

146 FERC ¶ 61,150
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER13-2108-000

ORDER ACCEPTING PROPOSED TARIFF PROVISIONS

(Issued February 28, 2014)

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). On October 1, 2013, the Commission issued an order conditionally accepting and suspending the proposed tariff changes 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.² As discussed below, we accept PJM's proposed tariff revisions to become effective March 2, 2014.

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."³ 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 (2012).

² *PJM Interconnection, L.L.C.*, 145 FERC ¶ 61,001 (2013) (October 1, 2013 Order).

³ RAA, section 1.13, Demand Resource (8.0.0).

An entity offering for sale, designating for self-supply, or including in any FRR Capacity Plan any Planned Demand Resource^[4] 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. On April 3, 2013,⁵ 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.⁶ The Commission encouraged PJM to submit a section 205 filing as appropriate.⁷

4. On August 2, 2013, PJM filed the DR Plan Enhancements. In its filing, PJM explained that it has seen tremendous growth in the megawatt quantity of demand resources offered and cleared in the Base Residual Auction and other Reliability 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

⁴ A Planned Demand Resource (Planned DR) is "a Demand Resource that does not currently have the capability to provide a reduction in demand or to otherwise control load but that is scheduled to be capable of providing such reduction or control on or before the start of the Delivery Year for which such resource is to be committed, as determined in accordance with the requirements of Schedule 6." PJM RAA, § 1.69 Planned Demand Resource.

⁵ *Demand Response Coalition v. PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,061 (April 19, 2013 Order).

⁶ *Id.* P 17.

⁷ *Id.* P 23.

actually identified in those areas.⁸ PJM argued 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’ 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.

5. Accordingly, in order to ensure that demand resources would be able to provide the offered demand reduction capability, PJM proposed 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,⁹ and second, a DR Officer Certification Form.¹⁰ PJM also proposed to require that end-use customer site information be provided under circumstances that PJM considers to present the greatest risk of multiple Demand

⁸ PJM Transmittal at 7. PJM states that in some zones, 23% of peak load in PPL and Penelec were offered into the Base Residual Auction, and 15% of peak load was offered in four other zones.

⁹ Among other things, the proposed DR Sell Offer Plan template required: (1) summary information (demand resource 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, 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; (3) details of, and key assumptions underlying, the Planned Demand Resource quantities, including methods of achieving load reduction at customer sites, types of customer targeted, and end-use customer site-specific information in flagged zones; and (4) a timeline for procuring end-use customer sites.⁹

¹⁰ The DR Officer Certification Form required 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.” Schedule 6 at 6.A.2.b.

Resource offers relying on load reductions from the same end-users.¹¹ The proposed revisions specified that PJM would notify Demand Resource Providers (DR Providers)¹² in the case of duplicate submissions of the same end-use customer, and DR Providers could 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 DR Provider for the relevant Delivery Year. The proposed revisions stated 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 would be allowed to include that end-use customer. Finally, PJM also proposed 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.

6. Numerous parties commented on PJM’s August 2, 2013 filing. PJM Power Providers Group (P3), Electric Power Supply Association (EPSA), American Electric Power Service Corporation (AEP) and The Dayton Power and Light Company (Dayton), and the Maryland Public Service Commission (Maryland Commission) filed comments in support. Parties supporting PJM’s filing generally argued that 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, and 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.

7. FirstEnergy Service Corporation (FirstEnergy) and Duke Energy Corporation (Duke), and Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC (PSEG Companies) opposed the filing, arguing that the information that PJM proposes to require from demand resources is much more limited

¹¹ 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 screens, 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.

¹² A Demand Resource Provider is “a PJM Member that has the capability to reduce load, or that aggregates customers capable of reducing load...” PJM Tariff, Attachment DD Reliability Pricing Model, § 2.22.

than information required for Generation Capacity Resources.¹³ The PSEG Companies also argued 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.

8. Comverge, Inc. (Comverge) and Viridity Energy, Inc. (Viridity) also opposed PJM's filing, arguing, *inter alia*, that (1) 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, (2) PJM's proposal requires the submission of information that will often be unavailable to the DR provider three years before the delivery year, (3) the officer certification requirement is unduly burdensome, and (4) the triggers for requiring detailed customer-specific information are based on an assessment of demand response potential published by the Commission's staff in 2009 (2009 Assessment)¹⁴ that is out-of-date and was never intended to be used for purposes of setting requirements. Comverge also states that the level of demand response that a participant will be able to arrange is directly affected by the price that the Curtailment Service Provider (CSP) will be able to pay the demand resource to provide a response, and that price is contingent on the clearing price in the Base Residual Auction. Comverge also states that as the price of capacity is not known prior to the Base Residual Auction a new customer cannot know whether revenues provided by a DR Provider will justify the opportunity cost of curtailing.

9. Finally, the Independent Market Monitor for PJM (PJM IMM) urged the Commission to reject the filing because the RAA already requires Planned DR to 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.

¹³ A Generation Capacity Resource is defined as "a generation unit, or the right to capacity from a specified generation unit, that meets the requirements of Schedules 9 and 10 of [the RAA]. A Generation Capacity Resource may be an Existing Generation Capacity Resource or a Planned Generation Capacity Resource." PJM RAA, § 1.33 Generation Capacity Resource.

¹⁴ Comverge Protest at 4 (citing "A National Assessment of Demand Response Potential," prepared by The Brattle Group, Freeman, Sullivan & Co., and Global Energy Partners, June 2009. [Http://www.ferc.gov/legal/staff-reports/06-09-demand-response.pdf](http://www.ferc.gov/legal/staff-reports/06-09-demand-response.pdf)).

10. On October 1, 2013, the Commission issued an order conditionally accepting and suspending the proposed tariff changes 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.¹⁵

11. Staff held a technical conference on November 13, 2013.

II. Interventions and Technical Conference Comments

12. Motions to intervene out-of-time were filed by EnergyConnect, Inc., Calpine Corporation (Calpine), Achieving Equilibrium, LLC, and EnerNOC, Inc. On November 8, 2013, PJM filed pre-technical conference comments. Post-technical conference comments were filed by PJM, Comverge, P3, EPSA, Exelon, PSEG Companies, PJM IMM, and AEP, Dayton, FirstEnergy, and Duke (collectively, the Ohio Utilities).

13. In its pre- and post-technical conference comments, PJM argues that the observed increases in purchases of replacement capacity by certain resource types in the Incremental Auctions is evidence that some Capacity Market Sellers¹⁶ are submitting capacity offers in the Base Residual Auction that have a heightened degree of uncertainty. PJM emphasizes that DR Providers that knowingly submit Base Residual Auction capacity offers in excess of reasonably expected capacity deliveries are inherently creating resource adequacy risk by artificially inflating the supply of resources into the Base Residual Auction.¹⁷ PJM states that the RPM is a resource adequacy construct, rather than a market, and the fundamental nature of the Reliability Pricing Model is to obtain forward commitment of specific resources to ensure reliability. PJM states that an offer in an RPM auction must be from a specific resource that is physically available to dispatch in the delivery year, because it relies on the specific resource type

¹⁵ October 1, 2013 Order, 145 FERC ¶ 61,001.

¹⁶ A Capacity Market Seller is defined as “a Member that owns, or has the contractual authority to control the output or load reduction capability of, a Capacity Resource, that has not transferred such authority to another entity, and that offers such resource in the Base Residual Auction or an Incremental Auction.” PJM Tariff, Attachment DD Reliability Pricing Model, § 2.11 Capacity Market Seller.

¹⁷ PJM also explains that speculative commitments in the Base Residual Auction expose loads to the risk of resource inadequacy if the Capacity Market Seller guesses wrong about Incremental Auction prices and chooses to pay a resource deficiency penalty rather than secure replacement capacity.

and resource location to enable the capacity auctions to set capacity prices that reflect the actual conditions and characteristics of the bulk transmission system. PJM argues that the need for specific, identifiable resources is why it does not allow undifferentiated “slice-of-system” contracts or offers supported by liquidated damages contracts to qualify as PJM capacity resources. PJM reiterates that the existing Tariff requires demand resource offers to be supported by a demonstration before the auction that the resource will be capable of reducing demand. PJM states that it recognizes that a separate filing is needed to address the incentives in the Incremental Auction to speculate but that the need for additional reforms does not negate the reasonableness of the instant filing.

14. PJM clarifies that the information requirements for Generation Capacity Resources remain more demanding than for Demand Resources under the proposal, particularly because the requirements for Generation Capacity Resources are always site-specific, whereas PJM only proposes to require site-specific data for Planned DR in narrowly defined circumstances. PJM argues that its proposed officer certification requirement is consistent with other officer certifications required by the Tariff.¹⁸ PJM explains that, in the overwhelming majority of cases, the information in the DR Sell Offer Plan template and the officer certification should be all that is needed to confirm that the offer is adequately supported, but that in those few cases where the exercise of discretion is required, it would be no different from the discretion allowed PJM in similar circumstances.¹⁹ PJM stated that while clearing price risk is not a risk that is unique to Demand Resources, a DR Provider can submit a Base Residual Auction offer that

¹⁸ PJM Pre-Technical Conference Comments at 10 (citing PJM Tariff, Attachment DD, section 5.11A(b); section 5.14(h)(6)(vi), 7(iv), 8(ii); section 6.6(g)(4); section 6.7(e); PJM Tariff, Attachment Q, section Ia.A and Appendix 1; *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275, at PP 99-102 (2009) (accepting, over protests, officer certification as part of requirements to model backbone transmission upgrades in RPM); *PJM Interconnection, L.L.C.*, 136 FERC ¶ 61,190, at P 112 (2011)).

¹⁹ PJM Pre-Technical Conference Comments at 11 (citing *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 235 (2013) (finding that “giving PJM the discretion to designate an incumbent transmission owner as the entity responsible for constructing, financing, and owning a transmission project (i.e., the Designated Entity) in certain circumstances (i.e., ‘time-based’ exceptions) represents a reasonable exercise of judgment by PJM, as the entity in charge of ensuring that the system remains reliable.”)); *Dominion Resources Servs., Inc. v. PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,068, at P 32 (2013) (“making dispatch decisions for reliability reasons is within PJM’s discretion”).

indicates the level of load reduction commitments it will provide at differing levels of capacity prices.

15. EPSA, Calpine, P3, and Exelon reiterate their support for the filing. EPSA asserts that concerns specific to the Incremental Auctions are beyond the scope of the filing. Calpine argues that the officer certification is not a guarantee that the full load reduction resources will be provided in the delivery year, and that changing circumstances are expected and can be accommodated by covering the position through a bilateral contract or buying out the position in a subsequent Incremental Auction. Exelon argues that demand resource commitments are merely aspirational sales plans, and this low level of supporting information, and the absence of specificity, enables some demand resources to submit speculative offers into the Base Residual Auction, which may force otherwise economically viable generation into premature retirement. Exelon argues that PJM's proposal appropriately balances the characteristics of demand resources and the business models of CSPs with the physical needs of the market by requiring, to the extent possible, data, evidence, and analyses that support the viability of offers.

16. In its post-technical conference comments, Comverge clarifies that it agrees with PJM that a DR Provider should, at the time of its offer, have a reasonable basis for believing it will be able to deliver the capacity it offers into the Base Residual Auction. However, Comverge argues that PJM has not provided any evidence that DR Providers are engaging in speculative behavior. Comverge also argues that PJM's proposal is vague as to how DR Providers will be judged as in compliance with the proposed tariff provisions, and that the proposal does not consider that DR Providers' business plans will necessarily contain projections and assumptions and therefore will never exactly match up with actual data. Comverge also argues that low prices in the Base Residual and Incremental Auctions are caused by PJM's market rules and modeling decisions, the fact that the Base Residual Auction is conducted 3 years before the Delivery Year, the 2.5 percent holdback for acquisition in the Incremental Auctions, and PJM's consistent overestimation of load in advance of the delivery year, rather than any action by DR Providers.

17. In its post-technical conference comments, the PSEG Companies argue that relying on Incremental Auction procurement to cover commitments made in a Base Residual Auction of non-physical resources is not a workable construct because shifting physical demand in the Incremental Auctions has price suppressive effects in the Base Residual Auctions that cannot be undone in time to send proper price signals to new entry of longer lead-time resources. The PSEG Companies argue that Comverge fails to demonstrate that PJM's proposal will interfere with development of demand resources. The PSEG Companies reiterate that PJM's filing should go further to ensure physical delivery of demand resources. The PSEG Companies state that at the technical conference PJM indicated that it would clarify that a DR Provider may submit DR Sell Offer Plans that vary the quantities of expected physical DR in relationship to clearing

price assumptions if properly supported. The PSEG Companies argue that this addresses Comverge's objection that DR Providers need to know the clearing price in the Base Residual Auction before determining the quantity of DR that can be obtained.

18. The PJM IMM reiterates that the PJM Tariff should be modified to even more explicitly require that capacity resources must have an identified physical resource prior to making an offer in the Base Residual Auction. The PJM IMM argues that the requirements of the current tariff rules should be further clarified to require that all physical capacity resources are financially viable and that such physical resources are obligated to provide service in the delivery year unless a force majeure event prevents fulfillment of that obligation, combined with appropriate penalties for noncompliance. The PJM IMM contends that, in the absence of a firm commitment at the time of the Base Residual Auction offer to provide physical resources in the three year forward delivery year, the RPM construct devolves into a speculative process inconsistent with a three year forward capacity market construct.

19. The Ohio Utilities argue that the filing is a step in the right direction but the Commission should direct PJM to make the changes discussed in FirstEnergy's and Duke's initial comments to ensure that resources will in fact be deliverable. In addition, the Ohio Utilities argue that the Commission should require PJM to impose performance requirements and must-offer obligations on Demand Resources that are comparable to those of Generation Capacity Resources.

III. Discussion

A. Procedural Matters

20. 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 late-filed motions to intervene by EnergyConnect, Inc., Calpine, Achieving Equilibrium, LLC, and EnerNOC, Inc. given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Commission Determination

21. The Commission finds that PJM's proposed tariff revisions are just and reasonable, and not unduly discriminatory. We find that these revisions help ensure that demand response continues to be a valuable resource in the RPM construct. Under PJM's proposal, demand response offers in the Base Residual Auction will be evaluated more carefully when these resources are offered in zones that already have high penetration levels of demand response. We find that, as penetration levels increase, a closer examination of additional demand response offers may be warranted, and thus PJM's proposal represents a measured and tailored approach that will ultimately support

the participation of demand response in the RPM construct. Accordingly, we accept the proposed revisions, to become effective March 2, 2014 as discussed below.

22. As PJM explains, PJM needs to have a reasonable assurance that resources offering into RPM auctions will actually be able to provide the offered demand response capability so that PJM can meet its resource adequacy requirements. Comverge states that “[b]oth [PJM and Comverge] agree that a DR Provider should, at the time of its offer, have a reasonable basis for believing it will be able to deliver the capacity it offers into the [Base Residual Auction].”²⁰ Because demand response providers are offering demand response into the Base Residual Auction, PJM’s proposed revisions reasonably require that demand response offer levels must represent demand resources that will actually be available in the Delivery Year.

23. Comverge states that PJM’s proposed revisions are unduly burdensome and unduly discriminatory because they limit the ability of demand resources to make purchases in the Incremental Auctions as needed if the predicted level of demand response does not come to fruition. We find it reasonable for PJM to establish a threshold requirement to assure that bids into the RPM reflect actual resources that will be available in the Delivery Year. We find that Comverge’s concerns are misplaced for several reasons. First, with respect to the alleged limitation on the rights of DR Providers to make purchases in Incremental Auctions, we note PJM’s assurances that the officer certification form to which Comverge objects merely requires a reasonable standard of intent (that a DR Provider reasonably expects to have physical load reduction capabilities in place by the start of the Delivery Year)²¹ and does not expressly forbid any purchases or in any way abridge DR Providers’ rights.²² The proposed officer certification requirement does not differ substantially from other officer certification forms cited by PJM as currently required by the PJM Tariff.²³ Second, the proposed revisions do not preclude the participation of demand response in the Incremental Auctions, which provide an opportunity for demand resources that may not wish to commit three years in advance of a delivery year. The information requirements proposed for Planned DR are a

²⁰ Comverge Post-Technical Conference Comments at 6.

²¹ PJM Answer at 17-18.

²² PJM Transmittal at 24.

²³ For example, in order to include backbone facilities in system modeling for RPM auctions, an officer must certify that a development schedule “is reasonably achievable based on information then known and reasonably anticipated by the project sponsor.” PJM Tariff, Attachment DD, section 5.11A(b).

reasonable way for PJM to ensure that this category of planned resources will be physically available when needed.

24. Comverge argues that, because the price of capacity is not known prior to the Base Residual Auction, a new customer cannot know whether revenues provided by a DR Provider will justify the opportunity cost of curtailing. Although Planned DR cannot know the clearing price of a Base Residual Auction prior to the time its DR Provider submits a DR Sell Offer Plan, PJM's limited review of DR Sell Offer Plans and its assurances that it will not substitute its business judgment for that of a DR Provider, in conjunction with PJM's clarification that DR Providers can submit into a RPM auction step-wise offers that associate higher clearing prices with higher levels of load reductions, address these concerns.

25. Comverge also argues that PJM does not adequately support the claim that DR Providers are engaging in speculative behavior or 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 also argues that low prices in the Base Residual and Incremental Auctions are the result of other capacity market rules, and PJM has not demonstrated that the Incremental Auction process is unable to correct for entities unable to meet their initial commitment. We find that PJM provides sufficient justification for its filing in assuring that offers into the PJM auction reflect physical resources that it reasonably can anticipate being available in the delivery year. The existing tariff already requires that a DR Provider offering a resource into the RPM make a demonstration that such resource has the capability to provide a reduction in demand, or otherwise control load, on or before the start of the Delivery Year. PJM's proposed revisions establish a threshold requirement that there is good faith support for the offer of demand resources into the auction. For example, PJM indicates in its filing 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. PJM also acknowledges that additional filings may be made to address the issue of low prices in the Base Residual and Incremental Auctions.

26. In addition, Comverge asserts that PJM has failed to file key criteria in determining which zones will require additional information in support of offers made in the forward capacity markets, and that these criteria are based on out-of-date estimates from the 2009 Assessment. Viridity also asserts that the criteria should be approved by the Commission and not merely be published in PJM Manuals. PJM's proposed tariff states that it will determine "the potential Demand Resource quantity for such Zone estimated by PJM based on an independent published assessment of demand response

potential that is reasonably applicable to such Zone, as identified in the PJM Manuals.”²⁴ We find that this tariff provision is sufficiently clear that such an assessment must be based on the most recent independent assessment of demand response, and that providing PJM, itself an independent entity, with the discretion to choose the most applicable independent assessment is reasonable. However, we emphasize that PJM has a responsibility to keep the independent assessment current so that flagged zones are properly identified and the focus is maintained on areas where additional precaution may be warranted.

27. Comverge argues that PJM’s proposal is vague as to how DR Providers will be judged in compliance, and fails to consider that DR Providers’ business plans may not necessarily match up with actual data. Under PJM’s proposal, there is no requirement that the resources identified in the Sell Offer Plan be the same resources that show up in the Delivery Year. Rather, PJM’s proposal requires DR Providers to certify that the DR Sell Offer Plan is being submitted with the “reasonable expectation, based on its analyses as of the date of the certification” to deliver all megawatts that clear in the RPM Base Residual Auction by the specified Delivery Year. As PJM acknowledges, “[c]learly, a certifying officer cannot be held responsible for unknowable future events.”²⁵ With respect to information submitted in the DR Sell Offer Plan template, PJM explains that it will review the plans “to confirm they facially support the intended Demand Resource offer levels and that there are no apparent errors or inconsistencies” and plans to implement cross-check procedures to compare DR Sell Offer Plan estimates against Demand Resource registration and other data.²⁶

28. 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. We did suspend the filing for five months and established procedures to obtain additional information. We see no factual issues that warrant establishing a trial-type hearing.

29. The PSEG Companies argue that the proposed officer certification’s “reasonable expectation” standard conflicts with the language in Attachment DD, section 5.5, which states that a Capacity Market Seller may submit a sell offer in a Base Residual Auction “only if such seller owns or has the contractual authority to control the output or load reduction capability of such resource and has not transferred such authority to another

²⁴ [Proposed RAA, Schedule 6, section A-1.1\(c\)\(iv\).](#)

²⁵ Initial Comments of PJM on Technical Conference at 18.

²⁶ PJM Pre-Technical Conference Comments at 8-9.

entity.” However, we find this provision to be ambiguous in light of the existing requirement in section A.5 of Attachment DD-1 of the Tariff that a DR Provider “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.” The existing section A.5 also requires Planned DR to 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.” If the provision cited by the PSEG Companies meant that DR Providers must have contracts with specific customers in place prior to bidding in the Base Residual Auction, then the demonstration required in Attachment DD-1 would seem superfluous because PJM would already have such assurances. Furthermore, the sentence immediately following PSEG Companies’ cited tariff language stating that “Capacity Resources must satisfy the capability and deliverability requirements of Schedules 9 and 10 of the PJM Reliability Assurance Agreement, and, as applicable, the requirements for Demand Resources or Energy Efficiency Resources in Attachment DD-1 and Schedule 6 of the Reliability Assurance Agreement” would seem unnecessary if the Tariff required DR Providers to provide signed contracts prior to the Base Residual Auction. We find PJM’s approach in revised section A.5 of Attachment DD-1 is just and reasonable, and PJM may choose to clarify the ambiguity in section 5.5 of Attachment DD to ensure its tariff is clear.

30. The PJM IMM urges the Commission to reject PJM’s filing, arguing that it is not the current rules for demand response that are the problem and must be revised, but rather a failure to properly implement and enforce those rules. Under FPA section 205, PJM may make filings with the Commission to propose changes to its tariff that it believes will improve the functioning of its markets. Here, PJM did propose these provisions as part of its tariff, and, as noted, we find them just and reasonable.

31. A number of protesters maintain that the filing is unjust and unreasonable because it does not impose additional requirements on demand response or is more limited than for Generation Capacity Resources. For example, FirstEnergy and Duke argue 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. The PSEG Companies argue that the Commission should require customer-specific information concerning Planned DR sites in flagged zones to apply to all Planned DR, give PJM explicit authority to reject or modify DR Sell Offer Plans that fail to meet requirements, revise the tariff to address cases in which an existing customer is claimed by more than one CSP, lengthen the review period to 60 days, enhance the demand response procurement timeline requirement to assure that timelines are followed, and clarify how the 10 MW safe harbor will affect other DR Sell Offer Plan requirements. Requiring PJM to impose additional conditions on demand resources is beyond what is being considered in a section 205 filing. The issue before the Commission is whether PJM’s proposal is just and reasonable and not whether the proposal is more or less

reasonable than other potential proposals.²⁷ As discussed above, we find PJM's filing to be just and reasonable. Moreover, PJM need not treat Planned DR identically to Planned Generation Capacity Resources,²⁸ since these resources have different characteristics and its proposal seeks to treat them comparably.

32. FirstEnergy, Duke, and the PSEG Companies also 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. Directing PJM to make revisions in its filing goes beyond the scope of a section 205 filing. We find that PJM's proposal to create the safe harbor threshold is just and reasonable. It provides a reasonable balance between assuring the Planned DR will have the capability to reduce load in the delivery year while providing opportunities for continued participation from demand response in the forward capacity market. Requiring the additional revisions requested by these parties could place an unreasonable burden upon entities attempting to develop new demand resources in areas that the market indicates are most supportive of demand resources.

²⁷ *California Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,265, at P 21 (2009). See *OXY USA Inc. et al. v. FERC*, 64 F.3d 679, 692 (1995) (finding that under the FPA, as long as the Commission finds a methodology to be just and reasonable, that methodology 'need not be the only reasonable methodology, or even the most accurate one'); *Cities of Bethany et al. v. FERC*, 727 F.2d 1131, 1136 (1984) (when determining whether a rate was just and reasonable, the Commission properly did not consider 'whether a proposed rate schedule is more or less reasonable than alternative rate designs').

²⁸ See, e.g., *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 494; *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 47, P 50 and P 54 (2008), *order on reh'g*, Order No. 719-A, 74 Fed. Reg. 37,776 (Jul. 29, 2009), FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009); *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 333, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007); *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323, at 155 (2011).

The Commission orders:

The proposed tariff revisions are hereby accepted to be effective March 2, 2014, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.