124 FERC ¶ 61,008
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Pepco Energy Services, Inc. Docket No. EL08-58-000

v.

PJM Interconnection, L.L.C.

ORDER ON COMPLAINT

(Issued July 2, 2008)

1. Pursuant to sections 206 and 306 of the Federal Power Act,[1] and Rule 206 of the Commission's Rules of Practice and Procedure,[2] on April 22, 2008, Pepco Energy Services, Inc. (PES) submitted a complaint regarding provisions of PJM Interconnection, L.L.C. (PJM) open access transmission tariff as related to the market rules governing the peak-hour-period availability charge for infrequently-run generators under PJM's reliability pricing model (RPM) (PES Complaint). As discussed below, the Commission will hold the PES Complaint in abeyance pending the ongoing PJM stakeholder process.

I. **Background**

2. On December 22, 2006, the Commission approved a settlement regarding implementation by PJM of a reliability pricing model (RPM) capacity construct (RPM Settlement). The RPM Settlement replaced PJM's then-existing capacity obligation rules beginning on June 1, 2007. The RPM Settlement included a section addressing peak-hour-period availability metrics[3] intended to preserve and maintain the reliability of the PJM region, and to encourage capacity market sellers to maintain the availability of

[1] 16 U.S.C. §§ 824(e), 825e (2000 and Supp. V, 2005).

[2] 18 C.F.R. § 385.206 (2008).

[3] RPM Settlement at 29 - 31.

generation resources during critical peak hours[4] of the delivery year. The peak-hour-period performance metric provides a means to access whether generation resources committed as capacity actually are available at expected levels during peak periods, and by crediting or charging resources to the extent they either exceed or do not meet the expected availability.

3. The peak-hour-period availability charges and credits are calculated by comparing a unit's actual availability during peak-hour-periods with the expected availability. For any unit that has at least 50 service hours during peak-hour-period, a unit's actual peak-hour-period availability, EFORp, is determined by assessing its availability during the 500 peak hours of the delivery year. Units with EFORp that was worse than their expected availability pay a charge per MW equal to the locational capacity clearing price, while units with peak-hour-period performance that was better than their expected availability receive a credit, funded by charges paid by other capacity suppliers.

4. However, for generating resources with fewer than 50 service hours during peak-hour-period (infrequently-run units), peak-hour-period performance is assessed using the resource's yearly EFORd metric, which includes all 8760 hours in the entire delivery year. Both charges and credits are assessed after the end of a delivery year (June 1 through May 31) and are calculated and billed by PJM after the close of the delivery year.[5]

II. <u>PES Complaint</u>

5. PES states that the use of the EFORd metric to calculate peak-hour-period availability charges for infrequently-run generation resources is unjust, unreasonable and unduly discriminatory.[6] PES contends that EFORd is an inaccurate and biased measure of peak-hour-period availability when used to calculate peak-hour-period availability charges, because a resource that is available during the approximately 500 peak hours can nonetheless be assessed a substantial penalty if it is unavailable during the approximately

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[4] Peak-hour-periods are defined as the hours between 1500 and 1900 on non-holiday weekdays in the summer (June through August), and the hours between 0700 and 0900, and between 1800 and 2000 on non-holiday weekdays in the winter (December through January). *See* RPM Settlement at 29. For a delivery year, the peak-hour-period total hours equals approximately 500 hours.

[5] The Commission approved a revision to the PJM tariff to provide up to three months after the delivery year to calculate the final peak-hour-period availability charges and credits. See PJM Interconnection, L.L.C., Docket No. ER08-919, delegated letter order, June 11, 2008.

[6] PES Complaint at 2.

8,260 hours that fall outside of the peak-hour periods in a delivery year.[7] As a result, PES contends the EFORd metric has the unintended effect of subjecting PES' and potentially other sellers' infrequently-run generation resources to peak-hour-period availability charges that are unrelated to their availability during peak hours.[8] PES also states that the EFORd metric is also used to assess a resource's overall performance and calculate the capacity resource deficiency charge, and as a result, a generation resource that experiences a forced outage (including those outside of the peak-hour-period) will be penalized twice for an increase in EFORd.[9] PES does not object to paying a capacity resource deficiency charge that is based on the EFORd metric. PES contends that the peak-hour-period availability charges are not narrowly-tailored to provide incentives to make such generation resources available during peak-hour-periods.[10]

6. In addition to the increased exposure to periods when a penalty could be applied, PES states that for generation resources that meet the 50 hour threshold, peak-hour-period availability charges are based on an EFORp metric that is calculated with exemptions for any such resource that was unavailable due to delay,[11] cancellation, retirement, de-rating, or rating test failure.[12] PES contends that excluding infrequently-run generation resources from the exemption that are available to other generation resources lacks a logical basis, and results in the imposition of penalties that are unduly discriminatory.[13] PES adds that unfairly high peak-hour-period availability charges could result in infrequently-run generation resources being unable to recover their going-forward costs, and as a result could also have the unintended consequences of degrading reliability.[14]

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[7] *Id.* at 10.

[8] *Id.*

[9] *Id.* at 15.

[10] Citing *Mirant-Kendal*, LLC, 110 FERC ¶ 61,272, at P17 (2005) (penalties should be narrowly tailored to balance the need to deter conduct that is harmful to the system with the need to limit excessive and unnecessary costs).

[11] For single-fueled, natural gas fired units; this includes non-availability of gas to supply the unit as a result of events outside management control.

[12] *Id.* at 16.

[13] *Id.*

[14] *Id.* at 18.

7. PES requests fast track processing under Rule 206(h) of the Commission's Rules of Practice and Procedure,[15] so that the Commission can act on its complaint and direct PJM to provide a suitable replacement before the 2008-2009 delivery year, which commences on June 1, 2008.

8. PES requests that the Commission find that generation resources with fewer than 50 service hours during peak hours in a delivery year should not be subject to charges and credits assessed under the peak-hour-performance market rules for the 2007-2008 delivery year. PES states that because PJM has not calculated the charges or credits for 2007-2008, the one-time exemption will not affect reliability incentives or require rebates or billing modifications.

9. PES also requests that the Commission require PJM to delete the special rules applicable to infrequently-run generation resources, and adopt the same EFORp metric for all generation resources for the 2008-2009 delivery year. PES contends that this is more consistent with the intent of the PJM Settlement, and as an interim measure, is a vast improvement over the current inaccurate and biased metric, and will result in infrequently-run resources being assessed peak-hour-period availability charges that are actually based on peak-hour performance. Further, PES states that since PJM is already using EFORp for all other resources, implementation of the EFORp metric, as an interim measure, should be a simple remedy.

10. PES acknowledges that EFORp may not be an ideal long-term solution to the problems of using EFORd for infrequently-run generation resources. Therefore, it requests the Commission to direct PJM, to explore through its stakeholder process alternative methods for assessing peak-hour-period availability charges on infrequently-run generation resources, and to make a FPA section 205 filing proposing a replacement methodology for the 2009-2010 delivery year.[16] PES contends that such a replacement methodology should: (1) provide a similar financial incentive for availability for infrequently dispatched resources as is provided for other generation resources whose peak-hour-period availability charges or credits are calculated based on EFORp; (2) remain focused on availability during the peak hours utilized in the peak-hour-period availability calculation of other units and preserve the incentives to maintain high availability during these peak hours; (3) remove the duplicative charges and unintended loopholes that result from the current peak-hour-period availability charges rules; and (4) directly mitigate the problems that the current peak-hour-period availability charges

[15] 18 C.F.R. § 385.206(h) (2007).

[16] 16 U.S.C. § 824d (2000).

rules for infrequently-dispatched units were intended to mitigate, the assessment of large charges based on limited operational data.[17]

III. Procedural Matters

A. Notice and Interventions

11. Notice of the PES Complaint was published in the *Federal Register*, 73 Fed. Reg. 23,455 (2008), with interventions and protests due on or before May 13, 2008. Interventions are listed in Appendix A.

B. PJM Answer

12. PJM states that PES has not established that using EFORd as an availability metric for peak-hour-period availability charges is unjust and unreasonable. PJM contends that EFORd is a well-established performance measure, and that use of EFORp for infrequently-run generating units could result in an unreliable indication of a resource's true availability. Since EFORp presents insufficient data to reliably measure performance over the peak period, PJM contends that the RPM Settlement opted for the EFORd metric as a better indicator of a capacity resource's value to the system.

13. PJM also states that PES misreads the unavailability calculation. PJM states that the market rules provide that the availability calculation "shall not include any day [a Generation Capacity Resource] was unavailable if such unavailability resulted in a charge or penalty due to delay, cancellation, retirement, de-rating or rating test failure."[18] PJM states that it interprets this provision as applying to all resources, regardless of how many hours they run during the peak-hour-periods.

14. PJM opposes PES' request to exempt generation resources with fewer than 50 total service hours from peak-hour-period availability charges or credits for the 2007-2008 delivery year. First, PJM contends that PES' proposal, filed nearly eleven months after the start of the 2007-2008 delivery year and nearly two months after the tariff-defined peak-hour-period for that delivery year, is contrary to the filed rate doctrine. PJM contends that the last tariff-defined peak hour for the 2007-2008 delivery year occurred on February 29, 2008, and that the April 22, 2008 PES Complaint cannot change the binding effect of this tariff provision on generation resources with less than 50 service hours of performance during this period.

15. Second, PJM argues that PES had an opportunity to mitigate its potential exposure to any peak-hour-period availability charges by self-scheduling its units. According to

[17] With its Complaint, PES provided an alternative proposal.

[18] These exemptions apply for matters outside management control.

PJM, this approach may not completely mitigate the risk of accruing peak-hour-period availability charges in all cases, since a generator that self-schedules its unit, and thereby agrees to accept the applicable energy clearing price, cannot ensure that the LMP it receives will compensate it for its costs of producing energy during these hours. Nonetheless, in many cases this approach may substantially reduce the generator's exposure to peak-hour-period availability charges. In addition, PJM argues that whether or not a seller's unit runs frequently or infrequently, if the seller expects that unit to experience an outage that could result in an availability shortfall (or if the unit is actually experiencing such an outage), it may obtain and commit replacement capacity (on as little as one day's notice) to avoid or reduce the charge. Thus, PJM concludes that an after-the-fact exemption of PES units would penalize generation owners that worked to improve their unit's availability, and excuse those that failed to prevent deterioration in their unit's performance. PJM contends that this is exactly opposite of the intended effect of the peak-hour-period availability provision.

16. As discussed above, because EFORp is an unreliable indication of generating resources availability for infrequently-run generation, PJM opposes the use of EFORp as an interim peak-hour-period performance metric for these units for the 2008-2009 delivery year. PJM identifies that PES acknowledges that EFORp is "less than ideal" as a performance measure for infrequently-run units. PJM contends that use of EFORp as a stop-gap proposal ignores the problems inherent with basing performance calculations on relatively few hours of performance, and that this would erode confidence in the application of performance charges or credits.

17. Finally, PJM states that stakeholders are actively addressing peak-hour-period availability metric for infrequently run generating resources. PJM states that an alternative could become effective prior to the 2009-2010 delivery year. PJM contends that rather than imposing an inappropriate EFORp metric as a stop-gap alternative, the Commission should allow the stakeholder process to develop a more fully-considered consensus alternative to be implemented as soon as possible.

C. <u>Comments</u>

18. Comments on the PES proposal were filed by Bear Energy LP, BE Allegheny LLC, BE Ironwood LLC, BE Red Oak LLC (Bear Subsidiaries); Constellation Power Source Generation Inc. and Constellation Energy Commodities Group, Inc. (Constellation); Dayton Power and Light Company, DPL Energy, LLC (Dayton Companies); Dominion Resources Services, Inc. (Dominion); Old Dominion Electric Cooperative (ODEC); Mirant Energy Trading, LLC, Mirant Potomac River, LLC, Mirant Chalk Point, LLC, Mirant Mid-Atlantic, LLC (Mirant); North Carolina Electric Membership Corporation (NCEMC); NRG Power Marketing LLC, Conemaugh Power LLC, Indian River Power LLC, Keystone Power LLC, NRG Energy Center Dover LLC, NRG Energy Center Paxton LLC, NRG Rockford LLC, NRG Rockford II LLC, Vienna

Power LLC (NRG Companies); Public Service Electric & Gas Company, PSEG Power LLC, PSEG Energy Resources & Trade LLC (PSEG); Reliant Energy, Inc. (Reliant).

19. No party filed comments in support of the PES Complaint for exemption from the 2007-2008 peak-hour-performance calculation. Dominion, ODEC, Mirant, NCEMC, PSEG Power Companies, and Reliant raise concerns with the retroactive ratemaking effect of exempting the 2007-2008 peak-hour-performance charges or credits, and as a result oppose the PES Complaint request for an exemption of the peak-hour-performance charges or credits for the 2007-2008 delivery year.

20. Bear Subsidiaries and PSEG state that the Commission should deny PES' Complaint. Similar to PJM, Bear Subsidiaries contend that PES' Complaint should be dismissed, because PES had an opportunity to mitigate its potential exposure to any peak-hour-availability charges by self-scheduling its units. Because of this opportunity, Bear Subsidiaries contend that PES has not demonstrated that the peak-hour-period performance market rules are unjust and unreasonable or unduly discriminatory. Bear Subsidiaries state that should the Commission set this matter for hearing, the scope of the hearing should be narrowly-focused on the issues raised by PES, and not countenance any attempt to mount broad-based challenges to the RPM settlement. PSEG Power Companies state that the matter is already being discussed in the existing stakeholder process.

21. Constellation, Dominion, Mirant and the NRG Companies contend that the PES' Complaint raises valid concerns that the use of EFORd as a performance metric for peak-hour-performance may result in rates that are unjust and unreasonable. Constellation and Dominion support use of the EFORp as the peak-hour performance metric for the 2008-2009 delivery year. Mirant opposes use of the EFORp metric for the 2008-2009 delivery year. Constellation, Dayton Companies, Dominion, ODEC, Mirant, NCEMC, PSEG, NRG Companies, and Reliant support the stakeholder process for design and implementation of a more appropriate peak-hour-period availability metric on a going-forward basis.

D. <u>PES Answer to Pleadings</u>

22. PES filed a motion to answer and an answer to the PJM answer and comments of the parties. PES contends that PJM fails to adequately support the continued use of an EFORd metric to assess peak-hour-performance for infrequently-run generation resources.[19] PES contends that the suggestion that generation resources have the responsibility to avoid the application and consequences of the existing peak-hour-period performance provisions for infrequently-run generation supports the proposition that they

[19] PES Answer at 3.

are unjust and unreasonable, and unduly discriminatory.[20] PES states that the tariff provides for infrequently-run generation to be accessed peak-hour-period availability charges based on the EFORd for the entire delivery year. PES argues that, in this case, the 2007-2008 delivery year had not concluded at the time PES filed its Complaint.[21] PES also states that there is good cause for granting a one-time exemption, because this flaw in the PJM rules has only become obvious over the past year, the first full year of RPM implementation. Alternatively, PES requests that the Commission require PJM to assess peak-hour-period availability charges for infrequently run generation resources based on an EFORp metric for the 2007-2008 delivery year.

IV. Commission Determination

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[22] the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Given the early stage of the proceeding, its interests, and the absence of undue prejudice or delay, we will grant the late-filed motion to intervene of the Duke Companies. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibit an answer to a protest and answer unless otherwise order by the decisional authority.[23] We will accept PES' answer because it has provided information that assisted us in our decision-making process.

24. The Commission takes no position on the merits of PES's complaint. As noted above,[24] the PJM markets implementation committee and the RPM working group have a process in place to consider possible changes to the market rules for infrequently-run generation resources. The stakeholder process is supported by PES and virtually all the commenters to this proceeding. To allow this stakeholder process to continue its discussions, the Commission will hold PES' Complaint in abeyance pending a report on the disposition of the stakeholder discussions. By the earlier of December 31, 2008, or thirty days from the date the stakeholder process concludes, PJM is directed to file a report on the stakeholder process. Based on this report, the Commission will issue a further order on the PES Complaint.

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[20] *Id.* at 9-11.

[21] *Id.* at 16.

[22] 18 C.F.R. § 385.214 (2007).

[23] 18 C.F.R. § 385.213(a)(2) (2007).

[24] *See supra* P 17.

The Commission orders:

As discussed in the body of this order, PES' Complaint is hereby held in abeyance pending completion of an ongoing stakeholder process.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A

Docket No. EL08-58-000
Complaint of Pepco Energy Services, Inc.
Answer of PJM Interconnection, L.L.C.

Notice of Intervention
Pennsylvania Public Service Commission

Motions to Intervene
NRG Companies:
    NRG Power Marketing LLC, Conemaugh Power LLC, Indian River Power LLC, Keystone Power LLC, NRG Energy Center Dover LLC, NRG Energy Center Paxton LLC, NRG Rockford LLC, NRG Rockford II LLC, Vienna Power LLC
Dynegy:
    Dynegy Power Marketing, Inc. and Rolling Hills Generating, L.L.C.
Constellation:
    Constellation Power Source Generation Inc. and Constellation Energy Commodities Group, Inc.
North Carolina Electric Membership Corporation
American Municipal Power-Ohio, Inc.
PJM Industrial Customer Coalition
Southern Maryland Electric Cooperative, Inc.
Old Dominion Electric Cooperative
Electric Power Supply Association
PPL Parties:
    PPL EnergyPlus, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL Susquehanna, LLC; PPL University Park, LLC; Lower Mount Bethel Energy, LLC
Dayton Companies:
    Dayton Power and Light Company; DPL Energy, LLC
Bear Subsidiaries:
    Bear Energy LP, BE Allegheny LLC, BE Ironwood LLC, BE Red Oak LLC
PSEG Power Companies:
    Public Service Electric & Gas Company, PSEG Power LLC, PSEG Energy Resources & Trade LLC
Mirant Parties:
    Mirant Energy Trading, LLC; Mirant Potomac River, LLC; Mirant Chalk Point, LLC; Mirant Mid-Atlantic, LLC
Reliant Energy, Inc.
Dominion Resources Services, Inc.:
    Dominion Energy Marketing, Inc.; Elwood Energy, LLC; Fairless Energy, LLC; Kincaid Generation, LLC; and Virginia Electric and Power Company

Exelon Corporation
Allegheny Energy Companies:
Allegheny Power and Allegheny Energy Supply Company, LLC
EME Companies:
Edison Mission Energy and Edison Mission Marketing & Trading, Inc.

Motion to Intervene (out of time)
Duke Companies:
Duke Energy Corporation; Duke Energy Ohio, Inc.; Duke Energy Indiana, Inc.; Duke Energy Kentucky, Inc.; Duke Energy Carolinas, LLC; Duke Energy Shared Service, Inc.