

135 FERC ¶ 61,212
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

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

PJM Interconnection, L.L.C.

Docket No. ER11-3322-000

ORDER ACCEPTING AND SUSPENDING PROPOSED
TARIFF CHANGES, SUBJECT TO REFUND AND THE
OUTCOME OF A TECHNICAL CONFERENCE

(Issued June 3, 2011)

1. On April 7, 2011, PJM Interconnection, L.L.C. (PJM) submitted proposed revisions to its Open Access Transmission Tariff (OATT), Amended and Restated Operating Agreement (Operating Agreement) and Reliability Assurance Agreement Among Load Serving Entities in the PJM Region (Reliability Assurance Agreement), pursuant to section 205 of the Federal Power Act (FPA).¹
2. In its filing, PJM proposes to revise and clarify the rules applicable to the values recognized for certain load reductions made during emergency and testing conditions by demand response resources that have offered and cleared in PJM's capacity market. Specifically, for a load reduction to be recognized as compliance towards a previous capacity commitment, PJM proposes to require that an end-use customer's actual load reduction result in a metered load that is less than the customer's Peak Load Contribution (PLC).² PJM states that its proposal is intended to: (i) remove the incentive for aggregators to intentionally register end-use customers that have little or no ability to curtail their loads in a given delivery year; and (ii) ensure system reliability. PJM also proposes additional measurement and compliance revisions and a transitional provision applicable to the 2011-12 capacity market delivery year, including a limited, one-time waiver request.

¹ 16 U.S.C. § 824e (2000).

² As discussed below, PJM describes the PLC as the average of the end-user's actual load during the five coincident peak hours of the preceding delivery year. *See* PJM Filing at note 11.

3. For the reasons discussed below, we accept and suspend PJM's filing for a five month period to become effective November 7, 2011, subject to refund, and to the outcome of a technical conference and further order.

I. Background

A. PJM's Capacity Market

4. PJM secures capacity commitments on a forward-looking basis to meet the expected peak load demand of its system, pursuant to a Reliability Pricing Model (RPM).³ Under RPM, PJM secures these capacity commitments in a base residual auction, held three years ahead of each delivery year, and by conducting three additional incremental auctions during the three-year period between the base residual auction and the relevant delivery year. The resources permitted to compete in these auctions include existing and proposed generation, demand response and energy efficiency resources. By allowing demand response resources to participate, PJM is able to reduce the amount of generation that it would otherwise be required to procure.

B. Demand Response Participation

5. Demand response resources are permitted to participate in the RPM capacity market as either a Demand Resource or as an Interruptible Load for Reliability (ILR) resource (collectively known as Load Management resources).⁴ Once committed in the capacity auction, the Load Management resource is required to reduce load in the relevant delivery year, if requested to do so by PJM following the declaration of a Maximum Emergency Generation action and pursuant to certain additional conditions set forth in PJM's tariff.⁵ Performance in the delivery year may be carried out pursuant to one of three verification

³ See *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 (2006). See also PJM OATT at Attachment DD.

⁴ A Demand Resource is designed to provide a demand reduction or load control capability that is cleared in an RPM auction, or which is otherwise committed through a load serving entities' long-term capacity plan. See PJM Reliability Assurance Agreement at Section 1.13. An ILR resource is designed to provide demand reduction or load control capability that is submitted to PJM no later than three months prior to the start of the delivery year. *Id.* at Section 1.42.

⁵ PJM OATT at Attachment K-Appendix (PJM Emergency Load Response Program, Emergency Operations).

options: (i) Direct Load Control (DLC);⁶ (ii) Firm Service Level (FSL);⁷ or (iii) Guaranteed Load Drop (GLD).⁸

6. In addition to individual demand response provider participation in RPM capacity market, participation is also permitted on an aggregated basis through a Curtailment Service Provider (CSP), acting as an agent for individual resources.⁹ RPM rules provide that a CSP may nominate an FSL or GLD Load Management resource in PJM's capacity auctions to provide capacity curtailment in the delivery year only up to the end-user's PLC value.¹⁰ As such, a CSP with FSL and/or GLD customers in its portfolio may not commit, in an RPM auction, to provide capacity at a level above the aggregate PLC of customers in its portfolio.

7. However, compliance in the delivery year is currently measured by PJM on an individual basis for GLD participants by comparing actual load drop during the event to the nominated load drop amount.¹¹ To measure compliance, CSPs submit actual loads and comparison loads for the hours in which the resources were called to provide capacity. The

⁶ DLC is “[l]oad management that is initiated directly by the Provider’s market operations center or its agent, employing a communication signal to cycle equipment[.]” See PJM OATT at Attachment DD-1, Section H.

⁷ FSL is “[l]oad management achieved by a customer reducing its load to a pre-determined level . . . upon notification from the Provider’s market operations center or its agent.” *Id.*

⁸ GLD is “[l]oad management achieved by a customer reducing its load by a pre-determined amount . . . upon notification from the Provider’s market operations center or its agent.” *Id.*

⁹ See PJM OATT at Attachment K-Appendix, Section 1.3.1A.001 (defining a CSP as a “Member or a Special Member [who, acting] on behalf of itself or one or more other Members or non-Members, participates in the PJM Interchange Energy Market by causing a reduction in demand.”).

¹⁰ See PJM OATT at Attachment DD-1, Section J. Nominations for DLC resources are not restricted to a PLC value. Rather, Section J of Attachment DD-1 provides the following: “The Nominated Value for a [DLC] program will be based on load research and customer subscription. The maximum value of the program is equal to the approved per-participant load reduction multiplied by the number of active participants, adjusted for system losses. The per-participant impact is to be estimated at long-term average local weather conditions at the time of the summer peak.”

¹¹ *Id.* at Section L.

comparison load, or customer baseline load (CBL), is the representation of what the end-use customer's energy consumption would have been in a relevant hour had PJM not dispatched under emergency conditions during that hour.¹²

8. Regardless of whether an end-use customer is enrolled as a Load Management resource, it can also reduce its payments for capacity (either directly for large customers who act as their own Load Serving Entity (LSE) or indirectly in retail rates)¹³ through participation in retail demand response programs or through management of its peak consumption in response to retail rates. This management activity, known as "peak shaving," may result in a lower capacity obligation for the resource's LSE (as measured by a PLC-based methodology) in the following delivery year.

C. Circumstances Giving Rise to PJM's Filing

9. PJM states that the circumstances giving rise to its filing were first raised with PJM's stakeholders in March 2010. PJM also states that its filing follows certain findings made by the Commission in *EnerNOC, Inc.*¹⁴ In the EnerNOC proceeding, the Commission addressed EnerNOC's request for a declaratory ruling that, as a CSP, EnerNOC may continue to register customers in PJM's demand response programs and settle under PJM's GLD baseline methodology, as it has done previously, without the threat of a Commission action seeking to enforce or apply a statement of a policy (Joint Statement) issued, on

¹² See PJM Manual 11, Section 10 at 114 (Energy and Ancillary Services Market Operations – Overview of the Demand Resource Participation) ("For those CSPs that wish to measure load reductions by comparing metered load against an estimate of what metered load would have been absent the reduction, a [CBL] shall be calculated for each Demand Resource[.]").

¹³ Many retail customers operate under tariffs that reflect the value of capacity after a time lag or through a fuel adjustment mechanism. In general, base retail tariffs are static, may have been set in a rate case many years before, and are not based on individual customer peak load contributions.

¹⁴ *EnerNOC, Inc.*, 134 FERC ¶ 61,158 (2011) (EnerNOC Declaratory Order).

February 4, 2011, by PJM and Monitoring Analytics, LLC, PJM's Independent Market Monitor (IMM).¹⁵

10. The EnerNOC Declaratory Order noted that the parties were in general agreement that PJM's tariff could be clearer on the issue of whether a curtailment exceeding an end-use customer's PLC can be counted by a CSP as an over-performance for the purpose of offsetting an under-performing resource. The Commission, however, declined to recognize the Joint Statement as a binding clarification applicable to PJM's market participants. The Commission also noted that a stakeholder proceeding had been instituted to consider this issue. The Commission stated that its order was being issued without prejudice to any future filing on this issue, whether submitted pursuant to FPA section 205 or section 206.¹⁶

11. PJM states that it interprets the Commission's findings in the EnerNOC Declaratory Order as a temporary authorization of EnerNOC's current GLD load relief practices, until such time as PJM (or a complainant under section 206) proposes modifications to PJM's existing RPM rules. PJM states that its filing acts on this allowance.

D. Proposed Changes

12. PJM states that its proposed tariff revisions and clarifications are limited to the above-described issues concerning load reductions applicable to PJM's capacity market.¹⁷ To resolve the ambiguity in the measurement and verification of demand reductions, PJM proposes to limit the value it accords to a demand response load reduction by recognizing only load reductions made below PLC, consistent with PJM's rules applicable to the nomination of load reduction commitments. PJM thus proposes to measure load reductions

¹⁵ The Joint Statement expressed the same concerns raised by PJM here, i.e., that certain CSPs were benefitting from load reductions, as measured by the GLD baseline methodology (and additional over-performance of these commitments), with no reductions made below the relevant PLC values. The Joint Statement asserted that such over-compliance is not performance under the Load Management program and should therefore not be used by a CSP to offset the under-performance of other resources. *Id.* P 4.

¹⁶ *Id.* P 20.

¹⁷ PJM states that, as such, its proposal does not change the rules applicable to the compensation of demand response resources participating in PJM's energy markets and will not effect PJM's forthcoming compliance with the Commission's Final Rule issued in Docket No. RM10-17-000. *See Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, 76 *Fed. Reg.* 16,658 (Mar. 15, 2011), FERC Stats. & Regs. ¶ 31,322 (2011), *reh'g pending*. PJM also states that legitimate aggregation is still permitted under the rule change.

relative to a baseline of: (i) the lower of PLC and CBL, for GLD resources; and (ii) the PLC, for FSL resources.¹⁸ PJM asserts that use of PLC, in this context, is appropriate because it represents the contribution of a load to the region's need to procure capacity resources. PJM asserts that, as such, PLC is the proper benchmark for measuring the capacity value of Load Management reductions.

13. PJM argues that CBL values should not be used as the benchmark for valuing capacity market load reductions. PJM argues that while CBL is appropriate for measuring load reductions in the energy market, it is unnecessary and inappropriate to use this reference point in the capacity market, because the amount of capacity actually procured for each customer load, i.e., the PLC, is a known variable.¹⁹ PJM further argues that if an

¹⁸ PJM proposes to accomplish this clarification through various revisions to its existing GLD and FSL measurement methodologies. *See, e.g.*, proposed PJM OATT at Attachment K-Appendix, PJM Emergency Load Response Program, Reporting and Compliance:

Actual load reductions of Load Management resources registered as Emergency Load Response Full Program Option or Capacity Only resources used to determine Load Management event and test capacity compliance for [FSL] and [GLD] end-use customers shall be equal to the load reduction provided to the electric distribution company as follows and in accordance with the PJM Manuals:

(i) For [GLD] end-use customers, the lesser of (a) comparison load used to best represent what the load would have been if PJM did not declare a Load Management event or the CSP did not initiate a test as outlined in the PJM Manuals, minus the metered load ("Load") and then multiplied by the loss factor ("LF") or (b) the current Delivery Year [PLC] minus the metered load multiplied by the loss factor ("LF"). A load reduction will only be recognized if the metered load multiplied by the loss factor is less than the current Delivery Year peak load contribution. The calculation is represented by: $\text{Minimum of } \{(\text{comparison load} - \text{Load}) * \text{LF}, \text{PLC} - (\text{Load} * \text{LF})\}$

(ii) For [FSL] end-use customers the current Delivery Year [PLC] minus the metered load ("Load") multiplied by the loss factor ("LF"). The calculation is represented by: $\text{PLC} - (\text{Load} * \text{LF})$.

¹⁹ PJM notes that in the energy market, by contrast, a proxy for this known variable is necessary because end-users, in theory, can consume unlimited amounts of energy at any given time and thus a hypothetical benchmark is required against which to measure real-time reductions in energy use under system emergency conditions.

end-use customer operating under the GLD option does not reduce its load in an emergency event below PLC, then such a customer will have provided no actual curtailment of its peak capacity obligation.

14. PJM argues that this problem is exacerbated when the end-use customer: (i) peak shaves, thereby counting that reduction to reduce its PLC in the following delivery year; and (ii) counts the same reduction from the CBL as performance of a Load Management resource to meet its capacity commitments. PJM further explains that this business practice allows a CSP to offset other end-use customers' under-performance with load reductions that significantly exceed the amount nominated by the customer in the RPM market (which cannot exceed the customer's PLC).

15. PJM notes that currently only a limited number of CSPs have interpreted PJM's existing rules as allowing for Load Management "performance" in excess of PLC. PJM argues, however, that the more loads that partake of this performance opportunity, the greater the detriment to reliability.²⁰ PJM notes, for example, that for an end-use customer with a PLC of 4 MW and a cleared Load Management commitment of 3 MW, PJM is currently permitted to purchase only 1 MW of generation to serve this customer's load. PJM argues, however, that under the current market rules the customer is not required to have a net load of 1 MW (the difference between the PLC of 4 MW and the capacity commitment of 3 MW). PJM hypothesizes that if this same end-use customer had a peak consumption of 16 MW in the delivery year and then reduced its consumption by 4 MW during an emergency event, then the customer would still have a net load of 12 MW, even though PJM only procured 1 MW of generation capacity to serve this customer's load.

16. PJM asserts that the threat to reliability, under its existing rules, is evidenced by load reductions that occurred in 2010, when CSPs reported 1,000 MW of Load Management in excess of PLC, thus rendering PJM 1,000 MW short of the capacity amount reflected in the 2010 peak load obligation. PJM states that, without the revisions it proposes, PJM will be required to change the way it procures generation resources. Specifically, PJM states that it will be required to increase the amount of generation it procures in RPM, the effect of which will produce higher clearing prices in the capacity market.

17. PJM concludes that the clarifications and revisions it proposes are necessary in order to ensure that consumers pay only for the capacity that is actually delivered, i.e., for a resource that is actually performing when needed, and that the capacity procured by PJM, through RPM, will be adequate to maintain system reliability.

²⁰ PJM states that it has been informed by other CSPs that if PJM's rules do indeed allow for the reporting of compliance in excess of PLC, they too will begin using this approach to remain competitive.

18. In further support of its filing, PJM argues that its proposed changes, while applicable to the 2011-12 delivery year and the prior auctions in which these commitments were established, do not violate the Commission's prohibitions against retroactive ratemaking. PJM asserts that while demand response commitments for the upcoming delivery year have already been made (in the RPM forward auctions and through ILR commitments), the Commission has previously determined that revising the measurement and compliance rules prospectively for previously committed resources does not conflict with prohibitions on retroactive ratemaking.²¹

19. In addition to the tariff changes summarized above, PJM also proposes a transitional provision, for delivery year 2011-12, for which Load Management resources' performance would be measured by load reductions relative to each registered customer's PLC multiplied by a factor of 1.25. PJM states that this transitional provision recognizes the acknowledged ambiguity of PJM's existing rules by allowing for a reduced compliance burden for CSPs as PJM's revisions and clarifications are implemented.

20. PJM requests that its proposed changes be made effective June 1, 2011, on the commencement of the 2011-12 delivery year, and that the Commission waive the 60-day notice requirement of section 35.3 of its regulations in order to provide for this effective date.²² In support of its request, PJM argues that making its proposed changes effective at the beginning of the forthcoming delivery year will avoid administrative burdens and controversy that could arise in the event of an emergency Load Management event after the commencement of the delivery year, but prior to the effective date of the changes.

21. Finally, PJM requests a one-time, limited waiver of Section 5.13 of Attachment DD to provide additional flexibility for ILR providers to modify their nominations for the upcoming 2011-12 delivery year.²³ PJM states that this waiver would allow ILR providers, on or before May 31, 2011, and for the 2011-12 delivery year only, to: (i) reduce their ILR nomination (in addition to their existing option to withdraw such nominations entirely); and/or (ii) change the measurement mechanism to the FSL methodology for any ILR nominations previously designated as GLD resources, so long as the resulting nominated value of the registration does not increase from the originally certified value.

²¹ PJM Filing at 3, citing *Pepco Energy Servs., Inc. v. PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,051 (2009) (*Pepco*).

²² 18 C.F.R. § 35.3 (2011).

²³ Section 5.13 provides that through the delivery year that commences on June 1, 2011, ILR providers can withdraw certified ILR nominations up to the day before the start of the delivery year. PJM OATT, Attachment DD at Section 5.13.

II. Notice of Filings and Responsive Pleadings

22. Notice of PJM's filing was published in the *Federal Register*, 76 Fed. Reg. 21,722 (2011), with interventions and protests due on or before April 28, 2011. Notices of intervention, timely-filed motions to intervene, protests and/or comments were filed by the entities noted in the Appendix to this order. Answers to protests were submitted on May 12, 2011, by Viridity Energy, Inc. (Viridity), on May 13, 2011, by PJM and the Demand Response Aggregator Coalition (DR Aggregators),²⁴ and on May 17, 2011, by the IMM. On May 19, 2011, EnerNOC submitted an answer to an answer. A summary of these pleadings is provided below, by topic.

A. Protests and Comments

23. Whether PLC is the Appropriate Benchmark to Value Capacity Load Reductions: Comverge, Inc. (Comverge), Energy Curtailment Specialists, Inc. (ECS), and EnerNOC argue that PJM's proposed reliance on PLC to value capacity load reductions fails to account for the value offered by demand reduction during emergency events, which in turn (and if accepted), will operate as a disincentive to demand response activity. ECS argues that without the ability to use reductions above PLC, PJM's proposal eliminates useful aggregation opportunities and introduces greater risk and uncertainty to the market, operations and planning.

24. EnerNOC argues that PJM's proposal is erroneously based on a static model in which actual customer consumption only counts if it is equal to or below the customer's usage in the prior year. EnerNOC argues that the PLC of a customer does not represent and is not used as a prediction for planning purposes of what any particular customer will use in any year; nor does it represent a particular amount of capacity that PJM has procured for a customer for a given year. According to EnerNOC, PJM's actual capacity procurement process is conducted without reference to any individual customer PLC; rather, PLC is a retail cost allocation device used by some Electric Distribution Companies to calculate a relative cost share to be charged to the customer. EnerNOC argues that PJM's suggestion that the PLC represents a fixed amount of capacity used for system planning purposes is refuted by PJM's actual planning process which recognizes that total consumption (and thus by implication individual customer consumption) will vary based upon economic conditions, weather, and simple random fluctuation due to customer diversity and happenstance. Similarly, American Municipal Power, Inc. (AMP) states that PJM's proposal fails to recognize that load could experience growth between the time of commitment and the time of the emergency event or test compliance measurement.

²⁴ DR Aggregators consist of Constellation NewEnergy, Inc. and Energy Connect, Inc.

25. EnerNOC further asserts that PJM's actual load forecasting and capacity procurement process uses aggregate hourly load values from each Electric Distribution Company, not customer-specific values or variations in these values. EnerNOC explains that PJM allocates costs to wholesale load zones based on a single coincident peak,²⁵ as opposed to the five coincident peak hours used in determining PLC values. EnerNOC argues that after the planning, procurement and regional allocation process are complete, each PJM Electric Distribution Company is responsible for allocating its normalized previous summer peak to each customer in the zone (both retail and wholesale), with the process used by the Electric Distribution Company to determine these PLCs based on rules negotiated with its regulators.²⁶

26. EnerNOC argues that PJM's proposal is inconsistent with the Commission's recent acceptance of certain product alternatives for demand resources seeking to participate in PJM's capacity market, as proposed by PJM in Docket No. ER11-2288-000.²⁷ Specifically, EnerNOC argues that Annual Demand Resources will be improperly compensated because PLC is determined during the summer, which may be inconsistent with actual loads and load reduction capabilities during other times of the year. In addition, ECS argues that PJM's filing runs counter to the Commission's guidance, as set forth in Order No. 719²⁸ and Order No. 745,²⁹ regarding the elimination of barriers for demand response, comparability, and the role of demand response during periods of operating reserve shortage.

27. Other intervenors support PJM's proposed use of PLC as a baseline for measuring load curtailment associated with a capacity commitment.³⁰ Dayton argues that if end-user

²⁵ EnerNOC Protest at 35, *citing* PJM Reliability Assurance Agreement at Section 7.2. Capacity costs are allocated on the basis of the Obligation Peak Load of a load serving entity as based on the weather-adjusted coincident summer peak.

²⁶ EnerNOC Protest at 43, *citing* PJM Manual 18 at Section 7.5.

²⁷ *Id.* at 28, *citing* *PJM Interconnection, L.L.C.*, 134 FERC ¶ 61,066 (order accepting proposed tariff changes subject to compliance and informational filings), *order on compliance filing and reh'g*, 135 FERC ¶ 61,102 (2011).

²⁸ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 Fed. Reg. 64,100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008) (Order No. 719), *order on reh'g*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

²⁹ *See supra* note 19.

³⁰ *See* Dayton Power and Light Company (Dayton) Comments at 5; DR Aggregators Comments at 8 and 13-15; and IMM Comments at 1.

customers that are part of an aggregated portfolio are using a level of power greater than the amount of capacity procured for them, then they are leaning on the rest of the system and that the CSP, under these circumstances, has not created any real decrease in PJM's capacity needs. Dayton also agrees that dropping demand at the time of a curtailment event to a level that remains higher than the PLC jeopardizes reliability.

28. The IMM agrees with PJM that the PLC is the only appropriate reference for determining whether a customer has reduced its use of the capacity. The IMM clarifies that the amount of capacity that PJM procures three years in advance of the delivery year in base residual auctions is based on forecasts of each Load Serving Entity's (LSE's) peak load. The IMM explains that the load forecast for a delivery year is based on customers' peak loads, which is incorporated in the demand curve in the RPM auction. Along with the supply curve, the demand curve determines the amount and cost of the capacity acquired in order to meet load for a delivery year. However, according to the IMM, PJM does not directly use PLC to determine the quantity of capacity procured in RPM base residual auctions, because PLC is not yet known. The IMM explains that, five months prior to the delivery year, end-use customer's contributions to LSEs' Obligation Peak Loads (i.e., PLCs) are established, and these are used to determine each customer's allocated share of that total capacity cost.³¹ The IMM argues that, as such, PLC is the MW quantity for which customers are responsible and, therefore, the maximum amount of capacity that a customer can agree to nominate in the capacity auction for the delivery year.

29. Viridity supports PJM's proposed transition proposal for the 2011-12 delivery year, noting that this transitional mechanism will at least partly accommodate customers who have not shaved their PLCs, but who would otherwise be excluded from the capacity market because they experienced load growth.

30. *Whether PJM's Proposal Preserves, or Should Preserve, the GLD Option:* AMP and Comverge argue that PJM's proposal makes unnecessary changes to how emergency Load Management assets are evaluated for compliance purposes. EnerNOC adds that PJM's proposal eliminates the GLD option, a result which would fundamentally upset the expectations of customers and CSPs that are currently relying on GLD as a performance measure. EnerNOC argues that if demand response performance above a customer's PLC is not allowed to count, as proposed by PJM, then the GLD baseline measure will yield performance no higher than what could be measured using the FSL baseline. EnerNOC further argues that the GLD methodology is preferred by customers that may not be able to predict what load level they will be consuming at the start of a dispatch instruction and the load level that they can drop to, such as hospitals and office buildings reducing heating, ventilation and air conditioning loads. EnerNOC asserts that eliminating GLD will reduce

³¹ IMM Comments at 4, *citing* PJM Reliability Assurance Agreement at Schedule 8, Section D.1.

both the level of aggregation in PJM and participation levels in PJM's demand response programs.

31. The Demand Response and Smart Grid Coalition (DRSG) and Comverge argue that the GLD baseline methodology is a widely accepted approach for assessing demand response performance in capacity markets and should be retained by PJM as a viable option. EnerNOC argues that GLD, as currently in effect, is consistent with: (i) the use of demand response capacity as a call option on energy to meet system reliability needs; and (ii) the Commission's demand response policies. EnerNOC and DSRG add that this existing approach is used by almost all North American ISOs/RTOs and that the Commission has approved a similar baseline metric as the exclusive means of performance in ISO New England, Inc.³² In addition, EnerNOC argues that the North American Energy Standards Board (NAESB) has approved a comparable methodology for use in wholesale electric capacity markets.³³

32. The PJM Industrial Customer Coalition (Industrial Customers), on the other hand, argue that PJM's proposed GLD changes are appropriately targeted at a discrete problem and do not include eliminating or modifying the use of GLD to measure demand response performance. DR Aggregators agree that PJM's proposal does not eliminate GLD as a verification option. DR Aggregators note, for example, that in the 2010-11 delivery year, Constellation served as a CSP for 53 hospitals, medical centers, and similar sites in the PJM Emergency Load Response Program and utilized the GLD option to measure these customers' curtailments. DR Aggregators assert that if PJM's proposed revisions were in place, the medical sites would have provided their full capacity commitments (under PJM's transitional proposal) or 96 percent of their nominated value (under PJM's proposal for delivery years beyond 2011-12). DR Aggregators further assert that if the curtailment response volume of a certain customer site offered as a capacity resource cannot reliably be predicted or controlled, it is incumbent on the CSP to offer that site as a capacity resource using conservative estimates of the site's demand response capability.

33. *Whether PJM's Existing GLD Methodology Promotes Inappropriate Incentives:* DR Aggregators and Viridity argue that while PJM's current rules cap a resource's capacity value at PLC, PJM's rules contain no provision prohibiting a CSP from using curtailments

³² EnerNOC Protest at 24-25; DRSG Comments at 5, *citing* ISO/RTO Council spreadsheet "North American Wholesale Electricity Demand Response 2010 Comparison," at [http://www.isorto.org/atf/cf/%7b5b4e85c6-7eac-40a0-8dc3-003829518ebd%7d/IRC%20DR%20M&V%20STANDARDS%20IMPLEMENTATION%20COMPARISON%20\(20100524\).XLS](http://www.isorto.org/atf/cf/%7b5b4e85c6-7eac-40a0-8dc3-003829518ebd%7d/IRC%20DR%20M&V%20STANDARDS%20IMPLEMENTATION%20COMPARISON%20(20100524).XLS).

³³ See NAESB Business Practice Standards at WEQ-015-1.7 (identifying Baseline Type-I).

from baseline levels well above a customer's PLC to offset under-performance by other resources in the same portfolio for the same zone. DR Aggregators and Viridity assert that this practice encourages CSPs to build a portfolio that includes a combination of customers that actively manage their PLCs and customers that lack the intent or the ability to perform during Load Management events and Load Management tests. DR Aggregators explain that intentionally enrolling under-performing resources appears to be in conflict with PJM's rules, which direct that customer sites must be nominated for their GLD amount but no more.³⁴

34. In contrast, EnerNOC argues that the purpose of portfolio aggregation is to allow CSPs to sign up customers within the same zone who have differing abilities to respond at differing times, and thus reliably provide needed service to the electric power grid.

35. Viridity and DR Aggregators state that the practice of contracting with demand response customers with an expectation of under-performance appears to be substantial.³⁵ DR Aggregators note that they have experienced multiple instances in which prospective customers have sought payment in excess of the customer site's PLC, claiming that competitors are offering such compensation. DR Aggregators argue that a CSP can guarantee such payments only if it knows that other sites in its portfolio will dependably under-perform.

36. Viridity takes issue with this business practice for two reasons. First, Viridity argues that the over-performance demonstrated by peak shaving customers is not really over-performance because such performance has already been counted to reduce the capacity procurement. Second, Viridity states that a CSP must recruit customers that reliably fail to perform in order to exploit a peak shaver's curtailments from levels well above the PLC, which damages the credibility of demand response. Viridity explains that a peak shaving customer is worth more when it joins a portfolio with several poor performers versus a portfolio with strong performers. Thus, Viridity concludes that the current rules create an economic incentive for a CSP to bring poor performers to the market. Viridity further

³⁴ DR Aggregators Comments at 9, *citing* PJM Manual 18: PJM Capacity Market at 34. *See also* PJM OATT, Attachment K – Appendix and Attachment DD-1, Section J; PJM Reliability Assurance Agreement at Schedule 6, Section J.

³⁵ DR Aggregators Comments at 10, *citing* IMM 2010 State of the Market Report, Vol II at 134:

For any given event, approximately 31 percent of participants showed little or no reduction. Approximately 47 percent of participants did not meet half of their committed MW.

believes that PJM's proposal will dramatically limit opportunities to intentionally bring under-performing and non-performing resources into the market.

37. DR Aggregators agree with PJM that if the Commission rejects PJM's proposed tariff changes and, in the process, endorses the CSP business practices giving rise to PJM's filing, CSPs not currently utilizing these tactics can be expected to seek out peak-shaving customers to pair with under-performing sites in order to remain competitive with those CSPs who are using these tactics.

38. Whether PJM's Proposal is Warranted for Reliability Reasons: Industrial Customers agree with PJM that if the GLD benchmark used to value capacity load reductions is not measured with respect to a customer's PLC, PJM will be forced to increase the amount of capacity it will be required to procure through RPM and, in the process, potentially devalue demand resources across-the-board.³⁶ The PJM Power Providers Group (P3) states that the GLD business practices giving rise to PJM's filing jeopardize the reliability necessary to maintain confidence in an organized market. Specifically, P3 is troubled that, as reported by PJM in its filing, a relatively small number of CSPs have reported as much as 1,000 MW of Load Management reductions in excess of PLC. P3 recognizes that this estimate is conservative, stating that per the IMM, the number appears to be closer to 1,200 MW to 1,600 MW.³⁷ In addition to its concerns regarding reliability, P3 contends that this business practice, on the part of certain CSPs, skews capacity prices and prevents capacity that is needed from clearing in capacity auctions.

39. Other intervenors, including Comverge and ECS, dispute these reliability concerns. Comverge asserts that during an emergency event, it is the ability of the system to respond to operating conditions that represents the value of demand response for system reliability. ECS argues that PJM has not provided evidence that the PLC baseline is necessary to maintain system reliability and that, if the PLC is the only reasonable measurement that

³⁶ Industrial Customers state that they have expressed their concerns to PJM regarding the disconnect between PLCs being based on measured loads in the year prior to the delivery year and the requirement that demand resources bid a fixed quantity into a base residual auction three years prior to the delivery year. Industrial Customers conclude that PJM's current rules require a customer to specify a quantity of demand response in the base residual auction before knowing the PLC-based cap on the quantity of demand response it may bid, thus subjecting the customer to unnecessary quantity risk. Industrial Customers assert that PJM's planned, upcoming elimination of ILR places greater urgency on resolving the timing barriers associated with PLC measurement vis-à-vis timing of the base residual auctions.

³⁷ P3 Comments at 5, *citing* IMM 2010 State of the Market Report at 135.

preserves system reliability, then it is unclear why PJM is willing to risk reliability for the 2011-12 RPM delivery year in favor of a proposed transitional PLC calculation.

40. *Behind-the-Meter Generation Performance*: AMP argues that PJM has revised its manual provision addressing the measurement of behind-the-meter generation performance based on the load meter and PJM should be required to explain how it would apply this new language in the case of a municipal utility with multiple generators behind the same meter. AMP states that PJM has also added language to its manual, stating that behind-the-meter generation operating at the time of the test or emergency event may not be utilized as an ILR or demand resource. AMP notes that despite establishing PLCs with add-backs and including load supplied by behind-the-meter generation in forecasts and capacity purchases, PJM now seeks to disqualify behind-the-meter generation as capacity through its Load Management programs after the behind-the-meter generation declaration deadline has passed.³⁸

41. *Whether PJM's Proposal, if Accepted, Would Violate the Filed Rate Doctrine or Should Otherwise be Implemented Prospectively*: EnerNOC argues that PJM's filing seeks to change PJM's filed rate methodology for capacity resources and makes such changes applicable to past RPM auctions retroactively after participants have already locked in their offers and market positions, after registration windows have closed, and after customer contracts and customer expectations have been set.

42. EnerNOC also challenges PJM's argument that the Commission's ruling in *Pepco* supports a finding that PJM's proposed tariff revisions do not constitute unlawful retroactive ratemaking. EnerNOC responds that *Pepco* is inapposite because, in that case, the rule change to the capacity market followed a finding that the then-applicable rule was unjust, unreasonable, and unduly discriminatory.³⁹ EnerNOC explains that the provision struck down in *Pepco* was found by the Commission to be an inaccurate metric for its intended purpose, whereas here PJM is not claiming that the GLD baseline is an inaccurate measure of actual load drop.⁴⁰ EnerNOC further argues that, in *Pepco*, the Commission expressly refused to waive the filed rate doctrine, as sought by the complainant.⁴¹

³⁸ AMP Protest at 8, *citing* PJM Manual 19: Load Forecasting and Analysis, Attachment A at 24-25.

³⁹ EnerNOC Protest at 51, *citing Pepco*, 128 FERC ¶ 61,051 at P 18.

⁴⁰ EnerNOC notes, rather, that PJM seeks to deny compensation for a load reduction that it does not deny is measured accurately.

⁴¹ *Id.*, *citing Pepco*, 128 FERC ¶ 61,051 at P 24.

43. Other intervenors agree that PJM's changes should become effective, if at all, prospectively. DSRG, for example, argues that PJM's RPM auctions have already established capacity commitments and prices through the 2013-14 delivery year.⁴² DSRG notes that the RPM auction for 2014-15 delivery year will close on May 6, 2011. DSRG concludes that if PJM's filing is accepted, in whole or in part, it should only be permitted to go into effect, as applicable to 2014-15 delivery year and beyond. DSRG argues that, at a minimum, PJM's proposed changes should not be permitted to become effective for the 2011-12 delivery year. Comverge argues that PJM fails to acknowledge the confusion that will result from requiring resources that were committed in earlier auctions under one set of assumptions to operate under fundamentally different market conditions.

44. DR Aggregators support PJM's proposed effective date, arguing that PJM's current rules require immediate revision to provide for a more efficient operation of the PJM capacity market, to restore competition and to enhance reliability. The PJM Members Committee Coalition (MC Coalition)⁴³ agrees that if the methodology to measure RPM capacity compliance for GLD resources is not addressed immediately, the stage will be set for higher customer costs resulting from the accommodations that PJM would have to make to assure reliable operations.

45. Industrial Customers also support PJM's proposed effective date, provided that PJM establishes a process to allow conditional changes to be made to demand response commitments for the upcoming delivery year. Industrial Customers request that the Commission state clearly that PJM has the authority to, and is required to, accept alternative and conditional ILR nominations through the date on which the Commission issues its order, as long as the Commission accepts PJM's proposed changes.

46. *Alternative Proposals:* AMP notes that because PJM charges load based on the load's unforced capacity obligation,⁴⁴ not the PLC, PJM should be directed to use the unforced capacity obligation as the proper basis for any limit on the maximum demand resource. AMP further argues that the reliability issues described by PJM are not caused by

⁴² See also AMP Protest at 8-9.

⁴³ The parties comprising the MC Coalition are noted in the Appendix.

⁴⁴ Unforced capacity obligations are obligations assessed to load to satisfy the reliability requirements during the delivery year. Specifically, unforced capacity obligations are determined for the RTO and zones and are used to establish the charge for capacity obligations. Zonal unforced capacity obligations are allocated to and paid for by individual LSEs who serve load in the zone. See PJM Reliability Assurance Agreement at Section 7.2 (Responsibility to Pay Locational Reliability Charge) and Schedule 8 (Determination of Unforced Capacity Obligations).

demand resources or ILR, but instead result from the fact that load is significantly greater than the amount of capacity included in procurement. AMP explains that under RPM, load is not penalized or limited to a specific capacity amount. AMP asserts that increased loads should be addressed through the add-back process.⁴⁵

47. Comverge and AMP believe that, if PJM's proposal is accepted, then the 1.25 adder to the PLC should be a permanent standard to address both CSPs' compliance burdens and any potential for legitimate growth; or, according to Comverge, PJM's proposal should only be put into place for the 2011-2012 delivery year and stakeholders should consider rules going forward. Viridity also requests that the Commission require PJM to conduct a stakeholder process and develop the necessary accommodation for load growth beyond the 2011-2012 delivery year.

48. EnerNOC argues that PJM's concern regarding the registration of customers with inadequate response capabilities should be addressed through the registration process directly or by removing all incentive for such behavior by eliminating the restriction of the PLC cap altogether. EnerNOC notes that without a PLC cap on nominations, customers who cannot perform have no value.

49. *Adequacy of the Stakeholder Review Process*: EnerNOC claims that PJM violated the stakeholder review rules set forth in the PJM Members Handbook and Operating Agreement when it pushed through its proposed tariff changes.⁴⁶ The MC Coalition, by contrast, notes that PJM's filing is supported by a broad consensus of the PJM membership, as expressed through a Members Committee vote of 93 percent in favor.

B. Answers

50. *Whether PLC is the Appropriate Benchmark to Value Capacity Load Reductions*: PJM, in its answer, responds to intervenor arguments that challenge the use of PLC as the baseline metric for curtailments. PJM argues that its tariff already provides that an end-use customer's commitment to supply capacity through Load Management is limited to the customer's PLC. PJM argues that its filing does not propose to revise this nomination rule, but merely seeks to resolve an ambiguity in the measurement and verification terms of the tariff. PJM concludes that protest arguments claiming that PLC is not a proper metric are

⁴⁵ Under PJM's emergency load response program, load reductions are added back to a customer's metered load during an emergency event to calculate peak load for capacity for the following year. See PJM OATT, Attachment K-Appendix, PJM Emergency Load Response Program, Reporting and Compliance.

⁴⁶ EnerNOC Protest at 12 and 14-15, citing PJM Members Handbook at 30, Section 7 and Operating Agreement, Section 8.3.1.

beyond the scope of this proceeding. In response to EnerNOC's argument that an individual customer's expected consumption and demand response capability are not static, PJM states that, while this observation is true, it has nothing to do with measuring whether a market participant has provided the capacity that it has promised the system (a capacity amount that is explicitly limited to PLC).

51. DR Aggregators assert that the PLC is a reasonable baseline from which to measure demand response performance in the PJM capacity programs. The IMM argues that EnerNOC's protest fails to appropriately separate energy and capacity products. The IMM states that a reduction of capacity is mandatory during an emergency, while a reduction in the energy market is voluntary. The IMM explains that a demand-side resource may provide either product or both products in any given hour and receive compensation depending upon the products that are delivered.

52. Viridity notes that while curtailment in the energy market is compensated based on the balancing of supply and demand at the time of curtailment, curtailment in the capacity market must be measured in a way that reflects the resource's contribution to satisfying peak demand. The IMM and Viridity argue that curtailment in the energy market is measured by comparing the actual load during the curtailment with a baseline that represents what the customer's load would have been, had it not taken action to curtail in response to market price. The IMM states that the reference point for a reduction in the use of capacity is the level of capacity which the customer has paid for. According to the IMM, the customer has agreed, by selling capacity as demand response, to reduce its requirement for capacity below the level it paid for (i.e. the PLC) when called on during an emergency. The IMM explains that the customer is not selling capacity to the system, but rather agreeing to not use a specified level of capacity and to not pay for that capacity. For customers that actively peak shave, the IMM contends that the correct baseline is what the customer would have used in the absence of the CSP's involvement, which is best measured by the PLC.

53. Viridity notes that while PJM's proposal includes a temporary accommodation for load growth by setting the capacity baseline for the 2011-12 delivery year at the customer's PLC multiplied by 1.25, another mechanism to accommodate load growth will be needed when the temporary mechanism expires. Viridity asserts that any accommodation for variations in actual peak load must not be extended to paper variations in peak load because paper variations do not represent load growth. Viridity notes that actual variations reflect changes in a facility's equipment, operations, and the market for its products, while paper variations compare a customer's peak load that was actively curtailed to reduce the PLC in one year against uncurtailed load in the following year.

54. PJM also challenges assertions made by EnerNOC and Comverge that its proposed tariff revisions will undermine demand response aggregation by reducing incentives for customers. PJM responds that, in fact, all demand response by registered end-use customers is compensated in the PJM energy market (a significant inducement for demand response participation) and will continue to be compensated regardless of whether PJM's proposed

rule changes are accepted. PJM adds that there is no reason to believe that its proposed changes will make demand response aggregation unattractive to CSPs, given that PJM's nomination guidelines are not being revised. The IMM agrees that PJM's proposal is consistent with aggregation.

55. Viridity and DR Aggregators disagree with EnerNOC's assertion that the value of aggregation is the ability to use the over-performance of one customer to offset the under-performance of another. Viridity and DR Aggregators counter that the purpose is identified expressly in the PJM OATT: "[t]he purpose for aggregation is to allow the participation of End-Use Customers in the Emergency Load Response Program that can provide less than 100 kW of demand response on an individual basis."⁴⁷

56. Whether PJM's Proposal Preserves, or Should Preserve, the GLD Option: The IMM responds to EnerNOC's arguments regarding the elimination of the GLD baseline. The IMM argues that, because both the FSL and GLD approaches attempt to measure and verify the same quantity of capacity, they should produce the same result. According to the IMM, if these approaches frequently produce different results, this suggests that something is wrong with one or both methods of measurement and verification.

57. PJM responds to arguments raised by EnerNOC and Comverge regarding the extent to which the PLC values PJM seeks to use are consistent with NAESB business practice standards. PJM argues that its proposal is consistent with NAESB standards, which reflect a number of metrics for measuring and verifying the performance of demand response in capacity markets, including the Maximum Base Load standard, which is the same as using PLC as the reference metric since it measures load below some predefined level.⁴⁸

58. Whether PJM's Existing GLD Methodology Promotes Inappropriate Incentives: According to PJM, CSPs are offsetting customers' lack of performance with other customers that reduce consumption by large amounts in order to take advantage of load reductions in excess of PLC. PJM states that it experienced this phenomenon on July 7, 2010 during an emergency event, when one CSP had only 27 percent of its sites performing, but claimed compliance with respect to the remaining 73 percent of its sites, all of which were under-performing. PJM explains that more than one-third of the under-performing sites had no load reductions whatsoever during the event. PJM asserts that while aggregation is expected to net over and under-performing sites, its purpose is not to encourage the registration of sites that are expected not to perform.

⁴⁷ Viridity Answer at 12, *citing* PJM OATT, Attachment K-Appendix, PJM Emergency Load Response Program, Emergency Load Response Participant Aggregation.

⁴⁸ PJM Answer at 19-20, *citing* NAESB WEQ Final Action, Ratified March 21, 2011, Request No.: 2010 WEQ AP Item 4(a) and 4(b), WEQ-000-2, Terms and Definitions.

59. Whether PJM's Proposal, if Accepted, Would Violate the Filed Rate Doctrine or Should Otherwise be Implemented Prospectively: PJM responds to EnerNOC's filed rate doctrine argument. PJM states that its filing does not contravene the objective of protecting *reasonable* market expectations. PJM states that its filing seeks to clarify existing rules and that its stakeholder process provided notice to participants that PJM sought to clarify measurement and verification. The IMM argues that because PJM's proposal only seeks to clarify measurement and verification, it does not change the mechanism for setting rates in RPM, nor does it affect the clearing prices that will apply in any delivery year. PJM argues that to the extent EnerNOC made commitments in prior RPM auctions that cannot be reconciled with PJM's proposed clarifications, it did so entirely, and knowingly, at its own risk. According to the IMM, no ratemaking doctrine entitles customers to rely on payments based on inaccurate measurement for delivery of a product or service. The IMM argues that CSPs must conform their contracts to the market rules and that the business practices of CSPs are not entitled to protection under any ratemaking doctrine.

60. PJM adds that in *Pepco*, the Commission held that prospective changes in measurement and verification rules under RPM do not constitute retroactive ratemaking relative to commitments made in RPM auctions prior to such changes. PJM also challenges EnerNOC's argument that *Pepco* is distinguishable because it involved a proceeding undertaken pursuant to FPA section 206 in which a finding was made that the then-applicable market rule was unjust and unreasonable (thus requiring the imposition of a new rule, regardless of market expectations). PJM responds that it was the provision of sufficient notice, in *Pepco* and here, that converts what would otherwise be retroactive ratemaking into a prospective application.

C. EnerNOC's Answer to an Answer

61. EnerNOC argues that Viridity, in its answer, concedes that customer PLCs, which are used to allocate costs in the delivery year, are not even determinable until two years after the procurement process for the delivery year is complete. EnerNOC also challenges the IMM's assertion that customers providing demand response services avoid paying the market price for their reduction in capacity usage because they receive an offsetting payment equal to the market price of capacity. EnerNOC responds that customers are required to pay retail rates irrespective of whether they participate in PJM's demand response program. EnerNOC adds that a demand response payment is not a credit against the customer's retail charges.

62. EnerNOC also asserts that PJM's answer undermines the central rationale advanced by PJM to support its proposed rule changes. Specifically, EnerNOC notes that while PJM's filing argues that PLC is the appropriate benchmark to value load reductions, PJM's answer concedes that PLCs are not utilized by PJM in system planning.

63. EnerNOC states that PJM's proposal alters the function of the PLC cap to serve as a limit on demand response compensation. EnerNOC argues that the Commission must

exercise its authority under section 206 of the FPA to consider whether the PLC cap on demand response nominations is unjust, unreasonable and unduly discriminatory. EnerNOC contends that this cap denies customers the ability to receive compensation for the full capability of their demand response resource.

64. Finally, EnerNOC argues that the views represented by Viridity and DR Aggregators are minority views within PJM's class of aggregators and that, collectively, aggregators in support of PJM's filing only comprise 30 to 40 percent of the demand response capacity registered in the PJM market.

III. Discussion

A. Procedural Matters

65. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 8 C.F.R. § 385.214 (2011), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which these interventions were filed.

66. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest and an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by Viridity, PJM, DR Aggregators, the IMM, and EnerNOC, because they have provided information that assisted us in our decision-making process.

B. Whether PJM's Proposed Methodology for Valuing Load Reductions Warrants Acceptance

67. For the reasons discussed below, 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. Accordingly, we accept and suspend PJM's filing for a five month period to become effective November 7, 2011, subject to refund, and to the outcome of a technical conference and further order. To expeditiously explore the issues presented by PJM's filing, we direct Commission Staff to convene the technical conference within 60 days of the date of this order. We further direct Commission Staff to establish appropriate post-technical conference comment procedures and additional guidelines as may be required.⁴⁹ Details relating to the technical conference will follow in a separate notice.

⁴⁹ Intervenors are also reminded that the Commission's Dispute Resolution Service (DRS) is available for the purpose of exploring the alternative dispute resolution process and/or to facilitate agreement on the matters in dispute. DRS can be reached at 1-877-337-2237.

68. At the outset, several intervenors argue that PJM's filing, as far as it applies to measurement relating to past auctions, must be rejected outright as a violation of the filed rate doctrine and/or as a prohibition against retroactive ratemaking. Intervenors argue that PJM's proposal changes the measurement rules with respect to previously conducted auctions and therefore have retroactive application.

69. At this point, we do not find grounds to reject this filing on a summary basis as it applies to measurement of performance with respect to previously conducted auctions. While the auctions have been conducted in the past, the measurement of performance will not be conducted until after parties have been on notice of the filing. Therefore, it is not apparent that this filing on its face is retroactive ratemaking, and the parties can address this issue at the technical conference. Moreover, the question of whether customers relied on these measurement rules in submitting their bids and the justness and reasonableness of applying these changes to measurement for past auctions also can be addressed by the parties at the technical conference.

70. In its filing, PJM seeks to revise and clarify its rules applicable to load reductions made to comply with capacity market commitments, by establishing the end-use customer's PLC (in the case of FSL customers) and the lower of CBL and PLC (in the case of GLD customers) as the reference point for the measurement and compliance of Load Management resource curtailments. According to PJM, its current tariff allows CSPs to use over-performance from end-use customers in an amount that exceeds the customer's PLC, even though the PLC is the maximum limit for nominations made into the capacity auctions.⁵⁰ PJM states that its current rules also allow customers using the GLD methodology to report compliance with their capacity commitments, even though the end-use customer may be consuming significantly more energy than it was forecasted to use in the delivery year.

71. PJM argues that its proposal to use the PLC as a baseline for measuring load reductions is necessary to ensure that the amount of capacity that PJM procures through RPM will continue to be adequate to maintain reliability in the PJM region. PJM argues that, without the rule changes it seeks, it will have insufficient resources to reliably serve the load that will remain on its system after Load Management resources perform in the manner that the existing rules permit. PJM argues that if its proposed changes are not implemented and additional CSPs begin reporting performance in excess of PLC, PJM will have no choice but to procure substantially more generation capacity through RPM for all upcoming delivery years than otherwise would be required. PJM asserts that this would inevitably mean higher RPM capacity prices for consumers across the PJM region.

72. We agree with PJM's efforts to develop market rules to ensure the integrity of PJM's capacity market by assuring that consumers in the PJM Region will pay only for capacity

⁵⁰ PJM OATT at Attachment DD-1, Section J.

that is actually delivered and that Load Management resources comply with their commitment to provide such capacity, thus allowing PJM to obtain adequate supply to maintain reliability of the PJM system for the benefit of consumers. PJM should remain vigilant in developing rules to maintain the reliable operation of the grid. However, intervenors have asserted a number of issues challenging both the description and the extent of the problem that PJM seeks to remedy, as well as the proposed remedy itself. For example, intervenors have asserted that: (i) the PLC does not accurately reflect PJM's capacity procurement process; (ii) the PLC is a static baseline that does not account for load growth; (iii) PJM's proposal would eliminate GLD as currently utilized in PJM's current market; and (iv) PJM's reliability concerns are not valid. We find that these concerns raise disputed issues of material fact that cannot be resolved based on the existing record. The issue before the Commission is whether PJM's filing is just and reasonable and not unduly discriminatory and we conclude that we need additional information so we may determine whether PJM's proposal is just and reasonable and not unduly discriminatory. These concerns (described more fully below) may be explored at the technical conference.

73. As described above, intervenors have raised potential concerns regarding a disconnect between the use of PLC as a baseline metric for measuring compliance with capacity commitments and PJM's capacity procurement process. Intervenors contend that PJM does not directly use the PLC to determine how much capacity it will procure in the base residual auction. The actual load forecast developed by PJM for capacity procurement is based on a methodology that utilizes a single coincident peak, not the five coincident peak methodology used to establish customer PLCs.⁵¹ Further, the PLC value is not established until two years after the base residual auction to aid Electric Distribution Companies in the allocation of capacity costs to customers.⁵² Also, although PJM explains that the PLC represents the amount of capacity that it obtained to meet the customer's load, PJM indicates that this relationship must be "trued up" for each delivery year to reflect the customer's actual load in the preceding year.⁵³

74. Moreover, intervenors are concerned that PJM's proposal does not allow for load growth and other factors that may alter an end-use customer's consumption in subsequent delivery years. Unlike the currently effective baseline metric that accounts for consumption levels and fluctuations within the current delivery year, the PLC is a static baseline that is established prior to each delivery year. Intervenors assert that a business that has experienced significant growth since the previous year might consume significantly more

⁵¹ See PJM Answer at 17.

⁵² See PJM Manual 19 (Load Forecasting and Analysis), Section 4.4 (Peak Load Allocation (5CP)) at <http://www.pjm.com/~media/documents/manuals/m19.ashx>.

⁵³ See PJM Answer at 17.

than its consumption during the coincident peak days of the previous year (which form the basis for the customer's PLC). PJM contends that, while this is obviously true, it has nothing to do with measuring whether a market participant has provided the *capacity* that it has promised to the system – which already is explicitly limited to PLC.

75. Furthermore, intervenors claim that PJM's proposal is unduly burdensome in that it places limits on PJM's GLD option that would make it essentially equivalent to the FSL option. Specifically, intervenors are concerned that under PJM's proposed tariff provisions, load reductions for resources using GLD would be defined by the PLC minus metered load (at maximum), thus essentially requiring GLD resources to curtail to a pre-determined metered load (or even lower). Intervenors assert that GLD is approved for use in wholesale electric capacity markets and is identified as Baseline Type-I under NAESB business practice standards, which have been adopted by the Commission. In response, PJM argues that its proposal is consistent with NAESB standards, as the Baseline Type-I methodology is not the only metric approved by NAESB for use in capacity markets. PJM explains that there are a number of metrics that have been approved by NAESB, such as the Maximum Base Load standard, which is the same as using PLC as the reference metric because it requires load to be below a predefined level.

76. Intervenors also question PJM's reliability concerns, stating that it's the ability of the system to respond to operating conditions that represents the value of demand response for system reliability. Intervenors also argue that the reliability issues described by PJM, in its filing, are not caused by demand resources or ILR, but instead result from the fact that load is significantly greater than the amount of capacity included in procurement. In contrast, PJM describes its reliability concerns with respect to the ability of a Load Management resource to reduce the peak load upon which PJM's procurement of capacity resources is premised. PJM asserts that, to perform in the capacity market, a customer must reduce load below its contribution to the peak load – its PLC. PJM also explains that when a CSP's offer as a Load Management resource clears in an RPM auction, it has committed its customers not to use a specific quantity of capacity (up to its PLC) that PJM otherwise would have to acquire through the auctions by way of generation (or other Load Management).

C. Additional Issues

77. AMP requests guidance from the Commission on recent PJM market rule revisions regarding behind-the-meter generation. We deny AMP's request, given that the market rules identified by AMP are not germane to PJM's proposal and thus are beyond the scope of this proceeding.

D. Waiver Requests

78. PJM requests that the Commission waive its 60-day notice requirement to permit its proposed changes be made effective June 1, 2011, on the commencement of the 2011-12

delivery year. We deny PJM's request in order to provide for a five-month suspension period and November 7, 2011 effective date.

79. PJM also requests a one-time, limited waiver of Section 5.13 of Attachment DD to provide additional flexibility for ILR providers to modify their nominations for the upcoming 2011-12 delivery year. However, PJM conditions its request on the Commission's acceptance of PJM's proposed changes. As the effective date of November 7, 2011 will fall after the availability requirement for ILR resources, which extends from June through September of the delivery year,⁵⁴ PJM's waiver request is moot.

The Commission orders:

(A) Pursuant to the authority contained in sections 205 and 206 of the Federal Power Act, PJM's filing is hereby accepted and suspended for a five-month period, to become effective November 7, 2011, subject to refund and the outcome of the technical conference and a further order, as discussed in the body of this order.

(B) Commission Staff is hereby directed to convene a technical conference, within 60 days following the date of this order, to further explore PJM's filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵⁴ PJM Reliability Assurance Agreement at Article 1 (Definitions), Section 1.42 (Interruptible Load for Reliability, or ILR).

Appendix

List of Intervenors, Commenters and Protesters

American Electric Power Service Corp. +
American Municipal Power, Inc. (AMP) + *
Baltimore Gas and Electric Company +
Calpine Corporation +
Chambersburg, PA +
Comverge, Inc. (Comverge) + *
Dayton Power and Light Company (Dayton) + *
Demand Response Aggregator Coalition + *
Demand Response and Smart Grid Coalition (DRSG) *
Demand Response Partners, Inc. +
Dominion Resources Services, Inc. +
Dynegy Parties +
Duke Energy Corporation +
Duquesne Light Company +
Edison Mission Energy +
Electric Power Supply Association +
Electricity Committee +
EnergyConnect, Inc. +
Energy Curtailment Specialists, Inc. (ECS) + *
EnerNOC, Inc. (EnerNOC) + *
Exelon Corporation +
FirstEnergy Service Company +
GenOn Parties +
Hess Corporation +
Illinois Commerce Commission +
Monitoring Analytics, LLC (IMM) + *
NextEra Energy Generators +
North American Energy Alliance, LLC +
North America Power Partners, LLC +
North Carolina Electric Membership Corporation +
NRG Companies +
Old Dominion Electric Cooperative +
PPL Parties +
PSEG Companies +
PJM Industrial Customer Coalition (Industrial Customers) + *
PJM Members Committee Coalition (MC Coalition) * #
PJM Power Providers Group (P3) + *

Shell Energy North America (US), L.P. +
Viridity Energy, Inc. (Viridity) + *

+ Entities submitting notices of intervention and/or motions to intervene

* Entities submitting protests and/or comments

The MC Coalition consists of the following entities: Constellation Companies; Industrial Customers; Chambersburg, PA; North Carolina Elec. Membership Corp.; Northern Virginia Elec Coop; Old Dominion Electric Coop; American Electric Power Service Corp.; Baltimore Gas & Electric Co.; Exelon Corp.; FirstEnergy Service Co.; Duquesne Light Co.; North American Energy Alliance, LLC; P3; PPL Companies; PSEG Companies; Calpine Corp.; Duke Energy Business Services, LLC; Dynegy Companies; Edison Mission Energy; GenOn Parties; NRG Energy; NextEra Energy Resources; BlueStar Energy Solutions; Buckeye Energy Brokers, Inc.; ConEdison Parties; Demand Response Partners, Inc.; Shell Energy North America (US), L.P.; Verisae, Inc.; Viridity Energy, Inc.; ArcelorMittal USA, Inc.; Lehigh Portland Cement Company; and Energy Consulting Services, LLC. MC Coalition members who are also intervenors are noted above.