167 FERC ¶ 61,268
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

PJM Interconnection, L.L.C. Docket Nos. ER19-1012-000
ER19-1012-001

ORDER REJECTING TARIFF REVISIONS

(Issued June 27, 2019)

1. On February 7, 2019, PJM Interconnection, L.L.C. (PJM) filed revisions to its Open Access Transmission Tariff (OATT) and the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region (RAA) to update the rules and requirements for Price Responsive Demand (PRD)[1] to conform to the rules and requirements for Capacity Performance Resources (PRD Update). As discussed below, we reject the filing as unjust and unreasonable because PJM has not demonstrated that calculating the Nominal PRD Value and the associated PRD Credit based on the lesser of summer and winter load reductions is consistent with a Load Serving Entity's (LSE) capacity obligation, which is based on the LSE's annual coincident peak demand.

I. Background

2. PJM operates a capacity market, the Reliability Pricing Model (RPM), in which it procures sufficient capacity to meet its reliability targets. Resources offering into the capacity market are expected to be available for all 12 months of the year, and are required to deliver their expected output during defined Performance Assessment Intervals (PAI),[2]

[1] We note that capitalized terms not defined herein are defined in the PJM OATT or RAA.

[2] PAIs are any real-time settlement interval during which an Emergency Action has been declared by the PJM Office of the Interconnection. *See* PJM, Intra-PJM Tariffs, OATT, O-P-Q, OATT Definitions (21.1.0); *id.* R-S, OATT Definitions (17.0.1).

which can occur at any time, or else pay a significant Non-Performance Charge Rate.[3] To create a further incentive to perform, PJM awards funds collected through Non-Performance Charges (Performance Payments) to resources that exceed their expected output during a PAI.[4] All supply-side capacity resources, including Demand Resources, are required to meet the Capacity Performance requirements.

3. PJM's PRD program provides LSEs an opportunity to designate a portion of their load as price-responsive in order to reduce their bills for energy and capacity. PJM's PRD program only allows for participation through an LSE: either the LSE acts as the PRD Provider itself, or the LSE contracts with a third party to act as the PRD Provider on its behalf. Furthermore, PRD Providers must: (1) limit PRD to customers served under a dynamic retail rate structure; (2) employ advanced metering; and (3) employ supervisory control to ensure the committed demand reduction can be accomplished.[5]

4. A PRD Provider reflects retail customers' willingness to reduce load using a set of price/quantity pairs called a PRD Curve, and is required to autonomously ensure its customers' real-time load does not exceed the amount in its PRD Curve corresponding to the prevailing real-time Locational Marginal Price (LMP).[6] The PRD Provider can also commit to reduce the LSE's load by a certain amount of MW (the Nominal PRD Value) during PJM's annual peak, which generally occurs in the summer.[7] Because PRD operates as price-sensitive demand in the energy market, LSEs participating in PRD receive no energy payment other than reduced energy bills. Similarly, LSEs receive a capacity service bill credit (the PRD Credit) for any PRD in their Locational Deliverability Area (LDA) to reflect avoided capacity market costs. The amount of the PRD Credit is based on Nominal PRD Value, which reflects the reduction in the LSE's demand during PJM's annual peak. That is, the PRD Credit puts the LSE in the same position as if PJM had reduced the LSE's capacity obligation, which is calculated based on the LSE's demand during PJM's annual peak.

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[3] *See* Deficiency Letter Response at 20; PJM, Intra-PJM Tariffs, OATT, Attachment DD, § 10A (5.0.0).

[4] *See* PJM, Intra-PJM Tariffs, OATT, Attachment DD, § 10A (5.0.0).

[5] *See* PJM, Intra-PJM Tariffs, RAA, RAA Article 1 – Definitions (29.0.0).

[6] *See id.* Schedule 6.1 (2.0.0).

[7] *Id.* Schedule 6.1.C (2.0.0).

II. Filing

5. PJM's filing seeks to revise the PRD program to align with the rules for supply-side Capacity Performance Resources. PJM proposes to: (1) change the calculation of the Nominal PRD Value used for determining the PRD Credit from the reduction in load during PJM's annual peak to the lesser of summer and winter load reductions; (2) assess Non-Performance Charges and award Performance Payments to PRD in accordance with the rules for Capacity Performance Resources; and (3) revise the PRD credit rate to conform to the credit requirements for Capacity Performance Resources. PJM proposes an effective date of July 28, 2019[8] for its revisions.

6. PJM argues that the PRD Update will address the current disparities between PRD and Capacity Performance Resources, and thereby affirm the expectation that Capacity Performance Resources "will be available to provide energy and reserves when called upon[], without regard to technology type."[9] Specifically, PJM explains four disparities between PRD and Capacity Performance Resources: (1) PRD is not required to perform annually, yet can displace an annual Capacity Performance Resource in the RPM auction; (2) the trigger for PRD non-performance charges is a Maximum Generation Emergency, while the trigger for Capacity Performance Resources is an Emergency Action, which is by definition broader; (3) PRD is not currently eligible to receive Performance Payments during a PAI; and (4) the existing credit requirement for PRD is not in line with that of other capacity resources.[10]

III. Notice of Filing and Responsive Pleadings

7. Notice of the filing was published in the *Federal Register*, 84 Fed. Reg. 3772 (2019), with interventions and protests due on or before February 28, 2019. Timely motions to intervene were filed by: American Municipal Power, Inc.; Calpine Corporation; Dominion Energy Services, Inc.; Exelon Corporation (Exelon); Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (the IMM); North Carolina Electric Membership Corporation; NRDC/FERC Project; NRG Power

[8] PJM originally requested an effective date of April 9, 2019, then amended its requested effective date in its deficiency letter response. *Compare* Transmittal at 2, *with* Deficiency Letter Response at 2.

[9] Transmittal at 4-5 (quoting *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, at P 99 (2015)).

[10] *Id.* at 4.

Marketing LLC; and PJM Power Providers Group (P3). The Illinois Commerce Commission and Maryland Public Service Commission filed notices of intervention.

8. On February 28, 2019, Exelon and P3 submitted comments. On March 1, 2019, the IMM submitted comments. On March 4, 2019, Public Interest Organizations submitted a motion to file a protest out-of-time and protest.[11] On March 20, 2019, PJM filed a motion for leave to answer and answer.

9. On March 29, 2019, Commission staff issued a deficiency letter seeking additional information related to the technical details of PJM's proposed PRD Update and the non-performance penalty PRD Providers would face under the PRD Update.

10. PJM filed its response to the deficiency letter (Deficiency Letter Response) on April 29, 2019. Notice of PJM's Deficiency Letter Response was published in the *Federal Register*, 84 Fed. Reg. 19,918 (2019), with interventions and protests due on or before May 20, 2019. On May 21, 2019, the IMM filed responsive comments.

A. Comments and Protest

11. Exelon states that it supports PJM's stated objective for the PRD Update, i.e., to align the rules under which PRD may participate in its capacity market with the rules that apply to supply-side Capacity Performance Resources.[12] Similarly, P3 states that it agrees with PJM that the PRD rules should be revised to align with the Capacity Performance construct, and requests that the Commission accept the PRD Update.[13]

12. The IMM argues that the Commission should reject the PRD Update unless it is modified to calculate the Nominal PRD Value based on the reduction in demand during PJM's annual peak (which generally occurs in the summer) rather than the lesser of summer and winter load reductions.[14] The IMM explains that load is billed for capacity obligations based on demand during PJM's annual peak, and that the Winter Peak Load metric proposed for PRD by PJM is not used for calculating capacity obligations or the

[11] Public Interest Organizations include NRDC/FERC Project, Earthjustice, Sierra Club, and Union of Concerned Scientists.

[12] Exelon Comments at 9.

[13] P3 Comments at 6.

[14] IMM Comments at 1-4.

cost of capacity for customers.[15] Thus, the IMM argues the PRD Update would impose an arbitrary limit on the Nominal PRD Value.[16]

13. Public Interest Organizations argue that the rules for PRD must be consistent with how LSEs are billed for capacity service (i.e., based on demand during PJM's annual peak) because PRD is not a supply resource nor even similarly situated to one.[17] Public Interest Organizations offer the example of a PRD site with 100 MW peak summer load absent PRD, an 85 MW peak winter load, and a 75 MW Maximum Emergency Service Level.[18] Public Interest Organizations maintain that this PRD site would be credited with reducing the system's capacity need by only 10 MW under the proposed PRD Update based on the PRD site's winter peak load, despite the fact that the PRD site in this situation would in fact reduce capacity requirements by 25 MW under PJM's existing method of determining load's actual capacity requirements as a function of summer peak loads.[19]

14. Public Interest Organizations further argue that the PRD Update would violate Commission precedent by requiring PRD load to pay a capacity charge for the interruptible portion of its load, which cannot be the basis for capacity charges.[20]

15. Public Interest Organizations argue that, if the Commission does not reject the PRD Update, then the Commission should hold this proceeding in abeyance pending resolution of related complaints involving seasonal capacity and incorporating peak shaving into load forecasts.[21]

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[15] *Id.* at 3-4.

[16] *Id.* at 4.

[17] Public Interest Organizations Protest at 4-6.

[18] *Id.* at 7-8. Maximum Emergency Service Level is "the level, determined at a PRD Substation level, to which Price Responsive Demand shall be reduced during the Delivery Year when a Maximum Generation Emergency is declared and the Locational Marginal Price exceeds the price associated with such Price Responsive Demand…." *See* PJM, Intra-PJM Tariffs, RAA, RAA Article 1 – Definitions (29.0.0).

[19] Public Interest Organizations Protest at 8.

[20] *Id.* at 10-11 (citing *Ky. Utils. Co.*, 15 FERC ¶ 61,002, at 61,003-04, *order on reh'g*, 15 FERC ¶ 61,222 (1981) (*Kentucky*)).

[21] *Id.* at 14-15 (citing Docket Nos. EL17-36-000 and EL17-32-000).

B. PJM Answer

16. PJM answers that its proposed change to the calculation of Nominal PRD Value is necessary to ensure that PRD will be available to curtail the same quantity of MW in either the summer or the winter consistent with the requirements of Capacity Performance.[22] PJM explains that the proposed method to calculate Nominal PRD Value under the PRD Update is, in fact, identical to how the annual Nominated Values for Demand Resources are determined, and that the same rationale that the Commission has previously upheld for participation by Demand Resources equally applies in the PRD context.[23]

17. PJM argues that Public Interest Organizations are wholly misguided in relying on Commission precedent that the interruptible portion of a customer's load should not incur capacity costs.[24] PJM states that any curtailment or interruption that occurs under PRD is generally automatic and at the direction and control of the PRD Provider, not PJM, and that participating PRD loads are not merely obtaining service that PJM can curtail or interrupt at any time.[25] PJM further argues that *Kentucky* is distinguishable because this proceeding involves all energy needed to meet load as well as costs to procure capacity resources, whereas *Kentucky* involved secondary energy and transmission capacity costs.[26]

C. Deficiency Letter Response and Comments

18. In its Deficiency Letter Response, PJM clarifies how Nominal PRD Value would be calculated under the PRD Update.[27] Beyond its clarification, PJM reiterates its position that Nominal PRD Value should be determined in accordance with how the nominal value is determined for Demand Resources.[28]

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[22] PJM Answer at 4 (citing IMM Comments at 3-4).

[23] *Id.* at 4-5 (citing PJM, Intra-PJM Tariffs, RAA, Schedule 6.I; PJM, Intra-PJM Tariffs, OATT, Attachment DD-1, § I; *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,157, at PP 59, 120 (2016)).

[24] *Id.* at 5.

[25] *Id.*

[26] *Id.*

[27] Deficiency Letter Response at 4-8.

[28] *Id.* at 5.

19. In its responsive comments, the IMM reiterates its argument that Nominal PRD Value should be determined in accordance with how PJM customers actually pay for capacity, i.e. based on the summer peak and not on the winter peak.[29] Because customers pay for capacity based solely on their load during the PJM system peak (i.e., peak load contribution), the IMM argues that basing the Nominal PRD Value on anything other than customers' peak load contribution would prevent customers from having the option to avoid paying for capacity.[30]

IV. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept PJM's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

22. We reject PJM's proposed PRD Update as unjust and unreasonable. Specifically, we find that PJM has not shown that it is just and reasonable to calculate the Nominal PRD Value and associated PRD Credit based on the lesser of summer and winter load reductions. PJM's proposed Nominal PRD Value calculation conflicts with the manner in which it calculates an LSE's capacity obligation, which is based on an LSE's demand during PJM's annual peak.[31] Indeed, PJM's filing is at odds with its original justification for proposing a PRD Credit that reflects an accurate reduction in an LSE's capacity obligation based on PRD load reductions:

> [The PRD Credit] puts the LSE in the same position as if PJM had simply reflected the lower peak load level by directly reducing the LSE's capacity obligation. . . . Importantly, therefore, the enclosed approach ensures that LSEs are not

[29] IMM Deficiency Letter Comments at 2.

[30] *Id.*

[31] *See* PJM, Intra-PJM Tariffs, RAA, Schedule 8.A (4.0.0).

> improperly charged by PJM for capacity that is not needed and not provided.[32]

PJM's proposal would improperly charge LSEs participating in PRD by not providing a PRD Credit that reflects the full value of load reductions during PJM's annual peak. We agree with the IMM and Public Interest Organizations that PJM's proposed approach would limit the amount of MW that PRD can commit and thereby inaccurately reflect PRD's load reduction capabilities.[33]

23. Our finding here is consistent with precedent in which the Commission has found that Regional Transmission Operators and transmission owners must recognize load reductions resulting from interruptible load programs in computing billing determinants.[34] PJM's attempts to distinguish factually *Kentucky* do not make less applicable the principle that, if load is reduced during a peak period used for billing, that load reduction should be credited consistent with principles of cost causation. As an initial matter, the Commission in *Kentucky* rejected PJM's argument here that cost allocation depends on whether the costs are transmission capacity costs, "find[ing] no basis for treating transmission and generating capacity costs differently."[35] PJM further attempts to distinguish *Kentucky* by arguing that "any curtailment or interruption that occurs under PRD is generally automatic and at the direction and control of the PRD Provider, not PJM."[36] Whether PJM controls the load reduction is not the salient fact in these cases. For example, in *Occidental*, the Commission disagreed with PJM's argument that it should not be required to reflect interruptible load reductions by LSEs in

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[32] PJM, Filing, Docket No. ER11-4628-000, at 30 (filed Sept. 23, 2011) (Initial PRD Filing).

[33] *See supra* PP 12-13.

[34] *See, e.g.*, *La. Pub. Serv. Comm'n v. Entergy Corp.*, Opinion No. 468, 106 FERC ¶ 61,228, at P 77 (2004) (directing Entergy's Operating Companies to remove interruptible load when calculating peak load responsibility ratios); *Occidental Chem. Corp. v. PJM Interconnection, L.L.C.*, 101 FERC ¶ 61,005 (2002), *order on compliance filing and reh'g*, 102 FERC ¶ 61,275, at P 13 (2003) (finding unjust and unreasonable PJM's practice of adding back interruptible load in determining a customer's coincident peak usage in order to allocate access charges for use of PJM's transmission system) (*Occidental*); *Kentucky*, 15 FERC at 61,005 (requiring utility not to allocate transmission capacity costs to curtailable load).

[35] *Kentucky*, 15 FERC at 61,004.

[36] PJM Answer at 5.

determining coincident peaks because PJM has to plan to serve that load. Even though PJM did not control the load reductions, the Commission concluded "[a]ccess charges for use of PJM's transmission system should be allocated to network customers based on a network customer's actual use of PJM's system, consistent with the principle of cost causation."[37]

24. Finally, PJM attempts to distinguish *Kentucky* by arguing that "load that participates as PRD is not obtaining secondary energy but instead obtains all energy necessary to meet the load's electricity needs from PJM."[38] The fact that the customer that opposed the cost allocation in *Kentucky* received secondary energy service is also not controlling. As the Commission explained in *Kentucky*, "[w]hat is important is that because of the right to interrupt, Kentucky can keep Paris from imposing any demand on Kentucky's system during peak periods and thereby control its capacity costs."[39] Similarly, PJM requires the relevant LSEs to include measures to ensure that load is reduced during periods of system stress, such as requiring participating LSEs to limit PRD to those customers on a dynamic retail rate structure, to employ advanced metering, and to implement supervisory control to ensure that participating customers do, in fact, reduce load.[40] We thus find that PJM has failed to justify its proposed revisions to the method for calculating Nominal PRD Value and the associated PRD Credit.[41]

25. PJM argues that the rules and requirements for PRD should be consistent with those of Capacity Performance Resources. In light of our finding that it is unjust and unreasonable to calculate the Nominal PRD Value in a manner inconsistent with how an LSE's capacity obligation is determined, we do not find it necessary to address the need

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[37] *Occidental,* 102 FERC ¶ 61,275 at P 14 (finding that "the effect of PJM's allocation adjustment is to increase network charges to customers that curtail load during emergencies and could dampen participation in demand side response programs").

[38] PJM Answer at 5.

[39] *Kentucky,* 15 FERC at 61,004.

[40] *See supra* P 3 & note 18.

[41] *See La. Pub. Serv. Comm'n v. FERC*, 184 F.3d 892, 894 (D.C. Cir. 1999) (holding "that it was arbitrary and capricious for the Commission to assess capacity costs for interruptible service without an explanation for departing from its own precedent," i.e., *Kentucky*); *see also PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,114 (2019) (accepting PJM's proposal to charge peak shaving resources only on the basis of peak summer load).

for consistency between the PRD requirements and the requirements for capacity resources.

The Commission orders:

PJM's proposed PRD Update is hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.