

**UNITED STATES OF AMERICA
BEFORE THE
ENVIRONMENTAL PROTECTION AGENCY**

In the matter of: EnerNOC, Inc.,)
EnergyConnect, Inc., CPower, Inc., and)
Innoventive Power, LLC in the United States) Docket No. EPA–HQ–OGC–2011–1030
Court of Appeals for the District of Columbia)
Circuit: EnerNOC, et al v. EPA, No. 10–1090)
(DC Cir.) and EnerNOC, et al v. EPA, No. 10–)
1336 (DC Cir.).)
)

COMMENTS OF THE INDEPENDENT MARKET MONITOR FOR PJM

Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (“Market Monitor”),¹ submits these comments on the Proposed Settlement Agreement announced by the Environmental Protection Agency (“Agency” or “EPA”) on January 4, 2012, among EPA, EnerNOC, Inc., EnergyConnect, Inc., CPower, Inc., and Innoventive Power, LLC (“Proposed Settlement”) in the above-captioned federal court

¹ PJM Interconnection, L.L.C. is a Regional Transmission Organization (“RTO”), as described in the rules of the Federal Energy Regulatory Commission (FERC). 18 CFR Part 35 Subpart F. PJM operates a centrally dispatched, competitive wholesale electric power market that, as of September 30, 2011, had installed generating capacity of 179,572 megawatts (MW) and more than 750 market buyers, sellers and traders of electricity in a region including more than 58 million people in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia (Figure 1-1). In the first nine months of 2011, PJM had total billings of \$28.8 billion. As part of that market operator function, PJM coordinates and directs the operation of the transmission grid and plans transmission expansion improvements to maintain grid reliability in this region. The Market Monitor performs the market monitoring function that FERC rules require for RTOs. 18 CFR § 35.34(j)(6). Market Monitoring consists of three core functions: reporting on market performance, monitoring the behavior of market participants and the RTO, and participating in market design. *Id.*

proceeding,² which involved the review of two EPA rulemakings that revised the National Emissions Standard for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines (“RICE NESHAP”). The Market Monitor has concerns about the provision in the Proposed Settlement that would allow owners and operators of emergency stationary internal combustion engines to operate those engines in certain emergency conditions, as part of an emergency demand response program, for up to 60 hours (or more) per year, or the minimum hours required by the applicable independent system operator (“ISO”).³ Special relaxation of the RICE NESHAP rule for generating units that participate in demand response programs but not for similarly situated generating units that offer supply directly to the wholesale electric power market operated by PJM serves no useful purpose and creates harmful incentives that should be avoided.

The settlement refers only to the parties’ desire to avoid litigation costs. The Agency may have assumed that the settlement provides benefits to the organized wholesale electricity markets. That is not correct. The settlement would not contribute to reliability. The settlement would contribute to distorted pricing signals in the energy markets. The settlement would conflict with and undermine the objectives of developing demand response in the organized wholesale power markets.

² 77 Fed. Reg. 282 (January 4, 2012).

³ PJM is an “ISO” in addition to its status as an “RTO.” An RTO is an ISO that meets the characteristics and performs the functions specified in FERC Rules. 18 CFR Part 35 Subpart F.

I. COMMENTS

A. The Settlement Is Not Required by and Does Not Benefit Wholesale Power Markets.

The EPA's interest in this proceeding is to protect and promote clean air. By excusing additional pollution from a number of smaller resources, the Market Monitor understands that the EPA is aware that settlement reduces the effectiveness of its rules.

Presumably the settling parties believe that, in return for relaxing the air pollution requirements, there is an offsetting benefit to wholesale power markets that makes this a reasonable settlement. But that is not the case. Permitting the identified units to run more hours is not required for wholesale power markets. Such operation would permit additional participation by limited demand side resources ("DR"). Such resources are an inferior product in the capacity market because they have a maximum obligation of 60 hours per year and thus they are not available throughout the year as are other generating units. The result of the increased role played by limited DR product is to suppress the price in the PJM capacity markets below the competitive level, which, among other things, reduces the ability of other generating units to pay for environmental upgrades based on EPA requirements.^{4 5} The limited DR product would also displace generating units that are required to be available every day of the year. The Market Monitor has recommended that the limited DR product be eliminated from the capacity market. PJM has taken steps to

⁴ See the *2010 State of the Market Report for PJM*.

⁵ Monitoring Analytics, LLC, can be found on the web at <<http://www.monitoringanalytics.com>>

restrict the amount of limited DR purchased in capacity auctions based on concerns about reliability.⁶

Using small engines to permit large customers to reduce the load they place on the wholesale power grid is a reasonable way for such customers to manage their capacity costs. However, that choice is an economic choice and one that should reflect all the associated costs and benefits. Such an application has no special status in the wholesale power markets and should not be assumed to have any special status.

Considering such uses to be demand side or conservation is misleading. Customers are not using less power when they rely on these engines. Rather they are using less efficient sources of energy and generally more polluting sources of energy than is available

⁶ See PJM Resource Adequacy Planning Department, Demand Resource Saturation Analysis at 15 (May 2010) (“Given the current interruption requirements applicable to DR, these study results indicate that the reliability value of DR saturates at an 8.5% penetration level for the RTO.”), which can be accessed at: <http://www.pjm.com/~media/committees-groups/committees/pc/20100811/20100811-item-10-demand-response-saturation-report.ashx>; see also, *PJM Interconnection, L.L.C.*, 134 FERC ¶61,066 at PP 2–4 (2011) (“Under the Reliability Pricing Model (RPM) rules, PJM conducts forward auctions to secure capacity for a future delivery year, thereby allowing both existing and proposed generation, demand response and energy efficiency resources to compete to meet the region's installed capacity needs. PJM provides for demand resources to be offered into the auction in competition with generation and energy efficiency resources.[footnote omitted] These demand resources must reduce load subsequent to a request for load reduction from PJM following the declaration of a Maximum Emergency Generation action, unless the resource has already reduced load pursuant to PJM's economic load response program.[footnote omitted] The level of demand resources committed to PJM has grown with the implementation of RPM.[footnote omitted] Under the current RPM rules, demand resources can qualify for the RPM provided they: []can be interrupted during the hours of 12:00 p.m. to 8:00 p.m. (Eastern Prevailing Time) on non-Holiday weekdays during the months of June through September; []can be called upon for interruptions up to ten times during that period each year; and []can remain interrupted for up to six hours when called upon. PJM contends that as more megawatts of resources that are only available during narrowly defined peak periods are committed, fewer megawatts of more broadly available resources are committed. As a result, PJM raises a concern that commitment of fewer resources that are more broadly available increases the risk that PJM may have to call on a resource at a time, or in a manner, in which the resource is not required to respond.”)

from the wholesale power grid. Affording such uses a special benefit through an exception to pollution rules simply means that more such units will run. This is not economically efficient and is not the optimal outcome.

DR providers can assemble portfolios to meet the requirements of a limited or an unlimited DR product and there is no reason that shorter run time diesels cannot be part of such portfolios. Such uses would appropriately reflect the actual economic and environmental costs of the identified engines.

While it may or may not be appropriate to provide grandfathered status to some such engines that have been used in agricultural applications, there is no benefit to the wholesale power markets from an exception for new applications.

Relaxing the environmental rules applied to such behind-the-meter generating units provides them an economic advantage which serves to impede or delay their replacement by cleaner alternatives, including both natural gas and renewables.

B. The Settlement Is Contrary to the Public Interest in Promoting the Development of the Demand Side of the Markets and Non-Discriminatory Open Access.

Relaxation of the EPA's standards will not promote the active participation of the demand side of the organized wholesale markets. The Market Monitor has long advocated the development of the demand side of PJM markets, which primarily means ensuring that customers see real time price signals, have the ability to respond to those signals in real time and have the ability to benefit from such response.⁷ The FERC has made the

⁷ See, e.g., *2008 State of the Market Report for PJM*, Volume 2, Energy Market, Part 1, at 9.

development of demand response a top priority.⁸ The chief objective has been to develop the demand side of markets for energy, capacity and ancillary services, in ways that would access the untapped potential of demand response to meet system resource needs, promote competition and conserve resources.⁹

Not only does DR based on such engines displace generation resources that are obligated to run throughout the year, but it also displaces demand side resources that are based on actual reductions in demand as a result of improved efficiency rather than simply substituting one generating source for another.

The same environmental standards should apply to all similarly situated generating units regardless of where on the system they happen to interconnect or whether they participate in power markets as demand or supply. Any other result provides incentives for generation owners to move their generating units behind-the-meter, beyond the reach of otherwise applicable RTO and FERC rules.

C. The Settlement Is Contrary to the Public Interest in Reliability.

The RTOs have adopted various means to ensure resource adequacy. PJM primarily relies on its capacity market known as the “Reliability Pricing Model” or “RPM” to ensure resource adequacy. Both supply and demand side resources can participate in RPM.

PJM acquires the amount of capacity it needs for reliability in the RPM auctions. The application of the original EPA rule limiting run hours to 15 would not adversely impact

⁸ See, e.g., Commissioner Wellinghoff’s Opening Remarks at the Commission Open Meeting (September 21, 2006), which can be accessed at: <<http://www.ferc.gov/media/statements-speeches/wellinghoff/2006/10-13-06-wellinghoff.asp>>.

⁹ See, e.g., *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, FERC Stats. & Regs. ¶31,322 at PP 8–14, 112–115 (2011), *order on reh’g*, 137 FERC P 61,215 (2011).

reliability. In fact, it would increase reliability. If PJM does not buy capacity from a Limited DR source, it will buy capacity from a generator or a DR provider based on improved efficiency. Limited DR, based on such engines, displaces generation which is obligated to be available every day of the year. If the EPA accords a benefit to a generating unit that participates in RPM as a demand-side resource rather than as a generating unit, this provides an incentive for activity that tends to degrade reliability in PJM. The better course avoids conferring any benefits on generating units that depends on whether units participate as demand or supply.

II. CONCLUSION

The settlement does not serve the public interest in competitive wholesale electricity markets, reliability, or clean air. The settlement will promote distorted market incentives in return for weakened emissions limits. Accordingly, the settlement should be withdrawn and the applicable regulations should make no distinction about where an engine interconnects or whether it participates in emergency demand response programs administered by ISOs.

The Market Monitor respectfully requests that the Agency afford due consideration to these comments as the Agency resolves the issues raised in this proceeding.

Respectfully submitted,



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