

143 FERC ¶ 61,061
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Demand Response Coalition

Docket No. EL13-57-000

v.

PJM Interconnection, L.L.C.

ORDER GRANTING COMPLAINT

(Issued April 19, 2013)

1. On April 3, 2013, pursuant to section 206 of the Federal Power Act (FPA),¹ the Demand Response Coalition (Demand Response Coalition)² filed a complaint against PJM Interconnection, L.L.C. (PJM) alleging that certain newly adopted provisions of PJM's Manual 18 (Manual 18 Revisions)³ violate FPA section 205⁴ and are unenforceable because they significantly affect jurisdictional rates, terms, and conditions of service and have not been filed in accordance with the Commission's Part 35 rules

¹ 16 U.S.C. § 824e (2006).

² The Demand Response Coalition includes: Comverge, Inc.; Viridity Energy; and Energy Curtailment Specialists.

³ Manual 18, PJM Capacity Market. This manual focuses on the capacity markets, including the Reliability Pricing Model (RPM) and the Fixed Resource Requirement Alternative, and the requirements for resource providers and Load Serving Entities (LSEs) to participate in these markets and their responsibilities as signatories to the Open Access Transmission Tariff, Reliability Assurance Agreement and Operating Agreement of PJM Interconnection, L.L.C.

⁴ 16 U.S.C. § 824d (2006).

(Complaint).⁵ In the alternative, the Demand Response Coalition seeks an order finding that the Manual 18 Revisions violate FPA section 205 and are unenforceable because they are unjust and unreasonable. As discussed below, the Commission grants the Complaint.

I. Background

2. Pursuant to section A.5 of Attachment DD-1 of PJM's Open Access Transmission Tariff (Tariff), "[a]n entity offering for sale...any Planned Demand Resource must demonstrate, in accordance with standards and procedures set forth in the PJM Manuals, that such resource shall have the capability to provide a reduction in demand, or otherwise control load, on or before the start of the Delivery Year for which such resource is committed" and "provide a timeline including the milestones, which demonstrates to PJM's satisfaction that the Planned Demand Resources will be available for the start of the Delivery Year, 15 days prior to a Base Residual Auction...."⁶

3. On December 12, 2012, the Market Implementation Committee (MIC) approved a Problem Statement identifying PJM's concern that relatively large quantities of offered zonal demand response (DR) capacity in the 2015/2016 Base Residual Auction (BRA) may not have been representative of practical levels of zonal DR penetration. PJM requested the MIC to develop recommendations to enhance DR Plan documentation requirements for incorporation into Manual 18.

4. Following a vote by the PJM Members Committee on March 28, 2013, PJM adopted the Manual 18 Revisions, which replace, among other things, a provision stating that demand resource providers must "provide a timeline including the milestones, which demonstrates to PJM's satisfaction that the Planned Demand Resources⁷ will be available for the start of the Delivery Year, 15 business days prior to an RPM Auction."

⁵ 18 C.F.R. pt. 35 (2012).

⁶ PJM Tariff, Attachment DD-1, section A.5, Procedures for Demand Resources, ILR and Energy Efficiency, 3.1.0.

⁷ "Planned Demand Resource shall mean a Demand Resource that does not currently have the capability to provide a reduction in demand or to otherwise control load, but that is scheduled to be capable of providing such reduction or control on or before the start of the Delivery Year for which such resource is to be committed, as determined in accordance with the requirements of Schedule 6." PJM Reliability Assurance Agreement (RAA), section 1.69, Planned Demand Resource.

The Manual 18 Revisions state, *inter alia*, that, “[i]n order to offer a Demand Resource in an RPM Auction,” a Curtailment Service Provider (CSP) must submit, 15 business days prior to the RPM Auction, a detailed “DR Sell Offer Plan” describing how the CSP plans to provide the megawatts it will offer into the Capacity Auction. The DR Sell Offer Plan requires delineation of Planned and Existing Nominated DR Values by zone/subzone, descriptions of plans to achieve the load reduction at specific customer sites, a timeline for procuring the resources, and a certification that must be signed by an officer representing that he or she has “the reasonable expectation...to physically deliver all megawatts that clear the RPM Auction through Demand Resource registrations by the specified Delivery Year.” The revisions also provide that, for certain zones flagged as having high levels of DR, a CSP sell offer threshold is determined for each CSP, and DR sell offer quantities in excess of this threshold will require site-specific information. In addition, megawatts from end-user sites that are identified in multiple CSPs’ plans will be ineligible to be bid into an RPM auction at all unless the CSP has a letter of support from the end-user site, and PJM will determine the demand response megawatt quantity by zone/sub-zone that the CSP is permitted to offer into the auction.

II. Complaint

5. In the Complaint, the Demand Response Coalition asserts that the Manual 18 Revisions significantly affect jurisdictional service and therefore, pursuant to FPA section 205, must be filed with and approved by the Commission before they are made effective, because they (1) set forth specific conditions, including submission of the DR Sell Offer Plan and officer’s certification, which must be met in order for demand response to participate in RPM auctions, (2) disqualify certain resources when they are cited by more than one supplier, and (3) determine for all suppliers the approved demand response megawatt quantity by zone/sub-zone that the CSP is permitted to offer into the auction. The Demand Response Coalition also argues that the revisions are contrary to the terms of the Tariff because (1) the Tariff cannot be reasonably read to require a detailed demonstration, before the BRA, that the demand resource can provide a reduction in demand, and (2) because the officer’s certification appears to prevent suppliers from later hedging their portfolios through incremental auctions.

6. In the alternative, the Demand Response Coalition argues that the Manual 18 Revisions are unjust and unreasonable because, among other things, they require a change from the submission of the timeline required by Tariff section A.5 (quoted above) to a detailed business plan with only 16 business days to comply, they are unduly burdensome and impose unnecessary barriers to demand resource participation because it is unlikely that CSPs will be able to identify the customers who will eventually sign a contract three years in advance, and they are unduly discriminatory by only restricting the rights of demand resources.

7. The Demand Response Coalition requests Commission action by April 19, 2013, the deadline PJM has established for submittal of DR Sell Offer Plans for the 2016/2017 BRA.

III. Notice and Responsive Pleadings

8. Notice of the Complaint was published in the *Federal Register*, 78 Fed. Reg. 21,928 (2013), with protests and interventions due on or before April 15, 2013. Motions to intervene were filed by PJM Industrial Customer Coalition; Hess Corporation; Public Utilities Commission of Ohio; Maryland Public Service Commission; Calpine Corporation; Pepco Holdings, Inc., Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; North American Power Partners, LLC; American Public Power Association; EnergyConnect, Inc.; The Dayton Power and Light Company; NRG Companies; Exelon Corporation; Duke Energy Corporation; EnerNOC, Inc.; Pennsylvania Public Utility Commission; DC Office of the People's Counsel; Natural Resources Defense Council; and Dominion Resources Services, Inc. Motions to intervene and comments were filed by the Demand Response and Smart Grid Coalition (DRSG), Independent Market Monitor for PJM (Market Monitor), Delaware Public Service Commission (Delaware PSC), American Electric Power Service Corporation (AEP), Electric Power Supply Association (EPSA), PSEG Companies, the PJM Power Providers Group (P3), and FirstEnergy Service Company (FirstEnergy). The Public Utilities Commission of Ohio (Ohio Commission) and Commissioner James H. Cawley of the Pennsylvania Public Utility Commission (PAPUC Commissioner Cawley) each submitted comments. The Indiana Utility Regulatory Commission (Indiana Commission) and Illinois Commerce Commission each filed a notice of intervention and comments.

9. On April 18, 2013, the PPL Parties⁸ filed a motion to intervene out-of-time.

A. PJM's Response

10. In its response to the Complaint, PJM argues that the Manual 18 Revisions are within the scope of section A.5 of Attachment DD-1 and simply provide implementing details by which PJM carries out this provision. PJM asserts that section A.5 requires the

⁸ The PPL Parties are PPL Electric Utilities Corporation, PPL EnergyPlus, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC, PPL Ironwood, LLC, Lower Mount Bethel Energy, LLC, PPL Martins Creek, LLC, PPL Montour, LLC, PPL Susquehanna, LLC, PPL New Jersey Solar, LLC, PPL New Jersey Biogas, LLC, and PPL Renewable Energy, LLC.

demonstration that the demand resource has the capability to provide a reduction in demand 15 days prior to the BRA or Incremental Auction.

11. PJM argues that the Manual 18 Revisions refer to the same information that PJM has required for the past four years in PJM's annual postings. PJM also argues that the Manual 18 Revisions do not have to be in the Tariff because the changes are merely "specifics" and "implementation details," not practices that significantly affect rates, terms, and conditions of service. In addition, PJM contends that the officer certification is reasonable, the revisions do not discriminate against demand resources, Complainants do not face an undue burden because the revisions largely request the same information that PJM has required for the past four years and have been shared with stakeholders for months, and Complainants have not demonstrated that the Manual 18 Revisions are unjust and unreasonable. PJM states that it does not question the fact that some end users cannot commit to specific load reductions three years in advance, but argues that this means that Demand Resource Providers should reflect in their BRA offers only the load reduction capability that they reasonably expect that, at the time of the auction, they will be able to produce.

B. Comments

12. PAPUC Commissioner Cawley asserts that the Manual 18 Revisions are inconsistent with the Tariff and may result in rates that are unjust and unreasonable, insofar as they place an unreasonable burden on CSPs to compete for capacity resources in PJM's capacity market, and therefore should be modified or eliminated. DRSG states that implementing the changes prior to the upcoming auction could have adverse impacts on demand resource procurement in the near term.

13. AEP, FirstEnergy, EPSA, PSEG, the Ohio Commission, P3, and the Market Monitor contend that PJM has the requisite authority to amend its RPM rules through changes to Manual 18. FirstEnergy and EPSA contend that the Manual 18 Revisions do not significantly affect jurisdictional rates, terms and conditions of service, and therefore do not need to be filed under section 205, and that in similar cases the Commission has not required such a filing. PSEG also argues that the Tariff contains provisions that require PJM to verify that parties offering Demand Resources have or reasonably expect to have the load reduction capabilities specified in their offers, and the Commission should dismiss the Complaint because the Demand Response Coalition failed to meet its burden to demonstrate that the proposed Manual 18 changes are unduly discriminatory. The Market Monitor states that it takes no position on whether the Manual 18 Revisions properly belong in the Tariff or the manuals.

14. The Ohio Commission renews its recommendation that the Commission initiate a rulemaking investigation to review whether it should significantly reduce or phase out the availability of PJM's Limited or Extended Summer DR capacity products. The Delaware PSC takes no position on the Complaint but supports the Commission pursuing

administrative procedures to facilitate discussion of reliability and demand response issues. The Indiana Commission states that it cannot speak to the facts asserted by the Demand Response Coalition but is concerned about the reliability and verifiability of demand response as a resource. Some parties assert that, if anything, the revisions do not go far enough, and only begin to put demand response on a comparable playing field with other forms of capacity.

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁹ the notices of intervention and timely, unopposed motions to intervene serve to make the parties that filed them parties to this proceeding.

16. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,¹⁰ the Commission will grant PPL Parties' 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.

B. Substantive Matters

17. We grant the Complaint. The changes proposed by PJM implement practices that significantly affect jurisdictional rates, terms and conditions of service, and accordingly must be submitted to the Commission pursuant to section 205 of the FPA.¹¹ The FPA requires all practices that significantly affect rates, terms and conditions of service to be on file with the Commission, and these practices must be included in a Commission-accepted tariff rather than other documents.¹²

⁹ 18 C.F.R. § 385.214 (2012).

¹⁰ 18 C.F.R. § 385.214(d) (2012).

¹¹ PJM may propose these changes through an FPA section 205 filing for the Commission's review and approval. We make no determination here as to whether such changes, if filed under section 205, would be just and reasonable.

¹² *Cargill Power Markets, LLC v. Public Service Company of New Mexico*, 141 FERC ¶ 61,141, at P 14 (2012); *Quest Energy, L.L.C. v. Detroit Edison Co.*, 106 FERC ¶ 61,227, at P 20 (2004) ("a company's tariffs, not its manuals or handbooks, must define the rates, terms and conditions of jurisdictional services"), *complaint*

18. The Commission addressed this specific issue in 2006. With respect to demand response participation in RPM, the Commission stated:

“[b]ecause the rules for demand response participation in RPM are an integral part of the new capacity construct, we will require that PJM incorporate the eight criteria in Schedule 6 of the Reliability Assurance Agreement and the rules in the PJM Manuals associated with standards and procedures for demonstration that a resource has the capability to provide a reduction in demand, the calculation of the DR Factor (Demand Response Factor) and Unforced Capacity Value of a demand resource, and rules and procedures for verifying performance of demand resources in the PJM Tariff.”¹³

19. PJM acknowledges that some Manual 18 Revisions reflect new practices relating to demand response capability, including adopting a new template for submitting information, requiring an officer certification, and establishing a procedure for identifying certain zones in PJM where more detailed information must be provided.¹⁴ Consistent with our prior finding, the changes PJM has proposed in its manuals regarding demand response capability must be filed with the Commission pursuant to section 205 of the FPA so that their justness and reasonableness can be reviewed.¹⁵

withdrawn, 109 FERC ¶ 61,334 (2004); *accord Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,147, at P 58 (2009) (finding that consistent with the Commission’s policy, as implemented through the rule of reason, a provision “that significantly affects rates, terms and conditions of service ... must be filed for Commission approval and made a part of the ... tariff.”); *Wisconsin Power and Light Co.*, 123 FERC ¶ 61,307, at P 6 (2008) (pursuant to 18 C.F.R. §§ 35.1-35.2, rate schedules must set forth in writing, clearly and specifically, all rates, terms, and conditions for sales of electric energy subject to the Commission’s jurisdiction.); *see generally Prior Notice and Filing Requirements under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,986-89 (1993), *order on reh’g*, 65 FERC ¶ 61,081 (1993).

¹³ *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, at P 134 (2006).

¹⁴ PJM Response at 14.

¹⁵ Given this finding, we do not need to address the arguments regarding possible different interpretations of PJM’s Tariff.

20. FirstEnergy claims that the Commission has not required an Independent System Operator to make a filing under section 205 of the FPA in similar cases.¹⁶ The cases cited by FirstEnergy are properly distinguished from the instant case. In contrast to those cases, and as noted above, the Commission made a specific finding in 2006 that PJM's rules for demand response participation in RPM were an integral part of PJM's capacity construct and must be included in the PJM Tariff.

21. PJM argues that the Manual 18 Revisions largely reflect its practices for the past four years. Even if PJM previously imposed some of these practices, the practices are now, for the first time, included in a Manual revision and a party has, for the first time, alleged that the revisions are beyond PJM's authority to implement under its existing tariff. Furthermore, PJM acknowledges that some Manual 18 Revisions reflect new practices.¹⁷

22. PSEG Companies contend that the Complaint should be dismissed because the Demand Response Coalition has failed to meet its burden to show that the Manual 18 Revisions are unduly discriminatory. As discussed above the Manual changes significantly affect the rates, terms, and conditions of service and must be filed in the Tariff. Accordingly, we need not make a finding that the revisions are unduly discriminatory to grant the Complaint.

23. Although we grant the Demand Response Coalition's Complaint based on our 2006 order, we note that PJM is free to propose these changes through an FPA section 205 filing. PJM states that it made the changes to its Manual to help standardize the information submitted by demand response resources offering into the auction and to create greater certainty about the integrity of offers submitted to meet future reliability needs.¹⁸ We also note that PJM's stakeholders were asked to consider enhancements that "will not present unreasonable barriers to entry, but will provide sufficient assurance that a provider's planned demand response MWs are viable, provide sufficient information for reliability-based planning analysis and are reasonably expected to be delivered for the

¹⁶ FirstEnergy Comments at 2 (citing *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,313, at P 344 (2007); *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172, at P 490 (2008)).

¹⁷ PJM Response at 14.

¹⁸ *Id.* at 34-35.

future Delivery Year.”¹⁹ We thus encourage PJM to submit a section 205 filing as it feels is appropriate.

The Commission orders:

The Complaint is hereby granted, as discussed in the body of this order.

By the Commission. Commissioners Moeller and Clark are concurring with a joint separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁹ *Id.* at 13.

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MOELLER, Commissioner, and CLARK, Commissioner, *concurring*:

Demand resources provide an ever-increasing amount of capacity to the markets, and as the grid operator, PJM must ensure that these resources are physically able to provide the load reduction capability that is assumed in their offers, just like any other resource. Based on our review of the proceeding, it appears that PJM has a legitimate need to require that demand resources provide certain information to substantiate offers to supply capacity.

However, as noted in today's Order, and as required by the 2006 Order, PJM must seek to amend its tariff, not its manual, to effectuate changes relating to the rules and procedures for qualifying demand resources in the RPM auctions. Notwithstanding the question of where these changes should be located, our primary concern is that PJM cannot ensure that resources are making legitimate and accurate offers into the capacity market. This injects additional uncertainty about whether these resources, if committed, will actually be available at some point in the future to provide capacity. Such uncertainty begins to degrade the very purpose of PJM's capacity market, which is meant to ensure that sufficient capacity is procured in advance of the delivery year to meet peak load.

Ultimately, a future section 205 filing from PJM could result in greater certainty as to the integrity of sell offers, and greater assurance that future reliability needs will be met. We thus reiterate here the encouragement for PJM to submit a section 205 filing to enable the Commission to address PJM's proposed changes on the merits.

Philip D. Moeller
Commissioner

Tony Clark
Commissioner