

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.) Docket No. ER15-623-000

COMMENTS
OF THE PJM POWER PROVIDERS GROUP

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or the "Commission"), 18 C.F.R. § 385.212 (2014), the PJM Power Providers Group ("P3")¹ respectfully submits these comments regarding the December 12, 2014, filing by PJM Interconnection, L.L.C. ("PJM"), pursuant to Section 205 of the Federal Power Act ("FPA")² that proposes reforms to the Reliability Pricing Market ("RPM") and related rules in the PJM Open Access Transmission Tariff ("Tariff") and Reliability Assurance Agreement Among Load Serving Entities ("RAA") to better ensure that capacity resources will perform when called upon to meet the reliability needs of the PJM Region."³ PJM proposes to implement these changes for the next Base Residual Auction ("BRA"), which is scheduled for May 2015, and which will procure capacity for the 2018/2019 Delivery Year. To allow implementation of these rules for the 2015 BRA, PJM proposes an effective date of April 1, 2015.

¹ P3 is a nonprofit corporation dedicated to promoting policies that will allow the PJM region to fulfill the promise of its competitive wholesale electricity markets. For more information on P3 visit www.p3powergroup.com.

² 16 U.S.C. §824d.

³ *PJM Interconnection, L.L.C.*, Docket No. ER15-623-000, December 12, 2014 ("PJM Capacity Performance Filing," "Capacity Proposal" and/or "Proposal"), p1.

The “Commission initially established a deadline for interventions, comments, and protests for PJM's Capacity Performance Filing as January 12, 2015. However, on December 24, 2014, the Commission issued a Notice Granting Extension of Time, setting January 20, 2015, as the deadline to file comments, interventions and protests.

On December 22, 2014, pursuant to Rule 214 of the Rules of Practice and Procedure of the Commission, 18 C.F.R. § 385.214 (2014), P3 submitted a doc-less motion to intervene.

P3 respectfully submits comments, as more fully described herein, in general support of transitioning to a Capacity Performance market, provided certain very important features of the proposal remain, certain issues are clarified, and certain changes are made.⁴

I. COMMENTS

A. P3 Agrees with PJM that Market and Tariff Reforms are needed to Ensure that Capacity Resources Receive Sufficient Revenue in Order to Deliver the Promised Energy and Reserves when Called Upon.

P3 appreciates that PJM has identified meaningful issues in its energy and capacity markets stemming from the January 2014, extreme cold weather and high winds ("Polar Vortex" and "Winter Storm") events that affected the majority of the eastern half of the United States. While PJM reported that it was able to effectively meet the challenges of the extreme weather events, the experience made it clear to PJM that important improvements were needed in PJM's operations and market processes to ensure reliability and more effectively meet similar challenges should they occur in the future.

⁴ The comments contained in this filing represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue.

Of particular importance was the fact that while PJM's RPM capacity market was "successful in securing capacity *commitments*, including from new resources . . . the RPM rules on capacity *performance* (did) not keep pace with that growth, and do not adequately ensure actual performance."⁵ While PJM has identified several reasons for these performance issues, it has mainly found that "the current RPM market design is not providing sufficient deterrents to poor performance, or sufficient incentives for good performance."⁶ P3 agrees with that assessment and therefore generally supports market reforms to improve capacity availability and overall grid reliability.

B. P3 Supports Many Elements of the PJM Proposal.

In order for the Capacity Performance Proposal to lead to the reliability benefits envisioned by PJM, there are many key elements of the Proposal that must remain intact. It is vital that Capacity Performance Resources have a meaningful opportunity to reflect the costs and risks associated with offering a resource into the market with higher obligations and greater penalty risk. In order for the PJM Capacity Performance Proposal to be successful and achieve its intended results, capacity prices need to reflect market fundamentals – which by definition include the risks associated with higher obligations and higher penalties for non-performance. Without this component, the problems that Capacity Performance was intended to address will persist and consumers will not receive the benefits associated with a well-functioning capacity market.

⁵ PJM Capacity Performance Filing, at p6.

⁶ PJM Capacity Performance Filing, at p7.

1. Setting the Market Seller Offer Cap at Net CONE is Just and Reasonable.

In order for Capacity Performance to incent generators to make investments to increase reliability, capacity suppliers need the ability to accurately reflect the costs of meeting the higher obligations associated with Capacity Performance and the higher penalty risks associated with non-performance. Both of these factors are dramatic and material departures from the current capacity construct and demand that changes be made to the market seller offer cap.

Generators seeking to participate as a Capacity Performance Resource need flexibility that is not offered by the current Avoidable Cost Rate ("ACR") process. Among other things, gas-fired generators are going to need to enter into non-traditional fuel arrangements to comply with Capacity Performance requirements -- arrangements that P3 members have represented could cost generators over \$150/MW-day for some units. Moreover, different units, by their very nature, are going to have different risk profiles depending on the age of the unit, the historical performance of the unit, the status of the surrounding transmission system, the fuel type, etc. In light of the higher non-performance penalties, risk calculations will be more granular, more subjective and less conducive to an ACR-like calculation.

The setting of the Market Seller Offer Cap at Net CONE affords generators the needed flexibility while establishing a cap at the logical proxy for new entry in PJM. Net CONE is properly considered the long-term expected level of the competitive price of capacity in PJM. As PJM has highlighted in the Capacity Performance Filing, “[B]y design, over time the marginal offer needed to clear the market will be priced at Net CONE, and all other resources that clear the market will be compensated at that Net CONE price.”⁷

⁷ Capacity Performance Filing at p55.

Moreover, Net CONE is the economically sensible choice of a threshold for alleviation of regulatory risk since it is properly viewed as the long-term expected level of the competitive price of capacity. Due to this economic view, the basic principles of the design of RPM rely on the expectation that the market clearing price will converge over time to the level of Net CONE. This tenet is fundamental to the RPM market design and an appropriate one upon which to base a change to the market seller offer cap given the additional risks being assumed by capacity providers.

In addition, P3 supports the inclusion of language in section 6.4(a) Attachment DD that offers, “the submission of a Sell Offer with an Offer Price at or below the revised Market Seller Offer Cap permitted under this proviso [i.e., up to Net CONE] shall not, in and of itself, be deemed an exercise of market power in the RPM market.” While this language is a positive addition to the tariff, P3 is concerned that it does not provide sufficient protection to capacity providers seeking to properly reflect costs and risk in their bids up to Net CONE. Given the consequences, capacity providers need greater assurances. P3 would urge the Commission to confirm that it will only initiate enforcement actions for offers at the revised default Market Seller Offer Cap where there is evidence, separate from the offers themselves, of collusion or actual manipulative conduct.

Finally, the ability to submit cost-based bids over Net CONE is important and should be preserved as part of the approved tariff provisions. Given that PJM is transitioning to a Capacity Performance market, investments and fuel arrangements will need to be made that could push a unit’s costs over Net CONE, particularly as some resources transition from base capacity to Capacity Performance. In those cases, it is reasonable to support a process similar to the current

ACR process that allows a unit owner to establish its costs (including an appropriate risk premium) and bid up to that level.

2. P3 Supports PJM’s Proposal to Reasonably Judge Performance during Emergency Conditions.

P3 supports PJM’s proposed Tariff change that would create new “Performance Assessment Hours,”⁸ that would subject Capacity Market Sellers to PJM’s delineated performance requirements during PJM’s declaration of Emergency Actions. P3 agrees that this important new requirement, albeit a departure from ISO-NE’s performance assurance improvements, is a proper and necessary one for the operation and assessment of Capacity Resource Performance. By focusing performance assessment on those hours when power is most needed, capacity suppliers and PJM will be able to adjust their operations in an efficient manner, while consumers benefit by not over-paying for capacity in non-emergency situations.

3. The Proposed Non-performance Charge Limits are Important Features of the Proposal that Must Be Retained.

As a general proposition, P3 supports appropriate penalties for non-performance by capacity resources during peak periods. Capacity resources that are paid to perform should be expected to perform and produce electricity or curtail consumption. As PJM has appropriately proposed, generators should not be penalized for following PJM’s dispatch instructions, including being left off-line, operating at reduced output due to transmission constraints, or being on PJM-approved outages. Non-performance charges should be structured so as to incent resource performance for system reliability. They should not be punitive to the point of being crippling or leading to market default or bankruptcy

⁸ Proposed PJM Tariff, Attachment DD, section 2.23A.

Setting monthly and annual limits for non-performance are important features of the proposal that should be retained. Without monthly and yearly limits, a single operational issue could lead to catastrophic financial consequences that could force otherwise capable plants into market default or bankruptcy. Limiting the overall exposure of generating facilities helps to prevent such an undesired outcome while still providing for sufficient incentive to encourage performance.

4. Moving forward, PJM Needs to Develop Protocols for the Calculation of the Non-performance Charge Rate Divisor.

The selection of 30 hours as a proxy for the number of hours in which PJM is likely to be in emergency during the year for is an important, but not fully understood, aspect of the proposal. As PJM states, this number is one of two “key determinants” of the non-performance charge rate.⁹ PJM appears to pick the number 30 because it is more than 23 (the number of hours of “emergency action” in 2013/14), but provides no other justification for this important number. P3 would respectfully suggest that PJM needs to develop a process for the review and calculation of this number going forward. Without such a process and further understanding of what constitutes an emergency action, P3 is concerned that the penalty structure could lead to unjust and unreasonable market outcomes.

5. The Short-Term Resource Procurement Target, or 2.5% Holdback, Should be Eliminated.

P3 has long joined the calls of the Independent Market Monitor ("IMM") and others to eliminate the 2.5% holdback. As a market rule, the 2.5% holdback has always been an anathema. There is no economic justification for intentionally under-procuring capacity and suppressing capacity prices to below-market levels. No other Regional Transmission

⁹ PJM Capacity Performance Filing at 43.

Organization ("RTO") has a holdback and the Commission clearly does not view it as an essential element of an organized market.

The process of deliberately understating demand in the presence of must-offer obligations by existing supply is inherently discriminatory and has always served to mask the unstated objective of price suppression. There is no reasonable basis in law for such patent discrimination between competing resources, nor is there a legitimate basis for understating demand in a fashion that results in economic inefficiency.

P3 is pleased that PJM is finally recognizing the inappropriateness of the holdback and whole-heartedly supports its elimination.

6. P3 Supports the Proposed Distribution of Penalty Payments.

P3 generally supports the dedication of non-performance charges to capacity resources that over-perform their obligation. It is logical and appropriate to compensate those resources that do not have a capacity obligation, yet perform at levels that make up the shortfall from non-performing generators. The allocation of dollars in this manner will incent performance when it is needed most and provide an opportunity for those resources without an obligation to receive compensation.

C. P3 Urges the Commission to Reject Several Aspects of the Proposal.

P3 has concerns with three elements of the Proposal that if adopted could decrease reliability and have negatively impact the market.

1. PJM's Proposal to Penalize Generators Whose Market Bids are higher than their Cost-Based Bids is not Just and Reasonable.

As currently written, generators could be penalized in situations when they are available to be dispatched but are still penalized because their market-based offers are greater than their cost-

based offers.¹⁰ It is patently unjust and unreasonable to penalize a generator that is available to run, yet, as currently written, the PJM proposal does exactly that. PJM offers no justification for this illogical provision and the Commission should specifically reject it.

2. P3 is concerned about the Proposed Catastrophic Force Majeure Provision.

P3 is also concerned about PJM's proposed changes regarding force majeure.¹¹ As P3 explained in its comments to PJM's Resource Performance Filing,¹² redefining force majeure to apply only when catastrophic conditions occur over the *entire PJM Region* is unnecessarily broad and, as applied, too punitive to generators. Notwithstanding the most prudent investments, it is nonetheless impossible for every generator to foresee every eventuality. Equally as important, it is illogical to apply a penalty for nonperformance of a generator based on the requirement that the entire PJM operational system would need to be negatively impacted. An overly-broad capacity performance design that imposes risks on generators – on a retroactive basis - that cannot be reasonably foreseen will discourage participation. P3 urges the Commission to adopt a more reasonable definition and application of force majeure.

3. P3 Does Not Support PJM's Proposal to Retain Limited Demand Resource Products.

PJM proposes that Demand Resources (“DR”) be either a Capacity Performance Resource or Base Capacity Resource.¹³ P3 does not believe that PJM has the legal authority to retain DR

¹⁰ Proposed Tariff at 10(a)(d) (ii).

¹¹ *PJM Interconnection, L.L.C.*, Docket No. ER15-29-000, December 12, 2014.

¹² Comments of the PJM Power Provider's Group, *PJM Interconnection, L.L.C.*, Docket No. EL15-29-000, dated January 20, 2015.

¹³ PJM Capacity Performance Filing, pp 34 -37.

as a capacity resource since FERC does not have legal jurisdiction over DR.¹⁴ Subject to the outcome of pending litigation, if DR is to remain on the supply side,¹⁵ P3 agrees that DR should be a Capacity Performance Resource with similar obligations and risks as generation resources. As P3 has commented in the past, to not do so would be unjust and unreasonable.

PJM proposes a new Base Capacity DR product that “reflects a combination of the characteristics of the Limited and Extended Demand Resource products in that such resources are only obligated to perform during the months of June through September (like Limited Demand Resources) but are available for an unlimited number of interruptions lasting up to 10 hours each during that period (like Extended Summer Demand Resources).”¹⁶ P3 does not support the retention of Limited DR products. As P3 previously noted, PJM's IMM recommended the elimination of the Limited and Extended Summer DR products from the capacity market. As the IMM noted several years ago, “[A]ll products competing in the capacity market should be required to be available to perform when called for every hour of the year.”¹⁷ Retaining these DR products is contrary to the very purpose of the PJM Capacity Performance

¹⁴ . On January 15, 2015, the United States Solicitor General on behalf of the Federal Energy Regulatory Commission filed a Petition for a Writ of Certiorari in the Supreme Court of the United States seeking review of the United States Court of Appeals for the District of Columbia Circuit’s *EPSA v FERC* decision, vacating and remanding FERC’S Order 745 on Demand Response compensation. On January 15, 2015, EnerNoc, In., *et al.*, also filed a Petition for a Writ for Certiorari in the Supreme Court of the United States in the same matter.

¹⁵ On January 14, 2015, PJM filed the DR Stop-Gap filing. *PJM Interconnection, L.L.C.*, Docket No. ER15-852-000, January 14, 2015 (“DR Stop-Gap Filing”), PJM states in the DR Stop-Gap filing that should the United States Supreme Court grant *certiorari* to review *Electric Power Supply v. FERC*, PJM anticipates making a subsequent filing with the Commission to withdraw the DR Stop-Gap filing, and in that event, the current RPM rules for supply-side participation by DR, as modified by the PJM Capacity Performance Filing, if accepted, would govern the 2015 BRA. DR Stop-Gap Filing at p.6.

¹⁶ PJM Capacity Performance Filing, at p35.

¹⁷ Monitoring Analytics, LLC, 2011 *State of the Market Report for PJM*, page 8, Section I.

proposal. Irrespective of the outcome of the *EPSA v. FERC*¹⁸ litigation and the resolution of the PJM DR Stop-Gap Filing (ER15-852), these products should be eliminated from the Capacity Performance proposal.

II. CONCLUSION

P3 respectfully requests that the Commission consider these comments and approve and reject certain portions of the PJM proposal as described above.

Respectfully submitted,

On behalf of the PJM Power Providers Group

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¹⁸ 753 F.3d 216 (D.C. Cir. 2014).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the Official Service List compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 20th day of January, 2015.

On behalf of the PJM Power Providers Group

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