CBL prior to the event day. PJM states that by including the day-before data at issue there is an increase in the accuracy of the CBL calculation, and that no other CSP has objected to this change or indicated that it cannot calculate the daily CBLs under the proposed new rule.

18. In response to ECI's argument that CBLs should not be based on denied settlements attributable to the unilateral determinations made by an electric distribution company or a load serving entity, PJM states that it is establishing new safeguards in place to ensure that a CSP's settlements are not improperly denied or disallowed under

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<sup>10</sup> See *Wholesale Competition in Regions with Organized Electric Markets*, Notice of Proposed Rulemaking, Docket Nos. RM07-19-000 and AD07-7-000, FERC Stats. & Regs. ¶ 32,617 (2007).

section 3.3A.7 of the PJM Operating Agreement.<sup>11</sup> PJM further asserts that under its proposed revisions, CBL determinations would not be based on event days that are disputed due to administrative errors.<sup>12</sup> In addition, PJM argues that settlement denials can be expected to plummet under its proposed CBL revisions because interested parties will be given the opportunity to resolve their disputes regarding a contested CBL at the time of registration.

19. Regarding ECI's argument that the effective date of PJM's filing should be delayed, PJM states that ECI has been on notice since March 2008 regarding PJM's proposed changes and that the changes at issue should be in effect for the 2008 summer season when demand response is most needed. PJM also responds to ECI's request that the Commission order PJM to complete studies to assess barriers to entry for demand response, as discussed by the Commission in Docket No. RM07-19-000, *et al.* PJM states that it intends to comply with any such study requirement that may be established by the Commission in its final rule.

## **Discussion**

### **A. Procedural Matters**

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>13</sup> the timely, unopposed motions to intervene submitted by the entities noted above serve to make them parties to this proceeding. In addition, we will accept the unopposed late-filed intervention submitted by AMP-Ohio. Rule 213(a) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise permitted by the decisional authority. We will accept the answer submitted by PJM because it has provided information that assisted us in our decision-making process.

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<sup>11</sup> PJM answer at 7, citing PJM Operating Agreement at 3.3A.7(a) (requiring PJM to investigate instances in which a CSP's demand response settlements are disputed by electric distribution companies or load serving entities more than ten percent of the time).

<sup>12</sup> *Id.*, citing PJM Manual 11, section 10 (scheduling operations) at 104, available at [www.pjm.com/contributions/pjm-manuals/pdf/m11.pdf](http://www.pjm.com/contributions/pjm-manuals/pdf/m11.pdf).

<sup>13</sup> 18 C.F.R. § 385.214 (2007).

**B. Analysis**

21. We accept PJM's proposed tariff revisions, effective as requested, subject to the condition that PJM file revised tariff sheets applicable to the implementation of its required system enhancements 14 days in advance of its proposed implementation date. We agree with PJM that when an economic load response participant reduces its load due to normal operations and not in response to price, a demand response payment is unwarranted. We also agree that PJM's proposed revisions will address this concern by ensuring that any given load reduction for which compensation is sought will be based on a market price response, not an invalid, non-price consideration, i.e., a gaming strategy. We note that one of the central features, in this regard, i.e., the replacement of the 5 of 10 process with the 4 of 5 process, is unopposed. We further note that PJM's revisions, as a whole, have received broad stakeholder support within PJM.

22. ECI alone questions the feasibility and/or justification of certain elements included by PJM in its anti-gaming proposal. However, we find that ECI's arguments lack merit. First, we reject ECI's argument that when an economic load response participant is a CSP, it should not be held liable for the information it has received from, or which may be attributable to, the end-use customer.

23. Under Schedule 1, section 1.5(a) of PJM's Operating Agreement, a CSP is an economic load response participant. PJM's tariff revisions apply possible sanctions to all economic load response participants. We therefore find no basis to excuse CSPs from application of the same penalties applicable to all other economic load response participants. When a CSP submits a demand response energy settlement for load reductions to PJM, it does so as the economic load response participant. PJM's contractual relationship, in this context, is with the CSP alone, acting as an economic load response participant, and it is the CSP that is obligated to perform.<sup>14</sup> Any failure to perform therefore is that of the CSP acting as an economic load response participant, and we find it appropriate to hold CSPs responsible for their own actions.

24. We also reject ECI's argument that PJM's proposed suspension authority is draconian or otherwise overbroad. In fact, PJM's proposed suspension authority will be

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<sup>14</sup> PJM has no contractual relationship with the clients of a CSP, and the end-use customer is not the economic load response participant.

triggered only by repeated rules violations. Moreover, suspension will be limited to demand response participation in PJM's energy markets.

25. ECI also argues that inclusion of load data from the day before an event day in the CBL calculation will not allow ECI and other CSPs to determine the expected CBL with enough certainty prior to the event day and will not allow the end-use customer to implement a reduction with enough confidence in the measured result. However, ECI does not claim that the CBL cannot be calculated under these circumstances, or that the load reduction cannot be made. ECI also fails to otherwise support its assertions. PJM, moreover, justifies its proposed revision based on a legitimate need, i.e., the need to create a more accurate CBL and the corollary need to prevent gaming. In addition, and as PJM notes in its answer, no other CSP indicates that it cannot calculate the daily CBLs under the revision PJM proposes.

26. ECI argues next that the definition of an event day should not exclude days where settlements are denied by an electric distribution company or a load serving entity. However, we agree with PJM that this provision will help ensure that a reported load reduction is, in fact, based on a price response. We also agree with PJM that PJM's proposed revisions will discourage the inappropriate denial of settlements. PJM will investigate when submittals are disputed by an electric distribution company or a load serving entity more than 10 percent of the time.<sup>15</sup> PJM's existing procedures also require electric distribution companies and load serving entities to provide specific reasoning as to why settlements are denied, reducing the possibility of administrative errors influencing the CBL calculation.

27. Finally, ECI requests that we defer the effective date of PJM's proposal until August 1, 2008. Under the FPA, we have no authority to defer an effective date. While we have authority to suspend a filing for 5 months, we find no basis to do so here. PJM's stakeholder process and 60-day prior notice filing provided all interested parties ample notice of PJM's proposed revisions. Moreover, we find these provisions just and reasonable, and PJM has fully supported the need to place its proposed revisions into effect for the 2008 summer season.

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<sup>15</sup> PJM Operating Agreement at section 3.3A.7.

The Commission orders:

PJM's proposed revisions to the PJM OATT and Operating Agreement are hereby accepted for filing, effective as requested, subject to the condition that PJM file revised tariff sheets applicable to the implementation of its required system enhancements 14-days in advance of its proposed implementation date, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.