UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	)	Docket No. ER11-4402-000

MOTION TO INTERVENE AND PROTEST OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rules 211, 212 and 214 of the Commission's Rules and Regulations, 18 CFR § 385.211, 385.212 and 385.214 (2010), Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM ("Market Monitor"),[1] submits this motion to intervene and protest to the revisions to Schedule 6A to the PJM Open Access Transmission Tariff ("OATT") filed August 30, 2011, which pertain to the recovery of costs of black start service units included in the PJM system restoration plan ("August 30th Filing"). The August 30th responds to the complaints of certain black start service unit owners that under the recently adopted rules, "they would be required to spend substantial time and effort to calculate, and document, the non-NERC related capital costs for these units."[2] The August 30th Filing does offer any evidence that the purported problem exists. The August 30th Filing does not explain why the specific proposed revisions would be necessary even if the alleged problem did exist.

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1 PJM Interconnection, L.L.C. is a FERC approved Regional Transmission Organization. Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff ("OATT").

2 August 30th Filing at 4.

Instead, the proposed approach nullifies the reform of Black Start Service procurement achieved by PJM in 2009.[3] The 2009 reform sought to avoid the two most serious flaws in August 30th Filing: provision for piecemeal recovery of costs in contravention of long-standing ratemaking principles, and provisions that disrupt the link between cost recovery and service obligations.[4] Accordingly, the August 30th Filing should be rejected, or, at a minimum, corrected to specifically address the alleged inability of certain black start service providers to produce documentation.

I. COMMENTS

The August 30th Filing explains (at 3) that its primary purpose is reverse the outcome of the recent reform of the black start procurement rules in response to arguments raised by "a few parties" unhappy with its outcome. The August 30th Filing states (at 3–4):

> While an overwhelming majority of stakeholders supported the proposal as outlined in the 2009 Filing, a few parties requested that the Commission consider an alternative approach that would allow those black start service providers that were using the then current formulaic rate (i.e. the Base Formula Rate), the option to recover NERC-CIP-related capital costs without the added requirement that they document the historic capital costs as required by the then-proposed Capital Cost Recovery Rate.[footnote omitted] In this regard, these parties argued that many existing black start units had historically recovered fixed black start service costs pursuant to the historic "black box" methodology and would be required to spend substantial time

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[3] *See PJM Interconnection, L.L.C.*, 127 FERC ¶61,197 (2009) ("2009 BSS Reform Order").

[4] BSS Reform Order at P 24 ("We accept PJM's proposed term commitments set forth in paragraphs 6. PJM's proposal ensures that PJM's transmission customers are paying a rate for black start service commensurate with the black start service they are receiving. PJM is providing generators with two options for receiving payment for black start service: (a) continue (or elect) to forego recovery of new capital costs and receive reimbursement over the traditional two year period (paragraph 5); or (b) seek recovery of new or additional black start capital costs (paragraph 6).").

> and effort to calculate, and document, the non-NERC related capital costs for these units. In many cases, it was alleged, the units had changed owners in the ensuing years, thereby complicating the discovery of detailed cost information. As such, while the Capital Cost Recovery Rate was a just and reasonable mechanism to compensate black start service providers for their non-NERC related capital costs, it was burdensome and unwarranted to require all black start service providers to document capital costs (even historical capital costs) when they simply were seeking an opportunity to recover incremental NERC-related capital costs. Ultimately, the Commission accepted the PJM proposed position, noting that while the alternative approach may be just and reasonable, the opposing parties did not claim that PJM's proposal was unjust and unreasonable.[footnote omitted]

Nothing substantively has changed since 2009. Nevertheless, PJM allowed the complaining parties to reopen the issue in the Black Start Service Working Group ("BSSWG"),[5] which met 15 times in late 2010 and 2011. These meetings primarily concerned PJM rules for compensating the providers of black start service. BSSWG meetings included active participation by the Market Monitor and PJM staff, neither of whom are voting Members, and representatives primarily, if not exclusively, of black start service providers and their affiliates. During this time the Market Monitor repeatedly requested evidence of the alleged problem. Specifically, the Market Monitor requested examples of investment costs in the incremental equipment solely necessary to provide black start service that service providers could not document. No such evidence was provided for consideration by the BSSWG.

The sole focus of the BSSWG was to address issues about the alleged inability to document non-NERC capital costs for which no evidence was ever provided. Ultimately,

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[5] This stakeholder group was renamed the Black Start Service Task Force ("BSSTF").

black start service providers on the BSSWG agreed to develop provisions that would: (i) allow piecemeal recovery of costs related to compliance with CIPS on top of the incentive rates; (ii) allow separate recovery of individual investments based on an individual accounting of expected lives, as opposed to a single levelized cost recovery; and (iii) permit recovery of costs through the PJM Tariff on top of costs recovered under a separate rate approved directly by the Commission. The relationship of items (ii) and (iii) to the alleged problem of cost documentation has never been established.

In subsequent discussions, which considered black start issues in the context of a number of issues under consideration in the senior stakeholder committees, black start service providers, transmission owners, load representatives and the Market Monitor agreed to some procedural modifications that would allow customers an opportunity to review individual black start cost items. The Market Monitor also proposed some compromise language that would address black start service providers' stated concern about cost documentation without disrupting the basic and substantively appropriate approach adopted in 2009. Perceptions of black start service as a relatively low cost issue prevented serious vetting of the issues raised by the Market Monitor in senior committees, and, consequently, these defects remain in the August 30th Filing.

A. The August 30th Filing Violates the Rule Prohibiting Piecemeal Ratemaking

The formula rate included in Paragraph 5 of Schedule 6A is an incentive rate. It was designed to create an incentive for older, fully depreciated units that have no investment to recover to continue to provide black start service. This rate was the product of an agreed formula that is indexed to capacity costs, but bears no relationship to the costs of particular providers to provide black start service. The August 30th Filing and black start service providers have characterized the incentive as a "black box" methodology to recover costs

with an incentive factor adjustment. This rate component, however, does not have any actual relationship to fixed costs, as those costs were generally understood to be zero because they have been fully recovered. The point of the incentive rate was to provide a reasonable incentive rate to unit owner whose costs had been fully recovered to continue to provide black start service.

Schedule 6A provides, as appropriately corrected in the August 30th Filing, for the calculation of the "Fixed Black Start Service Costs" under the incentive rate (i.e. Paragraph 5) as follows: Net CONE * Black Start Unit Capacity * "X," where "X" under the incentive rate is .01 for hydro units and .02 for a diesel or combustion turbine unit. The Fixed Black Start Service Costs component of the formula rate is indexed to the current value of the Black Start Unit's capacity MW. This value is further augmented by an overall incentive factor "Z" of ten percent. This amount has no relationship to the costs of investment in black start service. This amount is an incentive to provide the service. Documented variable costs, training costs and fuel storage costs, also increased by the "Z" incentive factor, are recovered separately. The incentive rate includes no provision for the recovery of any minor additional capital investments in black start equipment that a black start unit owner may from time to time incur. Recovery of minor investments was subsumed in the incentive rate for Fixed Black Start Service Costs. Major investments were recoverable through filings with the Commission.

In 2009, PJM added a third option, a formula rate that allowed for the recovery of significant documented investment in incremental black start equipment on a cost basis that avoided a need for unit owners to file with the Commission. Such investment could be associated with compliance with NERC-related Critical Infrastructure Protection Standards ("CIPS"), which some argued, could be significant. Such investment could be larger capital

investments in black start equipment, which an owner previously would have taken directly to the Commission. Such investment could include a combination of both CIPS and black start equipment.

The formula provides for the collection of all capital investments as a fixed cost component of the formula rate and included a table providing for a reasonable period of recovery and a matching period of obligation to provide black start service. Providers under the incentive rate component were only committed to renewable two year terms. Providers under the rate component for new fixed investment were required to provide service over a somewhat longer period, a period reasonably commensurate with the life of the investment in black start equipment (subject, however, to the limits of the remaining expected life of the host unit). Once the new investment was recovered and the corresponding service obligation was complete, the black start service provider could switch to recovery under the incentive rate.

The 2009 BSS Reform Order approved an approach designed to allow the recovery of CIPs costs, which had not been anticipated when the incentive rate was originally implemented. The approach approved in the BSS Reform Order carefully avoided blurring compensation based on incentive payments and compensation based on cost recovery. The August 30th Filing inappropriately and unnecessarily blends them. The August 30th Filing creates a special adder relating to one particular type of cost and levies it on top of the incentive rate deceived to procure service from fully depreciated units. This approach

amounts to ad hoc and piecemeal ratemaking, which is prohibited under longstanding traditional ratemaking principles.[6]

B. If the Commission Believes It is Necessary to Provide Relief to Black Start Service Providers Because They Have Failed to Maintain Records of Their Costs, Then the Market Monitor's Compromise Approach Would Provide Such Relief Without Corrupting the Design of the Procurement Rules.

Black start unit owners claim that they are unable to document their capital costs other than CIPs. For fully depreciated incremental black start equipment, no such costs exist to document.

Owners ought to keep accurate business records, including investment in incremental black start equipment. Owners should expect to bear the consequences of a failure to maintain records. However, the Market Monitor's chief concern in this matter is to preserve a reasonable market design for black start procurement and compensation going forward, not to penalize asset owners for poor record keeping. Moreover, the burden arguably falls more on the owners of smaller capacity black start unit owners, because CIPs costs as a proportion of overall cost recovery would be proportionately greater.

Consequently, the Market Monitor proposed compromise language that would provide black start owners the opportunity for cost recovery with tariff language targeted to solve the alleged problem and that would avoid instituting a piecemeal approach to ratemaking.

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[6] *See* Carolina Power & Light Co. v. FERC, 860 F.2d 1097 (D.C. Cir 1988), and Florida Power and Light Co. v. City of Miami, 92 F.2d 180, 183 (5th Cir 1938) (rejecting a proposal to add new facilities costs atop an existing point-in-time rate base).

The Market Monitor proposed the following addition to the tariff, which would be inserted immediately after the CRF table in Paragraph 18 of the currently effective Schedule 6A:

> If a Black Start Service Provider seeking to recover costs for a Black Start Unit under paragraph 6 (i) is unable to sufficiently document its costs for such unit and (ii) was receiving payment under paragraph 5 for services provided by such unit as of May 15, 2010, then the Black Start Service Provider may add an amount up to its Black Start Unit Capacity times net CONE times the Black Start allocation factor (X) for its technology type up to a maximum of 50 MW for diesel or CT units, or 100 MW for hydro units as a proxy for all of its costs (whether sufficiently documented or not) other than costs incurred solely for the purpose of meeting NERC Reliability Standards. Black Start Units not meeting all of the preceding criteria are eligible for recovery of costs under paragraph 6 solely to the extent that a Black Start Service Provider can sufficiently document such costs.

The approach allows the uses of Fixed Black Start Costs to serve as a proxy for investment costs of asset owners who may have made incremental investments in black start equipment prior to the 2009 BSS Reform Order and prior to the more recent stakeholder discussions. The provision would not apply to new black start units, whose owners now have explicit notice of the need to document the cost of incremental investment in black start equipment. Using a "cost proxy" rather than adding a cost adjustment to an incentive rate avoids the harmful precedent set by piecemeal cost adjustments to incentive rates. Use of such a proxy is limited to the owners of smaller assets receiving proportionately lower recovery under the incentive rate. This simple and straightforward compromise approach would compensate black start service units essentially as requested but would have avoided the flawed elements of the August 30th Filing. The Market Monitor presents this alternative approach to the Commission as a

potential alternative means to resolve the defects in the August 30th Filing if the Commission does not wish to reject it.

C. Adjustments to the Rates Specifically Approved by the Commission Should Be Approved by the Commission.

Schedule 6A currently provides a mechanism for determining a black start service rate through either an incentive rate formula or a cost-based rate formula and provides a means for black start service providers to collect that rate from the PJM Zone served. Black start service providers that do not want to use either of the formula rates under Schedule 6A may request the Commission to determine the rate instead of using the formula rates and still collect Zonal payments under Schedule 6A. In order to preserve separation between the formula rates and the Commission-approved rate, the tariff contains a proviso that, "The Transmission Provider will presume that any FERC-approved cost recovery plan would be the exclusive basis for the recovery of a black start unit's recovery of its costs during the applicable term."[7] The August 30th Filing proposes to delete this proviso. This would permit a black start service provider to collect the Commission-approved rate, and, within the term specified for the Commission-approved rate, collect for the same service additional amounts provided under the formula rate. The proposed revisions specifically allow for the recovery under the following formula: (FERC-approved rate) + (Incremental Black Start Capital Costs) * CRF).

This is another example of prohibited piecemeal ratemaking. If a black start service provider wants to change a Commission-approved rate, the owner must file to change that rate with the Commission. The PJM tariff should not provide for changes to rates separately

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[7] OATT Schedule 6A Paragraph 17.

approved by the Commission, even if the adjustment to the Commission-approved rate is subject to review by the Market Monitor. The approach filed by PJM would only increase rates if costs go up. It does not provide for any decrease if costs went down.

Accordingly, the proposed revisions should be rejected. If any change is appropriate, it would be to explicitly bar additional recovery under Schedule 6A formula rates when there is existing recovery under a comprehensive Commission-approved rate. An appropriately revised proviso would instead read, "A FERC-approved cost recovery plan shall be the exclusive basis for the recovery of a Black Start Unit's recovery of its costs during the applicable term."

D. The Link Between Investment Costs and Service Obligations Should Be Preserved.

The August 30th Filing proposes a confusing approach to cost recovery that requires assessing a useful life for each investment component rather than create a complete rate base to calculate cost of service. The August 30th Filing explains (at 10), "black start unit owners may only need to make minor modifications to their resources to ensure black start capability." The August 30th Filing claims, "the black start unit owner could be forced to recoup relatively inconsiderable expenditures, and provide black start service, over a discordant amount of time based upon the life of the unit as opposed to life of the improvement itself." The purported problem does not exist. Black start unit owners may receive payments at their election based under a cost-based rate or an incentive rate. Both approaches allow for generous compensation. If investment costs are small, the rational choice is to recover under the incentive rate. Cost-based recovery makes sense when capital investments are relatively large, and a cost-based rate would be greater than the incentive rate.

Contrary to the August 30th Filing, the rules do not provide that a black start unit owner must recover if the life of an "improvement" exceeds the life of the "unit." On the contrary, Paragraph 2 of Schedule 6A specifically avoids this result by providing, "the expected life of the black start unit shall take into consideration expectations regarding both the enabling equipment and the generation unit itself." A unit owner is not required to calculate its cost of service rate for black start equipment over a life longer than the expected life of the underlying unit. The August 30th Filing does not demonstrate the logical connection between the proposed revision and the problem that it purports to solve. The August 30th Filing does not identify an actual problem.

The Market Monitor raised this question during over a year of discussion in the BSSWG. The Market Monitor asked for examples of the alleged problem and how the division of a cost of service in separate components was necessary to provide investors in black start service a fair opportunity to recover investment. No answer has been provided.

To ascertain their meaning, these provisions must be evaluated on their face. Their primary effect is to replace levelized recovery of an aggregate investment with an accelerated recovery based on the life of certain components. This accelerated recovery, in turn, permits a black start service provider to prematurely terminate cost-based recovery, to terminate the obligation to provide black start service for the life of the investment and return to incentive recovery.

The following two-stage example shows how this could work. Unit A desires to recover new investments in black start equipment in three components. Investment Component "X" equals $1,000,000, recoverable over 2 years. Investment Component "Y" equals $500,000, recoverable over 3 years. Investment Component "Z" equals $100,000,

recoverable over 5 years. The Incentive rate equals $150,000 per year. Recovery could work as follows:

Table No. 1

YEAR	1	2	3	4	5	6	TOTAL
	Cost-based Payments Para. 6					Incentive Payments Para. 5	
X	500,000	500,000				150,000	
Y	125,000	125,000	125,000	125,000			
Z	20,000	20,000	20,000	20,000	20,000		
Annual Total	720,000	720,000	145,000	145,000	20,000	150,000	1,750,000
Total Levelized Recovery	320,000	320,000	320,000	320,000	320,000	150,000	1,750,000

In this example, the unit owner recovers the same amount over six years, $1,750,000, whether the total cost of service is recovered on levelized basis or an accelerated basis as result of breaking the investments into components.

The tariff includes language suggesting that the above correctly describes how these provisions work, stating: "In the event that the Black Start Unit seeks recovery of capital improvements that are included in more than one category of Capital Improvement Lifespan (as set forth below), its applicable commitment to provide black start service for such Black Start Unit shall be the longest expected life of those new or additional capital improvements." It would appear, if one read no further, the balance between cost recovery and service obligation is reasonably preserved.

Unfortunately, this is not how these provisions work at all. Instead, additional provisions allow the black start owner to revert from cost-based to incentive rate recovery prematurely. The relevant proviso reads:

> A Black Start Unit may make a non-revocable election to forego calculation of its Fixed BSSC, and surrender any forward compensation that it otherwise would have been entitled to, in accordance with either Capital Cost Recovery Rate set forth above. In this case, the Black Start Unit shall calculate its Fixed BSSC in accordance with the Base Formula Rate (and provide the applicable term of commitment established in Paragraph 5 above). In the event that the Black Start Unit seeks to recover further new or additional Black Start Capital Costs, it may not seek to recover any portion of those Black Start Capital Costs as its Fixed BSSC that it had previously forfeited.

The tone of this passage could suggest to the casual reader that this language limits recovery by the owner, but its actual effect is to provide black start unit owners in certain circumstances a windfall. Table No. 2 applies the rules as actually proposed to the above example. In this case, the rational black start unit owner reverts in the third year to the incentive rate:

Table No. 2

YEAR	1	2	3	4	5	6	TOTAL
	Cost-based Payments Para. 6		Incentive Payments Para. 5				
X	500,000	500,000	150,000	150,000	150,000	150,000	
Y	125,000	125,000					
Z	20,000	20,000					
Annual Total	720,000	720,000	150,000	150,000	150,000	150,000	2,040,000
Total Levelized Recovery	320,000	320,000	320,000	320,000	320,000	150,000	1,750,000

In this case, total recovery during the example six years is different. By terminating cost-based recovery earlier, the black start unit owner is paid an additional $290,000. This windfall is the result of improper blending of cost-based and incentive-based recovery during the commitment period. As the first tariff passage quoted above indicates, the

obligation applies on the basis of the longest recovery period. Why should an owner be permitted to unilaterally terminate its service obligation in order to exact higher incentive payments to perform exactly the service that it is already obligated to provide? Payment incentives are not necessary to obtain service from units already committed to provide that service. The proposed provision that allows such payments should be rejected as unjust and unreasonable. Either the unsupported provision for component-based recovery should be rejected or the provision allowing the unilateral premature switch from cost-based to incentive rates should be eliminated. Either corrective action would produce a reasonable (but still unnecessarily complicated) provision. The current proposal is unreasonable.

II. MOTION TO INTERVENE

Attachment M to the OATT requires that the Market Monitor, among other things, monitor "[a]ctual or potential design flaws in the PJM Market Rules" and "PJM's implementation of the PJM Market Rules or operation of the PJM Markets, as further set forth in Section IV.C."[8] As this proceeding involves the proposed revisions to market rules for compensating black start service units in PJM, it implicates matters within the Market Monitor's purview. Consequently, it is in the public interest that the Commission grant this motion. Rule 214 provides that the Commission may grant interventions where "[t]he movant's participation is in the public interest."[9] The Market Monitor has the exclusive duty to perform the market monitoring function for PJM, and no other party can adequately represent it in this proceeding. Accordingly, the Market Monitor moves that the

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[8] OATT Attachment M §§ II & IV.B.2 & 6.

[9] 18 CFR § 385.214(b)(2)(iii).

Commission grant it leave to intervene and afford to it full rights as a party to this proceeding.

III. CONCLUSION

The Market Monitor respectfully requests that the Commission grant leave to intervene and consider this protest as it proposes an approach that would resolve the issues raised in this proceeding.

Respectfully submitted,

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Dated: September 20, 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 20th day of September, 2011.

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