142 FERC ¶ 61,068
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Resources Services, Inc. Docket No. EL13-12-000

v.

PJM Interconnection, L.L.C.

ORDER DISMISSING COMPLAINT

(Issued January 28, 2013)

1. On October 19, 2012, pursuant to section 206 of the Federal Power Act (FPA),[1] Dominion Resources Services, Inc. (Dominion), on behalf of its affiliates Virginia Electric and Power Company, doing business as Dominion Virginia Power, and Dominion Retail, Inc., filed a complaint against PJM Interconnection, L.L.C. (PJM) alleging that PJM's decision to move dispatch of certain generation units from the real-time energy market to the day-ahead energy market results in an unjust, unreasonable, and unduly discriminatory cost allocation (Complaint). In this order, we dismiss the Complaint.

I. Background

2. PJM operates the region's wholesale electric markets by providing an energy market that consists of two settlements – "day-ahead" and "real-time." PJM commits certain units during the day-ahead energy market to meet energy levels above those needed to meet forecasted demand (operating reserves). These operating reserves represent the generating capability standing by, ready for service in case of an unexpected event on the PJM system, such as the loss of a large generator. Operating reserves are scheduled on a day-ahead basis and maintained in real-time. PJM currently charges all

[1] 16 U.S.C. § 824e (2006).

load-serving market participants in the PJM system a share of the cost of the day-ahead operating reserves based on those participants' proportionate share of load to the overall PJM load.[2]

3. PJM may commit additional generation units for resource adequacy to meet forecasted load or for reliability reasons in the real-time energy market. Costs resulting from the commitment of these units are funded through balancing operating reserves charges. Balancing operating reserves charges may also occur when units are dispatched out-of-merit to provide other ancillary services such as voltage support and to meet the requirements of a black start plan. The costs of balancing operating reserves are allocated to the region or zone in which they are needed, based upon principles of cost causation.[3]

4. On November 30, 2012, in Docket No. ER13-481-000, PJM filed proposed tariff revisions to modify the cost allocation methodology for day-ahead operating reserves to mirror the balancing operating reserves cost allocation methodology for resources scheduled in the day-ahead energy market that would not otherwise be scheduled day-ahead but for certain identified reliability reasons. The Commission is issuing an order concurrent with this order accepting PJM's filing in Docket No. ER13-481-000.[4]

II. Complaint

5. Dominion alleges that, on September 13, 2012, PJM changed its dispatch practice without prior notice to PJM stakeholders or a filing with the Commission by moving the commitment of certain uneconomic (high-cost) resources needed to solve local reliability issues from the real-time energy market to the day-ahead energy market. Dominion argues that, while this shift may have reduced the overall operating reserves costs to the RTO region as PJM intended, the change had an adverse effect of shifting considerable operating reserves costs (in the form of higher day-ahead operating reserves charges) to all load-serving market participants. Because the Tariff allocates balancing operating reserves on cost-causation principles, but allocates day-ahead operating reserves to all load-serving market participants, Dominion argues that shifting dispatch of generation units needed to solve local reliability issues to the day-ahead energy market creates an

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[2] PJM Tariff, Attachment K-Appendix, § 3.2.3(d), (15.1.0).

[3] PJM Tariff, Attachment K-Appendix, § 3.2.3(h), (15.1.0).

[4] *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,067 (2012).

unjust, unreasonable, and unduly discriminatory cost allocation that is not based on cost-causation principles.[5]

6. Dominion states that PJM initiated a stakeholder process on October 10, 2012 to discuss revisions to the day-ahead operating reserves Tariff provisions. Dominion asserts that PJM acknowledged in the stakeholder process that the current allocation of day-ahead operating reserves is not proper for the units previously committed in the real-time energy market for reliability purposes.

7. Dominion asserts that its affiliate, Dominion Virginia Power, has sustained additional day-ahead operating reserves charges of approximately $40,000 every day since September 13, 2012, and Dominion Retail has been overcharged approximately $90,000 each month. Dominion estimates the total overcharges will amount to roughly $8 million by March 2013.[6] Dominion requests that the Commission find that PJM's new dispatch practice results in an unjust, unreasonable, and unduly discriminatory cost allocation and direct PJM to amend the Tariff to allocate day-ahead operating reserves costs in a manner that appropriately allocates costs based on cost-causation principles. Dominion also requests that the Commission order a refund of overcharges and set the refund effective date to the date of the change in PJM's practice, i.e. September 13, 2012.

III. Notice and Responsive Pleadings

8. Notice of the Complaint was published in the *Federal Register*, 77 Fed. Reg. 65,544 (2012), with answers, protests, and interventions due on or before November 2, 2012. Motions to intervene were filed by Rockland Electric Company; Exelon Corporation; GenOn Energy Management, LLC, GenOn Chalk Point, LLC, GenOn Mid-Atlantic, LLC, GenOn Potomac River, LLC, GenOn REMA, LLC, and GenOn Wholesale Generation, LP; Allegheny Electric Cooperative; North Carolina Electric Membership Corporation; Dynegy Kendall Energy, LLC, Ontelanuee Power Operating Company, and Dynegy Marketing and Trade, LLC; Duquesne Light Energy; FirstEnergy Solutions Corp.; Duquesne Light Company; The Dayton Power and Light Company; PPL PJM Companies; American Municipal Power, Inc.; American Electric Power Service Corporation; and PJM Power Providers Group. Motions to intervene and comments were filed by the Independent Market Monitor for PJM (Market Monitor); Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy

[5] Dominion states that examples of resources moved into the day-ahead Market include those used for black start support, voltage support, and interface constraint management. Complaint at 12.

[6] Dominion states that PJM estimates that a tariff revision to address the cost shift will be filed at the Commission by January for implementation in March 2013.

Resources & Trade LLC (collectively, the PSEG Companies); the Retail Energy Supply Association (RESA);[7] Virginia Municipal Electric Association No. 1 (VMEA); Old Dominion Electric Cooperative (ODEC); and Hess Corporation (Hess).

9. On November 1, 2012, PJM filed an answer to the Complaint. On November 9, 2012, Dominion filed an answer to PJM's answer. On November 27, 2012, PJM filed an answer to Dominion's answer. On December 5, 2012, PJM filed an amendment to its November 27, 2012 answer.

10. On November 7, 2012, Duke Energy Corporation filed a motion to intervene out-of-time.

11. On December 14, 2012, Dominion submitted an informational filing consisting of its comments in Docket No. ER13-481-000. On December 17, 2012, RESA submitted in this proceeding its motion to intervene out-of-time in Docket No. ER13-481-000 and its comments in support of PJM's FPA 205 filing.[8] On December 21, 2012, PJM submitted in this proceeding an informational filing containing its answer filed in Docket No. ER13-481-000.[9]

A. PJM's November 1, 2012 Answer

12. PJM explains that, in recent months, it has experienced unusually high rates for real-time Operating Reserves due to low natural gas prices. PJM states that low natural gas prices have caused low-cost combustion turbines to be scheduled more frequently in the day-ahead energy market but not run in real-time. This is because PJM has to commit other, more expensive, steam units in the real-time energy market for reliability reasons, including voltage issues, black start capability, local contingencies not visible in the day-

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[7] RESA's members include: Champion Energy Services, LLC; ConEdison Solutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; Stream Energy; TransCanada Power Marketing Ltd.; and TriEagle Energy, L.P.

[8] RESA's comments on PJM's FPA section 205 filing are summarized in the order issued concurrently in Docket No. ER13-481-000.

[9] PJM's answer is summarized in the order issued concurrently in Docket No. ER13-481-000.

ahead Energy Market, and long lead time units that cannot be scheduled in the day-ahead energy market due to operating parameters. PJM explains that units scheduled in the day-ahead Energy Market, but not run in real-time by request of PJM are subsequently made whole through lost opportunity cost payments.

13. PJM asserts that it began committing certain steam units in the day-ahead energy market that previously had been committed only in real-time for reliability reasons. PJM explains that this action was taken in order to improve efficiency, resulting in a more accurate representation of actual, real-time operating conditions in the day-ahead Energy Market. PJM states that this change has reduced make whole payments, lowered rates for real-time operating reserves, reduced the total quantity of operating reserves scheduled in the combined day-ahead and real-time energy markets, and lowered the overall cost of operating reserves.

14. PJM explains that the current cost allocation for day-ahead operating reserves was designed to reflect the fact that the vast majority of those costs arise as a result of minimizing production costs in the day-ahead energy market. Those day-ahead operating reserve costs are allocated to all load and exports in the day-ahead energy market, the primary beneficiaries of those costs.

15. PJM "acknowledges that the current cost allocation methodology for Day-ahead Operating Reserves may no longer be equitable to all PJM market participants."[10] PJM states that it is working with stakeholders to revise the Tariff and Operating Agreement so that the day-ahead operating reserves cost allocation methodology mirrors the real-time operating reserves cost allocation methodology for units scheduled in the day-ahead energy market for local reliability reasons. While PJM "recognizes that a more optimal and equitable cost allocation methodology might be warranted," PJM denies that its conduct results in an unjust and unreasonable rate. PJM states that "stakeholder process should be given a fair opportunity to address potential inequities prior to any unilateral action by PJM or the Commission;"[11] though PJM also notes that in circumstances involving cost allocation, the stakeholder process can become difficult and protracted. Therefore, PJM believes that the appropriate relief for Dominion would be for the Commission to require PJM, in the absence of stakeholder agreement, to make a compliance filing within 60 days and establish an effective date for any proposed changes no earlier than the date PJM submits the compliance filing.

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[10] PJM Answer at 6.

[11] *Id.* at 7.

B. Comments

16. The Market Monitor filed comments stating that Dominion has not shown that PJM has acted inconsistently with its Market Rules or that retrospective relief is justified. In addition, the Market Monitor states that PJM should, as a short term solution, request that the Tariff be modified to permit allocation of day-ahead operating reserves charges consistent with prior allocation of these charges in real-time, and start a stakeholder process to consider the broader market design and cost allocation issues.

17. The PSEG Companies disagree with Dominion's requested relief, arguing that it would be more appropriate for the Commission to order PJM to return to its prior dispatch practice until the stakeholder process is concluded, require conclusion of the stakeholder process by year end, and direct that the scope of the stakeholder process establish rules regarding how resources are included in the day-ahead Market going forward. The PSEG Companies argue that the Tariff does not contemplate that PJM will change the security constrained least-cost day-ahead dispatch based upon an anticipated need in the real-time energy market for a constraint that is not being modeled in the day-ahead representation. They further argue that allowing PJM to make reliability commitments in the day-ahead energy market predicated on an expected reliability need in the real-time energy market would have negative impacts on markets, and that the better approach would be for PJM to model the constraint rather than forcing an uneconomic generating unit in the day-ahead dispatch. The PSEG Companies explain that Dominion's requested relief does not address the underlying problem that PJM may be skewing market results in both settlements by not honoring the objective functions of each commitment.

18. RESA argues that PJM's dispatch strategy shifted costs without notice or discussion and PJM has not shown that its strategy results in actual savings. RESA further argues that the change in dispatch strategy has caused unintended consequences, including increasing costs for retail load serving entities and possibly sending inappropriate market signals that could cause changes in the bidding behavior of market participants. RESA asserts that the Commission should order that PJM (1) pay refunds, (2) prove that its drivers for the increased operating reserve costs are accurate, (3) determine whether the strategy is actually the best solution to resolve the issue, and (4) consider and disclose the financial consequences of the action.

19. Hess supports PJM's efforts to reduce overall operating reserves costs, but states that the change in dispatch strategy resulted in an increase in its overall costs to serve load under contract and the way it was implemented prohibited the recovery of the increased cost to serve. Hess supports a stakeholder process to evaluate the issue and the concept of refunds as long as they can be done in an equitable manner.

20. ODEC supports Dominion's request for prospective relief in the form of revisions to the cost allocation provisions of the Tariff, but does not take a position on whether retroactive refunds should be ordered. However, if refunds are ordered, ODEC requests that refunds also be provided to similarly situated load-serving market participants.

21. VMEA filed comments in support of the Complaint.

C. Dominion's Answer

22. In its answer, Dominion emphasizes that the only dispute on the merits is whether PJM's new dispatch practice results in an unjust and unreasonable rate. Dominion argues that whether PJM was "carrying out core responsibilities" does not mean that a just and reasonable rate results. Given that PJM is the only entity with the ability to calculate overcharges, Dominion requests that the Commission order PJM to evaluate the data relating to all operating reserves charges since September 13, 2012 as part of the Commission-ordered hearing or stakeholder process that will result in a tariff revision. Finally, Dominion represents that it does not oppose the additional stakeholder processes as proposed by the Market Monitor and the PSEG Companies, but requests that the Commission order that the first task be the development of a proper cost allocation methodology for current commitment practices.

D. PJM's November 27, 2012 Answer

23. PJM states that, in response to Dominion's suggestion that it acted improperly with respect to the manner in which it implemented changes to its dispatch practice, it is not required under the Operating Agreement to discuss such operational changes with stakeholders prior to implementation since the changes did not require any revisions to the provisions of the Operating Agreement. PJM states that, under the Operating Agreement and parallel provisions of the Tariff, PJM is required to commit resources "in the least costly manner, subject to maintaining the reliability of the PJM region."[12] PJM argues that refunds are inappropriate because PJM did not violate the Operating Agreement and Dominion does not allege otherwise.

24. PJM states that the ongoing stakeholder process is moving forward on an expedited basis. PJM explains that, on November 19, 2012, the PJM Market Implementation Committee endorsed, without opposition, Operating Agreement changes that would alter the allocation of operating reserves payments to generators that would not have been committed in the day-ahead energy market but for expected real-time reliability needs. PJM states that the PJM Markets and Reliability Committee and PJM

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[12] PJM November 27, 2012 Answer at 2 (citing PJM Operating Agreement, Schedule 1, § 1.10.1 and PJM Tariff, Attachment K-Appendix, § 1.10.1).

Members Committee will be asked to approve the proposed revisions at their meetings on November 29, 2012, and if approved, PJM will file the proposed revisions on November 30, 2012.

E. PJM's December 5, 2012 Amendment to the November 27, 2012 Answer

25. PJM amends its November 27, 2012 answer to reflect that the PJM Markets and Reliability Committee and PJM Members Committee approved the proposed Operating Agreement revisions at their meetings on November 29, 2012, and PJM filed those proposed Operating Agreement revisions with the Commission on November 30, 2012 in Docket No. ER13-481-000.

F. Dominion's December 14, 2012 Informational Filing

26. In its informational filing, Dominion submits its comments to PJM's proposed tariff revisions in Docket No. ER13-481-000. In its comments, Dominion supports the proposed tariff revisions, stating that they have been vetted by stakeholders and "will ensure that operating reserves in the Day-ahead Market will be allocated justly, reasonably, and in accordance with well accepted notions of cost causation…."[13] In its comments, Dominion also requests coordinated consideration of the two proceedings.

IV. Discussion

A. Procedural Matters

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[14] the timely, unopposed motions to intervene serve to make the parties that filed them parties to this proceeding.

28. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,[15] the Commission will grant Duke Energy Corporation's late-filed motion to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

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[13] Dominion December 14, 2012 Informational Filing at 4.

[14] 18 C.F.R. § 385.214 (2012).

[15] *Id*. § 385.214(d).

29. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[16] prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept Dominion's and PJM's answers because they have aided us in our decision-making.

B. Substantive Matters

30. Dominion requests that the Commission find that PJM's new dispatch practice results in an unjust, unreasonable, and unduly discriminatory cost allocation and that the Commission, as a consequence, direct PJM to amend the Tariff to allocate day-ahead operating reserve costs in a manner that appropriately allocates costs based on cost-causation principles. In Docket No. ER13-481-000, the Commission, concurrent with this order, is accepting as just and reasonable effective December 1, 2012 PJM's proposed tariff revisions (which are supported by Dominion) to amend the cost allocation methodology for day-ahead operating reserves to mirror the balancing operating reserves cost allocation methodology for resources scheduled in the day-ahead energy market that would not otherwise be scheduled day-ahead but for certain identified reliability reasons. Because we are accepting a just and reasonable cost allocation for day-ahead operating reserves in Docket No. ER13-481-000 to become effective December 1, 2012, we will dismiss the Complaint.

31. Dominion also includes a request for the Commission to order payment of refunds of overcharges back to September 12, 2012, the date on which PJM is alleged to have changed its dispatch practices.[17] Even if we did conclude that PJM's current tariff was unjust and unreasonable, however, we would not order refunds given our policy of making changes in rate design and cost allocation prospective only.[18]

32. The PSEG Companies and RESA object to PJM's dispatch strategy itself, in addition to the cost allocation for day-ahead operating reserves. RESA argues that PJM has not shown that its strategy results in actual savings. Likewise, the PSEG Companies argue that the Tariff does not contemplate that PJM will change dispatch based on

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[16] *Id*. § 385.213(a)(2).

[17] Under section 206 of the FPA, moreover, the earliest a refund effective date could be set is the date of the complaint, October 19, 2012.

[18] *E.g., Occidental Chemical Corporation v. PJM Interconnection, L.L.C. and Delmarva Power & Light Company*, 110 FERC ¶ 61,378, at P 10 (2005) (when a Commission action under section 206 of the FPA requires only a rate design or cost allocation change, the Commission's order will take effect prospectively); *Black Oak Energy, L.L.C., et al. v. PJM Interconnection, L.L.C.*, 136 FERC ¶ 61,040, at P 28 (2011).

reliability needs in the real-time energy market and that this strategy would have a negative impact on markets, whereas a strategy of modeling the constraint would be better. Under section 206 of the FPA, in response to a complaint the Commission must first find that an existing tariff provision is unjust and unreasonable and, if it is, establish a just and reasonable rate. No party has shown that PJM's action in dispatching generation in the day-ahead market for reliability reasons violated PJM's tariff, however. As PJM explains, and we agree, its Tariff requires PJM to commit resources "in the least costly manner, subject to maintaining the reliability of the PJM region,"[19] and accordingly, making dispatch decisions for reliability reasons is within PJM's discretion and does not require prior stakeholder approval or a demonstration that its dispatch strategy is better than other strategies.

The Commission orders:

Dominion's Complaint is hereby dismissed.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[19] PJM November 27, 2012 Answer at 2 (citing PJM Operating Agreement, Schedule 1, § 1.10.1 and PJM Tariff, Attachment K-Appendix, § 1.10.1).