

154 FERC ¶ 61,216
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Big Sandy Peaker Plant, LLC
Wolf Hills Energy, LLC
Crete Energy Venture, LLC
Lincoln Generating Facility, LLC
Rolling Hills Generating, L.L.C.

Docket No. EL16-9-000

v.

PJM Interconnection, L.L.C.

ORDER DENYING COMPLAINT

(Issued March 17, 2016)

1. On November 3, 2015, Tenaska Fund I Entities and Tenaska Fund II Entities (collectively, Tenaska)¹ filed a complaint against PJM Interconnection, L.L.C. (PJM), under sections 206 and 306 of the Federal Power Act (FPA),² alleging that, in October 2014, PJM inappropriately found that Tenaska's combustion turbine (CT) generating facilities were not eligible to provide Tier 1 Synchronized Reserve effective beginning October 1, 2013, and made billing adjustments to rescind the payments previously made

¹ Tenaska Fund I Entities include Big Sandy Peaker Plant, LLC and Wolf Hills Energy, LLC. Tenaska Fund II Entities include Crete Energy Venture, LLC, Lincoln Generating Facility, LLC, and Rolling Hills Generating, L.L.C. Tenaska Fund I Entities and Tenaska Fund II Entities own or lease and operate generating facilities in the PJM market. Specifically, they operate natural gas-fired combustion turbine generating facilities, ranging from approximately 250 MW to 825 MW, in Illinois, Ohio, Virginia, and West Virginia.

² 16 U.S.C. §§ 824e, 825e (2012).

by PJM to Tenaska for Tier 1 Synchronized Reserve during the period from October 1, 2013 to July 1, 2014 (Complaint). Tenaska alleges that PJM's actions violate its Open Access Transmission Tariff (Tariff), the filed rate doctrine, and the rule against retroactive ratemaking, and were unjust, unreasonable and unduly discriminatory under the FPA. For the reasons discussed below, we deny Tenaska's Complaint.

I. Background

A. PJM Reserves

2. Reserves include additional generating capacity that PJM schedules above its expected load on the transmission system so that this generating capacity is available to produce energy and thereby help maintain system reliability. PJM utilizes several different types of reserves, which are co-optimized with energy, to meet its Primary and Synchronized Reserve Requirements. The PJM Tariff requires PJM to obtain an amount of Primary and Synchronized Reserve for each Reserve Zone and Reserve Sub-Zone in the PJM region, as specified in the PJM Manuals.³

3. Synchronized Reserve is electrically connected to the PJM system, and consists of both Tier 1 Synchronized Reserve and Tier 2 Synchronized Reserve. Tier 1 Synchronized Reserve can be provided from a generating resource that is only partially loaded and able to provide energy within 10 minutes to help maintain system reliability. Tier 2 Synchronized Reserve can be provided from a generating resource that is already operating, but reduces its energy output from its economic dispatch in order to be available to provide reserves within 10 minutes. Non-Synchronized Reserve is not electrically connected to the PJM system, but can respond within 10 minutes to help maintain system reliability.

4. This case concerns eligibility for compensation for Tier 1 Synchronized Reserve in a very limited circumstance. In particular, the PJM Tariff provides that a generating resource may be compensated for Tier 1 Synchronized Reserve when there is no

³ PJM Tariff, Attachment K – Appendix §1.7.19A(b)). PJM Interconnection, L.L.C., FERC FPA Electric Tariff, Intra-PJM Tariffs, [OATT ATT K APPX Sec 1.7, OATT Attachment K Appendix Sec 1.7 General, 15.0.0](#). PJM states that it typically procures a total of 2,100 MW of Primary Reserve, with 1,400 MW of that being Synchronized Reserve. PJM Answer at 4 n.11.

Synchronized Reserve Event⁴ on the PJM system, and the Non-Synchronized Reserve Market Clearing Price is greater than zero.⁵

B. Facts Relevant to Complaint

5. In 2012, the Commission reviewed and accepted the tariff provisions at issue in the Complaint.⁶ In particular, PJM submitted a compliance filing and proposed tariff changes⁷ addressing shortage pricing requirements established by the Commission in Order No. 719.⁸ The Commission accepted the tariff provisions, subject to certain

⁴ Under section 1.3.33B.02 of the PJM Tariff, a Synchronized Reserve Event is defined as a request from PJM to generation resources and/or Demand Resources able, assigned or self-scheduled to provide Synchronized Reserve in one or more specified Reserve Zones or Reserve Sub-zones, within ten minutes, to increase the energy output or reduce load by the amount of assigned or self-scheduled Synchronized Reserve capability. PJM Interconnection, L.L.C., FERC FPA Electric Tariff, Intra-PJM Tariffs, [OATT ATT K APPX Sec 1.3, OATT Attachment K Appendix Sec 1.3 Definitions, 22.1.1](#)

⁵ PJM Tariff, Attachment K – Appendix, § 3.2.3A(b)(i)). PJM Interconnection, L.L.C., FERC FPA Electric Tariff, Intra-PJM Tariffs, [OATT ATT K Appx Sec 3.2, OATT Attachment K Appendix Sec 3.2 - Market Buyers, 30.1.1](#) The PJM Tariff does not compensate a generating resource for Tier 1 Synchronized Reserve when there is no Synchronized Event on the PJM system, and the Non-Synchronized Reserve Market Clearing Price is zero. *Id.* The PJM Tariff also compensates a generating resource for Tier 1 Synchronized Reserve when it actually provides energy in response to PJM's dispatch instructions during a Synchronized Reserve Event. *Id.*

⁶ *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,057 (2012).

⁷ PJM submitted its Order No. 719 compliance filing on June 18, 2010 in Docket No. ER09-1063-004.

⁸ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 Fed. Reg. 64,100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281, at P 165, *et seq.* (2008), *order on reh'g*, Order No. 719-A, FERC Stats. & Reg. ¶ 31,292 (2009), FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

conditions, including the requirement that PJM add a must-offer requirement applicable to PJM's Synchronized and Non-Synchronized Reserve markets.⁹

6. At a January 5, 2015 meeting of the Market Implementation Committee, PJM provided stakeholders with educational documents explaining how Tier 1 Synchronized Reserve is compensated, including how PJM deselects certain types of generating units, such as CT generating units, from Tier 1 Synchronized Reserve.¹⁰ In discussing the Synchronized Reserve crediting process, PJM stated that, under PJM Manual 11, "Battery, Hydro, Nuclear, Solar, [and] Wind" resources are "automatically deselected from Tier 1 [Synchronized Reserve] . . .", "[c]ertain dispatch log reasons will automatically deselect a resource from Tier 1 [Synchronized Reserve][,]" and the "System Operator may manually deselect a resource from Tier 1 [Synchronized Reserve] for a period of time . . ."¹¹ PJM also indicated that, effective July 1, 2014, it "began using exceptions to Tier 1 [Synchronized Reserve] resource eligibility as defined by [PJM] Market Operations . . ."¹²

7. On March 23, 2015, PJM staff made another presentation to stakeholders concerning billing adjustments for compensation that had previously been paid for Tier 1 Synchronized Reserve. PJM's presentation indicated that after "the poor spin event response on September 10, 2013, PJM increased its scrutiny on and review of Tier 1 Synchronized Reserve estimates which are the input to the associated compensation calculations in the Market Settlements system."¹³ PJM stated that it had "[u]dated which estimates are used in the [PJM] Market Settlements system for Tier 1 Synchronized Reserve compensation effective July 1, 2014" and that it intended "to

⁹ 139 FERC ¶ 61,057 at P 205.

¹⁰ PJM, *Tier 1 Compensation Education*, at 2 (Jan. 5, 2015) (the "Tier 1 Compensation Presentation"), which is available at <http://www.pjm.com/~media/committeesgroups/committees/mic/20150105-tierone/20150105-tier-1-compensation-education-session.ashx>.

¹¹ *Id.* at 19.

¹² *Id.* at 37.

¹³ Adam Keech, Senior Director, Market Operations, *Tier 1 Synchronized Reserves – Billing Adjustment* (Market Implementation Committee Webinar, Mar. 23, 2015) (the "March 23 Presentation") at 4, available at: <https://www.pjm.com/~media/committees-groups/committees/mc/20150323-webinar/20150323-item-05-tier-1-billing-adjustment.ashx>.

process billing adjustments for the period October 1, 2013 - July 1, 2014 for resources that were compensated for Tier 1 Synchronized Reserves on a less accurate basis during that period than the basis utilized from July 1, 2014 prospectively.”¹⁴

II. Complaint

A. Deselection of the Tenaska CT Units

8. Tenaska asserts that, in early June 2015, it received preliminary invoices showing billing adjustments that would affect the entirety of their payments for Tier 1 Synchronized Reserve for the period October 1, 2013 to July 1, 2014.¹⁵ Tenaska states that, as a result of the deselection of all Tenaska’s CT units, PJM made negative adjustments to Tenaska’s invoices for Tier 1 Synchronized Reserve for the period from October 1, 2013 to July 1, 2014, totaling \$1,133,139 for the Tenaska Fund I Entities, and \$734,284 for the Tenaska Fund II Entities.¹⁶

9. Tenaska also states that the Tenaska CT units remained deselected from July 1, 2014 until Tenaska learned of the categorical deselection of CTs.¹⁷ Tenaska states that on June 26, 2015, it requested from PJM exceptions from default deselection for each of its CT units.¹⁸ On the same day, Tenaska states that PJM granted Tenaska exceptions from deselection for each of its CT units.¹⁹ Tenaska also states that, beginning in

¹⁴ *Id.* PJM stated that the “[t]otal value of the potential adjustments could be \$60-\$75 million, based on current estimates.” PJM’s March 23 Presentation at 5.

¹⁵ Tenaska Complaint, Behrens Affidavit at ¶ 13.

¹⁶ *Id.*

¹⁷ *Id.* at 11-12. Tenaska states that, despite its CTs being deselected, Tenaska Fund I Entities received a small amount of Tier 1 Synchronized Reserve compensation when certain of their CTs actually responded during Synchronized Reserve Events during these months. *Id.* at 12.

¹⁸ Tenaska Complaint, Behrens Affidavit at ¶ 13.

¹⁹ Tenaska Complaint, Exhibit JB-7 (July 6, 2015 email from Tier1SynchConsideration@pjm.com to Jason Behrens).

July 2015, PJM resumed providing compensation to Tenaska's CT units for Tier 1 Synchronized Reserve.²⁰

B. Tariff Authority

10. Tenaska's Complaint alleges that PJM violated the filed rate doctrine²¹ by deselecting Tenaska's CT units and making billing adjustments accordingly, for the period from October 1, 2013 to July 1, 2014. Tenaska states that PJM lacked the tariff authority to deselect classes of generating resources, including combustion turbine generating resources, from providing Tier 1 Synchronized Reserve. In support, Tenaska points to section 1.7.19A(b) of the PJM Tariff – stating that “[a]ll on-line nonemergency generation resources providing energy are deemed to be available to provide Tier 1 Synchronized Reserve” – as a bar prohibiting PJM from deselecting a class of generating resources from Tier 1 Synchronized Reserve.²²

11. Tenaska asserts that PJM has not identified, and cannot identify, any provision in the PJM Tariff that gives it the authority to unilaterally bar an entire class of generating resources from Tier 1 Synchronized Reserve.²³ Tenaska states that, in its communications with PJM, PJM pointed to a provision added to PJM Manual 11 on October 31, 2014 as the source of its authority.²⁴ The provision, which regards practices

²⁰ Tenaska Complaint, Behrens Affidavit at ¶ 24.

²¹ The filed rate doctrine “forbids a regulated entity [from] charg[ing] rates for its services other than those properly filed with the appropriate federal regulatory authority[.]” *Arkansas La. Gas Co. v. Hall*, 453 U.S. 571, at 577 (1981) (citation omitted).

²² Tenaska Complaint at 15 (citing PJM Tariff, Attachment K – Appendix §1.7.19A(b)). Also, in the Background section of Tenaska's Complaint, Tenaska points to additional PJM Tariff provisions concerning Tier 1 Synchronized Reserve, including sections 1.7.19A, 1.3.33B.01 and Schedule 5 of the PJM Tariff. *Id.* at 6-7.

²³ *Id.* at 15.

²⁴ *Id.*

concerning the deselection²⁵ of generating resources from Tier 1 Synchronized Reserve, and an exemption process from deselection, states:

Tier 1 [Synchronized Reserve] estimates for . . . resource types that cannot reliably provide Synchronized Reserve service shall be set to zero MW during the market clearing process. Such resource types include, but are not limited to: Nuclear, Wind, Solar, Batteries, and Hydro units. Owners of any specific resource(s) or [sic] these resource types may request an exception from the default zero MW estimated value of their resource(s) if they notify PJM that the resource(s) are able to reliably provide Tier 1 Synchronized Reserve. PJM will only grant such requested exceptions on a prospective basis. A resource will only be credited for Tier 1 Synchronized Reserve if the resource was considered during the market clearing process, unless such resource actually provides Tier 1 Synchronized Reserve during a Synchronized Reserve Event.²⁶

12. Tenaska contends that PJM has made no attempt to reconcile that provision in PJM Manual 11 with section 1.7.19A(b) of the PJM Tariff, which Tenaska interprets as prohibiting deselection. Tenaska states that, under Commission policy, a regional transmission organization (RTO) may not adopt rules in their unfiled tariffs that are inconsistent with the rules set forth in their filed tariffs.²⁷

13. Tenaska also asserts that PJM's discretion under section 3.2.3A(b)(i) of the PJM Tariff, pursuant to which PJM determines the amount of Tier 1 Synchronized Reserve a generating resource is providing, does not authorize PJM to adopt a blanket rule that CT

²⁵ The deselection of a generating resource from Tier 1 Synchronized Reserve Resources means that the generating resource has a default zero MW estimated value for the resource in PJM's market clearing process for Tier 1 Synchronized Reserve.

²⁶ See Tenaska Complaint at 8 (citing *PJM Manual 11* at 65). For the October 30, 2014 version of PJM Manual 11, see <http://www.pjm.com/~media/documents/manuals/archive/m11/m11v69-energy-and-ancillary-services-market-operations-10-30-2014.ashx>, which also states that: "For further information on the exception process, please visit: <http://www.pjm.com/markets-and-operations/ancillary-services/synchronized-service.aspx>."

²⁷ Tenaska Complaint at 18 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,212, at P 90 (2007) (explaining that the tariff provision "takes precedence over the Business Practice Manuals, and not the other way around" and that "we expect the Midwest ISO to rely on the filed rate and to ensure that its Business Practice Manuals are consistent with the [tariff].")).

generating units, as a class, cannot provide Tier 1 Synchronized Reserve, because this would negate the statement in section 1.17.19A(a) of the PJM Tariff that “[a]ll on-line non-emergency generation resources providing energy are deemed available to provide Tier 1 Synchronized Reserve.”²⁸

14. Tenaska asserts that PJM and the Independent Market Monitor for PJM (IMM) have acknowledged that the language in section 3.2.3 of the PJM Tariff is not clear.²⁹ Tenaska asserts that the October 30, 2014 modification to PJM Manual 11 was adopted in connection with broader discussions about compensation for Tier 1 Synchronized Reserve as a result of concerns expressed by the IMM regarding Tier 1 Synchronized Reserve compensation.³⁰ In particular, Tenaska states that the IMM was concerned that section 3.2.3A(b)(i) of the PJM Tariff was not clear concerning what “the hourly integrated amount” means when a resource is selected for Tier 1 Synchronized Reserve.³¹ Tenaska also asserts that in response to the IMM’s concerns, PJM staff agreed, at a January 5, 2015 meeting of the Market Implementation Committee, that the quantity of Tier 1 Synchronized Reserve when a resource is selected for Tier 1 Synchronized Reserve is unclear.³²

15. Tenaska further states that during the relevant period from October 1, 2013 to July 1, 2014, PJM’s Manual 11 provided for payment to all Tier 1 [Synchronized Reserve] that is on line, following economic dispatch, and capable of increasing its output within

²⁸ *Id.* at 16-17. Section 3.2.3A(b)(i) of the PJM Tariff states, in relevant part, that: “During such hours, Tier 1 Synchronized Reserve resources shall be compensated at the Synchronized Reserve Market Clearing Price for the applicable Reserve Zone or Reserve Sub-zone for the lesser of the hourly integrated *amount of Tier 1 Synchronized Reserve attributed to the resource as calculated by the Office of the Interconnection...*, or the actual amount of Tier 1 Synchronized Reserve provided should a Synchronized Reserve Event occur.” (Emphasis added.)

²⁹ *Id.* at 8.

³⁰ *Id.* at 9 (citing Monitoring Analytics, LLC, *Problem Statement: Payments to tier 1 synchronized reserves when the non-synchronized reserve price is greater than zero* (Jan. 1, 2015) (the “IMM Problem Statement”), <http://www.pjm.com/~media/committees-groups/committees/mic/20150105-tierone/20150105-tier-1-problem-statement.ashx>)).

³¹ *Id.*

³² *Id.* at 10.

ten (10) minutes following a call for a Synchronized Reserve Event.”³³ Tenaska maintains that PJM did not implement any changes in PJM Manual 11 until October 30, 2014.

16. Tenaska states that PJM’s March 23, 2015 presentation to stakeholders characterized the billing adjustments as updates to the estimates that PJM Market Settlement used for Tier 1 compensation.³⁴ Tenaska asserts that PJM’s authority to determine the amount of Tier 1 Synchronized Reserve, arguably, may include updating estimates when it, for example, identifies mathematical errors or when more accurate data is available, and might even support billing adjustments based on actual performance data. Tenaska asserts, however, that whatever discretion PJM may have to determine the amount of Tier 1 Synchronized Reserve, under section 3.2.3A(b)(i) of the PJM Tariff, does not justify PJM’s arbitrary and unsupported assumption that no resource in any of the affected classes of generating resources is capable of providing Tier 1 Synchronized Reserve.³⁵ Moreover, Tenaska asserts that such a broad reading of section 3.2.3A(b)(i) of the PJM Tariff would be at odds with section 1.7.19A(b) of the PJM Tariff.³⁶

17. Tenaska also asserts that the fact that PJM almost immediately approved Tenaska’s requests for exemptions for its CT generating units demonstrates that PJM’s deselection of CT generating units as a class was unsupported and incorrect in a number of cases.³⁷ Furthermore, Tenaska asserts that its affidavit from Mr. Jason Behrens demonstrates that Tenaska’s CT units met the requirements for Tier 1 Synchronized Reserve for the period from October 1, 2013 to July 1, 2014 during each and every hour that PJM originally compensated Tenaska for this service.³⁸ Tenaska argues that the only

³³ *Id.* at 7-8 (citing *PJM Manual 11: Energy & Ancillary Services Market Operations*, at 63-64 (Revision 77, Aug. 27, 2015), available at <http://www.pjm.com/~media/documents/manuals/m11.ashx>).

³⁴ *Id.* at 16.

³⁵ *Id.* at 16 (citing, *e.g.*, *Independent Energy Producers Ass’n v. California Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,276, at P 46 (2007) (explaining that an ISO “must exercise any discretion under its tariff in a reasonable manner”)).

³⁶ *Id.* at 16-17 (citing, *e.g.*, *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, at 63 (1995) (stating “a document should be read to give effect to all its provisions and to render them consistent with each other[]”)).

³⁷ *Id.* at 16-17.

³⁸ *Id.* at 17; Behrens Affidavit at PP 16-20.

difference between the Tenaska's CTs and the resources that were selected to provide Tier 1 Synchronized Reserves is that Tenaska's units are CTs, and Tenaska argues that this fact is not a legitimate basis for the disparate treatment of the two groups.³⁹

18. Tenaska asserts that, if PJM wanted the authority to make entire classes of resources ineligible to provide Tier 1 Synchronized Reserve, it was required to make a FPA section 205⁴⁰ filing with the Commission, rather than affecting the change through modifications to PJM Manual 11. Tenaska argues that the courts and the Commission have recognized that FPA section 205 imposes a filing requirement consistent with the "rule of reason," and a filing is required for "practices that affect rates and service *significantly*, that are realistically *susceptible* of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous."⁴¹ In addition, Tenaska argues that, consistent with the "rule of reason," the Commission has held that an RTO must "incorporate the criteria and process" for determinations of this sort in the Tariff, and also made clear that "[t]hese provisions also need to specify a process for notifying market participants potentially impacted by [the] determination"⁴² Tenaska argues that PJM failed to make the necessary FPA section 205 filing and to notify CT unit owners that their units were automatically deselected.

C. Retroactive Deselections

19. Tenaska further asserts that, assuming *arguendo* that PJM has the authority and discretion under the PJM Tariff to deselect entire resource categories from providing Tier 1 Synchronized Reserve, it did not have the discretion, under section 3.2.3A(b)(i) of the PJM Tariff, to do so retroactively.⁴³ Tenaska asserts that it and other providers of Tier 1 Synchronized Reserve, during the period from October 1, 2013 to July 1, 2014, were paid in accordance with section 3.2.3A(b)(i) of the PJM Tariff, and whatever authority PJM may have to correct erroneous invoices does not extend to retroactively

³⁹ *Id.* at 17.

⁴⁰ 16 U.S.C. § 824d (2012).

⁴¹ Tenaska Complaint at 18 (citing *City of Cleveland v. FERC*, 773 F.2d 1368, at 1376 (D.C. Cir. 1985) (emphasis in original)).

⁴² *Id.* (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,171, at P 80 (2012) (citations omitted)).

⁴³ *Id.* at 19.

applying the new requirements in PJM Manual 11.⁴⁴ Tenaska argues that PJM's retroactive application of its new manual rule violates the filed rate doctrine and the corollary rule against retroactive ratemaking, which, Tenaska states, forbids retroactively altering a filed rate to compensate for prior over- or under-payments.⁴⁵ Tenaska asserts that PJM and the IMM have concerns about the ambiguity of the tariff provisions concerning Tier 1 Synchronized Reserve, but, even if their concerns are valid, PJM cannot rescind past payments for this service.⁴⁶

20. Tenaska acknowledges that the PJM Tariff allows it to make certain billing adjustments within a two year period.⁴⁷ Tenaska asserts, however, that the RTO is limited to resettlements "to address data input errors, or software malfunctions," and the filed rate doctrine precludes an RTO from modifying past payments based on a reinterpretation of the application of its tariff.⁴⁸ Tenaska argues that the October 30, 2014 modifications to PJM Manual 11, which allow PJM to deselect classes of resources, are a reinterpretation by PJM of its Tariff, and, therefore, PJM's billing adjustments reflecting the deselection of resources are improper.⁴⁹

21. Tenaska states that the courts and the Commission have found the filed rate doctrine not to be applicable where customers were on notice that the rates were subject to change, but that there was no notice here.⁵⁰ Tenaska argues that it was not until October 2014 that PJM actually made the modifications to PJM Manual 11 indicating that certain classes of resources had been automatically deselected, and that modification

⁴⁴ *Id.*

⁴⁵ *Id.* (citing *Exxon Mobil Corp. v. FERC*, 571 F.3d 1208, at 1211 (2008) (citing *Towns of Concord v. FERC*, 955 F.2d 67, at 71 & n.2 (D.C. Cir. 1992))).

⁴⁶ Tenaska Complaint at 19-20.

⁴⁷ *Id.* at 20 (citing PJM Tariff, Section 10.4).

⁴⁸ *Id.* at 20-21 (citing, *e.g.*, *California Indep. Sys. Operator Corp.*, 137 FERC ¶ 61,180, at PP 21, 23 and 24 (2011)).

⁴⁹ *Id.* at 21.

⁵⁰ *Id.* at 22.

did not specify that CT generating units could be deselected.⁵¹ Tenaska also asserts that PJM staff's presentation, at a January 5, 2015 meeting of the Market Implementation Committee, indicated only that Nuclear, Wind, Solar, Batteries and Hydro units are automatically deselected.⁵² Tenaska states that when it expressed concern to PJM that it received no notice of the deselection of its CT generating units, PJM responded that the issue had been addressed in the October 30, 2014 modification to PJM Manual 11.⁵³ Tenaska also asserts that PJM Manual 11 expressly states that Tier 2 Synchronized Reserve compensation is subject to refund, while there is no similar language concerning Tier 1 Synchronized Reserve compensation. Tenaska therefore asserts that it reasonably believed that its Tier 1 Synchronized Reserve compensation was final and that there was no exception to the filed rate doctrine that would justify the billing adjustments.⁵⁴

D. Prospective Exceptions from Deselections

22. Tenaska also asserts that, even if PJM had the authority to make retroactive deselections of entire classes of resources, PJM's retroactive deselection of resources and prospective application of exceptions from deselections was unreasonable and unlawful. Tenaska argues that PJM should be required to make exceptions from deselection, including those exceptions granted to Tenaska's CT units, available with the same retroactive effect back to October 1, 2013.⁵⁵ Tenaska argues that making exceptions from deselection effective back to October 1, 2013 would prevent PJM from taking compensation away from resources, like Tenaska's CT units, that provided Tier 1 Synchronized Reserve in past periods.⁵⁶

⁵¹ *Id.* (citing the October 30, 2014 modification to PJM Manual 11 at 65, stating, in relevant part, that "Tier 1 [Synchronized Reserve] estimates for other resource types that cannot reliably provide Synchronized Reserve service shall be set to zero MW during the market clearing process," and that "[s]uch resource types include, but are not limited to: Nuclear, Wind, Solar, Batteries, and Hydro units.").

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 22-23.

⁵⁵ *Id.* at 23.

⁵⁶ *Id.*

23. Tenaska asserts that it reviewed its records and confirmed that, during each instance that it received compensation for Tier 1 Synchronized Reserve for the time period from October 1, 2013 to July 1, 2014, the Tenaska CT units had satisfied the requirements set forth in the PJM Tariff and PJM Manual 11 for Tier 1 Synchronized Reserve - i.e., the units were online, operating at below its maximum output, and capable of ramping up to maximum output in response to PJM's directives within 10 minutes.⁵⁷ Tenaska also argues that any claim PJM is taking compensation away from resources that cannot provide Tier 1 Synchronized Reserve is contradicted by the fact that, during the period from July 1, 2014 to June 26, 2015, both Big Sandy Peaker Plant, LLC's and Wolf Hills Energy, LLC's CT units provided Tier 1 Synchronized Reserve during Synchronized Reserve Events.⁵⁸ Furthermore, Tenaska asserts that since Tenaska's CT units received their prospective exceptions from deselection on June 26, 2015, PJM has compensated Tenaska CT units for doing exactly the same thing that the Tenaska CT units were doing during the period from October 1, 2013 to July 1, 2014.⁵⁹ Tenaska therefore argues that PJM has effectively conceded that the Tenaska CT units are fully capable of providing this service when PJM almost immediately granted the exceptions, without any physical or operational modifications having occurred since the prior period.⁶⁰

24. In addition, Tenaska argues that PJM's failure to grant retroactive exceptions from deselection is unduly discriminatory because CT units that provided Tier 1 Synchronized Reserve during the period October 1, 2013 to July 1, 2014 have to return their compensation for Tier 1 Synchronized Reserve, while other similarly situated resources, who were not in disfavored classes of generating resources and were deselected from Tier 1 Synchronized Reserve, are allowed to retain compensation for the same service. Tenaska therefore argues that, at a minimum, the exceptions to deselection should be made retroactively effective back to October 1, 2013 and those exceptions should remain in effect until prospectively revoked.⁶¹

⁵⁷ *Id.* at 24; Behrens Affidavit at PP 16-20.

⁵⁸ *Id.* at 24.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 25-26.

III. Notice of Complaint and Responsive Pleadings

25. Notice of Tenaska's Complaint was published in the *Federal Register*, 80 Fed. Reg. 69,204 (2015), with answers, interventions, and protests due on or before December 3, 2015. Timely motions to intervene were filed by Direct Energy Business, LLC,⁶² American Electric Power Service Corporation, Electric Power Supply Association, the IMM, NRG Companies (NRG),⁶³ and Dominion Resources Services, Inc. An out-of-time motion to intervene was submitted by American Municipal Power, Inc.

26. PJM submitted a timely answer. Comments were submitted by the IMM and NRG. On December 31, 2015, Tenaska submitted an answer to the answer and comments. On January 15, 2016, PJM submitted a supplemental answer to the answer and comments.

A. PJM's Answer

27. PJM seeks denial of Tenaska's Complaint, stating that it had the authority to make deselections for resources providing Tier 1 Synchronized Reserve, its decisions were made in real-time and not retroactively, PJM had experienced reliability issues with CTs as a class, and because the billing adjustments were consistent with the PJM Tariff and exercised because of an error made by PJM Market Settlements.

28. PJM asserts that section 3.2.3(A)(b)(i) of its Tariff gives it full discretion to deselect, for reliability reasons, generating resources from Tier 1 Synchronized Reserve, because the tariff provides that the amount of Tier 1 Synchronized Reserve is "attributed to the resource as calculated by [PJM][.]"⁶⁴ PJM also argues that, when it proposed this tariff language in its Order No. 719 compliance filing accepted by the Commission in

⁶² Direct Energy Business, LLC intervenes on behalf of itself and its affiliate Direct Energy Business Marketing, LLC.

⁶³ NRG Companies include NRG Power Marketing LLC and GenOn Energy Management, LLC.

⁶⁴ PJM Answer at 7 (citing PJM Operating Agreement, Schedule 1, §3.2.3A(b)(i)). *See also* PJM Tariff, Attachment K – Appendix §3.2.3A(b)(i), which includes language identical to the PJM Operating Agreement. *See supra* note 28 for the relevant portion of PJM Tariff, Attachment K – Appendix §3.2.3A(b)(i).

2012, it explained that it would rely on its data systems to make this calculation, and it would exclude certain resources from the calculation.⁶⁵

29. PJM cites to its answer submitted in its Order No. 719 compliance filing proceeding, where PJM explained that it would rely on its data systems to calculate reserves, including Tier 1 Synchronized Reserve, “based on unit operating status, ramp rates and operating limits...” and that “[t]he calculations determine the number of MWs that can be achieved in 10 minutes given these physical and operating limitations on the generators.”⁶⁶ Without referring to any specific tariff provision, PJM also stated that “[n]on-dispatchable generation such as nuclear, wind and self-scheduled units are excluded from these [reserve] calculations.”⁶⁷ PJM’s answer also indicated that PJM analyzes a generating resource’s physical and operating limitations to determine whether PJM will select or deselect a generating resource for Tier 1 Synchronized Reserve, and, if selected, to determine the number of MWs that can be achieved by the generating resource in 10 minutes.

30. PJM submits the affidavit of Mr. Adam J. Keech, its Senior Director of Market Operations, stating that PJM has long had a practice (including the entire time that the Order No. 719 tariff provisions have been in place) of instructing its data systems not to consider certain resources and groups of resources for reserves under certain conditions.⁶⁸ Mr. Keech states, “[f]or example, PJM Market Operations staff, since 2012, often has instructed the market clearing engine and the [Energy Management System] not to consider unloaded capability of combustion turbine (“CT”) plants as Tier 1 reserves

⁶⁵ PJM Answer at 7; Keech Affidavit at P 8-9.

⁶⁶ *Id.* at 7 (citing PJM August 23, 2010 Answer on PJM’s Order No. 719 Compliance Filing, Docket No. ER19-1063-004, Bryson Affidavit at P 17). PJM also explains that the accepted tariff language included a must-offer requirement applicable to PJM’s Synchronized and Non-Synchronized Reserve markets, and, for this reason, section 1.17.19A(a) of the PJM Tariff states that “[a]ll on-line non-emergency generation resources providing energy are deemed available to provide Tier 1 Synchronized Reserve.” PJM Answer at 21. The Commission directed PJM to submit tariff provisions for the must-offer requirement that required that “all on-line non-emergency generation resources providing energy are considered to be available to provide Tier 1 and Tier 2 Synchronized Reserves.” 139 FERC ¶ 61,057 at P 205.

⁶⁷ *Id.* at 7 (citing PJM August 23, 2010 Answer on PJM’s Order No. 719 Compliance Filing, Docket No. ER19-1063-004, Bryson Affidavit at P 17).

⁶⁸ PJM Answer, Affidavit at P 6.

based on a variety of issues and concerns typical of CT plants.”⁶⁹ PJM states that this practice was not limited to only CTs, but included the duct burning range of combined cycle plants which typically require longer than 10 minutes to load and could prevent such a unit from ramping up within 10 minutes. PJM explains that since generating resources eligible to provide Tier 1 Synchronized Reserve do not face a penalty for non-response, the amount of reserves that will actually be provided may be significantly different from what is estimated, resulting in PJM’s increased scrutiny on this resource type and causing it to deselect resources that it is not confident will respond to a request to deploy reserves.⁷⁰

31. PJM states that the three primary reasons that it deselects a generating resource include:

- (1) the resource is not following energy dispatch instructions and therefore PJM cannot have confidence that the resource will follow a dispatch signal to increase output when needed;
- (2) the resource is logged as being in a state or condition (e.g., “testing,” “tripped,” or providing regulation) that could prevent the resource from reliably increasing its output when needed; or
- (3) the resource, as a group or type, has, in PJM’s experience, consistently not been reliable at maintaining its estimated Tier 1 reserve quantity (thus causing reserve discrepancies), or consistently not been reliable at responding to a reserve event and converting their reserves into energy when needed.⁷¹

32. PJM states that, since 2012, PJM Market Operations staff often instructed the market clearing engine “not to consider unloaded capability combustion turbine plants as Tier 1 reserves based on a variety of issues and concerns typical of CT plants,” including:

- (1) recognition that system operators may have dispatched CTs at certain specific energy output levels to address certain reliability concerns;
- (2) the possibility that loading a CT plant to a higher level could exacerbate transmission constraints or other reliability issues;

⁶⁹ PJM Answer, Affidavit at P 8.

⁷⁰ PJM Answer at 8-9.

⁷¹ PJM Answer at 9; Keech Affidavit at P 7.

(3) the sensitivity of CT plants to ambient temperatures may prevent a CT plant from economically loading its remaining unused capability; and

(4) the possibility that energy and reserve compensation might not be sufficient to cover a CT plant's costs during a reserve event, which could be a deterrent to the plant delivering all of the unloaded capability that would otherwise be estimated by the market clearing engine and Energy Management System as providing reserves.⁷²

33. PJM argues that at various times since 2012, when PJM Market Operations regularly deselected a variety of resources, and during each relevant hour attributed zero MW of Tier 1 Synchronized Reserve to such deselected resources, PJM's Market Settlements erroneously compensated all resources that were synchronized, economic, and with remaining ramp capability as providing Tier 1 Synchronized Reserve. This settlement outcome ignored PJM Market Operations' contemporaneous deselection.⁷³ PJM explains that, as a result of the erroneous decision to compensate all resources, the Tenaska CT units received compensation on its invoices.

34. PJM explains that for the hours at issue in the billing adjustment, Tenaska was not in fact selected to provide reserves, and as a result, other resources were selected.⁷⁴ PJM states that the resource deselections were not retroactive and "each such deselection was made before (sometimes well before) the hour in which it was applied[.]" and the deselections "were reflected in the contemporaneous clearing results and in the contemporaneous eMarket information conveyed to market participants."⁷⁵ PJM also states that for some deselections, such as those for resource groups or types, "the deselection may be made months in advance, and preserved for as long as they are still considered necessary and appropriate."⁷⁶

⁷² PJM Answer at 10; Keech Affidavit at P 10.

⁷³ PJM Answer at 15.

⁷⁴ *Id.* at 24.

⁷⁵ *Id.* at 25; Keech Affidavit at P 10 (stating that "[a]ll deselection decisions were made in advance of each of the relevant hours that are the subject of Tenaska's complaint and therefore impacted the published market results for that hour.>").

⁷⁶ *Id.* at 9; Keech Affidavit at P 7.

35. PJM explains that its billing adjustments for the Tenaska CT units honor the filed rate doctrine and allows PJM to correct invoices for up to a two-year period. PJM further explains that the Commission and the courts have held that “[c]orrecting improperly billed invoices does not violate the ban on retroactive ratemaking... because it does not result in a change to a prior rate, but rather is enforcing the filed rate.”⁷⁷

B. Comments

36. NRG filed comments supporting and largely reiterating Tenaska’s Complaint arguments, stating that, as a result of PJM’s billing adjustments for Tier 1 Synchronized Reserve, NRG incurred a significant loss of revenues. NRG states that it is unclear which criteria PJM is using to determine compensation.⁷⁸ NRG states that PJM’s compensation rate for NRG’s CT and steam turbine units was lower than in the past for the same Tier 1 Synchronized Reserve service that it provided to PJM, and that PJM did not respond to its concern that specific NRG units that were running during the period from April 2013 to June 2014 did not receive Synchronized Reserve payments.⁷⁹

37. The IMM filed comments requesting that the Complaint be denied. The IMM states that, contrary to Tenaska’s argument that the Tenaska units were deselected retroactively, PJM deselected the Tenaska units in real-time because PJM determined that the Tenaska units were ineligible to provide reserves.⁸⁰ The IMM explains that because the Tenaska units were deselected, PJM did not obtain reserves from the Tenaska units, and did obtain reserves from other units.⁸¹ Therefore, the IMM argues that PJM’s payments to Tenaska for reserves that Tenaska did not provide were plainly in error, and PJM was right to correct its billing error.⁸²

⁷⁷ *Id.* at 23 (citing *Exelon Corp. v. PPL Elec. Utils. Corp.*, 114 FERC ¶ 61,298, at P 14 (2006); and *IDACORP Energy L.P. v. FERC*, 433 F.3d 879, 883 (D.C. Cir. 2006) (“The ban on retroactive ratemaking, however, imposes no obstacle to amending invoices; in fact, the prohibition on retroactive ratemaking may well require an amended invoice if the original invoice deviated from the tariff.”)).

⁷⁸ NRG Comments at 3-4.

⁷⁹ *Id.* at 4.

⁸⁰ IMM Answer at 2.

⁸¹ *Id.* at 2-3.

⁸² *Id.* at 1-2.

38. The IMM also argues that PJM is authorized to deselect resources based on their capability because the language in section 1.7.19 states that eligibility to provide Synchronized Reserves is conditioned on “the capacity resources’ capability to provide these services.”⁸³ The IMM asserts that PJM needs this authority to procure the level of reserves it needs only from units capable of providing reserves or, otherwise, reliability would be compromised.⁸⁴ The IMM asserts that Tenaska’s argument – that PJM’s deselections of the Tenaska units were not based on their performance – is not consistent with PJM’s treatment of CTs, including the Tenaska CTs, during the relevant period, and the IMM’s assessment of the performance history of the Tenaska CT units.⁸⁵ Furthermore, the IMM asserts that it is not useful to now second-guess PJM’s decisions about which units were capable of providing reserves and which units were not; the deselected Tenaska units did not provide the service, and should not be paid for the service.⁸⁶

39. The IMM asserts that Tenaska’s argument that it had no opportunity to obtain an exception from PJM’s decisions to deselect the Tenaska units is a red herring and irrelevant.⁸⁷ The IMM points out that Tenaska has not shown that PJM’s decision to deselect the Tenaska units did not comply with the prevailing rules or that Tenaska was singled out for unfavorable treatment compared to any other generating unit owner.⁸⁸

IV. Procedural Matters

40. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, we grant the unopposed, late-filed intervention submitted by American Municipal Power, Inc. given its interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

⁸³ *Id.* at 4 (citing PJM Operating Agreement, Schedule 1, §1.7.19).

⁸⁴ *Id.* at 4.

⁸⁵ *Id.*

⁸⁶ *Id.* at 3.

⁸⁷ *Id.*

⁸⁸ *Id.*

41. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Tenaska's answer and PJM's supplemental answer and will, therefore, reject them.

V. Discussion

42. As discussed below, we find that Tenaska has not provided a sufficient basis to justify reversing PJM's billing adjustments for Tenaska to correct for PJM's erroneous payment of Tier 1 Synchronized Reserve compensation to the Tenaska CT generating units for the period from October 1, 2013 to July 1, 2014. We find that PJM reasonably interpreted its tariff as providing it with broad authority to determine which units are physically capable of providing Tier 1 reserves. Accordingly, we deny Tenaska's Complaint.

43. Tenaska primarily relies on two sections of the PJM Tariff in support of its Complaint that PJM improperly deselected the Tenaska CT units. Tenaska first points to section 1.7.19A(b) of the PJM Tariff – stating that “[a]ll on-line nonemergency generation resources providing energy are deemed to be available to provide Tier 1 Synchronized Reserve” – as a bar prohibiting PJM from deselecting a class of generating resources from Tier 1 Synchronized Reserve. However, as PJM points out, that language was included in the PJM Tariff in response to a Commission order to impose a must-offer requirement on resources providing Tier 1 Synchronized Reserve.⁸⁹ The use of the phrase “[a]ll on-line nonemergency . . . are deemed to be available” does not indicate that all these units must be considered and compensated as reserves; it indicates only that these units cannot withhold reserves if it is available. We find that PJM has

⁸⁹ The Commission accepted tariff provisions, subject to certain conditions, including the requirement that PJM add a must-offer requirement applicable to PJM's Synchronized and Non-Synchronized Reserve markets. *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,057 (2012). With respect to this must-offer requirement, the Commission directed PJM to submit tariff provisions requiring that “all on-line non-emergency generation resources providing energy are considered to be available to provide Tier 1 and Tier 2 synchronized reserves.” *Id.* at P 205 (stating these requirements are consistent with the existing obligation of capacity resources to offer energy from all their capacity into the PJM day-ahead market). *See also, Duke Energy Corporation*, 151 FERC ¶ 61,206, at P 62 (2015) (stating “a Generating Capacity Resource in PJM must offer all available capacity in the Day-Ahead Energy Market and must operate in accordance with PJM's dispatch instructions if called upon to operate in real-time.”)

reasonably interpreted section 1.7.19A(b) as dictating the resources that must be able to provide the service, but not dictating the resources that PJM must select to provide this service.⁹⁰

44. As PJM notes, PJM also made clear in its Order No. 719 compliance filing that although certain resources might technically fit the definition in section 1.7.19A(b), PJM might not consider them as reserves. While PJM listed Nuclear, Wind, Solar, Batteries, and Hydro, it indicated that such resources would not be limited to the ones listed.⁹¹ PJM's long-held interpretation of section 1.7.19A(b) is reinforced by record evidence, in PJM's affidavit, that each hour, PJM contemporaneously conveys Tier 1 Synchronized Reserve information to each generating resource owner through PJM's postings on PJM's eMarket software system, which include the MW quantity of Tier 1 reserves estimates for each resource for each operating hour, and, "[i]f the resource was deselected, the 'Tier 1 reserve estimate' will be shown as zero."⁹² In addition, PJM explains that the screenshot views of this Tier 1 Synchronized Reserve information, as presented to generating resource owners in PJM's eMarket software system, is retained for 90 days, and PJM also keeps historical records that include this information.⁹³

⁹⁰ For the same reasons, Tenaska's reliance on other language in sections 1.7.19A, 1.3.33B.01 and Schedule 5 of the PJM Tariff is not persuasive. *See supra* note 22. Again, these sections concern availability to provide the service and do not dictate the resources that PJM must select for this service.

⁹¹ PJM stated that "[n]on-dispatchable generation such as nuclear, wind and self-scheduled units are excluded from these [reserve] calculations." PJM August 23, 2010 Answer on PJM's Order No. 719 Compliance Filing, Docket No, ER09-1063-004, Bryson Affidavit at P 17.

⁹² PJM Answer; Keech Affidavit at P 12. PJM Answer at 25 (stating that the resource deselections were not retroactive and "each such deselection was made before (sometimes well before) the hour in which it was applied," and the deselections "were reflected in the contemporaneous clearing results and in the contemporaneous eMarket information conveyed to market participants"); Keech Affidavit at P 10 (stating that "[a]ll deselection decisions were made in advance of each of the relevant hours that are the subject of Tenaska's complaint and therefore impacted the published market results for that hour[]").

⁹³ PJM Answer; Keech Affidavit at P 13.

45. Furthermore, reading section 1.7.19A(b) as Tenaska urges would result in PJM actually procuring and paying for more reserves than necessary for PJM to meet its reserve requirement. The PJM Tariff requires PJM to procure an amount of Primary and Synchronized Reserve for each Reserve Zone and Reserve Sub-Zone in the PJM region, as specified in the PJM Manuals.⁹⁴ If all of the Tier 1 reserves were counted as reserves, then PJM would procure more than the amount specified by the PJM Tariff. As PJM notes, for much of the Complaint period, if all of the Tier 1 Synchronized Reserve resources were counted, they would produce reserves ranging from 4,000 MW to 9,000 MW in comparison to PJM's typical Primary Reserve Requirement of 2,100 MW.⁹⁵

46. Tenaska also points to section 3.2.3A(b)(i) of the PJM Tariff to argue that PJM does not have the authority to deselect entire categories or classes of generation resources from providing Tier 1 Synchronized Reserve. Section 3.2.3A(b)(i) of the PJM Tariff provides that PJM is obligated to pay Tier 1 Synchronized Reserves in certain circumstances based on the amount of the Tier 1 Synchronized Reserve "attributed to the resource as calculated by [PJM][.]" Nothing in that provision limits PJM's discretion to decide whether a resource is capable of reliably providing Tier 1 Synchronized Reserve, and to attribute to the resource "as calculated by [PJM]" (1) 0 MW if the generating resource is from a class of generating resources that is not reliable capability; or (2) 0 MW or a specific, positive MW amount that represents the reliable capability of an individual generating resource.⁹⁶ We find that PJM has reasonably interpreted that provision as vesting PJM with broad discretion to decide whether a generating resource is capable to reliably provide Tier 1 Synchronized Reserve. Indeed, affording PJM such broad discretion may be appropriate in order to give PJM maximum operational flexibility to select resources that reliably provide Tier 1 Synchronized Reserve.

47. Consistent with our finding that section 3.2.3A(b)(i) may be interpreted as providing PJM with broad discretion in its selection of resources, that provision may also be reasonably interpreted as providing PJM with broad discretion to make categorical

⁹⁴ PJM Tariff, Attachment K – Appendix §1.7.19A(b).

⁹⁵ PJM Answer at 20-21.

⁹⁶ It is also consistent with PJM's general tariff authority and discretion to decide which resources to select, schedule, or dispatch to assure reliability. PJM Answer at 5 (citing PJM Operating Agreement, Schedule 1, § 1.8.2, which states that all market participants "shall comply with all determinations of [PJM] on the selection, scheduling or dispatch of resources in the [energy market], or to meet the operational requirements of the PJM Region.").

deselections. As noted, PJM has had a practice of deselecting entire groups or classes of generating units from providing Tier 1 Synchronized Reserve since 2012 due to a host of reliability concerns. PJM explains that generation units providing Tier 1 Synchronized Reserve do not face a penalty for not performing, so it needs to place increased scrutiny on which units will be likely to respond to a Synchronized Reserve Event. If PJM finds that certain resources are unlikely to respond in real-time to a Synchronized Reserve Event, then system reliability could be threatened, causing potential energy imbalances and leading to clearing prices that do not accurately reflect system conditions.

48. Tenaska argues that PJM's grant of an exemption to Tenaska's CT units after the period in question demonstrates that PJM's deselection of CT generating units as a class was unsupported and possibly unduly discriminatory. We disagree. PJM's deselection or exemption decisions over different periods of time are not dispositive of whether a specific deselection or exemption decision was appropriate. Synchronized Reserve requirements and concerns regarding various resources or categories of resources may change. We are also not persuaded that deselecting CT generating units during the relevant period here was unduly discriminatory. Although Tenaska asserts that there is not a legitimate basis for distinguishing between Tenaska's CT units and the selected resources, we note that CT resources and other resources may not be similarly situated in all circumstances. The record reflects that since 2012, PJM often did not consider unloaded capability of CT plants as Tier 1 reserves based on a variety of issues and concerns typical of CT plants.⁹⁷ And, PJM states that this deselection practice was not limited to only CTs, but included the duct burning range of combined cycle plants which typically require longer than 10 minutes to load and could prevent such a unit from ramping up within 10 minutes.

49. Tenaska argues that PJM is required, by the Commission's "rule of reason," to file tariff provisions defining its authority to make entire classes of resources ineligible to provide Tier 1 Synchronized Reserve. As an initial matter, we note that the Commission accepted the tariff language at issue here without requiring further specificity.⁹⁸

⁹⁷ PJM Answer, Affidavit at P 8.

⁹⁸ We note that Tenaska's reliance on *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,171, at P 80 (2012) (*MISO*) - for the proposition that PJM was required to file tariff provisions defining eligibility for selection for Tier 1 Synchronized Reserve, and to specify a process for notifying market participants potentially impacted by the determination - is inapposite. In *MISO*, the Commission directed the Midwest Independent System Operator, Inc. to revise its tariff to incorporate the criteria and process for determining when a voltage or local reliability requirement (VLR) issue is commercially significant into its tariff, which are realistically susceptible to specification,

(continued ...)

Therefore, for the period covered by the Complaint, from October 1, 2013 to July 1, 2014, there is no violation of the filed rate doctrine since, as discussed above, section 3.2.3A(b)(i) of the PJM Tariff provided PJM with broad authority and discretion to determine the amount of reserve “attributed to the resource,” which could be zero.

50. Moreover, we find, in this instance, that further specificity in the PJM Tariff was not required. As the courts have recognized, “there are an infinitude of practices affecting rates and services” but “only those practices that affect rates *significantly*, that are realistically *susceptible* of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous” need be filed with the Commission.⁹⁹ In this case, there are innumerable, reliability-related reasons to deselect a generating resource for any given hour, and all of those specific, reliability-related reasons are not “realistically susceptible of specification” in a tariff. In addition, requiring PJM to set forth in the PJM Tariff an exclusive list of all specific, reliability-related reasons that could result in the deselection of a generating resource from Tier 1 Synchronized Reserve would necessarily limit PJM to those tariff criteria, and could compromise PJM’s ability to respond to changes in operations or characteristics of the PJM system, a class of generating resources, or individual generating resources. The Commission has recognized that it may be appropriate to provide operational and reliability-related discretion to independent system operators, and to not second-guess their decisions in that regard.¹⁰⁰

51. Tenaska also argues that PJM violated the filed rate doctrine by retroactively deselecting its CT units from being eligible from providing Tier 1 Synchronized Reserve. However, as we have previously noted, the record reflects that none of the deselection decisions were made retroactively, but instead made before the operating hour,

in accordance with court precedent discussed below. This case concerns reliability-related eligibility, which is not realistically susceptible of specification.

⁹⁹ *City of Cleveland, Ohio v. FERC*, 773 F.2d 1368, at 1376 (D.C. Cir. 1985) (stating “[i]t is obviously left to the Commission, within its broad bounds of discretion, to give concrete application to this amorphous directive.”).

¹⁰⁰ *PPL EnergyPlus, LLC*, 117 FERC ¶ 61,338, at P 33 (2006) (recognizing that “...PJM, as the independent transmission operator, needs to have discretion to dispatch resources as necessary to meet load and ensure reliability depending upon the circumstances affecting the grid at a particular point in time.”).

sometimes months in advance.¹⁰¹ We, therefore, find that PJM's decisions to deselect groups or classes of units, including CTs and the Tenaska units, were not made retroactively and therefore did not violate the filed rate doctrine.

52. Tenaska also alleges that since PJM made its determination to deselect entire classes of units retroactively, an argument with which we disagree, it should be required to grant retroactive exceptions for its CT units. As we have found, PJM made its deselection decisions prior to the operating hour; we will not require PJM to grant a retroactive exception to pay the Tenaska CT units for a service that it did not provide. To do so would inappropriately require PJM to reallocate payments to other units that had provided other reserves products.

53. Tenaska also alleges that PJM did not give market participants any advance notification that their generating units had been deselected prior to those operational decisions being made. As we have previously noted, the record reflects that PJM provided generating units with real-time notification of its deselection decisions for Tier 1 Synchronized Reserve by PJM's eMarket software system posting for each generator showing that they were not assigned to provide any Tier 1 Synchronized Reserve. Therefore, we are not persuaded by the argument that adequate notice was not given to market participants generally, or to Tenaska in particular.

54. Tenaska agrees that PJM is allowed to make billing adjustments for up to a two year period. We find that section 10.4 of the PJM Tariff and section 15.4 of the Operating Agreement indeed give PJM this two-year window to make billing adjustments to correct and conform billing to the filed tariff. Since we find that PJM provided sufficient evidence to establish that the deselection of generating resources was made before the operating hour, and did not violate the filed rate doctrine, PJM acted within the confines of its tariff to make the billing adjustments. Therefore, PJM's billing adjustments for the Tenaska CT generating units were appropriate.

¹⁰¹ In addition, PJM reviewed the results of PJM's market clearing engine for each operating hour from October 2013 to July 2014 in which Tier 1 resources were compensated when there was no Synchronized Reserve Event called by PJM, and PJM confirmed that 0 MW was attributed to each of the Tenaska CT units for each of those operating hours. PJM Answer; Keech Affidavit at P 14.

The Commission orders:

The Complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.