

155 FERC ¶ 61,059
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Independent Market Monitor for PJM

Docket No. EL14-20-000

v.

PJM Interconnection, L.L.C.

ORDER ON COMPLAINT

(Issued April 21, 2016)

1. On January 27, 2014, pursuant to section 206 of the Federal Power Act (FPA),¹ Monitoring Analytics, LLC, the independent market monitor (Market Monitor) for PJM Interconnection, L.L.C. (PJM), filed a complaint against PJM alleging that PJM's existing capacity market rules fail to treat demand response resources in a manner comparable to generation capacity resources. Specifically, the Market Monitor argues that demand response should be subject to: (i) a must-offer requirement, as applicable to PJM's day-ahead energy market; and (ii) an offer cap on all energy offers, as applicable to generation resources. For the reasons discussed, we deny the Market Monitor's complaint.

I. Complaint

2. The Market Monitor asserts that, while demand response resources are currently cleared in PJM's capacity market auctions as full substitutes for a generation capacity resource, demand response, for dispatch purposes in PJM's energy market, is nonetheless treated as an emergency only resource with no obligation to submit an offer on a day-ahead basis. The Market Monitor argues that, by contrast, generation capacity resources are required to submit offers daily into PJM's day-ahead energy market, subject to a

¹ 16 U.S.C. § 824e (2012).

default offer cap.² The Market Monitor argues that, as such, PJM's tariff fails to treat demand response resources and generation resources on a comparable basis.

3. The Market Monitor states that PJM attempted to address this concern, in part, with tariff revisions regarding Pre-Emergency Demand Response submitted in Docket No. ER14-822-000.³ The Market Monitor argues, however, that the tariff changes proposed by PJM in that proceeding do not remedy the market imperfections at issue here. Specifically, the Market Monitor argues that making some demand response dispatchable, just prior to an emergency, as required under PJM's Pre-Emergency Demand Response provisions will not ensure that these resources will be available to PJM on a basis that is fully comparable to generation capacity resources. The Market Monitor adds that, under the Pre-Emergency Demand Response provisions, demand response that uses behind-the-meter generation (a significant percentage of PJM's overall supply of demand response) will not be callable as a pre-emergency resource. The Market Monitor argues, however, that because behind-the-meter generation has similar characteristics to generation, both should be treated on a fully comparable basis.

4. The Market Monitor requests that PJM be required to treat demand response as an economic resource required to offer into the day-ahead energy market, subject to the offer cap applicable to generation resources.⁴ In support of its request, the Market Monitor points to rules adopted by ISO New England Inc. (ISO-NE), which require demand response resources that have undertaken commitments in ISO-NE's Forward Capacity Market to make cost-based energy offers into ISO-NE's day-ahead energy market and

² See PJM Operating Agreement at Schedule 1, section 1.10.1A(d).

³ See *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,103 (2014) (order rejecting, in part, and conditionally accepting, in part, proposed revisions to increase the operational flexibility of demand response resources by requiring, among other things, that all demand response that participates in PJM's capacity market serve as Pre-Emergency Load Response, unless the curtailment service provider or load serving entity utilizing that resource meets its capacity obligations by utilizing behind-the-meter generation that is subject to an environmental restriction) (Pre-Emergency Demand Response Order).

⁴ In Docket No. ER16-76-000, PJM proposed (and the Commission accepted) tariff changes raising PJM's energy market offer cap from \$1,000/MWh to \$2,000/MWh, under specified triggers. See *PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,289 (2015) (2015 Offer Caps Order).

real-time energy market.⁵ The Market Monitor also points to Order No. 745 to argue that demand response resources should be treated comparably to generation resources.⁶

5. The Market Monitor asserts that while PJM's currently-effective rules establish energy market offer caps for demand response resources that significantly exceed the offer cap in place for generation capacity resources, these offer caps, which are set near shortage pricing levels, incorrectly value demand response. The Market Monitor asserts that demand resources may be valued as if PJM were short on reserves even if these are dispatched when PJM has adequate reserves. The Market Monitor adds that there is no reason to apply a higher offer cap to demand response resources than to generation. The Market Monitor asserts that if a higher offer cap is warranted, and PJM's net revenue offset method is refined, offer caps should be raised or all resource types.

6. The Market Monitor further notes that the Commission, in 2012, rejected PJM's proposed \$1,000 per MWh offer cap for demand response capacity resources, for the purpose of incenting voluntary offers from demand response into the energy market.⁷ The Market Monitor argues, however, that the Commission's assumed incentive has not been achieved, given that the participation by demand response resources in PJM's energy and ancillary services markets has been minimal. The Market Monitor asserts that a more direct way to achieve the intended goal would be to adopt the must-offer requirement it seeks here.

II. Notice of Filing and Responsive Pleadings

7. Notice of the complaint was published in the *Federal Register*, 79 Fed. Reg. 6892 (2014), with answers, interventions and protests due on or before February 24, 2014. PJM submitted a timely-filed answer. In addition, motions to intervene and notices of intervention were timely-filed by the entities noted in the Appendix to this order. On February 25, 2014, a motion to intervene out-of-time was submitted by the Duquesne Light Company (Duquesne).

⁵ Market Monitor complaint at 4 (citing *ISO New England Inc.*, 142 FERC ¶ 61,027, at PP 27-30 (2013) (ISO-NE Capacity Market Revisions Order)).

⁶ *Id.* (citing *Demand Response Compensation in Organized Wholesale Energy Markets*, Order 745, FERC Stats. & Regs. ¶ 31,322, at P 66 (Order No. 745), *order on reh'g and clarification*, Order No. 745-A, 137 FERC ¶ 61,215 (2011), *aff'd*, *FERC v. Electric Power Supply Assoc.*, 136 S. Ct 760 (2016)).

⁷ Market Monitor complaint at 6 (citing *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,057, at P 131 (2012) (PJM Scarcity Pricing Order)).

8. Protests and/or comments were submitted by American Electric Power Service Corporation, The Dayton Power and Light Company, and FirstEnergy Service Company (Utilities Coalition); Exelon Corporation (Exelon); the Delaware Public Service Commission (Delaware Commission); the Maryland Public Service Commission (Maryland Commission); Nucor Corporation and Steel Dynamics, Inc. (Steel Producers); EnerNOC, Inc. (EnerNOC); the New Jersey Board of Public Utilities (New Jersey Board); America's Natural Gas Alliance (ANGA); PSEG Companies (PSEG); the Electric Power Supply Association and the Electric Power Generation Association (EPSA/EPCA); the PJM Power Providers Group (P3); and the Demand Response Providers.⁸ Answers were submitted on March 11, 2014 by the Market Monitor, on March 26, 2014 by EnerNOC, and on March 27, 2014 by Steel Producers.

A. PJM's Answer

9. PJM responds that the Commission has not required identical treatment between demand response and generation capacity resources, recognizing there are inherent differences.⁹ PJM argues that the complaint discusses none of the distinctions between a generation plant and end-use customers that provide demand response, such as factories, hospitals, schools, or private residences.

10. PJM also disputes the Market Monitor's argument that, because both generation and demand resources compete against each other to meet the same PJM capacity requirement, they must have the same must-offer requirement. PJM asserts that if competition alone was sufficient to warrant the application of identical rules, then the Commission's purported policy of considering the inherent differences in these resources would be rendered meaningless.

11. PJM argues that, in any case, the Market Monitor fails to meet its burden of proof under FPA section 206 to show that PJM's existing caps are unjust and unreasonable. PJM argues that while a must-offer requirement, as adopted by ISO-NE, could be regarded as just and reasonable, that finding does not render PJM's tariff unjust and unreasonable. PJM further challenges the Market Monitor's suggestion that an \$1,800 per MWh offer cap over-values demand response at shortage pricing levels, stating that the Market Monitor fails to demonstrate that demand response, when subject to these caps, will exercise market power, or offer at a price level that reflects anything other than the cost to such loads of foregoing energy consumption. PJM further argues that the

⁸ The Demand Response Providers are comprised of the following entities: the PJM Industrial Customer Coalition, Comverge, Inc., EnergyConnect, the Advanced Energy Management Alliance, and the Illinois Industrial Energy Consumers.

⁹ PJM answer at 4 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, at P 216 (2007)).

Market Monitor makes no showing that every price level for Emergency Load Response above the offer cap is invalid or is justified only if PJM is short on reserves.

12. PJM asserts that the value of lost load for a particular end-use customer will be based on its operations and economic circumstance, and is not necessarily related to whether the system is short on reserves. PJM further asserts that, if an Emergency Load Response offer reflects the cost to the end-use customer of foregoing electricity consumption, and no other resources are available to PJM at a price less than that end-use customer's cost of reducing load, that end-use customer's cost should set the clearing price, and nothing in the Market Monitor's complaint suggests that the value of that lost load should be capped arbitrarily.

13. PJM also argues that lowering its existing offer caps for demand response committed as capacity could create pricing aberrations and operational concerns, given the Market Monitor's proposed retention of PJM's higher offer caps for virtual supply and demand and for non-capacity demand response resources, as applicable when PJM has exhausted reserves. PJM states that, in this context, capping Emergency Load Response could result in prices rising and then dropping significantly (as PJM enters emergency conditions and a large quantity of offer-capped Emergency Load Response clears) and then rising by a large amount (i.e., to the shortage pricing levels), if PJM enters a reserve shortage.¹⁰ PJM argues that such price oscillations could cause severe problems for dispatch (which is price-driven) and that even without price oscillation, a large and sudden step increase in price would produce sub-optimal dispatch, given that it would pass over resources that could help meet the system's need at a lower price.

B. Protests and Comments

14. Comments generally supportive of the Complaint were filed by PSEG, the Utilities Coalition, P3, EPSA/EPCA, and the New Jersey Board. P3 agrees with the Market Monitor that it is inappropriate to exempt demand response from submitting daily energy offers. PSEG concurs, citing the ISO-NE Capacity Market Revisions Order, which according to PSEG supports the argument that a market design rule allowing for the dispatch of demand response without consideration as to whether that resource is economic during emergency events tends to artificially lower energy prices below competitive levels and thereby sends the wrong price signal to market participants.¹¹

¹⁰ PJM notes that such a scenario would fail to send the correct price signals, and could send the opposite of the price signal needed at a critical time if dispatching a large quantity of Emergency Load Response, subject to a price cap, causes a price drop.

¹¹ PSEG comments at 6 (citing ISO-NE Capacity Market Revisions Order, 142 FERC ¶ 61,027 at P 31); *see also* P3 comments at 2-3; EPSA, *et al.* comments at 4; AEP, *et al.* comments at 6.

15. Other intervenors urge the Commission to reject the Complaint, arguing that the Market Monitor fails to establish that PJM's existing tariff is unjust and unreasonable. Demand Response Providers dispute the Market Monitor's assumption that demand response must be treated as an economic resource. The Maryland Commission agrees, arguing that demand response is not focused solely, or primarily, on achieving an economic return. Demand Response Providers argue that, under PJM's tariff, demand response obligations are appropriately tied to emergency operating conditions, and that, under Order No. 745, these resources need only be treated as comparable to generation, not identical.¹² The Maryland Commission asserts that comparable treatment does not mean identical treatment. Demand Response Providers assert that under Commission precedent, identical treatment of disparate resource types is disfavored when that treatment creates barriers to entry.¹³

16. Intervenors also challenge the Market Monitors' assumption that demand response is cleared in PJM's capacity market as a full substitute for generation capacity. EnerNOC argues that these resources have different performance obligations and characteristics, as prescribed by the PJM Reliability Assurance Agreement, and are measured based on different standards, as set forth in PJM Manual 18. Demand Response Providers argue that, regardless, capacity resources are cleared for reliability purposes, with the complaint establishing no such rationale supporting its request.

17. EnerNOC argues that the market power concerns that underlie the day-ahead must-offer requirements for generation do not apply to demand response. In addition, EnerNOC asserts that the Market Monitor has failed to demonstrate that the absence of a demand response must-offer rule harms the markets. EnerNOC further argues that imposing a must-offer obligation on demand response would likely chill demand response participation, reduce available resources, and do harm to PJM's markets.

18. Demand Response Providers also challenge the Complaint's reliance on the ISO-NE Capacity Market Revisions Order, arguing that, in that proceeding, a must-offer rule for demand response was proposed by ISO-NE pursuant to section 205.

19. Steel Producers dispute the Market Monitor's argument that a must-offer requirement is appropriate for the purpose of treating generation and behind-the-meter generation on a comparable basis. Steel Producers assert that this argument is not supported by Commission precedent. Steel Producers add that, regardless, the fact that 21.6 percent of demand response is behind-the-meter does not support the application of a must-offer requirement to all demand response.

¹² Demand Response Providers protest at 10 (citing *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,061, at P 70 (2007)).

¹³ See also Delaware Commission protest at 3.

20. Intervenors also address the Complaint's proposed offer caps for demand response. P3, ANGA, and Exelon agree with the Market Monitor that the offer cap placed on bids for demand response should be the same as the offer cap applicable to generation resources, consistent with the approaches taken in each of the other regional markets. P3, PSEG, EPSA/EPGA, and Exelon argue, however, that while a universal offer cap is appropriate, the cap proposed by the Market Monitor, would be too low. Instead, PSEG proposes a cap of \$1,500 per MWh, given that the marginal costs for some simple-cycle generators have reached at least \$1,200 per MWh. EPSA/EPGA argue that the single offer cap should be set at a level that is sufficiently high so as to: (i) address those conditions experienced during the winter of 2014; and (ii) reflect actual market conditions. P3 and Exelon support the establishment of a stakeholder proceeding to consider this issue.

21. EnerNOC opposes the Market Monitor's proposed offer cap, arguing that, in the absence of any demonstration of changed circumstances, the Market Monitor's proposal represents a collateral attack of the Commission's order accepting PJM's existing scarcity pricing mechanism.¹⁴

C. Market Monitor's Answer

22. The Market Monitor responds to PJM's and intervenors' argument that PJM's existing must-offer rules, and the disparate treatment they accord to generation resources *vis a vis* demand response, comport with the Commission's comparability policy. The Market Monitor responds that the Commission's policy is not focused on the comparable treatment of sellers, but on comparable products (a standard that requires that these products be substitutable, or capable of providing the same service).

23. The Market Monitor also responds to EnerNOC's argument that the purpose of the must-offer requirement is to prevent withholding and that such a concern is not raised by demand response participation in PJM's markets. The Market Monitor argues that, in fact, it cannot be assumed that demand response has no interest in exercising market power. The Market Monitor further argues that generation owners can have affiliates that are curtailment service providers. In addition, the Market Monitor asserts that it is the payment structures that incent the exercise of market power and that, with respect to this measure, the incentives applicable to demand response and generation are comparable.

24. The Market Monitor also responds to EnerNOC's argument that applying a uniform offer cap is a collateral attack on the PJM Scarcity Pricing Order. The Market Monitor argues that, in that order, the Commission approved a system offer cap for demand response at a level higher than that applicable to generation for the stated reason

¹⁴ EnerNOC protest at 18 (citing PJM Scarcity Pricing Order, 139 FERC ¶ 61,057 at P 131); see also Steel Producers protest at 5.

that demand response was not subject to a must-offer requirement. The Market Monitor also notes that the Commission made this ruling prior to its issuance of the ISO-NE Capacity Market Order. The Market Monitor adds, however, that if a must-offer requirement *is* applied, the Commission's rationale in the PJM Scarcity Pricing Order no longer applies.

25. Finally, the Market Monitor argues that evidence exists that PJM's existing demand response rules are now having a harmful impact on PJM's markets, as evidenced by the January 2014 system emergencies addressed by PJM in its filing, in Docket No. ER14-822-000. The Market Monitor asserts that these system emergencies demonstrate that annual capacity resources are required to maintain system reliability and that the limited capacity from demand response is not adequate.

D. Additional Answers

26. EnerNOC responds to the Market Monitor's argument that, because there was no must-offer requirement in place at the time the Commission issued the PJM Scarcity Pricing Order, the Commission's rationale in that order for rejecting the offer cap no longer applies. EnerNOC argues that this "changed circumstances" argument fails, given that, under PJM's existing rules and those now proposed by PJM in Docket No. ER14-822-000, neither a must-offer requirement nor an offer cap apply.

27. Steel Producers respond to the Market Monitor's argument, regarding the asserted reliability need supporting the Complaint, as based on the emergency events addressed by PJM in its filing in Docket No. ER14-822-000. Steel Producers argue that the Market Monitor's proffer of new evidence on this issue, in its answer, should be rejected on procedural grounds as untimely.

III. Procedural Matters

28. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, given its interest in this proceeding, the early stage of this proceeding and the absence of undue prejudice or delay, we grant the unopposed late-filed intervention submitted by Duquesne. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest or an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers submitted by the Market Monitor, EnerNOC, and Steel Producers because they have assisted us in our decision-making process.

IV. Discussion

29. For the reasons discussed below, we find that the Market Monitor's complaint fails to satisfy its burden under FPA section 206 to show that PJM's existing tariff is unjust, unreasonable, unduly discriminatory or preferential. The crux of the complaint is

that demand response resources and generation resources must be treated identically in PJM's energy market. Specifically, the Market Monitor argues that a day-ahead energy market must-offer requirement and a default offer cap must be imposed on capacity demand response resources that have cleared in PJM's capacity market auction in order to treat these resources on a fully comparable basis relative to generation capacity resources. We disagree.

30. As the Commission has held, a finding of undue discrimination may be supported by a showing that there is a difference in rates or services among similarly situated entities that is not justified by some legitimate factor.¹⁵ With specific regard to demand response resources, the Commission has stated that "as a general matter demand response providers and generators should be subject to comparable rules that reflect the characteristics of the resource[.]"¹⁶ The Commission has further explained that comparability does not require that generation resources and demand response resources be subject to the same operational parameters in every circumstance; treating "similarly-situated resources on a comparable basis does not necessarily mean that the resources are treated the same."¹⁷

31. Applying these standards here, we find that comparability does not require identical application to demand response resources and generation resources of PJM's offer cap and the must-offer requirement, as alleged by the Market Monitor.

32. With respect to the offer cap, we note that PJM's currently-effective offer caps are calibrated to be consistent with the high end of the marginal cost of fuel and other inputs for generation bids. Specifically, PJM's offer cap limits generation offers to the higher of \$1,000/MWh or a resource's short-run marginal cost, with a hard cap of \$2,000/MWh.¹⁸ As a result, generation resources are able to submit bids that reflect short-run marginal cost up to \$2,000/MWh. The cost of providing a load reduction for a demand response resource is the opportunity cost of foregoing production, as based on that entity's operations and economic circumstances. As the Commission has found, moreover, an offer cap is designed to allow demand response resources to submit offers that reflect the cost of providing demand response.¹⁹ As such, both demand response resources and

¹⁵ *Cal. Indep. Sys. Operator Corp.*, FERC ¶ 61,148, at P 34 (2010).

¹⁶ *See* Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 66.

¹⁷ *See Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g and clarification*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216 (2007).

¹⁸ *See* 2015 Offer Caps Order, 153 FERC ¶ 61,289 at P 25.

¹⁹ *Cf. PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,057 at P 131 (2012).

generation resources are currently able to submit offers that reflect either the short-run marginal cost of providing energy or the cost of providing demand response, even though the mechanics of having these offers validated differ. As such, we find that the Market Monitor has failed to show that it is unjust, unreasonable, or unduly discriminatory or preferential for PJM to utilize a different offer cap mechanism for generation resources and demand response resources where both resource types are able to submit bids consistent with their short-run marginal costs.

33. With respect to the must-offer obligation, we note that generation resources are in the business of providing energy and ancillary services. Demand response resources, by contrast, include such entities as hospitals, schools, businesses, and homes whose primary purpose is typically not the provision of energy and ancillary services. As such, there is greater likelihood that end-use sources of this sort may have legitimate reasons for a willingness to provide demand response when needed to support the reliability of the system, without extending that willingness to other circumstances. Indeed, the Commission has long allowed a distinction between demand response resource participation in a day-ahead or real-time energy market administered by a regional transmission operator (RTO), or independent system operator (ISO), and demand response under programs that RTOs or ISOs administer for reliability or emergency conditions.²⁰ A requirement that a must-offer obligation must attach to demand response resources would severely undercut such a distinction. The Market Monitor has not provided sufficient justification to warrant imposition of that requirement in the context of a section 206 proceeding.

34. Finally, we disagree that the ISO-NE Capacity Market Revisions Order requires us to grant the Market Monitor's complaint. In that order, the Commission accepted a capacity resource must-offer obligation, as proposed by ISO-NE, pursuant to FPA section 205, focusing in particular on ISO-NE's need to correct for certain then-existing inefficiencies in its ability to economically dispatch its supply resources.²¹ In accepting ISO-NE's proposal, however, the Commission expressly recognized that "there may be other ways to achieve [these dispatch] efficiencies [and that] there can be more than one just and reasonable rate."²² A determination that ISO-NE's must-offer requirement is just and reasonable, moreover, does not alone support a finding here that the absence of this

²⁰ See, e.g., Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 2, n.4 (identifying the demand response programs operated by the PJM, the Midcontinent Independent System Operator, Inc. and the New York Independent System Operator as illustrative programs that RTOs and ISOs administer for reliability or emergency conditions).

²¹ *ISO-NE Capacity Market Revisions Order*, 142 FERC ¶ 61,027 at PP 27-28.

²² *Id.* P 28 (citing *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995)).

requirement is unjust and unreasonable, particularly given the complexities at issue as between ISO-NE's system (and its rules) and PJM's system (and its rules). As discussed above, the Market Monitor has failed to provide a sufficient basis for granting its complaint.

The Commission orders:

The Market Monitor's complaint is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Clark is dissenting in part with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

List of Intervenors

Advanced Energy Management Alliance (Demand Response Providers) *
Allegheny Electric Cooperative, Inc.
American Electric Power Service Corporation (Utilities Coalition) *
America's Natural Gas Alliance (ANGA) *
Calpine Corporation
The Dayton Power and Light Company (Utilities Coalition) *
Delaware Public Service Commission (Delaware Commission) *
Direct Energy Business, LLC
Dominion Resources Services, Inc.,
Duke Energy Corporation
Duquesne Light Company (Duquesne) #
Dynergy Marketing and Trade, LLC, *et al.*
Edison Electric Institute (EEI) *
Electric Power Generation Association (EPSA/EPCA)
Electric Power Supply Association (EPSA/EPCA) *
EnergyConnect, Inc. (Demand Response Providers) *
EnerNOC, Inc. (EnerNOC) *
Exelon Corporation (Exelon) *
FirstEnergy Service Company (Utilities Coalition) *
Indiana Utility Regulatory Commission (Indiana Commission) *
Invenergy LLC
NRG Companies (NRG) *
Maryland Public Service Commission (Maryland Commission) *
New Jersey Board of Public Utilities (New Jersey Board) *
North Carolina Electric Membership Corporation
Northern Indiana Public Service Company
Nucor Corporation and Steel Dynamics, Inc. (Steel Producers) *
PJM Industrial Customer Coalition (Demand Response Providers) *
PJM Power Providers Group (P3) *
PPL Electric Utilities Corporation
PSEG Companies (PSEG) *
Rockland Electric Company

* Entities submitting protests or comments, whether individually or jointly.

Entities submitting motions to intervene out-of-time.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Independent Market Monitor for PJM

Docket No. EL14-20-000

v.

PJM Interconnection, L.L.C.

(Issued April 21, 2016)

CLARK, Commissioner, *dissenting in part*:

Today's order responds to a complaint filed by PJM's Independent Market Monitor (IMM) over two years ago. In its complaint, the IMM makes two arguments: first, demand resources that receive capacity supply obligations should be treated as economic resources required to offer into the day-ahead energy market (must-offer requirement argument),¹ and second, those day-ahead energy market offers should be subject to the same offer cap applicable to generation resources (offer cap argument).²

I dissent in part from today's order because I believe the IMM has more than met its FPA section 206 burden with regard to the must-offer requirement argument, showing PJM's current exemption of demand resources from a must-offer obligation in the day-ahead market is unjust, unreasonable, or unduly discriminatory or preferential. Further, I believe it is a matter of good public policy and market design to treat resources that compete as full substitutes (such as demand resources and generation in PJM's capacity market) on a comparable basis.³

PJM's current regime holds one resource class (generators) to a must-offer requirement paid at system wide marginal cost, while simultaneously exempting a second resource class (demand resources) from that must-offer requirement and then paying that class at the higher of a pre-determined strike price or system wide marginal cost. This is, on its face, discrimination. The question becomes, "is the discrimination undue?"

¹ Independent Market Monitor Complaint at PP 2-5.

² *Id.* PP 5-7.

³ See e.g., *ISO New England, Inc.*, 142 FERC ¶ 61,027, at P 27 (2013) ("The Commission finds that establishing a must-offer requirement for demand response resources with capacity supply obligations helps ensure just and reasonable and not unduly discriminatory or preferential rates by providing for more efficient, economic dispatch of all supply resources.")

In today's order, as the basis for finding that demand resources should remain exempt from a must-offer requirement, the majority takes the position that unlike generation resources, demand resources are *not* primarily in the business of providing energy and ancillary services.⁴ I find this justification for discrimination unpersuasive.

A resource's primary business function is irrelevant after that same resource makes the voluntary decision to compete and receives a stream of funding from the wholesale market for capacity services. No matter what a resource's "primary business" line consists of, it has voluntarily agreed to enter PJM's capacity construct and provide load reduction when called. Despite the arguments of protestors in this docket, all capacity procured by PJM through its capacity market is obtained on an equal basis for the purpose of providing system reliability.

There is no carve out in PJM's methodology saying capacity from generation resources is procured for economic goals while capacity from demand resources is procured for emergency-only capacity needs. Rather, the capacity from all resources is procured on the basis of full (locational) substitution. It is only after the procurement is completed that PJM layers on operational and must-offer distinctions. I find the IMM provides adequate justification showing this policy to be unjust, unreasonable, and a threat to grid reliability. If that alone were not enough, the IMM persuasively argues the present construct impedes the proper functioning of markets and increases the potential for improper market power to be wielded.⁵

I believe the Commission is too quickly dismissing the concerns that have been raised by PJM's neutral and independent market expert on matters related to how demand resources participate in the wholesale market.⁶ I cannot help but feel that the subsidies and preferences that have been granted to certain demand-side products are coming at the expense of always available supply-side resources that we need, now more than ever. To this point, we have been fortunate to avoid the worst of the potential negative outcomes that are highlighted by the IMM. Yet hoping for good fortune to continue is a risky long-term strategy. The grid is changing rapidly and, speaking broadly, I am concerned that eventually one or another region of the country will pay the price for a chronic underappreciation of utility-scale energy delivery and generation assets.

Demand resources, energy efficiency, intermittent distribution-side renewables and the

⁴ Order at P 33.

⁵ Independent Market Monitor Answer at P 10.

⁶ See *2015 State of the Market Report for PJM*, http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2015/2015-som-pjm-volume2-sec2.pdf.

like should have every opportunity to participate in the grid of the future. The Commission has an important role to play to make sure that can happen. Yet their participation in the market should always be based on sound fundamentals, not a devotion to pushing a particular resource or business model. To do otherwise risks an unsustainable bubble. Here and in other contexts, the IMM and other market experts have given fair notice that they believe the Commission's compensation and market rules are suboptimal. I sincerely hope this does not eventually cause reliability or affordability problems, but none of us should be surprised if it does.

As to the second leg of the IMM complaint related to the offer cap, I find this to be a close call, but ultimately I concur with today's order on this point. While the IMM raises a worthy topic for consideration, I do not believe it met its burden under section 206 of the FPA. PJM adequately responded to the complaint by describing its rationale for deploying different offer cap mechanisms to differing technologies based on the short run marginal costs for those resources.⁷ I make no claim of finding that the current offer caps are ideal, but that is not the standard to be met in assessing this type of complaint. The issue may not be ripe in this particular docket, but I do hope it will be further explored not only in PJM, but other organized wholesale power markets through forums such as the Commission's price formation efforts.⁸

For these reasons, I respectfully dissent in part from this order.

Tony Clark
Commissioner

⁷ PJM Answer at 7-10.

⁸ *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 154 FERC ¶ 61,289 (2016).