

162 FERC ¶ 61,047
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Neil Chatterjee,
and Richard Glick.

PJM Interconnection, L.L.C. Docket Nos. ER15-623-010

PJM Interconnection, L.L.C. EL15-29-006

Essential Power Rock Springs, LLC, Essential Power
OPP, LLC, and Lakewood Cogeneration, L.P. v. PJM
Interconnection, L.L.C. EL15-41-002

ORDER ON REHEARING

(Issued January 18, 2018)

1. The Illinois Municipal Electric Agency (IMEA) seeks rehearing of an order on compliance issued May 10, 2016 (May 2016 Order), addressing the establishment, by PJM Interconnection, L.L.C. (PJM), of its Capacity Performance Resource protocols.¹ As explained more fully below, the May 2016 Order rejected PJM's July 9, 2015 compliance proposal regarding the scope of a proposed Non-Performance Charge exemption but accepted another aspect of PJM's compliance proposal addressing PJM's recognition of operating parameter constraints. IMEA challenges both findings. For the reasons discussed below, we deny rehearing.

I. Background

2. Because the issues presented by IMEA's rehearing request turn, as a threshold matter, on the Commission's initial order addressing PJM's Capacity Performance proposal, we begin by briefly summarizing that order. First, the June 2015 Order generally accepted PJM's proposed Non-Performance Charges under section 205 of the

¹ *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,157 (2016). In its initial order, the Commission conditionally accepted PJM's filing. See *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (2015) (June 2015 Order), *aff'd sub nom., Advanced Energy Management Alliance v. FERC*, 860 F.3d 656 (D.C. Cir. 2017).

Federal Power Act (FPA),² including a proposed exemption for resources that are not scheduled to operate, or scheduled down, for reasons *other* than those specified by the seller as a resource operating parameter limitation.³ However, the Commission found that the provision contained a minor ambiguity based on PJM's stated intent. The tariff language indicated that a resource would not be subject to penalties if it were not scheduled, except that it would be subject to such penalties if it were not scheduled due to "limitations specified by such seller in the resource operating parameters."⁴ In light of PJM's transmittal letter, the Commission interpreted this language as providing that "if PJM does not schedule a resource during a Performance Assessment Hour due to any operating parameter limitation specified in a market seller's energy offer, the resource will be subject to Non-Performance Charges."⁵ PJM did not dispute this interpretation and submitted a compliance filing purporting to implement it.

3. Second, PJM had filed under section 206 of the FPA⁶ to make revisions to its energy offer provisions to make those provisions consistent with its FPA section 205 proposals. The Commission agreed with PJM that its prior energy provisions were unjust and unreasonable, but found PJM's proposed revision to its tariff regarding parameter limitations was not just and reasonable. PJM proposed to limit the grounds on which a resource can condition its day-ahead energy offer, in the form of a parameter limitation. Under PJM's proposal, parameter limitations would have been determined based only on a resource's operating design characteristics. The June 2015 Order found, however, that in addition to limitations of this sort, additional constraints on a resource's ability to operate, including contractual limitations, must be considered. Accordingly, the June 2015 Order required PJM to revise its proposal to provide, among other things, that a resource's operating parameters will be determined "on the basis of its operating design characteristics and other constraints."⁷

4. On July 9, 2015, PJM submitted its compliance filing regarding each of these issues.

² 16 U.S.C. § 824d (2012).

³ June 2015 Order, 151 FERC ¶ 61,208 at P 167.

⁴ PJM Open Access Transmission Tariff (OATT) at Attachment DD, section 10A(d), 0.0.0.

⁵ June 2015 Order, 151 FERC ¶ 61,208 at P 170-171.

⁶ 16 U.S.C. § 824e (2012).

⁷ June 2015 Order, 151 FERC ¶ 61,208 at P 437.

II. Compliance Order

5. In the May 2016 Order, the Commission addressed PJM's compliance filing. First, the May 2016 Order addressed PJM's proposal to clarify the reach of its Non-Performance Charge exemption, specifically, its proposal to revise section 10A(d) of Attachment DD of the PJM OATT, by adding the following italicized language – allowing for an exemption if the resource is not scheduled to operate:

[b]ased on a determination by [PJM] that such scheduling action was appropriate to the security constrained economic dispatch of the PJM Region. *Subject to the foregoing*, such resource shall be considered in the calculation of a Performance Shortfall if it would otherwise have been scheduled by [PJM] to perform, but was not scheduled to operate, or was scheduled down, solely due to: (i) any operating parameter limitations submitted in the resource's offer.⁸

6. The May 2016 Order found that section 10A(d), as revised, remained ambiguous and required clarification, given that a resource that might not be scheduled based on its pre-determined parameter limited schedule could continue to be exempt. The Commission added that a “literal reading of the phrase ‘subject to the foregoing’ suggests that the provision exempting resources from the Non-Performance Charge, if the resource is not scheduled, or scheduled down, through PJM's security-constrained economic dispatch, governs.”⁹ The Commission found that, under that interpretation, a resource's undelivered megawatts may not be counted as a performance shortfall, even if a resource would otherwise be needed but for an inflexible operating parameter.¹⁰ PJM did not contest the Commission's interpretation and submitted a filing proposing modifications, which was accepted.¹¹

⁸ PJM OATT at Attachment DD, section 10A(d), 0.1.0 (emphasis added).

⁹ May 2016 Order, 155 FERC ¶ 61,157 at P 300.

¹⁰ *Id.*

¹¹ *PJM Interconnection, L.L.C.*, Docket No. ER15-623-009 (Oct. 11, 2017) (delegated letter order).

7. The May 2016 Order also addressed PJM's proposal to determine a resource's operating parameters based, among other things, on that resource's "operating design characteristics and other constraints."¹² The Commission found that, under PJM's proposal, resources will be afforded the opportunity to justify their specific operation parameter limitations as affected by their actual constraints.¹³ The Commission also addressed IMEA's argument that PJM's compliance proposal failed to require PJM to provide a reason for denying the request or the basis on which PJM's determination was made. The Commission found that PJM's commitment to "notify the Capacity Market Seller in writing...whether the request is approved or denied," will provide sufficient detail regarding this determination.¹⁴

III. Request for Rehearing

8. As noted above, IMEA seeks rehearing of the May 2016 Order's compliance rulings addressing: (i) PJM's proposed Non-Performance Charge exemption; and (ii) PJM's recognition of operating parameter constraints. PJM and Monitoring Analytics, LLC, acting as PJM's independent market monitor (Market Monitor), submitted answers to IMEA's rehearing request. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2017), prohibits an answer to a request for rehearing. Accordingly, we reject the answers submitted by PJM and the Market Monitor.

IV. Discussion

A. Non-Performance Charge Exemption

9. For the reasons discussed below, we deny IMEA's request for rehearing of the finding in the May 2016 Order that PJM's compliance proposal failed to satisfy the

¹² PJM Operating Agreement at Schedule 1, section 6.6(b), 3.1.0. PJM further proposed that these operational limitations "shall be (a) physical operational limitations based on the operating design characteristics of the resource, or (b) other actual physical constraints, including those based on contractual limits, that are not based on the characteristics of the resource." *Id.* In addition, PJM proposed that these unit-specific values apply, subject to an exceptions allowance for operating limitations that prevent the resource from meeting PJM's minimum parameters. *Id.*

¹³ May 2016 Order, 155 FERC ¶ 61,157 at P 355.

¹⁴ May 2016 Order, 155 FERC ¶ 61,157 at P 356. (citing PJM Operating Agreement at Schedule 1, section 6.6(b), 3.1.0).

requirements of the June 2015 Order with regard to a Non-Performance Charge exemption.

1. Arguments on Rehearing

10. IMEA argues that, in responding to the June 2015 Order, PJM appropriately proposed that its Non-Performance Charge exemption apply if the relevant resource is not scheduled by PJM, or is online but scheduled down, subject to a determination by PJM that such an action is appropriate to the security-constrained economic dispatch of the PJM region. IMEA argues that PJM's proposal reasonably recognizes the impact of PJM scheduling decisions on the ability of generators to respond to an Emergency Action without being subjected to a Non-Performance Charge.

11. IMEA adds that the effect of the May 2016 Order's ruling, by contrast, will be to unduly disadvantage coal-fired generation owners like IMEA who separately bid in their minimal level of output and megawatts. IMEA asserts that a generator should not be punished for managing, in a prudent and efficient manner, its physical limitations and/or PJM's dispatch needs. IMEA explains that when a coal unit submits an offer above its minimum operating level and that offer fails to clear, or is accepted by PJM but later reduced for economic dispatch, a Non-Performance Charge will apply in the event of an Emergency Action, for every megawatt under its Expected Performance level during the time it takes to ramp the unit up to its required output level. IMEA adds that the only alternative, which is equally unviable, would be to self-schedule and/or self-dispatch – an option that also carries the risk of penalties.

12. IMEA argues that in disadvantaging coal-fired units, the May 2016 Order is inconsistent with Commission precedent recognizing the longer ramp-time needs associated with such units.¹⁵ In addition, IMEA argues that the Commission's ruling is inconsistent with PJM's underlying Capacity Performance construct, which is based on long-term reliability, as tied to incentives for capacity sellers to invest in and maintain their resources. Finally, IMEA asserts that these incentives will not be furthered by a provision that penalizes a coal-fired unit, due to the inescapable reality of its design or operation.

2. Commission Determination

13. We deny rehearing on this issue as IMEA effectively seeks rehearing of the initial June 2015 Order, not the May 2016 Order on PJM's filing in response to the June 2015 Order. IMEA does not challenge the May 2016 Order's determination that PJM's proposed inclusion of the phrase "subject to the foregoing" was ambiguous and might

¹⁵ IMEA Request for Rehearing at 10 (citing *Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,198, at P 25 (2008)).

permit resources to escape performance charges if they are not scheduled due to an inflexible operating parameter. Rather, IMEA disputes the Commission's underlying determination in the June 2015 Order, contending that PJM's original filing and compliance proposal were just and reasonable, and should have been accepted. IMEA argues PJM's proposal recognized the operating characteristics of generators, particularly coal-fired units that may be unable to quickly respond to an Emergency Action due to parameter limitations, and, therefore, appropriately exempted such generators from Non-Performance Charges when they are unable to perform after not being scheduled. In effect, then, IMEA challenges the Commission's reading of the provision in the June 2015 Order, that PJM's Non-Performance Charge would apply (and no exemption will be allowed) if PJM has not scheduled a resource during a Performance Assessment Hour due to any operating parameter limitation specified in the market seller's energy offer.¹⁶

14. The Commission fully addressed rehearing requests on this issue in the May 2016 Order.¹⁷ Having failed to seek rehearing of the June 2015 Order on this issue, IMEA may not raise these issues on rehearing of the May 2016 Order addressing PJM's compliance filing. Accordingly, we dismiss IMEA's argument as an untimely request for rehearing of the June 2015 Order.

B. Operating Parameter Constraints

15. For the reasons discussed below, we deny IMEA's request for rehearing regarding the May 2016 Order's finding that PJM's compliance proposal satisfied the requirements of the June 2015 Order regarding Operating Parameter Constraints.

1. Arguments on Rehearing

16. IMEA argues that PJM's compliance proposal, in response to the June 2015 Order's ruling on operating parameter constraints, failed to provide the specificity or transparency required regarding PJM's determination of a resource's actual parameter limits, as caused by legitimate, non-physical constraints. IMEA argues that, given PJM's Non-Performance Charge exemption (as summarized above), the procedures for determining unit-specific operating parameter limits take on even greater significance for entities such as IMEA. IMEA asserts that, under these circumstances, it is critical that PJM be required to explicitly document the specific operating limitations it will impose on a given resource and the reasons justifying those limitations.

¹⁶ June 2015 Order, 151 FERC ¶ 61,208 at P 171.

¹⁷ May 2016 Order, 155 FERC ¶ 61,157 at PP 103-112.

2. Commission Determination

17. We reject IMEA's argument that PJM's compliance proposal, as to operating parameter constraints, failed to satisfy the requirements of the June 2015 Order. As the May 2016 Order expressly found, the relevant provision proposed by PJM complies with the June 2015 Order's directive by incorporating timelines and details specifying how PJM will implement its unit-specific parameter limited schedule review process.¹⁸

18. IMEA argues on rehearing, as it did in its protest of PJM's compliance filing, that PJM's proposed revisions, to be compliant, require additional case-specific clarifications, including an obligation that PJM specify the grounds on which it has denied a request. The May 2016 Order found, however, that PJM's proposal contained adequate procedures for evaluating parameter limitations, citing provisions of PJM's tariff allowing for an annual review of unit-specific parameter limitations and a case-by-case procedure through which a resource can justify operating outside of its unit-specific parameters for purposes of receiving make-whole payments.¹⁹ The May 2016 Order further interpreted PJM's obligation to notify a seller in writing regarding PJM's determination as a commitment to provide sufficient detail regarding its determination.²⁰ In renewing its protest arguments on rehearing, IMEA fails to cite any additional grounds supporting reconsideration of these findings. Accordingly, we deny IMEA's rehearing request on this issue.

The Commission orders:

IMEA's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission. Chairman McIntyre and Commissioner Powelson are
are not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁸ *Id.* P 355.

¹⁹ *Id.* (citing PJM Operating Agreement at Schedule 1, sections 6.6(b), 3.1.0, and 3.2.3(e), 25.1.0).

²⁰ *Id.* P 356.