

Accordingly, EnerNOC's arguments should be rejected and the January 5th Filing should be accepted subject to the modifications suggested by the Market Monitor in its comments filed January 16, 2012.

I. COMMENTS

EnerNOC raises arguments that could leave the impression that PJM's clarification of the rules affects the ability of customers included in DR portfolios to deliver their offered MW.⁴ That is not the case. The PJM rules limit the amount of offered MW to the customers' Peak Load Contribution ("PLC"), whether individually or aggregated into a portfolio.⁵ PJM's filing will not exclude a single offered MW. If customers respond consistent with their offered MW (their "Nominated Value"), the CSP will realize its expectations. If over performance of some customers, measured against PLC, is sufficient to cover under performance of the other customers, then the CSP will also realize its expectations. The circumstances in which a CSP may not realize its expectations as a consequence of the clarification of the measurement and verification rules in this proceeding are limited, and

⁴ EnerNOC argues (at 3) that "PJM's proposed interim mechanism does not 'fully protect'[citation omitted] CSPs that made commitments through the 2014-15 delivery year and have assembled portfolios based upon the reasonable expectation that curtailment capabilities in an amount greater than PLC would continue to be credited as capacity performance. EnerNOC states (at 6): "A CSP that has built a portfolio focused on filling out the performance capabilities of variable loads under the current market rules, cannot simply flip the switch to a completely different measurement paradigm and expect the same performance capabilities." EnerNOC explains (at 8) its business activities included securing financing in difficult conditions, "hiring and training large numbers of Sales, Marketing, and Operations personnel," and developing a portfolio of "customers with load characteristics and load reduction capabilities to fit within its portfolio and comply with existing PJM rules so that it could meet its capacity obligations in future delivery years."

⁵ See OATT Attachment DD-1 § J.

whether those expectations can be fairly characterized as “reasonable” cannot be determined without additional inquiry.

PJM has clarified that load drop measured from and to usage levels above PLC do not constitute compliance. Customers with significant and reliable load drop capability above their peak usage typically, if not exclusively, have such capability only because they manage their PLC through peak shaving. EnerNOC accepts that such individual customers cannot offer this load drop capability above PLC into RPM Auctions, but under EnerNOC’s interpretation of the rules prior to clarification, a CSP could use such capability to offset non performance by other customers included in a portfolio. If a CSP expects most of its customers to perform most of the time, the rules as clarified would be expected to have a small impact on their portfolio. The impact would relate solely to non performance risk. A CSP can reduce that risk by reducing its capacity obligations in the Incremental Auctions. A CSP can also sign up additional customers to cover its risk. These additional customers would only be needed to provide backup for the CSP on commitments other customers are already obligated to meet. There is no reason to suppose that CSPs with portfolios including customers with load characteristics and load reduction capabilities reasonably consistent with the MW attributable to them in their offer cannot fully meet their expectations, including their desired risk profile, with only modest adjustments.

EnerNOC, however, suggests that the clarification of the rules will require more than modest adjustments. EnerNOC suggests (at 5–11, 24–27) that for its portfolio to be viable it must be able to offset non performance with performance from some customers that is not consistent with PJM’s definition of compliance. In other words, EnerNOC asserts that it must rely on load drop measured from and to usage levels above PLC. EnerNOC suggests that its “reasonable reliance expectations” depend on the continued availability of

this offset. This can only be true if EnerNOC believes that a substantial proportion of its portfolio will be unable or unwilling to perform in a manner consistent with their offered level of MW. EnerNOC seems to be asserting that it requires over compliance from certain customers at levels above PLC to cover expected substantial non performance by other customers.

This raises some important questions about EnerNOC's (and other CSPs') reasonable expectations with respect to over performance by some customers and under performance by other customers. These questions cannot be answered without an investigation of the details of the CSP's portfolio. For example, what is the basis for expecting over performance or under performance from specific customers? Given that EnerNOC claims that it expended considerable effort to identify customers with the right characteristics, what is the basis for EnerNOC's claim that a substantial number of its customers will not perform?

In order for the Commission to find that a CSP's reliance expectations are reasonable, it is necessary to examine the reasonableness of the assumptions that went into developing a portfolio. If the Commission determines that the effort required to develop a portfolio in fact means the effort required to match non performing customers with customers who already avoid capacity obligations through peak shaving, then no reasonable reliance expectations exist for the recovery of the costs of such efforts. If expected profits come from offsetting expected non performance with expected performance from reductions above PLC that could not be offered directly into RPM by those customers, then no reasonable reliance expectations exist for obtaining those profits.

EnerNOC states (at 4) that because PJM refers to EnerNOC's faulty settlement practices as "exploitation," this means that "PJM tacitly charges the Commission with abetting such exploitation by passing an order requiring that CSPs' reasonable reliance

expectations related to these practices be protected.” To the contrary, PJM’s compliance filing assumes that the Commission does not want provisions that protect “exploitation.” PJM’s approach is defective only in that it does not go far enough to avoid protecting unreasonable reliance expectations along with reasonable ones. EnerNOC’s position is out of step with the compliance required to meet the Commission’s concern to protect “reasonable reliance expectations.”

II. MOTION FOR LEAVE TO ANSWER

The Commission’s Rules of Practice and Procedure, 18 CFR § 385.213(a)(2), do not permit answer to answers or protests unless otherwise ordered by the decisional authority. The Commission has made exceptions, however, where an answer clarifies the issues or assists in creating a complete record.⁶ In this answer, the Market Monitor provides the Commission with information useful to the Commission’s decision-making process and which provides a more complete record. Accordingly, the Market Monitor respectfully requests that this answer be permitted.

III. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this answer as the Commission resolves the issues raised in this proceeding.

⁶ See, e.g., *Public Service Company of New Mexico*, 128 FERC ¶61,017 at P 11 (2009) (“We will accept [various answers to protests] because they have provided information that assisted us in our decision-making process.”); *Midwest Independent Transmission System Operator*, 128 FERC ¶61,007 at P 15 (2009).

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Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Eagleville, Pennsylvania,
this 27th day of January, 2012.



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