

145 FERC ¶ 61,001
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER13-2108-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING PROPOSED TARIFF
CHANGES AND INSTITUTING A TECHNICAL CONFERENCE

(Issued October 1, 2013)

1. On August 2, 2013, PJM Interconnection, L.L.C. (PJM) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ revisions to the PJM Open Access Transmission Tariff (Tariff) and the Reliability Assurance Agreement among Load Serving Entities in the PJM Region (RAA) to require that certain information be provided prior to submission of a demand resource offer into PJM's forward capacity auctions to assure that the resource will be able to provide the offered demand reduction capability (DR Plan Enhancements). As discussed below, we accept and suspend PJM's filing for a five month period to become effective the earlier of a Commission order or March 2, 2014, subject to refund, and to the outcome of a technical conference and further orders.

I. Background

2. The currently effective RAA defines a Demand Resource as a resource with "a demonstrated capability to provide a reduction in demand or otherwise control load" and requires such demand reduction capability to be "in accordance with the requirements of [RAA] Schedule 6."² In addition, section A.5 of Attachment DD-1 to the Tariff and section A.5 of Schedule 6 to the RAA provide:

¹ 16 U.S.C. § 824d (2006).

² RAA, Article 1, Definitions, § 1.13 (8.0.0).

“An entity offering for sale, designating for self-supply, or including in any FRR Capacity Plan any Planned Demand Resource must demonstrate, in accordance with standards and procedures set forth in the PJM Manuals, that such resource shall have the capability to provide a reduction in demand, or otherwise control load, on or before the start of the Delivery Year for which such resource is committed. Providers of Planned Demand Resources must provide a timeline including the milestones, which demonstrates to PJM’s satisfaction that the Planned Demand Resources will be available for the start of the Delivery Year, 15 business days prior to a Base Residual Auction or Incremental Auction.”³

3. On April 3, 2013,⁴ in Docket No. EL13-57-000, the Demand Response Coalition filed a complaint alleging that newly adopted provisions of PJM’s Manual 18 interpreting section A.5 of Attachment DD-1 and Schedule 6 to require submission of a detailed “DR Sell Offer Plan” significantly affected jurisdictional rates, terms and conditions of service, and accordingly must be submitted to the Commission pursuant to section 205 of the FPA. The Commission granted the Complaint in its April 19, 2013 Order, finding that PJM’s Manual 18 changes implemented practices that significantly affected the rates, terms, and conditions of service and therefore must be included in a Commission-accepted tariff rather than other documents.⁵ The Commission encouraged PJM to submit a section 205 filing as appropriate.⁶

4. PJM states that, subsequently, PJM and its stakeholders developed changes to the Tariff and RAA to implement the changes that had initially been adopted through revisions to PJM’s Manual 18. PJM states that, on June 27, 2013, the proposed revisions were approved by a sector-weighted vote of 87 percent in favor.

II. Details of the Filing

5. PJM explains that it has seen tremendous growth in the megawatt quantity of demand resources offered and cleared in the base residual auction and other Reliability

³ Tariff, Attachment DD-1, section A.5 (4.0.0); RAA, Schedule 6, section A.5 (4.0.0).

⁴ *Demand Response Coalition v. PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,061 (2013) (April 19, 2013 Order).

⁵ *Id.* P 17.

⁶ *Id.* P 23.

Pricing Model (RPM) auctions, and that the quantity of demand resources offered into the 2012 base residual auction was, in some areas, far above the level of demand resources actually identified in those areas.⁷ PJM argues that, even allowing for reasonable growth in demand response, such demand resource offer levels appear to be “very aggressive” either due to: (1) overly optimistic assumptions about the demand resource providers’⁸ (DR Provider) ability to develop entirely new demand response; (2) double-counting of the same demand resources as another provider; or (3) an assumption that resources need not offer in the base residual auction the demand response levels that they actually expect to provide, on the theory that they could buy out of their capacity commitments in the bilateral market or Incremental Auctions. PJM explains that its proposed revisions are intended to ensure that demand resources will be able to provide the offered demand reduction capability.

6. Accordingly, PJM proposes that every DR Provider must submit, at least 15 business days before the RPM auction, a DR Sell Offer Plan, consisting of, first, a completed template document requiring certain information set forth in the Tariff and PJM Manuals, and second, a DR Officer Certification Form.

7. Among other things, the proposed DR Sell Offer Plan template requires: (1) summary information (DR Provider’s name, contact information, and Nominated DR Value⁹ in ICAP MWs by Zone/sub-Zone that the DR Provider intends to offer); (2) identities of all Existing DR,¹⁰ by identifying end-use customer sites that are currently registered with PJM and that the DR Provider reasonably expects to have under contract by the start of the Delivery Year;¹¹ (3) details of, and key assumptions underlying, the

⁷ PJM Transmittal at 7. PJM states that in some zones, 23 percent of peak load in PPL and Penelec were offered into the base residual auction, and 15 percent of peak load was offered in four other zones.

⁸ Demand Resource Provider is a PJM member that has the ability to reduce load, or that aggregates customers capable of reducing load. Tariff, Attachment-DD.2, Definitions, § 2.22 (12.0.0).

⁹ Nominated DR Value is the amount of load reduction a demand resource commits to provide through the load drop programs. Tariff, Attachment-DD.2, Definitions, § 2.43 (12.0.0).

¹⁰ Existing DR is a demand resource with a demonstrated ability to control load in accordance with the requirements of Schedule 6 of the Tariff.

¹¹ Delivery Year is the planning period for which a capacity resource is committed pursuant to the RPM auction procedures. RAA, Article 1, Definitions, § 1.12 (8.0.0).

Planned Demand Resource¹² (Planned DR) quantities, including methods of achieving load reduction at customer sites, types of customer targeted, and end-use customer site-specific information in flagged zones (discussed further below); and (4) a timeline for procuring end-use customer sites.¹³

8. The DR Officer Certification Form requires a designated officer of the DR Provider to certify that the information supplied is true and correct, and that the DR Provider is submitting the plan “with the reasonable expectation, based upon its analyses as of the date of the certification, to physically deliver all megawatts that clear the RPM Auction through Demand Resource registrations by the specified Delivery Year.”¹⁴ PJM argues that a DR Provider that expects to deliver only part of its offered level, and to satisfy the rest of its base residual auction obligation through incremental auctions, does not reasonably expect to physically deliver all megawatts and thus cannot provide the required certification. However, PJM also states that a DR Provider that makes such a certification at the time of the base residual auction does not relinquish any rights it has under the tariff or other relevant documents to participate in the incremental auctions; rather, PJM understands that conditions change and the incremental auctions allow capacity market sellers a tool to adjust their commitments in light of changed circumstances.¹⁵

9. PJM proposes to require that end-use customer site information be provided under circumstances that PJM considers to present the greatest risk of multiple DR offers relying on load reductions from the same end-users. Specifically, PJM states that it will identify zones in which: (1) the quantity of DR (as a percentage of peak load) increases from prior delivery years, and (2) the amount of DR offered in the locational deliverability area or zone exceeds the maximum percentage as estimated by an independent assessment of DR available in that zone. In zones that have failed both

¹² Planned DR is a demand resource that does not currently have the ability to provide a demand reduction, but is scheduled to be capable of providing a load reduction on or before the Delivery Year. RAA, Article 1, Definitions, § 1.69 (8.0.0).

¹³ For comparison, a generation resource offering into the RPM auctions must provide PJM with (1) identifying information, (2) main transformer data, (3) transmission line data, and (4) plant data. PJM asserts that comparable treatment of both generation and demand resources means that PJM can assure itself, before the auction, that both types of offered resources will be available when needed.

¹⁴ Proposed RAA, Schedule 6, § 6.A.2.b.

¹⁵ PJM Transmittal at 24.

screens,¹⁶ PJM proposes to require that end-use customer site information be supplied by DR Providers looking to offer capacity in excess of what they have previously cleared in the RPM. PJM argues that this is reasonable as offers above those that have previously cleared in the region, and in excess of what can reasonably be expected to show up, are the most likely source of unsupported or duplicative offers. PJM states that this will help overcome the uncertainties associated with these offers and the potential reliability implications associated with resource adequacy shortfalls. DR Providers that do not provide sufficient information may have their bid increment reduced as appropriate. In addition to requiring end-use customer information in these specific circumstances for Planned DR in flagged zones, PJM also proposes to require that all DR Providers provide end-use customer information to the extent it is known before the auction.

10. PJM states that it will review the submitted plans, in part, to address duplicative or competing demand resource commitments. The proposed revisions specify that PJM will notify DR Providers if there have been duplicate submissions of the same end-use customer, and DR Providers may resolve the conflict by submitting a “letter of support from the end-use customer indicating that it is likely to execute a contract with that Demand Resource Provider for the relevant Delivery Year,” or “other comparable evidence of likely commitment.” The proposed revisions state that, if no DR Provider offers such a letter, or multiple letters are offered for the same end-use customer, then neither DR Sell Offer Plan will be allowed to include that end-use customer. PJM also proposes to notify each DR Provider of the approved maximum demand resource quantity the DR Provider is permitted to offer into the RPM auction no later than five business days before the auction.

11. PJM also proposes a “safe harbor” rule, in which DR Providers offering 10 MW or less in the relevant zone in the relevant base residual auction would not need to provide any site-specific information. Also, PJM proposes that, if a DR Provider has only cleared under 10 MW in prior auctions, customer specific information will only be required if the current offer exceeds 10 MW.

III. Notice of Filing and Responsive Pleadings

12. Notice of the Application was published in the *Federal Register*, 78 Fed. Reg. 49,503 (2013), with interventions and protests due by August 23, 2013. Timely motions to intervene were filed by NRG Companies; American Municipal Power, Inc.; Dynegy Kendall Energy, LLC, Ontelanuee Power Operating Company, and Dynegy Marketing and Trade, LLC; Direct Energy Business, LLC; NextEra Energy Generators;

¹⁶ Such flagged zones will remain flagged until the threshold for flagging that zone is not exceeded for three consecutive Delivery Years.

and Exelon Corporation. A notice of intervention was filed by the Delaware Public Service Commission. A notice of intervention and comments were filed by the Maryland Public Service Commission (Maryland Commission). Motions to intervene and comments were filed by the Electric Power Supply Association (EPSA), PJM Power Providers Group (P3), and American Electric Power Service Corporation (AEP) and The Dayton Power and Light Company (DP&L). Motions to intervene and protest were filed by Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC (PSEG Companies); FirstEnergy Service Corporation and Duke Energy Corporation (collectively, FirstEnergy); Comverge, Inc. (Comverge); and Viridity Energy, Inc. (Viridity).

13. A motion to intervene out-of-time was filed by the Independent Market Monitor for PJM (Market Monitor).

14. On September 5, 2013, P3 submitted an answer to Viridity's and Comverge's protests. On September 9, 2013, the Maryland Commission and PJM each submitted an answer to the comments and protests filed. On September 12, 2013, the Market Monitor filed an answer to the comments and protests filed. On September 16, 2013, the PSEG Companies submitted an answer to PJM's answer. On September 17, 2013, the Market Monitor submitted minor corrections to its answer.¹⁷ On September 20, 2013, PJM submitted an answer to the Market Monitor's answer.

A. Comments

15. P3 states that it supports the filing because the DR Plan Enhancements are a step in the right direction to put demand response on a fair and comparable playing field with other forms of capacity. P3 argues that market conditions, reliability concerns, growth in demand response, and past demand response performance warrant acceptance of the filing. Finally, P3 argues that the proposed revisions received strong stakeholder support and serve to clarify existing rules and to ensure that demand resources will be available for the start of the Delivery Year.

16. EPSA states that PJM's proposal is consistent with the mandate of Order No. 890,¹⁸ which required that demand response and generation be treated consistently

¹⁷ The Market Monitor makes minor corrections, including to the docket number on its answer and date of the certificate of service.

¹⁸ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299

while taking into account the inherent characteristics of demand response. EPSA asserts that if demand response is going to be paid the same amount as generation, then it is not unjust or unreasonable to hold them to the same requirements as generation resources. In fact, EPSA argues that it would be discriminatory if the Commission did not put PJM's proposed revisions in place on an expedited basis, and that the proposed revisions are one in a series of steps needed to secure the reliability of the electric grid.

17. AEP and DP&L support PJM's proposal, arguing that demand response has been subject to less stringent requirements than generation. AEP and DP&L state that the proposed requirements simply specify requirements already laid out in the Manuals. AEP and DP&L argue that the existing requirements may allow demand response providers to offer in more capacity than they can provide, which may create reliability problems. AEP and DP&L point to a report by the Market Monitor showing that sellers of demand response are more likely to replace their commitments than sellers of other resource types. AEP and DP&L argue that reliability can be impaired if significant quantities of three-year forward capacity bids made by DR merchants are based on double-counting or mere speculation as to the possibility of having the level of demand resources under contract by the time the Delivery Year rolls around. AEP and DP&L explain that demand response providers have been able to make a profit by selling speculative capacity in the base residual auction and then buying it back in the incremental auction because, due to sufficient generation being available in the market, the incremental auction clearing price has always been substantively below the base residual auction clearing price. AEP and DP&L state that excess demand response offers will reduce the clearing price of the base residual auction, which could result in generation resources mothballing or retiring earlier than if the excess offers were not made.

18. If the Commission does not accept PJM's proposal, AEP and DP&L request that the Commission instead consider: (1) making the non-performance penalties associated with demand response be commensurate with those of generation resources, (2) making all demand response a year-round resource, and (3) subjecting demand response to the must-offer requirement.

19. The Maryland Commission states that it supports the creation and maintenance of an environment that encourages responsible development and use of DR resources. The Maryland Commission explains that, subject to consideration of concerns respecting PJM's proposal that may be expressed to the Commission, particularly by DR providers, the Maryland Commission generally supports and urges approval of PJM's proposal.

(2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

B. Protests

20. FirstEnergy and Duke state that they support demand resource participation in the RPM auctions and the RTEP process on a comparable basis to generation, and generally support PJM's proposed changes because they make substantial improvements to the qualification process for demand response. However, FirstEnergy and Duke argue that the proposed changes are not just and reasonable in three areas. First, FirstEnergy and Duke argue that the information that PJM proposes to require from demand resources is much more limited than information required for generation capacity resources and request that the Commission direct PJM to require detailed information for all Planned DR that are not Existing DR. Second, FirstEnergy and Duke argue that the Commission should direct PJM to revise its test for whether to require site-specific information to eliminate reliance on "suspect" demand resource quantities cleared in the recent base residual auctions. Third, FirstEnergy and Duke contend that the Commission should direct PJM to require DR Providers to supply schedules that reflect an increasing percentage of customers-under-contract in the incremental auctions, instead of the proposed open-ended schedule requirement, because this would provide a better guideline to DR Providers and better information to PJM as to whether the demand response will actually be deliverable.

21. In addition, FirstEnergy and Duke state that, because they are concerned about the ability of the PJM system to accommodate high levels of demand response from an operational perspective, they request that the Commission direct PJM to conduct a reliability study of the effect of quantities of demand response offering into and clearing in RPM auctions on system planning and operations. FirstEnergy and Duke also argue that the Commission should require PJM to impose a must-offer requirement in the energy market to encourage the efficient dispatch of demand response. Finally, FirstEnergy and Duke also request that the Commission require PJM, at a minimum, to make an informational filing no later than December 1, 2013 addressing the outcome of the ongoing stakeholder process examining the unintended financial incentives for demand response to over-offer capacity into the base residual auctions.

22. The PSEG Companies argue that the Commission should reject the filing because PJM's tariff already mandates that DR Providers have contracts in place with end-use customer sites in order to submit an offer as a capacity resource, and PJM has failed to reconcile the discrepancy between its existing tariff and the proposed revisions.¹⁹ The

¹⁹ PSEG Companies Protest at 12 (citing Tariff, Attachment DD, Section 5.5, Eligibility for Participation in RPM Auction ("Capacity Market Seller may submit a Sell Offer for a Capacity Resource in a Base Residual or Incremental Auction only if such

PSEG Companies also argue that the proposed revisions are not comparable with the eligibility requirements imposed on planned generation capacity resources and are not stringent enough to protect the markets from speculative demand response offers.

23. If the Commission does not reject the filing, the PSEG Companies request that the Commission direct PJM to revise its proposal to: (1) require customer-specific information concerning targeted Planned DR sites to apply to all Planned DR in the DR Sell Offer Plan instead of just the incremental amount above the safe harbor threshold; (2) revise the safe harbor threshold for triggering customer-specific review to not include historic quantities of cleared MWs and to be based on capacity commitment levels associated with quantities of demand response previously registered by the DR Provider instead of the gross quantities of registered MWs themselves; (3) give PJM explicit authority to reject or modify DR Sell Offer Plans that fail to meet the requirements of the tariff or do not provide a realistic assessment of the DR Provider's capabilities to procure DR sites; (4) revise the tariff to address cases in which an existing customer is claimed by more than one DR Provider; (5) lengthen the 15 business day review period to 60 days to allow for more rigorous review in zones with high demand response concentrations; (6) enhance the demand response procurement timeline requirement by including guidelines for the completion of procurements activities and adopting procedures to assure that timelines are followed; and (7) clarify the 10 MW safe harbor from Planned DR site specific review so that it does not annul other Planned DR submittal and review provisions. The PSEG Companies argue that these revisions are necessary to render the proposal just and reasonable.

24. Comverge asserts that PJM's proposed revisions are unjust and unreasonable and would damage the ability of demand response providers to participate in RPM. Comverge states that PJM does not provide adequate factual justification to support the claim that "very aggressive" levels of demand resources offered into the 2012 base residual auction were the result of double counting or offers made without adequate resources to back them. Comverge asserts that it is reasonable that a materially greater amount of demand response would be offered in the base residual auction for a delivery year three years forward than the level that is actually presently registered in the current delivery year. Comverge points out that many resources offered into the auction do not clear, indicating that the price required to retain these resources was not met in the auction. Comverge notes that, should a demand resource provider have difficulty meeting its obligation, it can purchase capacity resources in the incremental auction to make up its shortfall. Comverge states that PJM has not demonstrated that the

seller owns or has the contractual authority to control the output or load reduction capability of such resource.")).

incremental auction process is unable to correct for entities unable to meet their initial commitment, and if PJM perceives it to be inadequate, then PJM should review the entire auction framework.

25. Comverge asserts that PJM has failed to file certain key criteria that determine demand resource eligibility to participate in RPM, in contravention of the Commission's explicit directions. Moreover, Comverge asserts that this criteria is based on out-of-date estimates of statewide demand resource potential from the Commission Staff's 2009 National Assessment of Demand Response Potential (2009 Assessment). Specifically, Comverge argues that the screens used by PJM are based on data from the National Assessment that was never intended to limit demand response participation, and that it relies on outdated data from 2008 and earlier whereas the market has changed significantly. Comverge also points out that, while only one zone was flagged in the most recent base residual auction, two more zones barely missed a failing grade, and that more zones will be flagged over time. Comverge argues that these screens proposed by PJM to flag zones are arbitrary and punish demand response providers in zones where the market most supports demand response.

26. Comverge states that PJM's proposed requirement that an officer certify that the DR Sell Offer Plan relies only on physical delivery of demand resources for its viability, is unduly burdensome. Specifically, Comverge asserts that the proposal appears to rule out the use of market-based business plans and other reasonable projections of available demand resources that DR Providers have employed historically in the RPM auction process. Comverge argues that these requirements create unnecessary barriers to demand response participation in violation of federal policy.²⁰

27. Comverge contends that, by imposing the officer certification requirement, the proposed revisions restrict only the rights of demand resources to make purchases in the incremental auctions as needed if the predicted level of demand resource does not come to fruition, and are therefore unduly discriminatory. Comverge also disagrees with PJM's statement that the proposed requirements are nothing more than what is already required from conventional generation resources, and argues that the two resources are different because demand response relies on the actions of retail customers to meet its wholesale obligations. Comverge argues that PJM does not, and would find it imprudent to, monitor the fuel supplies available to power plants more than three years in advance. Comverge states that PJM should develop its rules understanding that retail customers are

²⁰ Energy Policy Act of 2005, §152(f), Pub. L. 109-58 (uncodified) "It is the policy of the United States that...unnecessary barriers to demand response participation in energy, capacity and ancillary service markets shall be eliminated." Comverge Protest at 14.

very different from wholesale market participants, and that retail customers cannot be expected to agree to reduce load when they cannot say what their energy cost will be three years in advance.

28. For example, Comverge explains that the majority of planned demand response retail customers who will register in the delivery year are not under contract at the time of the base residual auction. As the price of capacity is undetermined, the new customer does not know whether revenues supplied by the DR Provider will justify the opportunity cost of curtailing, customers may wish to negotiate with several DR Providers to obtain the best deal, and customers do not know their business conditions three years in advance of the delivery year. Comverge argues that therefore it is unreasonable that PJM require demand response providers to identify potential customers with a high degree of certainty before new capacity can be offered in flagged zones. Comverge argues that other changes could be made to better accommodate demand response participation, including increasing the holdback in the base residual auction to be acquired in the incremental auctions. Comverge also asserts that the proposed revisions will result in an accelerated shrinkage in the amount of capacity supplied by demand response, and ultimately a cap on demand response. Comverge states that this will reduce competition and increase capacity prices without any corresponding reliability or environmental benefits.

29. If the Commission does not reject the filing, Comverge alternatively requests that the Commission suspend PJM's proposal for five months and set it for a trial-type hearing before a settlement judge in order to allow a full record to be developed.

30. Viridity supports Comverge's protest because (1) PJM's proposal requires the submission of information that will often be unavailable to the DR provider three years before the delivery year, (2) the triggers for requiring detailed customer-specific information are based on an out-of-date study that was never intended to be used for purposes of setting requirements, and (3) PJM has not sought Commission approval of the basis for requiring detailed customer-specific information.

C. Answers

31. In its answer, PJM contends that, in arguing that PJM's proposal is inconsistent with an existing tariff provision, the PSEG Companies omit a clause of that provision and thereby seek to change the meaning of the provision. PJM asserts that it has never read the provision cited by the PSEG Companies to mean that end-use contracts for all of a DR Provider's capacity offer are required at the time of the base residual auction.²¹ With respect to the PSEG Companies' claim that PJM fails to address the duplication of

²¹ PJM September 9, 2013 Answer at 24.

Existing DR by DR Providers, PJM clarifies that no change is needed because PJM's systems simply will not accept offers that identify the same existing registered end-use customer site.²²

32. In addition, PJM argues that Comverge's overarching complaint is that the DR Sell Offer Plan will accomplish exactly what it is designed to do—DR Providers will only submit capacity offers that they reasonably expect to be able to support with physical resources in the applicable delivery year. In response to Comverge's claim that it will be impossible for demand resources to comply with the new rules, PJM argues that they should instead be offering that resource into an incremental auction held closer to the delivery year. With respect to claims that PJM's use of the 2009 Assessment is improper, PJM contends that it is not tied to using this study and its use is not necessarily a determinative part of the process used to identify when and to what extent end-use customer data may be required. PJM reiterates that the officer certification is reasonable and that data referenced in its filing shows overly aggressive demand resource offer levels. PJM argues that the Commission should reject Comverge's request for a hearing and settlement judge proceedings because there is no material issue of fact.

33. In its answer, the Market Monitor urges the Commission to reject PJM's filing, arguing that section A.5 of Schedule 6 to the RAA already requires that Planned DR be a specific, physical resource that is able to provide the identified reduction in the Delivery Year and that the entity offering the Planned DR must demonstrate that it is a specific physical resource at a specific location prior to the offer.²³ The Market Monitor contends that PJM has failed to implement the existing rule requiring physical demand response by allowing submittal and acceptance of Planned DR in BRAs that only reflects a CSP's speculative estimate of the MW that could be registered in the Delivery Year. The Market Monitor states that its data shows that the failure to enforce rules requiring Planned DR to demonstrate that it has a physical resource at a specified location prior to the base residual auction is allowing non-physical offers to suppress prices and distort the market, and asserts that accepting the filing would weaken and confuse the existing rules.

²² *Id.* at 24-25.

²³ Market Monitor Answer at 3 (citing PJM RAA, Schedule 6, section A.5: “An entity offering for sale...any Planned Demand Resource must demonstrate, in accordance with standards and procedures set forth in the PJM Manuals, that such resource shall have the capability to provide a reduction in demand, or otherwise control load, on or before the start of the Delivery Year...Providers of Planned Demand Response must provide a timeline including the milestones, which demonstrates to PJM's satisfaction that the Planned Demand Resources will be available for the start of the Delivery Year, 15 business days prior to a Base Residual Auction...”).

In addition, the Market Monitor argues that consistent and non-discriminatory enforcement of current rules requiring both generation and demand response to show that offers are physical would remove the need for the proposed rules, which treat generation and demand response inconsistently.

34. The Maryland Commission states in its answer that to adopt the PSEG Companies' reading of the Tariff would severely burden development of Maryland demand response resources. The Maryland Commission disagrees with Comverge's arguments that the proposal is burdensome and will restrict participation of demand resources, and that PJM has not shown the necessity for the proposal. However, Maryland Commission is concerned with the extent of site-specific data required in flagged zones, and agrees with protestors that argue that PJM should be directed to provide more specific explanation of the standards it has chosen to trigger these additional site-specific requirements.

35. In its answer, P3 argues that Comverge misunderstands the purpose of the capacity market. P3 asserts that the capacity market is designed to secure physical commitments, and is not designed for speculation or to obtain commitments after resources are chosen in an auction.

36. The PSEG Companies reiterate that PJM's proposal imposes a lesser standard on DR Providers than currently specified in its Tariff. The PSEG Companies contend that the PJM's argument that it has never interpreted the Tariff in the way PSEG Companies interpret it is not determinative of the meaning of the provision.

37. In its answer to the Market Monitor's comments, PJM urges the Commission to reject the Market Monitor's pleading because it constitutes an untimely protest. PJM states that it does not object to the Market Monitor's filing of an updated version of its report on replacement capacity included with the pleading, but the buying and selling or replacement capacity in PJM's incremental auctions presents a distinct set of issues from the issue presented by the instant tariff changes.

IV. Discussion

A. Procedural Matters

38. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

39. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will grant the Market Monitor's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

40. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest and or answer unless otherwise ordered by the decisional authority. We will accept the answers filed by P3, Maryland Commission, PJM, the PSEG Companies, and the Market Monitor because they have provided information that assisted us in our decision-making process.

B. Commission Determination

41. We find that PJM's proposed tariff changes have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Commenters raise a number of issues with PJM's proposal that we find warrant further discussion, including but not limited to whether the proposed requirements for demand resources are reasonable, given the resource development cycle used by curtailment service providers to provide demand response inside PJM and given the overall reliability objectives of the RPM. We will, within the next sixty days, establish a technical conference to explore these issues. Accordingly, we accept and suspend PJM's filing for a five month period to become effective the earlier of a Commission order or March 2, 2014, subject to refund, and the outcome of a technical conference. The details of such conference will follow in a subsequent notice.

The Commission orders:

(A) Pursuant to the authority contained in sections 205 and 206 of the Federal Power Act, PJM's filing is accepted and suspended for a five month period, to become effective on March 2, 2014, subject to refund, and to the outcome of a technical conference and a further order, as discussed in the body of this order.

(B) The Commission's Staff is hereby directed to convene a technical conference, within 60 days following the date of this order, and to report the results of the conference to the Commission, as discussed in the body of this order.

By the Commission. Commissioners Moeller and Clark are concurring with a joint separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.

Docket No. ER13-2108-000

(Issued October 1, 2013)

MOELLER, Commissioner, and CLARK, Commissioner, *concurring*:

As discussed in our prior concurrence on this issue in Docket No. EL13-57-000, we support PJM's efforts to ensure that offers into the capacity market represent real, physical resources that will help PJM meet reliability requirements in the delivery year. Our initial assessment is that PJM's filing represents a balanced approach for resolving its reliability concerns. However, we are also interested in a technical conference as a means of discovering whether additional mechanisms are needed to ensure the reliability of PJM's system and its capacity products.

Philip D. Moeller
Commissioner

Tony Clark
Commissioner