UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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PJM Interconnection, L.L.C.	)	Docket No. ER13-2140-000
	)	

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

Pursuant to Rules 212 and 213 of the Commission's Rules and Regulations,[1] Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM ("Market Monitor"), submits this answer to the pleadings filed August 30, 2013, in response to revisions to Section 6.6(g) of Attachment DD of the PJM Open Access Transmission Tariff ("OATT") to change the deadline for submission of Reliability Pricing Model ("RPM") must offer requirement exception requests for resources that are expected to be deactivated prior to or during the relevant Delivery Year, proposed by PJM on August 9, 2013 ("August 9th Proposal").[2] The purpose of RPM's three-year forward design is to allow competition from new entry to help establish competitive and efficient prices. The August 9th Proposal helps facilitate competition by providing notice of the location of likely deactivations prior to the deadline for new entrants to enter the planning queue. New entrants cannot participate in the RPM Auction if they have not entered the planning queue. The current deadline serves to create an anticompetitive barrier to entry in the PJM capacity markets.

Allegations raised by and on behalf of owners of incumbent generation that the proposal is unduly burdensome, unduly discriminatory or deficient on other grounds are

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[1] 18 CFR § 385.212 & 213 (2013).

[2] Capitalized terms not otherwise defined have the meaning specified in the OATT or the PJM Reliability Assurance Agreement ("RAA").

misplaced and unsubstantiated, and should be rejected.[3] The August 9th Proposal should be approved and made effective in time for the 2017/2018 Base Residual Auction (BRA) which will take place in May 2014.

I. ANSWER

A. Moving the Firm Deactivation Notification Date from January to December Is Reasonable and Consistent with the Purpose of August 9th Proposal.

The generation owners misstate the issue and fail to explain why moving the deadline for requesting an exception to the must offer requirement from mid January (120 days prior to the BRA) to December 1, has a significant impact on incumbent generators and why the positive impact on competition does not outweigh any impact on incumbent generators. Each of the generation owners' arguments apply equally to the mid January deadline as to the December 1 deadline and thus provide no support for the claims that the December deadline is unreasonable.

Duke argues (at 16) that "no real justification has been supplied for moving the final, firm deactivation notification date for the BRA from January to December."

To the contrary, the justification is explicitly to permit new entrants to compete in the BRA. Retaining the deadline in January creates an anticompetitive barrier to entry by preventing new entrants from replacing the deactivating resource.

Duke ignores that fact that the original proposal by PJM and the IMM was to have the firm deadline be September 1, which would have permitted potential entrants two

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[3] The Market Monitor here responds to filings made by Duke Energy Ohio, Inc. ("Duke"); FirstEnergy Service Company, on behalf of its affiliates FirstEnergy Solutions Corp. and Allegheny Energy Supply Company, LLC ("FirstEnergy"); the NRG Companies, including NRG Power Marketing LLC, GenOn Energy Management, LLC, Conemaugh Power LLC, GenOn Mid-Atlantic, LLC, Indian River Power LLC, Keystone Power LLC, NRG Chalk Point, LLC, NRG Energy Center Dover LLC, NRG Energy Center, Paxton LLC, NRG Power Midwest, LP, NRG REMA, LLC, NRG Rockford LLC, NRG Rockford II LLC, NRG Wholesale Generation LP, and Vienna Power LLC ("NRG") and the PJM Power Providers Group ("Power Providers").

months to prepare to enter the planning queue by the October 31 deadline. The December 1 date for a firm deactivation decision was a compromise that combined preliminary notification of all retirements by zone on September 1 which provides enough information to new entrants to permit them to meet the planning queue entry deadline, with final notification on December 1 which provides extra time for existing generation owners to reach a final decision.

B. The August 9th Proposal Concerns a Request for an Exception from the Must Offer Requirement, Not a Notice of Deactivation.

The PJM rules require a generation owner to provide only 90 days notice of a deactivation (including a retirement or mothball) to PJM and the Market Monitor, and the August 9th Proposal does not change this.[4] This proceeding concerns the notice that an owner must provide to PJM and the Market Monitor in order to avoid the must offer requirement in the next RPM Auction based on physical unavailability due to deactivation.[5] A resource failing to meet this deadline and not receiving a waiver from FERC must submit an offer. Failure to meet this deadline does not prohibit deactivation after 90 days notice.

NRG (at 3–5) and Power Providers (at 3–4) argue that the August 9th Filing unfairly forces generation resource owners "to make decisions prematurely and, arguably, without complete information."[6] Power Providers explain (at 5):

> For example, a unit may need capital upgrades from a company's capital pool of funds that is limited; meaning the capital for the resource in question is competing with other needs of the company which are not on a PJM deadline. In addition to the limited timeframe with which these critical commercial decisions need to be made, evaluations will be performed on a unit's capability and profitably [sic] almost four years in advance of the

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4 OATT Part V.

5 OATT Attachment DD § 6.6(g).

6 Power Providers at 4.

> Delivery Year, compounding the complexity of the analysis. [footnote omitted] As identified by PJM, organized labor agreements [footnote omitted] for resource personnel, as well as environmental site remediation, further complicate this analysis.

Generation owners fail to admit a critical feature of the RPM design which is that owners of an existing generating unit may make offers into the BRA that fully reflect the costs of complying with all the investment requirements for the unit. If the unit fails to clear the BRA, the owner has the option to provide notice of deactivation at that point. The time period from December 1 prior to a BRA to the actual Delivery Year is slightly less than three and a half years, not four years, and it is approximately one month longer than the current notification period.

C. Information on Deactivations Is Not Market Sensitive Information that Requires Protection from Disclosure.

The August 9th Proposal establishes two deadlines, a September 1 deadline that results in posting deactivation MW "on a zonal basis" without disclosing the owner, and a December 1 deadline that confirms the deactivation and publicly identifies the resource and owner. Despite this compromise intended to address resource owner concerns, Power Providers complain (at 6) that the ability in some cases, "even though indirect and perhaps speculative," to deduce the identity of the resource and owner creates a "potentially significant problem."

Deactivation may create public relations issues for a resource owner, but these are not market issues. Information on resources that are deactivating is not information that needs to be kept confidential in order to protect the market. To the contrary, this information facilitates competition. Owners' concerns about public relations issues associated with deactivations do not take priority over the need to ensure resource adequacy at competitive prices. The August 9th Proposal appropriately reflects efforts by PJM and the IMM to accommodate owners' interests without unduly compromising its purpose.

D. The August 9th Proposal Treats Does Not Unduly Discriminate Against Deactivating Resources.

Protestors complain of discrimination on various grounds. Duke argues (at 8–10) that the August 9th Proposal does not treat existing and new generation capacity resources comparably because there is "an eight month difference between the commitment date for an existing resource and the commitment date for a new resource." Power Providers complain (at 7–8) that the August 9th Proposal "exacerbate[s] discriminatory treatment of internal capacity resources as compared to external resources and demand response." FirstEnergy (at 6) and NRG (at 7–8) claim that the August 9th Proposal is discriminatory because it applies only to deactivating resources and not to resources seeking an exemption of the must offer requirement due to physical unavailability on other grounds.

The claim of discrimination is incorrect on its face. Queued planned generation requires the completion of a Feasibility Study and a signed Impact Study Agreement in order to offer in RPM. This means that generation must enter the planning queue by October 31 of the calendar year preceding a BRA in order to ensure the completion of the Feasibility Study, and subsequent signing of an Impact Study Agreement. Feasibility studies for planned generation entering the queue by October 31 of the calendar year preceding a BRA are not completed until the last day of February. As a signed Impact Study Agreement is a requirement to offer a planned resource in a BRA, and a Feasibility Study must precede the signing of an Impact Study Agreement, planned generation must enter the queue by October 31.[7]

In addition, it makes no sense to impose a must offer requirement on new entrants in the market. Such a requirement would be illogical at best. Effectively, incumbent generators are arguing against the must offer requirement for existing generation. The must offer

[7] PJM. "Manual 14A: Generation and Transmission Interconnection Process," Revision 14 (February 1, 2013), p. 12.

requirement is a critical pillar of the RPM design without which the market would fail. All the arguments that the incumbents make here about the discriminatory nature of the deadlines is effectively arguing that the must offer requirement is discriminatory. It is decidedly not.

In order to show that a rule is unduly discriminatory, it is necessary to show that the rule does not account for different situations and circumstances.[8] Owners of existing capacity resources are differently situated from potential entrants. Owners of existing resources have made a commitment to sell capacity in competitive markets to loads who must purchase that capacity at competitive prices. Owners of existing resources have benefitted from the existence of competitive capacity markets.

Arguments that the August 9th Proposal is unduly discriminatory have no merit and should be rejected.

E. The Improved Deadline Will Appropriately Facilitate Competition.

NRG (at 6), FirstEnergy (at 7) and Power Providers (at 8–9) argue that, in addition to conferring an unfair advantage to new entry, the August 9th Proposal will confer no advantage to new entry. These arguments are incorrect and should be rejected.

It is undisputed that any potential entrant must have entered the planning queue by October 31 of the year preceding the BRA. In order to determine whether there is an opportunity to compete to replace a retiring generating unit, potential entrants must know where such retirements will take place. It is impossible to offer in the BRA to compete to replace the retiring unit without this information and without entering the planning queue based on this information.

If the incumbent generators had no deadline, they could postpone notifying the market until it is too late for potential entrants to compete, including waiting until the end

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[8] *See*, *e.g.*, Southwest Power Pool, Inc., 132 FERC ¶ 61,020 at P 35 (2010).

of the auction week. In fact, generation owners have engaged in exactly such behaviors, which is one of the reasons for the current deadlines in the tariff. It is also a reason to have a deadline which permits potential entrants to compete, meaning at least two months prior to the October 31 planning queue deadline.

F. Requiring Existing Resources to Commit Prior to PJM's Posting Final Planning Parameters Is Just and Reasonable.

Duke (at 10–12) and FirstEnergy (at 7–10) argue, "PJM's proposal would create a system under which new resource developers have perfect planning parameter information when they make their decisions, but existing generation owners have no planning parameter information whatsoever when they must make theirs."[9] FirstEnergy explains (at 10), "market conditions can deteriorate or improve significantly in eight months."

In addition to arguing against the must offer requirement, incumbent generators misstate the facts. New resource developers must enter the planning queue by October 31 of the year prior to the BRA. PJM does not post planning parameters until January. While potential new entrants must take significant steps under the planning queue process in order to be able to compete in the BRA, it is also true that potential new entrants do not face a must offer requirement and can change their mind at any point up to the close of the BRA. This is consistent with a competitive process and is also consistent with a must offer requirement for existing resources.

II. MOTION FOR LEAVE TO ANSWER

The Commission's Rules of Practice and Procedure, 18 CFR § 385.213(a)(2), do not permit answers to answers or protests unless otherwise ordered by the decisional authority. The Commission has made exceptions, however, where an answer clarifies the issues or

[9] Duke at 11.

assists in creating 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 pleading as the Commission resolves the issues raised in this proceeding.

Respectfully submitted,

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10 *See*, *e.g.*, *N.Y. Indep. Sys. Operator, Inc.*, 121 FERC ¶61,112 at P 4 (2007) (answer to protest accepted because it provided information that assisted the Commission in its decision-making process); *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).

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 13th day of August, 2013.

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