

151 FERC ¶ 61,224
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER15-696-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS
AND DIRECTING COMPLIANCE FILING

(Issued June 18, 2015)

1. On December 22, 2014, PJM Interconnection, L.L.C. (PJM) submitted revisions to Schedule 2 of its Open Access Transmission Tariff (PJM Tariff) to comply with the Commission's November 20, 2014 Order to Show Cause.¹ PJM proposes to require that, 90 days prior to the deactivation or transfer of a generation unit, each reactive power supplier either: (1) submit a filing to terminate or adjust its cost-based rate schedule to account for the deactivated or transferred unit; or (2) submit an informational filing explaining the basis for the decision not to terminate or revise its cost-based rate schedule. In this order, we conditionally accept PJM's proposed tariff revisions, effective as of the date of this order, subject to a further compliance filing. We direct PJM to submit the further compliance filing within 30 days of the date of this order, as discussed below.

I. Background

2. Pursuant to Schedule 2 of the PJM Tariff, PJM compensates generation and non-generation resource owners monthly for the capability to provide reactive power based on the resource owner's Commission-approved reactive power tariff.² These reactive power tariffs contain a cost-based revenue requirement, which may be unit-specific or may cover multiple resources that are part of the reactive power supplier's generation fleet. Rather than including the reactive power tariffs in the PJM Tariff, PJM maintains a chart on its website that lists the annual reactive power revenue requirements for each reactive

¹ *PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,132 (2014) (Order to Show Cause).

² PJM, Intra-PJM Tariffs, OATT, Schedule 2 (2.0.0).

power supplier in the PJM region.³ The PJM Tariff neither explicitly states that payments for reactive power capability will cease when a generation or non-generation resource owner has deactivated a unit, such that the unit is no longer capable of providing reactive power, nor does it explain whether and how capability payments will be adjusted when a unit is transferred out of a fleet.

3. On November 20, 2014, the Commission issued an Order to Show Cause in Docket No. EL15-15-000, expressing concern with the PJM Tariff's "lack of clarity concerning termination or of change in payments for Reactive Service when generating units are no longer capable of providing reactive power or have been transferred out of a fleet, respectively."⁴ The Commission expressed concern that PJM may be continuing to pay generation and non-generation resources for reactive power capability after units have been deactivated or transferred out of a fleet.⁵ The Commission explained that "[p]aying for a service required under the Tariff where . . . the generation or non-generation resource owner is no longer capable of providing that service is unjust and unreasonable."⁶ Accordingly, the Commission required PJM to either submit tariff revisions that "provide that a generation or non-generation resource owner will no longer receive reactive power capability payments after it has deactivated its unit and to clarify the treatment of reactive power capability payments for units transferred out of a fleet," or show cause why it should not be required to do so.⁷ The Commission directed PJM to "address payments related to deactivated or transferred units that do not comprise the entirety of the generation fleet under the applicable Reactive Service tariff."⁸

³ See *PJM Interconnection, L.L.C.*, Docket No. ER08-339-000 (Feb. 13, 2008) (delegated letter order); PJM, *Reactive Supply and Voltage Control Revenue Requirements* (Oct. 2014), <http://www.pjm.com/markets-and-operations/market-settlements/reactive-supply.aspx>.

⁴ Order to Show Cause, 149 FERC ¶ 61,132 at P 8.

⁵ *Id.* P 7.

⁶ *Id.* (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,192, at P 19, *order on reh'g*, 116 FERC ¶ 61,283 (2006); *Calpine Oneta Power, L.P.*, 119 FERC ¶ 61,177, at P 11 (2007)).

⁷ *Id.* P 9.

⁸ *Id.*

II. PJM's Filing

4. PJM filed proposed revisions to Schedule 2 of the PJM Tariff to require that 90 days prior to the deactivation or transfer of a generation unit each reactive power supplier either: (1) submit a filing to terminate or to adjust its cost-based rate schedule to account for the deactivated or transferred unit; or (2) submit an informational filing explaining the basis for the decision not to terminate or revise the rate schedule.⁹ PJM requested an effective date of February 20, 2015.

5. PJM asserts that it does not have the authority to compel a reactive power supplier to submit a filing under section 205 of the Federal Power Act (FPA)¹⁰ to terminate or amend its existing reactive power tariff when a unit is deactivated or to stop paying reactive power suppliers their revenue requirement.¹¹ According to PJM, stopping payment would be tantamount to PJM unilaterally revising the reactive power supplier's Commission-approved revenue requirement. PJM explains that sections 205 and 206 of the FPA establish two mechanisms for adjusting existing reactive power tariffs—either the reactive power supplier files under section 205 to revise or terminate its rate; or the Commission finds that the existing rate is unjust and unreasonable pursuant to a section 206 proceeding.¹² PJM states that “courts have made it clear that public utilities have the statutory right under section 205 to make changes to their rates, and that the Commission lacks the authority to compel them to forego or cede their section 205 filing rights.”¹³ PJM also explains that a section 206 proceeding must be initiated by the Commission or by a party that lacks section 205 filing rights with respect to the rate schedule at issue.¹⁴ Given this statutory construct, PJM contends that it cannot revise the PJM Tariff to state that PJM will no longer pay reactive power suppliers in accordance with their Commission-approved rate schedule, nor can it require that each reactive power supplier submit a section 205 filing when it deactivates or transfers a unit.

⁹ PJM Transmittal Letter at 6.

¹⁰ 16 U.S.C. § 824d (2012).

¹¹ PJM Transmittal Letter at 7.

¹² *Id.* at 7–8 (citing *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002); *Mass. Dep't of Pub. Utils. v. United States*, 729 F.2d 886, 887 (1st Cir. 1984)).

¹³ *Id.* at 8 n.17 (citing *Atl. City Elec. Co.*, 295 F.3d at 9).

¹⁴ *Id.* at 8 (citing *Mass. Dep't Pub. Utils.*, 729 F.2d at 888; *Entergy Servs., Inc.*, 115 FERC ¶ 61,095, at P 62, *order on reh'g*, 116 FERC ¶ 61,275 (2006); *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,234, at P 22 (2005)).

According to PJM, stopping payment would be inappropriate because PJM would be taking on a ratemaking role reserved for the Commission and essentially trying to unbundle a rate.¹⁵

6. PJM also argues that, even if it had the authority, it lacks the information necessary to stop payments to deactivated or transferred units receiving payment under fleet-wide reactive power rate schedules. Specifically, PJM states that, while generators within PJM are generally obligated to inform PJM that they are retiring pursuant to Part V of the PJM Tariff,¹⁶ PJM typically does not know whether a retiring unit is compensated for providing reactive power under a fleet-wide rate schedule. Since fleet-wide rate schedules consist of a single rate for multiple generators, sometimes developed over an extended period of time, which do not specify which generators are being compensated under the rate schedule, PJM asserts that without additional information it could not know whether to reduce payments to account for a deactivated or transferred unit or by how much.¹⁷ PJM notes that several stakeholders contended that a single generator deactivation does not necessarily trigger an adjustment of a cost-based rate schedule because, for example, the reactive power supplier may have added other generators without updating the revenue requirement before deactivating an older unit.¹⁸

7. PJM asserts that its approach will both preserve reactive power suppliers' FPA section 205 filing rights and require a filing by a reactive power supplier that will result in either a change to the rate schedule to account for a deactivated or transferred unit or will provide other parties with sufficient information to initiate a proceeding under FPA section 206 prior to deactivation. PJM contends that its approach will increase transparency surrounding deactivated and transferred units, thereby significantly reducing the probability that such units improperly receive Schedule 2 payments, while also preserving the reactive power supplier's section 205 filing rights.

8. PJM also proposes to add new section 113.4 (Notice for Generation Units Providing Reactive Supply and Voltage Control) to Part V (Generation Deactivation) of the PJM Tariff. According to PJM, new section 113.4 requires generation owners

¹⁵ *Id.* at 6, 9.

¹⁶ PJM, Intra-PJM Tariffs, OATT, Part V (Generation Deactivation) (0.0.0).

¹⁷ PJM Transmittal Letter at 9.

¹⁸ *Id.* at 10.

deactivating a unit to provide notice in accordance with the new rules proposed to Schedule 2, in addition to the other notice requirements in Part V of the PJM Tariff.¹⁹

9. PJM further proposes ministerial revisions to Schedule 2. PJM proposes to modify each instance of “Generation or other source Owner” to read “Generation Owner or other source owner” because “Generation” and “Owner” are not defined in the PJM Tariff, whereas “Generation Owner” is a defined term.²⁰ PJM also proposes to revise two instances in Schedule 2 of “Generation Capacity Resources” to read “generator or other source” because generator owners and other source owners may transfer any generator or other source in accordance with Schedule 2, not only generation capacity resources.²¹

III. Notice of Filing and Responsive Pleadings

10. Notice of PJM’s December 22, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 78,846 (2014), with interventions and protests due on or before January 12, 2015. Dayton Power and Light Company, the Independent Market Monitor for PJM (Market Monitor), American Electric Power Service Corporation,²² Exelon Corporation, American Municipal Power, Inc., the Electric Power Supply Association (EPSA), the NRG Companies,²³ the PJM Power Providers Group (P3), Dominion Resources Services, Inc. (Dominion),²⁴ FirstEnergy Service Company, and the PSEG Companies²⁵ filed

¹⁹ *Id.* at 11.

²⁰ *Id.* (citing PJM, Intra-PJM Tariffs, OATT, § 1.13F (0.0.0)).

²¹ *Id.* at 11–12 (citing *PJM Interconnection, L.L.C.*, Docket No. ER00-3327-000 (Sept. 25, 2000) (unpublished letter order)).

²² American Electric Power Service Corporation filed its motion to intervene on behalf of its affiliates, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, AEP Indiana Michigan Transmission Company, AEP Kentucky Transmission Company, AEP Ohio Transmission Company, and AEP West Virginia Transmission Company.

²³ The NRG Companies consist of NRG Power Marketing LLC and GenOn Energy Management, LLC.

²⁴ Dominion filed its motion to intervene on behalf of Virginia Electric and Power Company d/b/a Dominion Virginia Power.

²⁵ The PSEG Companies consist of Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC.

timely motions to intervene. The Market Monitor filed comments, EPSA and P3 jointly filed comments and a limited protest, Dominion filed comments and a protest, and the PSEG Companies filed a protest.

11. The Market Monitor asserts that PJM's compliance filing is inadequate to address the serious flaw in the PJM Tariff provisions governing reactive power identified in the Order to Show Cause. The Market Monitor sets forth the background of payments for reactive power in PJM, explaining that, in the initial order providing for reactive power in PJM, the Commission determined that regional rates for reactive power were equivalent to zonal transmission rates.²⁶ According to the Market Monitor, this rate structure made sense only if no other seller was providing reactive power in the same franchise under a separately-filed rate; once multiple rates applied in the same zone, the initial rate needed to be converted to unit-specific rates or the new supplier needed to be paid out of the existing rate. Instead, the Market Monitor explains, additional rates for reactive power were filed for individual units and plants not owned by the transmission owners who continued to provide reactive power under a rate meant to recover costs for service to the zone on a franchise cost-of-service basis.²⁷ The current practice of multiple parties serving the same franchise service area under separately-filed rates, according to the Market Monitor, is inconsistent with fundamental cost-of-service ratemaking principles.

12. The Market Monitor disagrees with PJM's representations that it is only a conduit for the collection of a rate filed and approved by others, arguing that PJM has the authority over, and the responsibility for, its market rules for billing and settlement.²⁸ The Market Monitor argues that PJM should use that authority to effectively terminate or revise cost-based rate schedules that result in improper billing and payments for services not rendered. The Market Monitor asks that the Commission direct PJM to revise Schedule 2 to provide for collection of rates only from specific units and only at times when such units are capable of providing reactive power. According to the Market Monitor, it is not necessary for PJM to take a position in proceedings establishing

²⁶ Market Monitor Comments at 3–4 (citing *Pa.-N.J.-Md. Interconnection*, 81 FERC ¶ 61,257 (1997), *order on clarification*, 82 FERC ¶ 61,068 (1998), *order on reh'g*, 92 FERC ¶ 61,282 (2000), *vacated in part & remanded sub nom. Atl. City Elec. Co.*, 295 F.3d at 1).

²⁷ *Id.* at 4 (citing *FPL Energy MH 50, L.P.*, 96 FERC ¶ 61,035 (2001)).

²⁸ *Id.* at 5 (citing *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001)).

cost-of-service rate schedules for the affected units; however, it is necessary that PJM bill its customers and pay its suppliers only for services that are provided.²⁹

13. EPSA and P3 generally support PJM's proposed tariff revisions as an acceptable means of addressing the concerns the Commission expressed in the Order to Show Cause, but urge the Commission to require certain discrete modifications to PJM's proposal to provide clarity regarding the treatment of generation units that were (or are) deactivated prior to the adoption of PJM's proposal and to distinguish between unit deactivations and transfers.³⁰ EPSA and P3 ask that the Commission consider that many of the reactive power revenue requirements established by the transmission providers and incorporated into Schedule 2 in 1997 were fleet-wide and not tied to any specific units; therefore, unless and until the entire fleet has been deactivated or transferred, PJM cannot be said to be "[p]aying for a service required under the Tariff where . . . the *generation or non-generation resource owner* is no longer capable of providing that service" and precedent cited in the Order to Show Cause for the proposition that continued payments under such circumstances are "unjust and unreasonable" is inapposite.³¹ EPSA and P3 explain that, in the case of fleet-wide revenue requirements, deactivating one or more units does not necessarily result in the reactive power supplier over-recovering its cost of providing reactive power because there may have been ongoing plant additions and enhancements after the revenue requirement was established.³² EPSA and P3 further note that many of the effective revenue requirements for reactive power are the product of "black-box" settlements; without undertaking a fleet-specific cost analysis, EPSA and P3 assert there

²⁹ *Id.* at 5–6.

³⁰ EPSA and P3 Comments and Protest at 2 (citing Order to Show Cause, 149 FERC ¶ 61,132 at P 8).

³¹ *Id.* at 5–6 (citing PJM Transmittal Letter at 2; Order to Show Cause, 149 FERC ¶ 61,132 at P 8 & n.18).

³² *Id.* at 6–7 (citing *Bd. of Pub. Util. Comm'rs v. N.Y. Tel. Co.*, 271 U.S. 23, 32 (1926); *Cent. Ill. Pub. Serv. Co. v. FERC*, 941 F.2d 622, 628 (7th Cir. 1991); *Am. Pub. Gas Ass'n v. FPC*, 567 F.2d 1016, 1057 (D.C. Cir. 1977); *Borough of Ellwood City v. FERC*, 731 F.2d 959, 966 (D.C. Cir. 1984); *Sw. Pub. Serv. Co. v. FERC*, 952 F.2d 555, 562 (D.C. Cir. 1992); *City of Batavia v. FERC*, 672 F.2d 64, 74 (D.C. Cir. 1982); *Vill. of Chatham v. FERC*, 662 F.2d 23, 29–30 (D.C. Cir. 1981)).

is no way of knowing if and to what extent those revenue requirements may actually understate the cost of providing reactive power.³³

14. EPSA and P3 state that PJM appropriately acknowledges in its filing that it may not usurp reactive power suppliers' FPA section 205 rights.³⁴ EPSA and P3 make two clarifications, however: (1) not only PJM, but also the Commission, lacks the authority to compel a reactive power supplier to make an FPA section 205 filing;³⁵ and (2) ceasing to pay reactive power suppliers in accordance with their existing revenue requirements would have PJM stepping into a ratemaking role that appropriately lies not with the Commission, as PJM suggests, but with the suppliers.³⁶ According to EPSA and P3, PJM's proposed revisions are a good faith attempt to devise a means of putting the Commission in a position to identify revenue requirements that may be unjust and unreasonable and to modify them after finding they are, in fact, unjust and unreasonable.

15. In their limited protest, EPSA and P3 ask that the proposed tariff revisions be modified so that they expressly cover not only future deactivations, but also past deactivations and transfers. Specifically, EPSA and P3 state that the PJM Tariff should provide that an owner of a unit deactivated or transferred prior to the effective date of the revisions that continues to receive payments for reactive power pursuant to Schedule 2 must make an FPA section 205 filing or an informational filing no more than 180 days after the later of: (1) the date of the Commission's order accepting PJM's proposal; or (2) the effective date of the proposal. EPSA and P3 also suggest the Commission

³³ *Id.* at 7–8 (citing PJM Transmittal Letter at 2; *Am. Elec. Power Serv. Corp.*, Opinion No. 440, 88 FERC ¶ 61,141 (1999); PSEG Energy Resources & Trade, LLC, Filing of Rate Schedule No. 3, Docket No. ER08-951-000 (filed May 13, 2008), *accepted*, *PSEG Energy Res. & Trade, LLC*, Docket Nos. ER08-951-000, *et al.* (Nov. 13, 2008) (delegated letter order)).

³⁴ *Id.* at 9 (citing PJM Transmittal Letter at 6–7).

³⁵ *Id.* at 10 (citing PJM Transmittal Letter at 8–9 & n.17; *Atl. City Elec. Co. v. FERC*, 329 F.3d 856, 858–59 (D.C. Cir. 2003); *Atl. City Elec. Co.*, 295 F.3d at 10–11; *Consumers Energy Co. v. FERC*, 226 F.3d 777, 780 (6th Cir. 2000); *W. Res., Inc. v. FERC*, 9 F.3d 1568, 1578 (D.C. Cir. 1993); *Pub. Serv. Comm'n of N.Y. v. FERC*, 866 F.2d 487, 488–89 (D.C. Cir. 1989); *Mass. Dep't of Pub. Utils.*, 729 F.2d at 887–88).

³⁶ *Id.* (citing PJM Transmittal Letter at 7; *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332, 341 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348, 350 (1956); *Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 577 n.7 (1981)).

consider language to address the possibility of unit deactivations or transfers less than 90 days after the effectiveness of the proposed tariff revisions.³⁷

16. EPSA and P3 also ask in their limited protest that the 90-day notice requirement not be applied to future transfers because this may create unnecessary obstacles to transfers of units. EPSA and P3 explain that the PJM Tariff already provides that reactive power revenue requirements may be reallocated as agreed by the parties in connection with sales of Generation Capacity Resources and that PJM has appropriately proposed clarifying language to ensure this provision applies broadly to transfers of other resources.³⁸ EPSA and P3 argue that the entity acquiring a unit eligible for compensation for reactive power is incentivized to obtain a reasonable allocation of the pre-existing revenue requirement or ensure that revenue requirement is cancelled or reduced appropriately so the new owner can propose its own revenue requirement. Therefore, EPSA and P3 contend, unit transfers do not present the same concerns about over-recovery as unit deactivations, and it is unclear what useful purpose is served by requiring an FPA section 205 filing or informational filing 90 days in advance of the disposition date of a transfer. Moreover, EPSA and P3 state that such a requirement could delay transfers that might otherwise be consummated in less than 90 days.³⁹ At a minimum, EPSA and P3 ask that there be no required filing prior to the disposition date when the transfer itself would not result in a net increase in the compensation or decrease in reactive power capability.⁴⁰

17. Dominion generally supports PJM's proposed tariff revisions, but argues that PJM's proposal goes too far because it impermissibly shifts the burden of demonstrating that a rate is unjust, unreasonable, unduly discriminatory or preferential under FPA section 206 from the Commission or a complainant to the unit owner.⁴¹ When PJM suggests that its proposal will result in a reactive power supplier providing sufficient information for other parties to initiate an FPA section 206 proceeding, to the extent PJM

³⁷ *Id.* at 12–13.

³⁸ *Id.* at 14 (citing PJM December 22, 2014 Filing, Attachment A, Schedule 2).

³⁹ *Id.* (citing 16 U.S.C. § 824b (2012)) (noting that the Commission routinely processes applications for approval of generating asset sales under FPA section 203 in substantially less than 90 days).

⁴⁰ *Id.* at 14–15.

⁴¹ Dominion Protest at 5 (citing 16 U.S.C. § 824(e) (2012); *Atl. City Elec. Co.*, 295 F.3d at 9–10; *Ala. Power Co. v. FERC*, 993 F.2d 1557, 1569 (D.C. Cir. 1993); *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74, 94–95 (3d Cir. 2014); *W. Res., Inc.*, 9 F.3d at 1578).

is suggesting that cost-of-service level information is required, Dominion argues PJM's proposal is unlawful under the FPA. Dominion explains that, requiring a reactive power supplier to provide cost-of-service level information or to demonstrate the filed rate is not unjust, unreasonable, or unduly discriminatory impermissibly shifts the FPA section 206 burden.⁴² In addition, Dominion asserts that the Commission has effectively deemed Dominion Virginia Power's reactive power tariff to be unjust and unreasonable without a proceeding, which the Commission may not do.⁴³ Dominion contends that the Commission may not order PJM to withhold reactive power capability payments from fleets when a unit is deactivated because this violates the filed rate doctrine.⁴⁴ According to Dominion, unless the Commission finds that Dominion Virginia Power's reactive power tariff is unreasonable or discriminatory pursuant to a challenge under FPA section 206, the Commission may not order PJM to withhold payments when a unit in the fleet is deactivated.⁴⁵

18. Dominion asks that the Commission distinguish unit-specific reactive power tariffs from fleet-wide tariffs, particularly those that resulted from "black-box" settlements, because, in the case of fleet-wide tariffs, a reactive power supplier may retro-fit, retire, or replace units within its fleet that will replace and even increase capacity and reactive power capability. Dominion states that, since 2006, when Dominion Virginia Power entered into a "black-box" settlement for its fleet-wide reactive power revenue requirement, it has retired or deactivated approximately 800 MWs of generation capacity, but, during that same period, has added approximately 2,500 MWs, such that Dominion Virginia Power's reactive power tariff may under-recover the costs of providing reactive power.⁴⁶ Dominion argues that requiring a reactive power supplier to file cost-of-service rate cases for every deactivation or addition is unduly burdensome and an unmanageable expectation for both Dominion and the Commission. Dominion

⁴² *Id.* at 8–9.

⁴³ *Id.* at 6–7.

⁴⁴ *Id.* at 7 (citing *Ark. La. Gas Co.*, 453 U.S. at 577; *Mont.-Dakota Utils. Co. v. Nw. Pub. Serv. Co.*, 341 U.S. 246, 255–56 (1951); *Maislin Indus., U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 127–28 (1990); *City of Groton v. Conn. Light & Power Co.*, 662 F.2d 921, 930–31 (2d Cir. 1981)).

⁴⁵ *Id.* at 8.

⁴⁶ *Id.* at 6 (citing *Va. Elec. & Power Co.*, 119 FERC ¶ 61,004 (2007)).

requests that the Commission consider developing a flexible rate adjustment procedure to facilitate regular updates.⁴⁷

19. The PSEG Companies argue that the Order to Show Cause is premised on the flawed assumption that reactive power tariffs established on a fleet-wide basis are necessarily unjust and unreasonable when a unit deactivates. They contend that this ignores the fact that after a fleet-wide rate is established, there are ongoing plant additions and enhancements that occur regularly. Therefore, PJM's proposal is unnecessary and contrary to law because changes to approved rates can only be imposed on a utility through an FPA section 206 proceeding.⁴⁸ The PSEG Companies explain that PSEG Energy Resources & Trade LLC's fleet-wide rate for reactive power is a cost-based rate that was accepted by the Commission; therefore, it is unlawful for PJM to withhold a portion of that payment.⁴⁹

20. Moreover, the PSEG Companies contend that PJM's proposal impermissibly compels FPA section 205 filings, or their functional equivalent, contrary to well-established law prohibiting utility service providers from being compelled to submit FPA section 205 filings to change rates.⁵⁰ Although PJM's alternative to requiring a rate adjustment or termination proceeding is to submit an "informational filing," the PSEG Companies argue this requirement is tantamount to requiring an FPA section 205 filing because it requires evidence that the Commission-approved rate remains "just and reasonable." The PSEG Companies request that, if the Commission adopts PJM's proposed tariff revisions, it should clarify that a reactive power supplier that submits an informational filing will not be required to submit cost-based evidentiary support comparable to that which would be required in an FPA section 205 proceeding; rather, the PSEG Companies ask that the Commission presume that the previously-approved rate remains just and reasonable unless there is clear and compelling evidence to the contrary.⁵¹

⁴⁷ *Id.* at 9 (citing Opinion No. 440, 88 FERC at 61,141).

⁴⁸ PSEG Companies Protest at 3–4.

⁴⁹ PSEG Companies Protest at 2–3 & n.8.

⁵⁰ PSEG Companies Protest at 3–5 (citing *Atl. City Elec. Co.*, 295 F.3d at 9; PJM Transmittal Letter at 7).

⁵¹ *Id.* at 5–6.

IV. Discussion

A. Procedural Issues

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁵² the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Issues

22. We conditionally accept PJM's proposed tariff revisions, subject to a further compliance filing. We find that PJM complied with the requirement in the Order to Show Cause to submit tariff revisions that "provide that a generation or non-generation resource owner will no longer receive reactive power capability payments after it has deactivated its unit and to clarify the treatment of reactive power capability payments for units transferred out of a fleet."⁵³ Specifically, under PJM's proposed revisions to Schedule 2 of its Tariff, a generation or non-generation resource owner must notify PJM and the Commission 90 days prior to deactivating or transferring a unit by either filing to terminate or adjust its reactive power tariff or submitting an informational filing explaining why its reactive power tariff is not unjust and unreasonable.⁵⁴ PJM also proposes to add new section 113.4 to Part V of its Tariff to require generation owners to provide notice in accordance with the revisions to Schedule 2 in addition to the other notice requirements in Part V. PJM further proposes ministerial revisions to Schedule 2. We find that these proposed revisions to the PJM Tariff are just and reasonable because they require a reactive power supplier to provide sufficient opportunity for the Commission to review the impact of an upcoming deactivation or transfer on the underlying basis for the applicable reactive power revenue requirement.

23. While we find PJM's proposed tariff revisions to be just and reasonable, and to address the concerns in the Order to Show Cause generally, we will require PJM to submit a further compliance filing to specify that the following information be included in any informational filing: (1) a list of all of the resources covered by the reactive power tariff from the date the revenue requirement was first established until the date of the informational filing; (2) the type (i.e., fuel type and prime mover) of each resource; (3) the actual (site-rated) megavolt-ampere reactive (MVAR) capability, megavolt-ampere (MVA) capability, and megawatt (MW) capability of each resource, as supported

⁵² 18 C.F.R. § 385.214 (2014).

⁵³ Order to Show Cause, 149 FERC ¶ 61,132 at P 9.

⁵⁴ PJM Transmittal Letter at 6.

by test data; (4) the nameplate MVAR rating, nameplate MVA rating, nameplate MW rating, and nameplate power factor for each resource; and (5) the acquisition date, deactivation date, and transfer date of each resource, as applicable. This information is necessary to be able to determine how a reactive power supplier's capability has changed, if at all, since the Commission approved its reactive power tariff.

24. While Dominion argues that requiring reactive power suppliers to submit cost-of-service rate cases for every deactivation or plant addition is unduly burdensome,⁵⁵ we note that the information in the above list should be readily available to resource owners and that the information requested is limited to specific points of data (i.e., we are not requiring engineering studies, expert testimony, etc.). We also note that entities may propose *pro rata* reductions to the revenue requirements contained in reactive power tariffs resulting from unit deactivations or transfers. The Commission will consider such proposals where the reductions result in a just and reasonable rate.⁵⁶

25. With respect to the comments of the PSEG Companies,⁵⁷ EPSA and P3,⁵⁸ and Dominion⁵⁹ regarding possible additions of generation offsetting unit deactivations or transfers, reactive power suppliers have an opportunity to identify all new reactive power capability in an informational filing. This information may indicate, as the PSEG Companies, EPSA and P3, and Dominion suggest, that additions offset the capability lost from a unit deactivation or transfer and that the underlying basis for the applicable reactive power revenue requirement continues to exist.

26. PJM,⁶⁰ EPSA and P3,⁶¹ and the PSEG Companies⁶² all assert that neither the Commission nor PJM has the authority to compel a reactive power supplier to make a

⁵⁵ Dominion Protest at 6.

⁵⁶ *Cf., e.g., Duke Energy Conesville, LLC*, 150 FERC ¶ 61,229 (2015).

⁵⁷ PSEG Companies Protest at 3–4.

⁵⁸ EPSA and P3 Comments and Protest at 6.

⁵⁹ Dominion Protest at 6.

⁶⁰ PJM Transmittal Letter at 7–9.

⁶¹ EPSA and P3 Comments and Protest at 9–12.

⁶² PSEG Companies Protest at 3–5.

section 205 filing. While this is true,⁶³ we agree with PJM that its proposal to give reactive power suppliers the option of filing to terminate or adjust their reactive power tariffs or submit an informational filing preserves their section 205 filing rights. We disagree with the PSEG Companies that the informational filing requirement is tantamount to requiring a section 205 filing. Court and Commission precedent recognize that the Commission retains the ability to require informational filings without exceeding its authority under section 205.⁶⁴ The Commission's authority to prescribe informational filings and require informational reports, moreover, is statutory.⁶⁵ We also note that other provisions of the PJM Tariff already require utilities to make informational filings with the Commission under certain circumstances.⁶⁶

27. EPSA and P3 ask that the Commission apply PJM's proposed tariff revisions to past deactivations and transfers, such that reactive power suppliers that have deactivated or transferred a unit prior to the effective date must submit one of the two filing options no more than 180 days after the later of: (1) the date of the Commission's order accepting PJM's proposal; or (2) the effective date of the proposal.⁶⁷ We clarify that PJM's proposed tariff revisions are effective as of the date of this order, and apply only to those unit deactivations or transfers occurring as of, and after, the date of this order. For those unit deactivations or transfers that will occur less than 90 days from the date of this order, we will require PJM to include in its compliance filing a transition mechanism. We note that certain reactive suppliers may have continued to receive payments for reactive power service for units which were no longer capable of providing that service,

⁶³ See *Atl. City Elec. Co.*, 295 F.3d at 10–11; *Mass. Dep't of Pub. Utils.*, 729 F.2d at 888.

⁶⁴ See *Interstate Natural Gas Ass'n of Am. v. FERC*, 285 F.3d 18, 38 (D.C. Cir. 2002); *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,037, at P 12 (2008); *Kinder Morgan Interstate Gas Transmission, L.L.C.*, 134 FERC ¶ 61,061, at PP 21–35 (2011).

This requirement to make such informational filings in the future is being spelled out in the tariff, so there can be no doubt that a party providing reactive power service will know that, in providing such service, it will face an obligation in the future should it ever dispose of or deactivate the facilities providing such service and that were the basis of the rate for such service.

⁶⁵ See 16 U.S.C. §§ 825c, 825f(a), 825h (2012).

⁶⁶ See, e.g., PJM, Intra-PJM Tariffs, OATT, § 116 (0.0.0); PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (c)(7) (5.2.0).

⁶⁷ EPSA and P3 Comments and Protest at 12–13.

and that we previously referred this concern to the Commission's Office of Enforcement for further examination and inquiry as may be appropriate.⁶⁸

28. EPSA and P3 also ask that PJM's proposed tariff revisions not apply to unit transfers because: (1) this may create unnecessary obstacles to unit transfers, or otherwise delay them; (2) the PJM Tariff already allows for parties to reallocate reactive power revenue in connection with sales; and (3) transfers do not present an over-recovery issue.⁶⁹ We disagree and find that applying the proposed tariff revisions to transfers is a necessary element of PJM's proposal. When a reactive power supplier transfers a unit, absent a filing, it may continue to receive reactive power capability payments for that unit under its reactive power tariff at the same time that the new unit owner seeks to recover its costs of providing reactive power capability for the same unit. Therefore, requiring reactive power suppliers to make filings regarding unit transfers ensures transparency of reactive power capability payments for the transferred unit and that the rates charged to customers for reactive power capability remain just and reasonable.

29. The Market Monitor argues that PJM should use its authority over its market rules for billing and settlement to only pay for reactive power capability on a unit-specific basis, rather than allowing fleet-wide rates, and only when units are capable of providing reactive power.⁷⁰ The Market Monitor further asserts that multiple reactive power suppliers serving the same franchise service area under separately-filed rates is inconsistent with cost-of-service ratemaking principles.⁷¹ We find that PJM's proposed tariff revisions are just and reasonable and address the concerns the Commission identified in the Order to Show Cause with PJM continuing to pay for reactive power capability from deactivated or transferred units. We therefore decline, in this proceeding, to require PJM to use its billing and settlement authority to change the way it compensates units for reactive power. We also find that the Market Monitor's concerns

⁶⁸ See Order to Show Cause, 149 FERC ¶ 61,132 at P 10; see also *Duke Energy Conesville, LLC*, 150 FERC ¶ 61,229 at P 8 (referring to the Office of Enforcement the matter of the resource owner possibly receiving payments for reactive power service after its units had retired and thus were no longer capable of providing that service); *Desoto County Generating Co., LLC*, 151 FERC ¶ 61,009, at P 14 (2015) (referring to the Office of Enforcement the matter of the resource owner possibly receiving payments for reactive power service while its facility was incapable of providing that service).

⁶⁹ EPSA and P3 Comments and Protest at 13–15.

⁷⁰ Market Monitor Comments at 4–6.

⁷¹ *Id.* at 5.

about multiple parties serving the same franchise service area under separately-filed rates are outside the scope of this proceeding.

The Commission orders:

(A) PJM's proposed tariff revisions are hereby conditionally accepted, effective as of the date of this order, subject to a further compliance filing, as discussed in the body of this order.

(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)

Kimberly D. Bose,
Secretary.