139 FERC ¶ 61,257
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C. Docket No. ER12-1705-000

ORDER ON TARIFF FILING

(Issued June 28, 2012)

1. On May 2, 2012, PJM Interconnection, L.L.C. (PJM) filed revisions to PJM's open-access transmission tariff (OATT) and to its Amended and Restated Operating Agreement (Operating Agreement) to remove tariff provisions on a legacy method of demand response compensation. PJM requests that the tariff provisions become effective July 1, 2012. As discussed below, the Commission accepts PJM's tariff revisions.

Background

2. On March 15, 2011, the Commission issued Order No. 745,[1] in which it amended its regulations under the Federal Power Act, regarding compensation for demand response resources participating in wholesale energy markets administered by Regional Transmission Organizations (RTO) and Independent System Operators (ISO). Order No. 745 requires each RTO and ISO to pay a demand response resource the locational marginal price (LMP) when both: (1) the demand response resource has the capability to balance supply and demand as an alternative to a generation resource; and (2) dispatching the demand response resource is cost-effective as determined by a net benefits test. In order to implement the net benefits test, the Commission directed each RTO and ISO to develop a mechanism to approximate the price level at which dispatching demand response resources will be cost-effective.

3. On July 22, 2011, PJM submitted a compliance filing addressing the demand response compensation requirements established by the Commission in Order No. 745. On December 15, 2011, the Commission accepted PJM's compliance filing subject to an

[1] *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, 76 FR 16,658 (Mar. 24, 2011), FERC Stats. & Regs. ¶ 31,322 (2011), *order on reh'g*, Order No. 745-A, 137 FERC ¶ 61,215 (2011).

additional compliance filing.[2] In the December 15, 2011 Order, the Commission accepted PJM's provisions implementing a net benefits test that establishes a single price point RTO-wide to estimate where customer net benefits will occur. However, the Commission found that PJM's proposal to eliminate its existing payment of LMP net of avoided generation and transmission charges (namely, LMP-(G+T)) in the hours where LMP is below the net benefits threshold price went beyond the scope of compliance with Order No. 745. Accordingly, the Commission directed PJM to reinstate its existing tariff provisions for payment of LMP-(G+T).[3] In compliance with this directive, on March 14, 2012, PJM filed revisions in Docket No. ER11-4106-002 to reinstate its pre-existing tariff provisions compensating load reductions that do not satisfy the net benefits test at LMP-(G+T). The Commission order on the March 14, 2012 filing is being issued concurrently with that of ER12-1705-000.

PJM's Instant Filing

4. On May 2, 2012, PJM filed, pursuant to section 205 of the Federal Power Act[4], tariff revisions to remove from sections 3.3A.5(a) and 3.3A.6(a) of its market rules, the compensation of LMP-(G+T) to demand response with verifiable load reductions, when the applicable LMP is less than the threshold price established under the net benefits test. PJM states that its current effective market rules provide a two-tiered compensation structure under which demand response resources are compensated at full LMP when the applicable LMP is equal to or greater than the net benefits test threshold price and such resources are compensated at LMP-(G+T) at times when the threshold price is not met. PJM asserts that since implementation of Order No. 745, the LMP-(G+T) payment structure is rarely used and continuation would impose significant administrative burdens on demand response providers, PJM, and Load Serving Entities (LSE).[5]

[2] *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,216 (2011) (December 15, 2011 Order).

[3] The Commission noted that "[i]f PJM wishes to propose changes with respect to circumstances that were not addressed by the Commission's section 206 action in Order No. 745, the appropriate forum for such a proposal would be a separate section 205 filing." *See* December 15, 2011 Order, 137 FERC ¶ 61,216 at P 16.

[4] 16 U.S.C. § 824d (2006).

[5] As a result, PJM proposes to compensate DR for load reductions at LMP when the applicable LMP is equal to or greater than the threshold price established under the net benefits test.

5. PJM states that there are few if any advantages, and several disadvantages, to keeping in place the rules that compensate demand response at LMP-(G+T) when LMPs are below the net benefits test threshold price. First, PJM asserts demand response providers rarely offer load reductions in the price range where offer prices are around or below the current or expected net benefits test price, because the offsetting G+T charges will usually eliminate any demand response compensation.[6]

6. Second, PJM states implementing LMP-(G+T) entails administrative burdens that are no longer warranted given the severe reduction in LMP-(G+T) payments in the wake of Order No. 745. To implement LMP-(G+T) compensation, PJM's tariff requires PJM confirm the G+T charges with the relevant LSE or electric distribution company (EDC). According to PJM, obtaining this information can be burdensome and presents practical challenges. For example, PJM states, it may not be easy to determine the LSE for a given end-use customer, particularly in a retail-choice jurisdiction. Similarly, the G+T component of a retail rate may not be obvious under some retail contracts. PJM notes that these challenges can delay customer registrations and complicate demand response aggregation.

7. Third, PJM asserts, the PJM current existing LMP-(G+T) compensation scheme may impose costs in excess of benefits on the other loads that do not reduce. PJM states that its LMP-(G+T) program allocates the costs of payments to demand response resources to the LSE responsible for serving the load of the demand response resource, while the benefits are distributed more broadly. According to PJM, this cost allocation creates a mismatch between costs borne and benefits received.

8. PJM also notes that, if conditions change in the future, it will revisit the question of compensation to demand response when prices clear below the Order No. 745 threshold level.

9. PJM states that, at its February 23, 2012 meeting, the PJM Markets and Reliability Committee approved the proposal to eliminate the existing demand response energy market compensation for activity below the net benefits test price with a sector-weighted vote of 3.63 (i.e., 72.6 percent) in favor. Subsequently, PJM submitted the associated market rule changes to the Members Committee for consideration and vote at its March 29, 2012 meeting. The Members Committee overwhelmingly approved the

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[6] PJM notes that, during April 1, 2011 to March 31, 2012, there were only three hours for which any demand response providers requested settlements with G+T charges of less than $25.89/MWh, which is the net benefits test threshold price for April 2012. PJM states that the net compensation in each of these hours (after subtracting the G+T rate) was only about $3/MWh. In addition, PJM notes the net benefits test threshold price for May 2012 is $23.46/MWh.

proposal (submitted with this filing), with a sector-weighted vote of 3.72 (i.e., 74.4 percent) in favor.[7]

Notice and Responsive Pleadings

10. Notice of PJM's filing was published in the Federal Register, 77 Fed. Reg. 27,221 (2012), with interventions and protests due on or before May 23, 2012. Timely motions to intervene were filed by American Municipal Power, Inc., Exelon Corporation (Exelon), PJM Industrial Customer Coalition (PJMICC), and Old Dominion Electric Cooperative. On May 18, 2012, Exelon filed comments in the proceeding. On May 23, 2012, PJMICC filed a protest. On June 7, 2012, PJM filed an answer to PJMICC's protest.

11. In Exelon's comments supporting PJM's filing, Exelon states that obtaining the G+T information needed to apply the legacy compensation method is a burden on demand response providers. Exelon argues that demand response providers seek to avoid this burden, because they do not intend to offer demand response when the LMP is below the net benefits test threshold price. In addition, Exelon asserts that maintaining the legacy compensation method is inefficient and costly.

12. PJMICC protests PJM's proposal as premature, and unjust and unreasonable. First, PJMICC asserts that Order No. 745 is neither final nor non-appealable and, if Order No. 745 were reversed, customers in the PJM region would have no opportunities for demand response compensation in the PJM day-ahead and real-time energy markets. Second, PJMICC states that PJM has not provided any evidence to demonstrate that the net benefits test could not increase considerably from its current levels. Therefore, PJMICC asserts, PJM cannot adequately establish that the LMP-(G+T) and Order No. 745 compensation schemes could not co-exist in the future.

13. PJM states in its answer to PJMICC's protest that it is not premature to file tariff changes that take into account the Commission's current effective rules. PJM reasons that "'absent a stay, Commission orders are in full force and effect pending judicial review'"[8] and delaying action until related orders become no longer appealable would "slow and complicate the Commission's effective administration of matters . . . that the

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[7] Results of the March 29, 2012 meeting can be found at: http://www.pjm.com/~/media/committees-groups/committees/mc/20120329/20120329-item-03-voting-report-order-745-follow-up-filing.ashx.

[8] PJM Answer at 4 (quoting *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 108 FERC ¶ 61,311, at P 97 (2004)).

Commission is required to timely address."[9] Furthermore, PJM states, the Commission, "'like a court, can undo what is wrongfully done by virtue of its order[s]' and has 'general discretionary authority' to devise an appropriate response in such cases."[10]

14. In addition, PJM responds that PJMICC has not provided any evidence that the net benefits price will increase considerably in the future. According to PJM, in order for participation in the legacy LMP-(G+T) compensation method to become economic, the net benefits price must increase substantially either between 80 and 100 percent (based on last year's net benefits prices)[11] or 200 percent based on this year's net benefits prices.[12] Finally, PJM reiterates that it stands by its commitment to revisit its rules should significant changes occur in the conditions under which demand might respond to price signals.

Discussion

15. The Commission accepts PJM's tariff revisions, as discussed more fully below.

Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

17. 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 unless otherwise ordered by the decisional authority. We will accept the answer submitted by PJM because it has provided information that assisted us in our decision-making process.

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[9] *Id.*

[10] *Id.* (quoting *United Gas Improvement Co. v. Callery Properties, Inc.*, 382 U.S. 223, 229 (1965) and *Natural Gas Clearinghouse v. FERC*, 965 F.2d 1066, 1073 (D.C. Cir. 1972)).

[11] Last year's net benefits prices were calculated at $36.76/MWh for April 2011, $34.68/MWh for May 2011, $35.09/MWh for June 2011, and $36.78/MWh for July 2012. *See* net benefits test results of the PJM July 22, 2011 compliance filing to Order No. 745.

[12] This year's net benefits prices were calculated at $25.89/MWh for April 2012, $23.46/MWh for May 2012, $23.86/MWh for June 2012, and $22.99/MWh for July 2012. *See* PJM answer at 5-6. PJM's net benefits test results can be found at: http://pjm.com/markets-and-operations/demand-response/net-benefit-test-results.aspx.

Substantive Matters

18. The Commission accepts, as just and reasonable, PJM's proposed tariff revisions.

19. The Commission accepts PJM's explanation that revising its rules on compensation of demand response when the LMP is below the net benefits test price as proposed here will alleviate significant administrative burdens for PJM. As PJM states, the necessity of collecting and confirming the G+T charges with the relevant LSE or EDC entails administrative burdens that are not commensurate with the level of use of the LMP-(G+T) compensation mechanism.

20. The Commission rejects PJMICC's protest. We find that PJMICC's concerns are speculative at this time. For example, PJMICC's concern that, in the future, customers in the PJM region could have unreasonably limited or no opportunities to receive compensation for demand response in the PJM wholesale energy markets is premature. Additionally, the Commission notes PJM's statement that, if significant changes occur in the conditions under which demand might respond to price signals, then PJM will revisit the question of compensation to demand response when prices clear below the net benefits threshold price.

The Commission orders:

PJM's filing is hereby accepted, to become effective July 1, 2012.

By the Commission. Commissioner Moeller is concurring with a separate statement attached.
Commissioner Clark is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C. Docket No. ER12-1705-000

(Issued June 28, 2012)

MOELLER, Commissioner, *concurring*:

I agree with the decision to grant PJM's request to remove from its market rules, provisions relating to the legacy compensation scheme of LMP-(G+T) to demand response providers when the LMP is less than the threshold price established by the net benefits test. Notwithstanding my differences on the merits of Order No. 745, I agree that it would be a rare occasion where a demand response provider in PJM would seek this form of compensation when offer prices are below that established by the net benefits test.

Moreover, while PJM currently collects information regarding the retail rate and transmission charges (*i.e.*, G+T), in light of the stated administrative burdens in compiling this rate information, I see no justifiable reason to continue requiring PJM to collect this information. Accordingly, I reluctantly agree that based on current market conditions, the legacy practice of LMP-(G+T) compensation should be removed from PJM's tariff, and as such, I concur with the Order's decision.

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Philip D. Moeller
Commissioner