

145 FERC ¶ 61,035
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. ER13-2140-000

ORDER ACCEPTING PROPOSED TARIFF CHANGES

(Issued October 11, 2013)

1. On August 9, 2013, PJM Interconnection, L.L.C. (PJM) submitted proposed revisions to its Open Access Transmission Tariff (OATT), pursuant to section 205 of the Federal Power Act (FPA).¹ In its filing, PJM proposes new and/or revised deadlines for preliminary and final must-offer exception requests for capacity market resources that are required to participate in PJM's capacity market auction, but which are expected to be deactivated prior to, or during, the relevant capacity auction delivery year.² For the reasons discussed below, we accept PJM's revised deadlines and related tariff changes, to become effective October 15, 2013, as requested.

I. **Background**

2. Under PJM's existing capacity market rules, only existing generation resources located within the PJM region are subject to PJM's must-offer requirement,³ absent a request for a must-offer exception.⁴ PJM states that the current deadline applicable to must-offer exception requests is 120 days prior to the commencement of the offer period for the applicable auction (i.e., a deadline of early to mid-January, as applicable to a May auction). PJM argues, however, that this existing deadline does not give PJM sufficient

¹ 16 U.S.C. § 824d (2006).

² See PJM OATT, Attachment DD (Reliability Pricing Model), at proposed section 6.6(g).

³ *Id.* at section 6.6(a).

⁴ *Id.* at section 6.6(g).

time to evaluate the effect of a proposed deactivation to determine whether it would impact system reliability. In fact, PJM states, when an exception is not received until early or mid-January, PJM's corresponding review process may not be completed until early to mid-April, meaning that the exception request generally cannot be reflected in the planning parameters that PJM is required to post on, or before, February 1.

3. PJM notes that, instead, the deactivation notice is included in updated auction parameters, issued in April, but doing so does not allow new entrants enough time to enter the auction. Accordingly, PJM proposes to revise its OATT, at Attachment DD, section 6.6(g), to provide that must-offer exception requests be submitted to PJM in the form of both a preliminary request and a final request, based on the following deadlines.

4. First, PJM proposes to implement a transition-year provision applicable to the May 2014 base residual auction, for which preliminary must-offer exception requests must be submitted no later than November 1, 2013. Second, PJM proposes that, for all future base residual auctions, preliminary must-offer exception requests be submitted no later than September 1.⁵ Third, PJM proposes that, for all incremental auctions, preliminary must-offer exception requests be submitted no later than 240 days prior to the commencement of the offer period. Fourth, PJM proposes that final must-offer exception requests be submitted no later than the December 1 for base residual auctions, or 120 days prior to the commencement of the offer period for the applicable incremental auction. The seller must inform PJM whether the exception request is being withdrawn due to changes in circumstances, or conversely, that the seller can demonstrate, among other things, that it has a documented plan for moving forward with its deactivation.

5. PJM also proposes that a preliminary must-offer exception request must: (i) advise PJM and the PJM independent market monitor (IMM) that the capacity market seller intends to deactivate the relevant resource; (ii) indicate the reasons and conditions upon which the capacity market seller is relying; and (iii) include supporting documentation.⁶ Finally, PJM proposes to post on its website a summary of the total megawatts of preliminary must-offer exception requests it receives, by zone and locational deliverability area, as well as post the final requests it receives.⁷ PJM states

⁵ The corresponding, existing deadline for new entrants to enter PJM's planning queue (and subsequently participate in PJM's capacity auction) is October 31.

⁶ PJM notes, for example, that if the capacity market seller only intends to deactivate its resource if it cannot reach agreement with its labor force on a new collective bargaining agreement, it must note this condition in its must-offer exception request.

⁷ PJM notes that the final notice would be publicly identified, as to both owner and resource.

that its manuals will describe the level of detail that will be posted regarding the proposed deactivations, including the following ranges for purposes of aggregation: less than 100 MW; 100 to 500 MW; 500 to 1000 MW; and a specific MW total if deactivations are over 1000 MW. PJM states that this posting obligation will ensure market transparency and assist market participants making business decisions about capacity market sell offers and resource development, while still safeguarding capacity market sellers' interests.

6. In support of its filing, PJM argues that modifying its existing deadline for the submission of must-offer exception requests, as proposed, will: (i) assist PJM in its determination of the planning parameters applicable to its capacity market auctions; (ii) provide more timely notice to market participants seeking to develop and submit new resources to replace deactivated resources; and (iii) ensure that a generation owner with a last minute deactivation notice will not have an unfair advantage over other market participants.⁸ PJM requests that its proposed tariff changes be made effective as of October 15, 2013.

II. Notice of Filing and Responsive Pleadings

7. Notice of PJM's filing was published in the *Federal Register*, 78 Fed. Reg. 40,135 (2013), with interventions and protests due on or before August 30, 2013. Notices of intervention and motions to intervene were timely-filed by the entities noted in the appendix to this order. In addition, motions to intervene out-of-time were submitted, on September 4, 2013, by Dominion Resource Services, Inc. (Dominion), on September 10, 2013, by Duquesne Light Company (Duquesne), on September 16, 2013, by the Pennsylvania Public Utility Commission (Pennsylvania Commission), and on September 17, 2013, by Public Interest Organizations.⁹

8. Protests and comments were filed by the Dayton Power and Light Company (Dayton) and American Electric Power Service Corporation (AEP), Duke Energy Ohio, Inc. (Duke), the PJM Industrial Customer Coalition (Industrial Customer Coalition), FirstEnergy Service Company (FirstEnergy), NRG Companies (NRG), PJM Power

⁸ PJM states that where a capacity market seller is the only entity with advance knowledge that a particular zone, or locational deliverability area, might be short in the next capacity market auction, due to the deactivation of the seller's resource, such a seller would have the opportunity to begin developing a new project and then submit an offer for that new project into the auction to the disadvantage of other potential developers.

⁹ Public Interest Organizations is comprised of the following entities: Earthjustice; Environmental Law and Policy Center; National Audubon Society; Pace Energy and Climate Center; Sierra Club; Southern Environmental Law Center, Sustainable FERC Project; and the Union of Concerned Scientists.

Providers Group (P3), and the Utility Workers Union of America, AFL-CIO (Utility Workers Union), and Public Interest Organizations. In addition, comments were filed by non-intervening entities.¹⁰ Finally, answers to protests were filed, on September 13, 2013, by the IMM and the Industrial Customer Coalition, on September 16, 2013, by the Maryland Commission, on September 17, 2013, by PJM. On October 2, 2013, the Utility Workers Union filed an answer to an answer.

A. Protests and Comments

9. Comments generally supportive of PJM's filing were submitted by the Industrial Customer Coalition, which asserts that PJM's proposed deadlines and related tariff changes will allow PJM and the IMM to adequately consider the impacts of requested deactivations on system reliability and to reflect these impacts in the models and planning parameters applicable to the operation of PJM's capacity market auctions. Similarly, Dayton and AEP urge the Commission to promptly accept PJM's filing.¹¹

10. P3 and Duke argue that PJM's proposed changes would unduly favor new over existing resources by: (i) requiring a forward commitment for existing generators of three and two-thirds years, compared to only three years for other resources, and (ii) requiring existing generators to make these commitments without the benefit of PJM's planning parameters, while allowing all other participants to make their decisions based on these parameters.¹² P3 argues that no other forms of capacity – including

¹⁰ See comments of U.S. Sen. Robert P. Casey, Jr.; comments of U.S. Sen. Sherrod Brown; comments of Pennsylvania State Sen. Timothy J. Solobay and Pennsylvania State Rep. Pam Snyder; comments of Pennsylvania State Sen. Wayne D. Fontana; comments of the state-chapter AFL-CIO of Pennsylvania; comments of the state-chapter AFL-CIO of Ohio; comments of state-chapter AFL-CIO of Michigan; comments of Mayor Len Morano, Barnegat Township, New Jersey; comments of New Jersey Assemblyman Charles S. Mainor; comments of New Jersey Assemblyman Patrick J. Diegnan, Jr.; comments of New Jersey Assemblyman Upendra Chivukula; comments of New Jersey Sen. Joseph F. Vitale, New Jersey Assemblyman John S. Wisniewski, and New Jersey Assemblyman Craig J. Coughlin; comments of New Jersey Sen. Jim Whelan; comments of New Jersey Assemblyman Stephen M. Sweeney; and comments of New Jersey Assemblyman Troy Singleton.

¹¹ However, should the Commission establish further proceedings, Dayton and AEP request that the Commission consider whether demand response and imported capacity should be subject to similar notification requirements.

¹² See P3 Protest at 4 and 7; Duke Protest at 8.

demand response or imported capacity – are required to provide notice to PJM regarding their intention not to participate in PJM’s capacity market auction.

11. FirstEnergy and NRG assert that PJM’s proposed deadlines treat existing resources seeking exceptions due to deactivation in a discriminatory manner compared to existing resources seeking exceptions for other reasons. FirstEnergy argues that capacity sellers that seek a must-offer exception, based on a deactivation plan (as supported by economic conditions), are the very entities that most need current and up-to-date market information, including PJM’s auction planning parameters, in order to make the best-informed decision about whether their resource commitments remain economically viable.

12. Duke argues that PJM should be required to clarify that the proposed September notification is, in fact, non-binding, and that while it should be made in good faith, a capacity market seller’s decision to change its mind, absent evidence of market manipulation, cannot be second-guessed by PJM. Duke asserts that this clarification would appropriately balance PJM’s desire for earlier data collection with the need to ensure that its proposal is not unduly discriminatory and skewed in favor of new entry.

13. Duke also suggests that PJM could hire additional engineers (or provide more evidence on this issue), in response to PJM’s asserted concern that it needs more time to evaluate deactivation requests. Duke further suggests that PJM could expedite the new entry process, including the existing timetable applicable to Interconnection Feasibility Studies and the submission of a System Impact Study, in response to PJM’s concern that new entrants, currently, do not have enough time to respond to the market needs presented by an expected deactivation. In addition, Duke argues that PJM’s concern, regarding its current inability to post February 1 planning parameters that incorporate recently-received deactivation notifications, could be addressed by a tariff change authorizing the use of planning parameters that do not take into account generation unit deactivations, or perhaps by allowing PJM to issue predictions, based on trends.

14. Duke argues, however, that to ensure that both existing generators making deactivation decisions and potential new generators have access to planning parameters when making their forward commitments, the planning parameters should be published before the final deactivation notice is given. Duke argues that, as such, PJM should be required to explain why it could not move the final deactivation notification date for the capacity market auction to February 15, i.e., to a date 15 days after the publication of the planning parameters.¹³ Alternatively, Duke argues that PJM should continue to require final notification of deactivation by early January. Finally, Duke requests that the

¹³ See also P3 Protest at 5 (arguing that the decision to retire may be dependent on the posting of the auction parameters).

remainder of PJM's proposal be accepted on an interim basis, subject to consideration, next year, of appropriate alternatives.

15. FirstEnergy and P3 also question the premise behind PJM's proposal that a September 1 deadline will give new entrants the time they need to enter the PJM interconnection queue, receive a System Impact Study Agreement, and offer into the capacity market auction. FirstEnergy argues that it is unlikely that a new entrant will be able to submit an offer into the capacity auction on the timetable suggested by PJM, without initiating the relevant certificate of public convenience and necessity process and receiving guidance as to the operating conditions that are likely to apply to a new resource. P3 adds that a market participant with a new interconnection request and a pending Feasibility Study can concurrently execute a System Impact Study at any time prior to the conduct of the capacity market auction and is not dependent on the posting of the auction parameters.

16. FirstEnergy questions whether PJM's proposed preliminary deadline is not, in fact, a final deadline, given that the required preliminary deadline requires the capacity resource seller to submit supporting data and documentation.

17. NRG and P3 argue that PJM's proposal will negatively impact the market. NRG asserts that it is difficult for any resource owner to forecast the state of the market, predict environmental rule changes, and know its own capital improvement needs three years out, let alone 46 months out, as PJM proposes. P3 adds that PJM's proposed deadlines significantly change the timeline for a retirement decision to 46 months prior to the delivery year, forcing the capacity market seller to make decisions prematurely and, arguably, without complete information. NRG concludes that forcing resource owners to make these decisions, in so short a time period, and with so little information, is unjust and unreasonable.

18. NRG also challenges the asserted need to allow new entrants the time they need to develop new projects, arguing that developers submit projects throughout the year and throughout the market footprint, with information relating to expected unit retirements representing only one of many factors influencing the decision to move forward. NRG argues that, regardless, PJM's argument that the must-offer exemption submission should be moved up to facilitate a developer's ability to execute a System Impact Study Agreement is unsupported, giving the ability of generators to expedite the interconnection process.¹⁴

¹⁴ NRG notes that PJM allows generators to sign a System Impact Study Agreement in advance of the issuance of a Feasibility Study.

19. NRG also questions PJM's claim that the existing mid-January deadline fails to give PJM or market participants the time required to set the planning parameters for the capacity market auction. NRG notes that the only basis for this claim cited by PJM is the auction held *prior* to the effective date of the current must-offer waiver exception deadline. NRG further questions PJM's claim that the need to re-post planning parameters, following the February 1 posting, has negative implications for the market. NRG argues that PJM fails to explain these alleged negative effects and neglects to acknowledge that PJM reposts its planning parameters for a variety of reasons.¹⁵

20. P3 argues that if a deactivation request can be changed at a later date, as allowed under PJM's proposal, there can be no valid reason for imposing a September 1 preliminary notice requirement. P3 also argues that PJM's proposal to post aggregate data could lead to unintended consequences, given the likely inability of being able to shield the identity of larger units looking to retire. According to P3, it is concerned that if a generation owner informed PJM that it would be retiring a large station of units, rather than a single unit, and that if the large station is the only retirement in the zone, the mere number of megawatts is sufficient to identify the generation station and the owner. P3 asserts that revealing market sensitive information of this sort could have significant economic and reliability consequences for any given capacity market seller.

21. Finally, the Utility Workers Union and Public Interest Organizations object to PJM's proposal to limit the information it posts to aggregate deactivation requests, by zone and locational deliverability area. The Utility Workers Union argues that PJM's professed need to ensure confidentiality regarding these matters is unsupported and otherwise unwarranted, given that PJM has no legitimate stake in such matters as labor negotiations and other issues relating to a potential deactivation. Public Interest Organizations agrees, noting that PJM's proposal will undermine transparency. The Utility Workers Union further asserts that potential new developers would be better able to assess the likelihood of proposed unit deactivations based on unit-specific information, while PJM and the IMM would also benefit by the input that could be provided by the affected stakeholders on such matters as collective bargaining negotiations. Various parties filed comments in support of the Utility Workers Union's protest, and in particular, several of these parties raised issues related to the deactivation of the Hatfield and Mitchell power plants in Pennsylvania.¹⁶

¹⁵ See also P3 Protest at 9.

¹⁶ See *supra* note 10.

B. Answers

22. PJM, the IMM, and the Industrial Customer Coalition, in their answers, assert that arguments asking the Commission to treat new resources, demand response resources, and imported capacity resources comparably misconstrue PJM's limited section 205 proposal and/or seek tariff changes that are beyond the scope of this proceeding. In particular, the IMM asserts that a must-offer requirement can only apply to existing generation, and that such arguments represent an attack on the must-offer requirement itself.

23. PJM argues that its proposed deadlines and related tariff changes do not change the final commitment date for capacity resources. PJM notes that a capacity resource is not "committed" to PJM, for a given delivery year, until it has been offered into (and cleared) PJM's capacity market auction applicable to that delivery year. PJM adds that an existing resource that obtains a must-offer exception is not prohibited from submitting an offer into PJM's May capacity auction (although such a resource may be investigated and possibly sanctioned if it has done so for the purpose of market manipulation).

24. PJM also responds to the Utility Workers Union's argument that PJM's posting proposal, including its proposal to post aggregate data only for notices of preliminary must-offer exception requests, fails to promote adequate market transparency. PJM argues that at the time it receives a capacity market seller's notice of a preliminary exception request, it is unlikely that such a notice would be accompanied by an actual deactivation notice. PJM adds that the information it is proposing to post on an aggregate basis by zone, locational deliverability area, and range, after it receives a final exception request, is merely an updated version of the same information it will post after it receives a preliminary request and will represent additional information that PJM does not currently post. PJM states that it will maintain its current practice of posting unit-specific information related to a deactivation on its website, following receipt of a formal deactivation notice.

25. The IMM, in its answer, argues that the generators fail to explain why moving the must-offer exception request deadline from mid-January to December 1, as proposed by PJM, would have a significant impact on incumbent generators, or why the beneficial impact on competition would not outweigh any such adverse impact. In response to Duke's argument that no justification has been supplied for moving up the final deactivation notice deadline, the IMM argues that the justification is to permit new entrants to compete in PJM's capacity market auction, given that the existing mid-January deadline creates an anti-competitive barrier to entry by preventing new entrants from replacing the deactivating resource.

26. The IMM responds to NRG's and P3's argument that PJM's proposal unfairly forces generation resource owners to make decisions prematurely and without adequate (i.e., complete) information. The IMM asserts that this argument overlooks the fact that, under PJM's capacity market protocols, the owners of an existing generation resource

may make offers into the auction that fully reflect their costs and that any such resource that fails to clear may be deactivated, upon notice.

27. The IMM also responds to P3's argument that the aggregate information PJM proposes to post (addressing preliminary must-offer exception requests) is market-sensitive information that should be protected. The IMM argues that a deactivation may create public relations issues for a generation owner, but any such issues cannot be characterized as "market" issues, particularly when the information at issue will facilitate competition.¹⁷

28. The IMM argues that PJM's proposed deadlines will appropriately facilitate competition, relative to the commitments that must be made by new entrants. The IMM notes that potential entrants seeking to participate in PJM's base residual auction held in May are required to enter the planning queue by October 31 of the preceding year. The IMM adds that, in order to determine whether there is an opportunity to compete to replace a retiring generating unit, potential entrants must know where such retirements will take place. The IMM argues, however, that if the incumbent generator has no deadline applicable to its deactivation plan, notice of that plan could be delayed until it is too late for any potential new entrant to compete.

29. The Maryland Commission, in its answer, generally agrees with the IMM's arguments. In particular, the Maryland Commission argues that PJM's revised deadlines, as applicable to a must-offer exception request, will not impose any significant hardship on incumbent generators and cannot be characterized as unduly discriminatory.

30. Finally, the Utility Workers Union, in its answer to PJM's answer, notes that PJM's answer fails to address the Utility Workers Union's fundamental concern that PJM's proposed tariff changes will allow generation owners to pursue their planned deactivation in an unduly secretive manner *vis a vis* their unions.

III. Discussion

A. Procedural Matters

31. 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. In addition, given their interests, the early stage of this proceeding, and the absence of undue

¹⁷ The IMM adds that, regardless, a generation owner's concerns about the public relations issues associated with deactivation do not take priority over the need to ensure resource adequacy at competitive prices.

prejudice or delay, we grant the unopposed late-filed interventions submitted by Dominion, Duquesne, the Pennsylvania Commission, and Public Interest Organizations.

32. 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 or an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers submitted by the IMM, the Industrial Customer Coalition, the Maryland Commission, PJM, and the Utility Workers Union because they have assisted us in our decision-making process.

B. Determinations

33. For the reasons discussed below, we accept PJM's proposed tariff changes, to become effective October 15, 2013, as requested. PJM states that, under PJM's existing rules, a must-offer exception request received in the mid-January timeframe does not give PJM's planning engineers sufficient time to take into consideration the deactivation of a resource in the determination of the capacity market planning parameters that must be posted on or before February 1. PJM notes that in the case of PJM's May 2012 auction, PJM was unable to consider, as of that time, the reliability impact of over 11,600 MW of capacity for which must-offer exception requests (based on planned deactivations) had been received. Instead, PJM was required to post updated parameters (reflecting updated assumptions) in April, addressing these deactivation notices, and an additional 8,500 MW of capacity reflecting deactivation notices received *after* February 1, 2012.¹⁸

34. We find reasonable PJM's proposal that to help ensure reliability, make the auction process function more efficiently, and provide greater notice to potential new entrants, preliminary information on deactivations should be supplied by November 1, 2013 for the 2014 base residual auction, by September 1 for subsequent base residual auctions, and 240 days in advance of incremental auctions. We also find reasonable PJM's proposal that final information on deactivations should be provided by December 1 for base residual auctions and 120 days in advance for incremental auctions. These deadlines will give PJM the time it needs to evaluate the impact of deactivation on its system prior to the date it is required to post its capacity market planning parameters and will give new entrants the time they need to consider their investment options.

35. We reject intervenors' argument that PJM's proposed deadlines, and related changes, will unduly discriminate against existing generation capacity resources (and thus unduly favor other resources, including new resources, demand response, and imported capacity). PJM's currently-effective tariff requires existing capacity resources to offer into the capacity market auction, but does not impose such a requirement on the other resources identified by intervenors. Any change to this existing requirement is

¹⁸ See PJM Filing at 6-7.

beyond the scope of this section 205 proceeding.¹⁹ PJM has demonstrated, here, that it is reasonable to require that resources that are subject to a must-offer requirement provide PJM with advance notice of a must-offer exception request so that PJM can take that notification into account in planning for its upcoming auctions.

36. We also reject the argument made by NRG and P3 that PJM's proposed September 1 preliminary deactivation notice, if required, would force existing capacity resources to make decisions prematurely. The September 1 date is only preliminary and the resource may withdraw that request if it finds it can continue in operation. Further, NRG and P3 provide no support for their contention that an existing seller will not have sufficient financial and other information to provide a good faith, preliminary determination that it will need to deactivate the unit.²⁰

37. Duke, NRG, and FirstEnergy argue that PJM's proposed tariff changes should be rejected, as ineffective, given that PJM's revised deadlines cannot achieve one of PJM's principal underlying objectives, i.e., the revised deadlines will not assist new entry. However, as PJM notes, a preliminary notice of a must-offer exception request, in the case of an expected deactivation, will provide additional information to potential new entrants, while also allowing PJM to develop more accurate planning parameters.

38. Duke requests clarification that a preliminary must-offer exception request is non-binding and may be withdrawn for any reason, absent bad faith or evidence of market manipulation. We note that PJM's proposed tariff does, in fact, address this concern. The proposed tariff provides that "in order to obtain an exception to the must-offer requirement ..., a Capacity Market Seller shall first submit a preliminary exception request in writing, along with supporting data and documentation indicating the reasons and conditions upon which the Capacity Market Seller is relying in its analysis of whether to retire such resource" and that it can notify PJM that "it is withdrawing its

¹⁹ Intervenor-proposed changes to PJM's existing tariff must be made through a complaint under section 206 of the FPA and not through protests to a section 205 filing. *See, e.g., Otter Tail Power Co.*, 137 FERC ¶ 61,225, at P 23 (2011) ("the Commission discourages the combination of complaints with other types of filings, including protests.").

²⁰ Moreover, this provision does not preclude a generator that fails to seek an exemption from deactivating its unit at later date. Under PJM's tariff, a generator can deactivate a unit with 90 days notice to PJM. *See* PJM OATT Part V, Section 113.1 ("When a Generation Owner desires to deactivate a generating unit located in the PJM Region, such Generation Owner, or its Designated Agent, must provide notice of such proposed Deactivation in writing to the Transmission Provider no later than 90 days prior to the proposed Deactivation Date for the generating unit.").

preliminary exception request and explaining the changes to its analysis of whether to retire such resource that support its decision to withdraw.”²¹ As such, PJM’s proposed tariff provides that good faith exception requests may be withdrawn and we see no need for further clarification.

39. Duke also contends that the filing should be rejected because PJM moved the final notice of deactivation from January to December. We find convincing PJM’s explanation that it was unable to consider the reliability impact of the final deactivation notices PJM received leading up to the 2014-15 delivery year on the transmission system in time to meet the February 1, 2012 deadline for posting planning parameters; as a result, the posted planning parameters did not reflect the deactivation notices received. We note that an early January deadline gives PJM just a few weeks to consider the impacts of a deactivation request, even though the OATT contemplates that this process may take ninety days after the receipt of a deactivation notice.²² Moreover, Duke does not explain how requiring notification a few weeks earlier will, for example, harm the market.

40. Duke also suggests that PJM could hire additional engineers and propose additional tariff changes expediting the new entry process and authorizing the use of planning parameters that do not take into account generation unit deactivations, or comparable policies. We see no basis for rejecting this filing on the basis that PJM alternatively could hire additional engineers. As indicated above, Duke has not shown why providing a preliminary determination of deactivation is so onerous that it warrants the rejection of PJM’s filing.

41. P3 argues that PJM’s proposal to aggregate data could lead to unintended consequences, to the extent this posting policy might reveal the identity of large units looking to retire. P3 asserts that revealing market sensitive information of this sort could have significant economic and reliability consequences for any given capacity market seller. As discussed above, we find that PJM has developed a reasonable means for ensuring reliability and efficiency in the auction process. PJM’s proposal to post a summary of the total megawatts of preliminary must-offer exception requests that it receives is an appropriate way to address its stated concerns with the current process at this time, while also mitigating against the potential release of generator-specific information in certain circumstances. Moreover, we are not persuaded that revealing this information would be inappropriate, particularly at the preliminary stage, when the unit is only considering deactivation. P3 makes only vague references to the “significant economic and reliability consequences” associated with revealing this information and

²¹ *Id.* at Attachment DD, proposed section 6.6(g).

²² *Id.* at Part V, section 113.2.

has not demonstrated how PJM's proposal will harm the market. We also agree with PJM and the IMM that information on resources that are deactivating is not information that needs to be kept confidential in order to protect the market, but is information that will facilitate competition.

42. Finally, we are not persuaded that PJM's posting policies should be further modified, as proposed by the Utility Workers Union and Public Interest Organizations, to provide additional information, particularly unit-specific information, to be posted when preliminary exception requests are received. We note that PJM's proposal represents additional information that will be provided to market participants. In addition to posting summary information on preliminary and final exception requests, PJM has stated in its answer that it will continue to post unit-specific information on its website when it receives a formal deactivation notice.²³ Thus, PJM's filing results in greater transparency by providing summary information on deactivations in advance of unit-specific information.

The Commission orders:

PJM's proposed tariff changes are hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²³ PJM answer at 8.

Appendix

List of Intervenors

American Electric Power Service Corporation (AEP)
American Municipal Power, Inc.
Dominion Resource Services, Inc. (Dominion) *
Duke Energy Ohio, Inc. (Duke)
Duquesne Light Company (Duquesne) *
Edison Mission Energy
Exelon Corporation
FirstEnergy Service Company (FirstEnergy)
Maryland Public Service Commission (Maryland Commission)
Monitoring Analytics, LLC (IMM)
NRG Companies (NRG)
Organization of PJM States, Inc.
Pennsylvania Office of Consumer Advocate
Pennsylvania Public Utility Commission (Pennsylvania Commission) *
PJM Industrial Customer Coalition (Industrial Customer Coalition)
PJM Power Providers Group (P3)
PSEG Companies
Public Interest Organizations *
The Dayton Power and Light Company (Dayton)
Utility Workers Union of America, AFL-CIO (Utility Workers Union)

* motion to intervene out-of-time