UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

EnerNOC, Inc.	)	Docket No. EL11-23-000

MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rules 212 and 213 of the Commission's Rules and Regulations, 18 CFR § 385.212 & 385.213 (2010), Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM[1] ("Market Monitor"), moves for leave to answer and answers the answer filed by EnerNOC, Inc. ("EnerNOC") in this proceeding on March 2, 2011 ("March 2nd Answer"). EnerNOC petitioned the Commission to enjoin "enforcement action being threatened or taken on account thereof." In the March 2nd Answer, EnerNOC argues (at 1) that the issue is whether PJM and the Market Monitor "may create a new market rule." It is EnerNOC who is proposing to add a new rule. Granting the relief requested in the March 2nd Answer would revise the PJM tariff to sanction double counting. The current rules prevent sales of non-existent capacity because they explicitly cap the calculation of Nominated Value at the Peak Load Contribution ("PLC"), which is the basis upon which responsibility to pay for capacity is allocated.

EnerNOC asserts that the MMU's position is not consistent with aggregation. That is not correct. The MMU's position is that aggregation is appropriate and should be

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[1] PJM Interconnection, L.C.C. is a Commission-approved Regional Transmission Organization. Capitalized terms used herein and not otherwise defined have the meaning provided in the PJM Open Access Transmission Tariff ("OATT") or the PJM Reliability Assurance Agreement ("RAA").

encouraged but that aggregation must be based on the correct definition of over compliance in order to prevent double counting. Reductions that occur below the PLC, and which exceed the offered reduction, would be overcompliance and could be netted against appropriately defined undercompliance.

EnerNOC ignores the fact that "Nominated Value," is explicitly defined in the tariff: "The maximum credit nominated shall not exceed the customer's Peak Load Contribution."[2] The Nominated Value is the fundamental basis for compensating Demand Resources and billing Load Serving Entities ("LSEs"). Where ambiguous language about a specific measurement and verification approach contradicts the definition of Nominated Value, this contradiction must be resolved in a manner that does not compromise the integrity of the product itself. Measurement and verification rules intended to protect the LSEs and their customers who are paying for capacity should not be interpreted in a manner that exploits those customers.

EnerNOC cites no existing provision in the tariff establishing a right to double counting because no such provision exists.

Demand Resources should not receive payment unless they can verify that they have met their capacity obligation. As PJM explains, double counting is "patently illogical and unreasonable."[3] No tariff provision entitles any party to compensation for capacity on this basis, and once this has been made absolutely clear, knowingly accepting payment for a product that has not been delivered would constitute manipulation of the markets.

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[2] RAA Schedule 6 § J.

[3] Motion to Intervene and Comments of PJM Interconnection, L.L.C., Docket No. EL111-23-000 at 13 (March 1, 2011).

Resolution of this proceeding in any manner that writes manipulation into the PJM Market Rules should not be countenanced. Accordingly, the additional relief requested in March 2nd Answer should be denied.

I. ANSWER

In the March 2nd Answer, EnerNOC asserts that the tariff allows it to meet its capacity obligations to PJM with reductions that do not provide capacity to PJM LSEs. EnerNOC's petition as originally filed seemed to request that the Commission provide carte blanche approval to its past practices without explaining what those practices were. EnerNOC now seems to petition the Commission to approve as just and reasonable the double counting practice itself.

In the March 2nd Answer, EnerNOC makes two points. The first that the tariff contradicts the MMU's position on the definition of capacity and the second is that the MMU's position opposes aggregation. Neither is correct.

EnerNOC points to the tariff language related to GLD but misquotes and misinterprets that language. The tariff states: "Compliance is checked on an individual customer basis for GLD, by comparing actual load dropped during the event to the nominated amount of load drop." EnerNOC then misquotes the tariff, substituting the word "determined" for the word "checked." Nothing in the tariff states or can be interpreted to state that the amount of load drop measured by GLD equals compliance. The amount of load drop measured by GLD is an input into the calculation. But the fact that it is an input does not mean that the full amount of the measured load drop is the amount of delivered capacity.

The flawed premise behind EnerNOC's position in this proceeding is its assertion that GLD, by itself, constitutes a basis for compensating Demand Response. The only basis

for compensating Demand Response is the capacity it delivers, which depends upon the Nominated Value of the Demand Resource.[4] The tariff explicitly and unambiguously caps Nominated Value at the PLC.[5] The purpose of measurement and verification provisions is to provide one input into the determination of whether a Demand Resource has delivered the capacity defined by its Nominated Value and is therefore entitled to payment. Accurately measuring load drop is essential, but the amount of the measured load drop does not equal delivered capacity as a matter of definition, as EnerNOC asserts.

The rules about measurement and verification are ambiguous and need clarification, but those rules do not constitute a self standing basis for an entitlement to payment. The right to compensation is exclusively tied to the actual delivery of capacity, which is defined by the Nominated Value.

EnerNOC cites the tariff provisions that set forth various approaches for PJM to measure and verify compliance with its emergency notifications. PJM has been flexible in the past, allowing CSPs to provide a variety of data to support measurement and verification under one of the approaches. But this does not mean that PJM has turned over to Market Participants responsibility for administering the tariff provisions for ensuring compliance in the Emergency Load Response Program.

PJM is the party ultimately responsible to administer the PJM Market Rules.[6] This includes ultimate responsibility for accurate measurement and verification. The tariff

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4 RAA Schedule 6 § B.

5 RAA Schedule 6 § J.

6 *See PJM Interconnection, L.L.C.*, 129 FERC ¶61,250 at PP 155, 160 (2008); *see also*, *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶31,281 at PP 370-79

establishes a number of provisions for measurement and verification, including Guaranteed Load Drop ("GLD").[7] If PJM chooses to reasonably interpret GLD a certain way, or even reasonably declines to rely on GLD as a method that will achieve an accurate measure, that is PJM's decision as the administrator of its tariff. PJM must administer its tariff according to its terms, but nowhere do those terms require PJM to use an approach for measurement and verification that produces a result known to be inaccurate. PJM cannot knowingly charge LSEs and their customers for capacity that has not been delivered.

PJM has not proposed to change compensation for demand response. What PJM proposes is to apply an interpretation of GLD that more accurately determines whether demand resources are delivering their Nominated Value, a value defined with explicit reference to PLC. A CSP could plausibly claim prior to the Joint Statement that it did not understand that PJM was measuring its compliance on the basis of data provided by the CSP that amounted to double counting. The Joint Statement on February 4, 2011 served notice that this is no longer true.

The GLD approach included in the PJM Market Rules for measurement and verification does not explicitly require or prohibit use of PLC to determine "comparison loads."[8] The PJM Market Rules do not require PJM to apply any particular approach to measurement and verification to any particular transaction. The PJM Market Rules do not explain how the rules apply to a context where "actual loads" include a portion of load that

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(2008) ("Order No. 719"), *order on reh'g*, Order No. 719-A, FERC Stats. & Regs. ¶31,292 (2009), *reh'g denied*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

7 RAA Schedule 6 § L.

8 RAA Schedule 6 § L; see also PJM Manual 19 (Load Forecasting and Analysis) Attachment A.

is subject to managed PLC.[9] The PJM Market Rules are ambiguous, and that is why there is a stakeholder process to remove this ambiguity. None of this is a reason for the Commission to direct PJM to accept, among the approaches to measurement and verification available to it, the approach that PJM knows results in double counting a load reduction. PJM should not be required to charge LSEs and their customers for capacity that is not delivered.

EnerNOC argues that preventing double counting means preventing CSPs from netting under and over performance to determine compliance. On the contrary, netting under and over performance does not depend on double counting. Over performance can be established by one or more participants in a portfolio reducing below PLC by an amount greater than the Nominated Value. This surplus can offset other participants wholly or partly failing to perform. Netting over performance against underperformance is a perfectly acceptable approach. However EnerNOC advocates netting non compliance against under compliance. While netting is reasonable, any over compliance used in netting must actually be over compliance. Demand Resources that fail to deliver capacity should not be paid and should not be available to offset other non complying resources in a portfolio.

EnerNOC asks the Commission to reject PJM's "policy preferences" as "the basis for granting PJM the relief it seeks." PJM is not seeking relief in this proceeding. Only EnerNOC has filed a petition for relief. PJM explains how the Commission could deny the relief requested by EnerNOC. The Market Monitor observes the PJM has indicated (at 17–21) that the Commission could, rather than immediately confirming PJM's rejection of

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[9] *Id*.

double counting, provide for a transitional period that would temporarily permit double counting. PJM explains (at 20) that this would constitute a departure from a "strict, logical interpretation of PJM's rule." PJM does not attempt to justify this alternative approach.

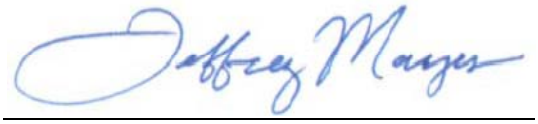
II. MOTION FOR LEAVE TO ANSWER

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 created a complete record.[10] 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 it resolves the issues raised in this proceeding.

Respectfully submitted,



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[10] *See, e.g., PJM Interconnection, L.L.C., 119 FERC ¶61,318 at P 36 (2007) (accepted answer to answer that "*provided information that assisted … decision-making process*"); California Independent System Operator Corporation*, 110 FERC ¶61,007 (2005) (answer to answer permitted to assist Commission in decision-making process); *New Power Company v. PJM Interconnection, L.L.C.*, 98 FERC ¶ 61,208 (2002) (answer accepted to provide new factual and legal material to assist the Commission in decision-making process).

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Dated: March 3, 2011

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 3rd day of March, 2011.

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