

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

LS Power Development, LLC and Doswell)	
Limited Partnership,)	
v.)	Docket No. EL21-72-000
PJM Interconnection, L.L.C.)	
)	

COMMENTS OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 211 of the Commission’s Rules and Regulations,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor (“Market Monitor”) for PJM Interconnection, L.L.C. (“PJM”),² submits these comments responding to complaint filed May 7, 2021, by LS Power Development, LLC and Doswell Limited Partnership (“Complainants”) against PJM (“May 7th Complaint”). The May 7th Complaint requests that the Commission invalidate the Fixed Resource Requirement (“FRR”) Alternative election by any entity whose FRR Capacity Plan does not demonstrate the “commitment of Capacity Resources for the term of such election sufficient to meet such Party’s Daily Unforced Capacity Obligation.”

Section C.1 of Schedule 8.1 to the RAA states:

No less than four months before the conduct of the Base Residual Auction for the first Delivery Year for which such election is to be effective, any Party seeking to elect the FRR Alternative shall

¹ 18 CFR § 385.211 (2020).

² Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”), the PJM Operating Agreement (“OA”) or the PJM Reliability Assurance Agreement (“RAA”).

notify the Office of the Interconnection in writing of such election. Such election shall be for a minimum term of five consecutive Delivery Years.³

Section C.1 of Schedule 8.1 to the RAA then states:

No later than one month before such Base Residual Auction, such Party shall submit its FRR Capacity Plan demonstrating its commitment of Capacity Resources for the term of such election sufficient to meet such Party's Daily Unforced Capacity Obligation (and all other applicable obligations under this Schedule) for the load identified in such plan.

The tariff's phrasing is plain and unambiguous.⁴ The term of the election is five years.

Section D.1 of Schedule 8.1 to the RAA provides:

Each FRR Entity shall submit its initial FRR Capacity Plan as required by subsection C.1 of this Schedule, and *shall annually extend and update* such plan by no later than one month prior to the Base Residual Auction for each succeeding Delivery Year in such plan. Each FRR Capacity Plan shall indicate the nature and current status of each resource, including the status of each Planned Generation Capacity Resource or Planned Demand Resource, the planned deactivation or retirement of any Generation Capacity Resource or Demand Resource, and the status of commitments for each sale or purchase of capacity included in such plan. [emphasis added]

The tariff's use of the phrase "extend and update" is not consistent with PJM's interpretation. "Extend" means to extend the plan for an additional year. "Update" means to revise the existing plan to reflect more current information. PJM's past practice and interpretation of the Manuals cannot supplant the required application of the filed rate,

³ RAA Schedule 8.1 § C.1.

⁴ *Id.*

which provides for extending and updating an initial FRR Capacity Plan that covers the five year term of the election.⁵

PJM does not have the discretion to eliminate the tariff requirement that the entity “demonstrate[] the capacity to satisfy the entire capacity obligation for all load, including load growth, in the applicable Fixed Resource Requirement service area for the term of the entity’s participation in the Fixed Resource Requirement alternative.”⁶

The Market Monitor shares Complainants’ concern that the issue be resolved as soon as possible, prior to the next Base Residual Auction (“BRA”), which is scheduled to begin on May 19, 2021. The BRA is about to begin and it should not be postponed. The only practical relief within the available time frame is the invalidation of FRR elections for the May BRA which is for the 2022/2023 Delivery Year. Such invalidation would be without prejudice to electing the FRR for the next BRA and associated delivery year. The next BRA is scheduled for December 2021.

The facts and circumstances of the May 7th Complaint also indicate a separate issue with the administration of the rules for FRR elections. The market rules require notice of an FRR election four months in advance.⁷ The market rules do not explicitly indicate whether

⁵ See, e.g., *MMC Energy, Inc. v. CAISO*, 123 FERC ¶ 61,251 at PP 68, 83–84 (2008) (Commission agreed “that the filed rate doctrine prevents the enforcement of a formal contract that would contradict a filed rate and also prevents parties from incurring a contractual obligation based on detrimental reliance where doing so contradicts a filed rate”); see also *Reiter v. Cooper*, 507 U.S. 258, 266 (1993) (“The filed rate doctrine embodies the principle that a shipper cannot avoid payment of the tariff rate by invoking common-law claims and defenses such as ignorance, estoppel, or prior agreement to a different rate.”).

⁶ RAA Schedule 8.1 § B.1.

⁷ See RAA Schedule 8.1 § C.4 (“To facilitate the elections and notices required by this Schedule, except a new FRR Entity’s initial election, the Office of the Interconnection shall post, in addition to the information required by Section 5.11(a) of Attachment DD to the PJM Tariff, the percentage of Capacity Resources required to be located in each Locational Deliverability Area by no later than one month prior to the deadline for a Party to provide such elections and notices.”)..

such notice is confidential to PJM or is intended to notify the markets.⁸ PJM received a timely FRR election notice from Dominion Energy Virginia, but held it confidential at Dominion's request. An important purpose of the tariff requirement for four months notice is to allow market participants to adapt their plans based on potentially significant market information. Participants cannot prepare if the notice is not posted. Four months notice would also permit participants to raise issues with the Commission without the need for emergency action. The Market Monitor requests that, in addition to the specific issue and request for relief raised in the May 7th Complaint, that the Commission clarify that an entity's notice of an intent to elect FRR should not be kept confidential, but should instead be posted by PJM to the market.

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

Respectfully submitted,



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⁸ *Id.*

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 12th day of May, 2021.



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