

128 FERC ¶ 61,249  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

PJM Interconnection, L.L.C.

Docket No. ER09-730-002

ORDER ON COMPLIANCE FILING

(Issued September 17, 2009)

1. On May 29, 2009, the Commission issued an order conditionally accepting the proposed modifications of PJM Interconnection, L.L.C. (PJM) to the practices and rules governing the provision of black start service and related revenue recovery for black start service providers set forth in Schedule 6A of its Open Access Transmission Tariff (Tariff).<sup>1</sup> On June 29, 2009, PJM filed revised tariff sheets to comply with the Commission's May 29 Order. For the reasons discussed below, the Commission accepts PJM's June 29, 2009 compliance filing, effective April 21, 2009, subject to further conditions.

**I. Background**

2. Schedule 6A of PJM's Tariff sets forth the details for generators to provide, and users of the transmission system to obtain black start service.<sup>2</sup> PJM's proposed revisions to Schedule 6A were crafted to: (i) establish a tiered level of commitment for a black start unit to provide service dependent upon whether it seeks to recover additional fixed cost capital improvements; (ii) allow black start unit service providers the opportunity to recoup reasonable costs that would otherwise not be incurred but for

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<sup>1</sup> *PJM Interconnection, L.L.C.*, 127 FERC ¶ 61,197 (2009) (May 29 Order).

<sup>2</sup> Black start service is the ability of a generating unit to start-up without an outside electrical supply or to continue operating at reduced levels when disconnected from the grid, which is critical for restoration of the transmission system in the event of a de-energizing event (*e.g.*, a blackout).

maintaining their black start units in compliance with applicable North American Electric Reliability Corporation (NERC) Reliability Standards; and (iii) establish an alternative capital cost recovery mechanism by allowing a black start service provider to seek a Commission-approved cost of service recovery mechanism in lieu of the proposed Schedule 6A formula rates.

3. The Commission accepted the proposed revisions conditioned on PJM: (i) clarifying that the refund obligation, as set forth in paragraph 6 and 6(A) of the proposed Schedule 6A, does not apply to existing black start service providers receiving revenue recovery pursuant to paragraph 5 of Schedule 6A; (ii) explaining further and justifying the proposed revision relating to the reduction of the black start service allocation factor, or “X factor,” for black start units “...having recovered new or additional Fixed Black Start Service Costs on an accelerated basis prior to April 21, 2009;” (iii) clarifying whether PJM intends to allow black start service providers that certify their costs to PJM, without separate Commission approval, to recover NERC penalties or the costs of insurance covering those penalties under the auspices of Schedule 6A costs recovery; and (iv) correcting minor typographical errors identified on the proposed tariff sheets.<sup>3</sup>

## **II. Notice of Filing and Responsive Pleadings**

4. Notice of PJM’s June 29, 2009 compliance filing was published in the *Federal Register*, 74 Fed. Reg. 32907 (2009), with comments and protests due on or before July 20, 2009. Monitoring Analytics, LLC (Market Monitor) filed comments to PJM’s compliance filing. On August 4, 2009, the Tenaska Parties<sup>4</sup> and Duke Energy Ohio, Inc. (Duke) filed an answer to the Market Monitor’s comments. On August 28, 2009, the Market Monitor filed an answer to the Tenaska Parties’ and Duke’s answers.

## **III. Discussion**

### **A. Procedural Matters**

5. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Tenaska Parties’, Duke’s, and the Market Monitor’s answers because each provided information that assisted us in our decision-making process.

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<sup>3</sup> See May 29 Order, 127 FERC ¶ 61,197.

<sup>4</sup> The Tenaska Parties include Big Sandy Peaker Plant, LLC, Lincoln Generating Facility, LLC, and University Park Energy, LLC.

**B. Substantive Matters**

6. As discussed below, the Commission accepts PJM's June 29, 2009 compliance filing, including proposed tariff sheets, to be effective April 21, 2009, as requested, subject to the conditions discussed below.

**1. Refund Obligation**

7. Under PJM's revised Schedule 6A, a black start service provider can recover black start costs under a Commission-approved rate either pursuant to a two year rolling commitment (paragraph 5) or pursuant to a longer term service commitment (paragraph 6). The tariff provides that if a black start provider fails to fulfill its service commitment, such provider is required to "fully refund any amount of the Black Start Capital Costs recovered under a FERC-approved rate (recovered on an accelerated basis pursuant to the provisions of paragraph 17(i)) in excess of the amount that would have been recovered pursuant to paragraph 18 during the same period."

8. The May 29 Order found that PJM's transmittal letter and answer created some ambiguity regarding PJM's proposed refund obligations in paragraphs 6 and 6(A). Specifically, PJM's transmittal letter and answer suggested that the refund obligations under paragraphs 6 and 6(A) would apply to black start providers who establish their revenues requirements based on a Commission-approved rate, regardless of whether the provider establishes its commitment period under the two-year commitment in paragraph 5 or the longer term commitment in paragraph 6. The Commission however, found that the proposed paragraphs 6 and 6(A) seemed to correctly provide that the refund obligation would be triggered only when a black start service provider elects to recover new or additional Black Start Capital Costs and fails to fulfill its longer term commitment established under paragraph 6. Accordingly, PJM was directed to clarify that the refund obligation, as set forth in paragraphs 6 and 6(A), does not apply to existing black start service providers receiving recovery pursuant to paragraph 5.

9. In its June 29, 2009 compliance filing, PJM states that the refund obligation for revenues recovered on an accelerated basis in both paragraphs 6 and 6(A) are triggered only when a black start service provider fails to fulfill its applicable commitment period established under paragraph 6 and does not apply to existing black start service providers receiving recovery pursuant to paragraph 5. We find PJM's clarification to be acceptable.

**2. X Factor****a. PJM's Compliance Filing**

10. Originally, PJM submitted a revised formula rate for those black start providers that elect to forego new or additional black start capital costs as part of the revenue

requirements provisions of the proposed Schedule 6A. For black start service providers that elect to forego new or additional black start capital costs, PJM proposed that the Fixed Black Start Service Costs component of the formula rate be equal to: Cost of New Entry \* 365 \* Black Start Unit Capacity \* X.<sup>5</sup> This revised rate calculation contemplated that the X factor would be reduced for black start units "...having recovered new or additional Fixed Black Start Capital Costs on an accelerated basis prior to April 21, 2009..." to .005 for Hydro units and .01 Diesel or CT units. PJM also proposed that the X Factor would remain at .01 for Hydro units and .02 for Diesel or CT units electing to forego recovery of new or additional Fixed Black Start Capital Costs pursuant to a two-year rolling commitment period established under paragraph 5 of Schedule 6A.

11. The May 29 Order found, among other things, that PJM had not adequately explained what appeared to be an inconsistency in its use of the term "new or additional Fixed Black Start Capital Costs." In prior provisions of the tariff "new or additional Black Start Capital Costs" referred to capital costs for which a black start provider seeks recovery of or after April 21, 2009 and not capital costs recovered prior to such date. Given this usage, it was unclear how "new or additional Fixed Black Start Capital Costs" could be incurred prior to April 21, 2009, the effective date of the proposed tariff sheets,<sup>6</sup> or why the X factor should differ depending on the date on which a black start service provider began to recover costs under their Commission-approved rate schedule. PJM was directed to further explain this proposed modification and its justification for the proposed X factor reduction.

12. PJM responds that after re-evaluating the proposed tariff language it has determined that the provision applying reduced allocation factors to units "having recovered new or additional Fixed Black Start Capital Costs on an accelerated basis prior to April 21, 2009," is inconsistent with the remaining provisions of Schedule 6A. PJM explains that, in particular, because the X factor is solely a component of the formula for determining Fixed Black Start Capital Costs for units that do not elect to recover new or additional capital costs and have established a commitment period under paragraph 5, its further application to units seeking to recover new or additional capital

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<sup>5</sup> The X factor, or black start service allocation factor, is designed to allocate a portion of the fixed costs of the operation of black start units to the provision of black start service, as well as to permit black start providers to recover capital investments which may be above the current caps used as allocation factors under PJM's Tariff.

<sup>6</sup> Given the use of the terms in the proposed tariff sheets, new or additional fixed black start costs would need to be recovered after the effective date of the proposed tariff sheets, April 21, 2009.

improvements under paragraph 6 is inappropriate. Accordingly, PJM proposes to eliminate this language from Schedule 6A.

**b. Protest**

13. The Market Monitor argues that the Commission should approve the reduced X factor because it will reduce the rate paid black start providers at three generating facilities that the Market Monitor contend is unjust and unreasonable and unduly discriminatory.<sup>7</sup> The Market Monitor requests that the Commission consider its comments in determining “whether to accept PJM’s proposed reduced X factor.” But the Market Monitor does not explain or address in its comments or its answer the structural inconsistency that the Commission observed, and PJM confirmed, existed with the originally proposed provision (i.e., how new or additional fixed black start costs could be incurred prior to April 21, 2009).<sup>8</sup> Instead, the Market Monitor argues only that a reduction in the X factor is appropriate for three certain facilities that received accelerated recovery of black start costs prior to April 21, 2009, which is different from PJM’s original proposal, which concerned recovery of “new or additional” black start costs. The Market Monitor contends that, without such reduction, these affected units will recover 100 percent of their capital investment in black start capability on an accelerated basis, followed immediately by recovery under paragraph 5, or the legacy rate (i.e., receive reimbursement under the formula rate, which includes the full X factor, over a rolling two-year period), resulting in over recovery of their investment costs. The Market Monitor also contends that without such reduction the three facilities will receive preferential treatment as compared to other units operating under PJM’s revised Schedule 6A that recover their costs over a commitment period matched to the life of the investment. The Market Monitor

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<sup>7</sup> The affected facilities cited by the Market Monitor include Lincoln Generating Facility, LLC, Big Sandy Peaker Plant, LLC and University Park Energy, LLC. In its initial comments filed in this proceeding, the Market Monitor stated that these facilities negotiated and received expedited recovery of capital investment within a two-year period.

<sup>8</sup> The Market Monitor appears to make the same observation as PJM, that the language at issue (i.e., “new or additional Fixed Black Start Service Costs”) “pertains to cost recovery for new and additional capital costs for the new formula rate for recovery pursuant to paragraph 6, not to recovery under the legacy formula rate continued in paragraph 5.” Market Monitor Answer at 4. However, the Market Monitor does not acknowledge any inconsistency created by having as part of the formula for rate recovery under paragraph 5 a component that would only be applicable to black start units that provide service under paragraph 6.

contends that the reduced X factor PJM had originally proposed was a modest reduction and just and reasonable.

14. The Market Monitor states that the reduced X factor is non-discriminatory and not based on the date that the provider began to recover costs. It states that it would not apply to any unit that had received recovery of capital costs over the financial life of the unit, regardless of the date that recovery began. According to the Market Monitor, PJM's originally proposed tariff language explicitly links the reduced X factor to the accelerated recovery of black start costs prior to the implementation of the new tariff.

15. The Tenaska Parties and Duke generally raise the same issues they raised previously and request that PJM's compliance filing be accepted in its entirety. The Tenaska Parties argue that the Market Monitor ignores the structural inconsistency that prompted the Commission to question, and ultimately persuaded PJM to withdraw its initial proposal. The Tenaska Parties argue that the Market Monitor's interpretation requires the paragraph 6 commitment periods to be applied retroactively and for fixed black start service costs incurred and recovered prior to April 21, 2009 to be treated as "new or additional" costs, which is contrary to the Commission's findings in the May 29 Order.

16. The Tenaska Parties and Duke argue that the Market Monitor's request to reinstate the reduced X factor should be rejected because it would unduly discriminate against certain generators based solely on the date that they began to recover costs under a Commission-approved rate schedule.<sup>9</sup> Duke states that older units presumably would continue to qualify for the X factor even though 100 percent of their black start investment costs would most likely have already been recovered. The Tenaska Parties also note that the Market Monitor's proposal is based on a false predicate; that the generators that recovered costs under a Commission-approved rate schedule prior to April 21, 2009 will necessarily over-recover their costs.

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<sup>9</sup> As an example, the Tenaska Parties describe a generator whose applicable commitment period pursuant to paragraph 6 is five years, but recovers its costs under a Commission-approved rate schedule over a two-year period. According to PJM's tariff, the Tenaska Parties claim, such a generator would be recovering its costs "on an accelerated basis" because it would recover its costs before the expiration of its applicable commitment period. Assuming that this generator began to recover these costs (on an accelerated basis) after April 21, 2009, and then after the expiration of the five-year commitment period begins to receive compensation for black start service under paragraph 5, the Tenaska Parties state, it would recover its fixed black start service costs at the full X factor rate. If this same generator instead began recovering these costs on an accelerated basis prior to April 21, 2009, the Tenaska Parties argue, it would recover its fixed black start service costs at the reduced X factor rate.

17. Duke also argues that the shorter paragraph 5 commitment period and X factor are designed to help retain existing black start providers. Duke maintains that without the X factor, black start rates may simply not be worth the risks a black start provider takes on when providing this service. Duke states that it is unlikely that it will continue to provide black start service beyond its current commitment if the X factor is reduced as the Market Monitor proposes.

**c. Commission Determination**

18. PJM has withdrawn its proposed change and is continuing its prior just and reasonable tariff provision regarding the X factor. Any change to this provision would have to be made pursuant to a proceeding under section 206 of the Federal Power Act, and we do not find that the Market Monitor has made a sufficient showing that the existing provision is unjust and unreasonable and that its proposal is just and reasonable.

19. According to the Market Monitor, PJM's original provision was designed to provide an incentive for units with fully depreciated black start service investments to continue to provide the service after the end of the financial life of their assets. The Market Monitor focuses on whether three generators may over recover by having received accelerated depreciation in the past as well as receiving the full X factor incentive in the future. The Market Monitor provides no support indicating that these generators will in fact over recover their costs. Also, the past payments to the generators cannot be changed by this provision. On the other hand, halving or otherwise adjusting the X factor will reduce the incentive for these, and possibly other, generators to provide the black start service PJM requires. Since the effect of changing the provision would be to reduce the incentive to provide an important service PJM needs, we do not find that the Market Monitor has provided a sufficient basis to institute a section 206 inquiry into this issue, especially since this issue potentially relates only to three expiring contracts from existing units and over time, will disappear.

20. Moreover, it is not readily apparent based upon the Market Monitor's comments and answer what the Market Monitor is seeking from the Commission or that its proposal to retain the PJM proposal is just and reasonable. The Market Monitor appears to propose that the Commission retain the original PJM proposed tariff language. But the Market Monitor's proposal leaves in place the same structural inconsistency with the provision that the Commission observed, and PJM confirmed.

**3. Treatment of NERC Penalties and Insurance Costs**

21. The May 29 Order, in response to AMP-Ohio's concern that PJM's filing did not expressly disallow the recovery of NERC-imposed penalties related to black start activities or the cost of insurance covering those penalties, directed PJM to explain whether it intends to allow black start service providers that certify their black start service costs to PJM, without separate Commission approval, to recover NERC

penalties or the cost of insurance covering those penalties. In its compliance filing, PJM explains that this issue was discussed at various Black Start Working Group meetings. PJM states, that ultimately, the participants agreed to defer these issues to a later date and not include them in the revised Schedule 6A. PJM states that this decision was shared with its membership and it was understood that the proposed changes to Schedule 6A would not allow a black start unit owner to include the cost of NERC penalties or the costs of insurance against such penalties in the black start costs certified to PJM for cost recovery. Therefore, PJM states, it does not intend to allow black start service providers that choose to certify their black start service costs to PJM the opportunity to recover NERC penalties or any costs of insurance indemnifying against such penalties.

22. We find acceptable PJM's intention to not allow black start service providers that choose to certify their black start service costs to PJM the opportunity to recover NERC penalties or any costs of insurance indemnifying against such penalties.

#### **4. Minor Corrections**

23. PJM states in its compliance filing that it was making minor corrections to the tariff sheets to reflect typographical corrections consistent with the May 29 Order. We accept PJM's corrections.<sup>10</sup> We note, however, PJM failed to add a decimal before "02" in the third sentence of the paragraph describing the "X" factor on 2<sup>nd</sup> Substitute Original Sheet No. 241 A. Therefore, PJM is directed to make such correction within 30 days of the date of this order.

#### **The Commission orders:**

(A) PJM's proposed tariff sheets are hereby accepted to become effective April 21, 2009, subject to conditions, as discussed in the body of this order.

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<sup>10</sup> In addition to submitting revised tariff sheets in compliance with the Commission's May 29 Order, PJM included with its compliance filing First Revised Sheet No. 241.01, which contains proposed revisions submitted by PJM in compliance with the Commission's directives in Order No. 719. These Order No. 719 proposed revisions are still pending approval in a separate proceeding and therefore, are not accepted.

(B) PJM is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.