

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

Independent Market Monitor for PJM)	Docket No. EL24-___-000
)	
v.)	
)	
PJM Interconnection, L.L.C.)	
)	

COMPLAINT OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 206 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 files this Complaint against PJM and its unlawful implementation of the PJM market rules for energy efficiency resources (“EE”).

By definition, the PJM market rules explicitly include in the capacity market only EE Resources “not reflected in the peak load forecast prepared for the Delivery Year for which the Energy Efficiency Resource is proposed.”³ After PJM did include EE in the PJM forecast, PJM correctly recognized that EE was no longer a capacity resource. Nevertheless, in reliance on rules not included in the filed tariff, but included instead in PJM Manual 18, PJM has been paying the capacity market clearing price to EE resources that do not meet the

¹ 18 CFR § 385.206 (2022).

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”).

³ RAA Schedule 6 § L.1, *see also* OATT Attachment DD-1 § L.1.

definition of an EE Resource.⁴ When changing rates, Section 205 of the Federal Power Act requires that “notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect.”⁵ Accordingly, PJM’s implementation of rules that require customers to pay EE resources when EE was no longer a capacity resource violated the tariff and the Federal Power Act. PJM should be directed to discontinue such payments immediately. PJM should also be directed to recoup unlawful payments.

I. BACKGROUND

Under the current PJM Market Rules EE resources are not capacity resources. EE resource MW are not included in the supply of capacity in any capacity market auction. EE resource MW cannot be used to replace capacity resources. EE MW do not contribute to PJM system reliability.

Section L.1 of Schedule 6 to the RAA defines “Energy Efficiency Resources:”

An Energy Efficiency Resource is a project, including installation of more efficient devices or equipment or implementation of more efficient processes or systems, exceeding then-current building codes, appliance standards, or other relevant standards, designed to achieve a continuous (during peak summer and winter periods as described herein) reduction in electric energy consumption at the end-use customer’s retail site that is not reflected in the peak load forecast prepared for the Delivery Year for which the Energy Efficiency Resource is proposed, and that is fully implemented at all times

⁴ “Energy Efficiency Resources” or “EE Resources,” when capitalized, means Energy Efficiency Resources as defined in the OATT Attachment DD-1 § L.1 and RAA Schedule 6 § L.1. When not capitalized, “energy efficiency resources” or “EE resources” means resources that are referred to or treated as energy efficiency resources even though they do not satisfy the definition included in the filed tariff.

⁵ 16 U.S.C. § 824d(d).

during such Delivery Year, without any requirement of notice, dispatch, or operator intervention [emphasis added].⁶

On March 26, 2009, FERC approved Tariff and RAA changes to allow EE Resources to participate in PJM Capacity Markets beginning with the Base Residual Auction conducted in May 2009 which committed capacity for the 2012/2013 Delivery Year.⁷ The Commission approved PJM's request to allow EE Resource participation beginning June 1, 2011 in the remaining 2011/2012 Incremental Auctions by letter order dated January 22, 2010, in Docket No. ER10-366-000. The requirements for EE Resource participation in PJM Capacity Markets are in Tariff, Attachment DD-1 and RAA, Schedule 6, Section L. The only reason that EE was included in the capacity market in the first place was that EE was asserted to not be included in the PJM load forecast used in the capacity market. PJM stated that EE was not fully reflected in the load forecast for four years based on the method in place at the time.⁸ As soon as PJM explicitly included EE in the load forecast used in the capacity market, PJM should have followed its tariff language and logic and eliminated EE from the capacity market entirely.

Revisions to the PJM load forecast to incorporate energy efficiency were endorsed at the November 19, 2015, MRC.⁹ These revisions included improvements to comprehensively

⁶ See also OATT Attachment DD-1 § L.1.

⁷ See PJM Interconnection, L.L.C., 126 FERC ¶ 61,275 (2009)

⁸ See PJM Filing, Docket No. ER09-412-000 (December 12, 2008) at 32 (“An EE Resource is permitted to be offered as a Capacity Resource in the Base Residual or Incremental Auctions for four (4) consecutive Delivery Years. [footnote omitted] As discussed above, this ensures that a party contemplating an energy efficiency investment realizes the benefit of the investment’s reduction in the PJM region’s capacity needs before that reduction can be reflected in the load forecast used for RPM’s forward auctions. After that reduction is reflected in the load forecast, the customer’s load obligation, and capacity requirements, are reduced even without the changes proposed in this docket.”).

⁹ See *Approved Minutes from the Markets and Reliability Committee*, <<https://www.pjm.com/-/media/committees-groups/committees/mrc/20151217/20151217-item-01-draft-minutes-20151119.ashx>> (December 17, 2015).

capture energy efficiency impacts through incorporation of projections from the U.S. Energy Information Administration (EIA) Annual Energy Outlook (AEO). The AEO forecast is based on a set of end use models for the residential, commercial, and industrial sectors. EIA accounts for state and utility efficiency programs by mapping regional EE program expenditures to end uses and tracks the number of units sold and associated efficiency information on an ongoing basis.¹⁰

Instead of eliminating EE from the capacity market consistent with the tariff and logic, PJM removed EE from capacity resource status and implemented a calculation method (the addback method) in the capacity auctions intended to eliminate any price impact of EE on the capacity auctions. Beginning with capacity auctions conducted in 2016 for delivery years 2016/2017 and forward, PJM began use of an addback method to reflect the inclusion of EE in the peak load forecast. PJM documented the addback method in Manual 18 on December 17, 2015, but retained the tariff language that defines EE Resources in a manner that completely removes them from the capacity market.¹¹ The current EE addback method, adopted for the 2023/2024 Delivery Year and following an MMU recommendation about how to correct the calculation errors in PJM's implementation of the addback method, uses an iterative approach such that the EE addback MW quantity applied in each capacity auction matches the MW quantity of EE resources with offer prices lower than the auction clearing price.¹² The result of the EE addback is that there is no impact on the capacity market clearing price. While EE does not affect the clearing price,

¹⁰ See [Analysis of Energy Efficiency Program Impacts Based on Program Spending \(eia.gov\)](https://www.eia.gov/analysis/studies/buildings/efficiencyimpacts/pdf/programspending.pdf) <<https://www.eia.gov/analysis/studies/buildings/efficiencyimpacts/pdf/programspending.pdf>> (Accessed January 18, 2024).

¹¹ See PJM Manual 18: PJM Capacity Market," § 8.8, Rev. 59 (June 27, 2024).

¹² See *id.*, § 2.4.5.

customers do pay for the cleared quantity of EE resources at market clearing prices as an uplift payment or subsidy to EE sellers.

EE resources are not capacity resources and are not treated as capacity resources in the capacity market. EE resources do not contribute to meeting the RPM Reliability Requirement. EE resources may not serve as a replacement for the commitment of any other RPM Capacity Resource type.

The original rationale for the inclusion of EE in the PJM Capacity Market was that the load forecasts did not account for the impact of EE on demand for four years. Regardless of whether that was a good reason at the time, the original rationale is no longer true.

Because EE resources are reflected in the peak load forecast for the delivery year for which each capacity auction is conducted and are therefore not EE Resources and not capacity resources, there is no basis in the filed tariff for payment to EE resources.

In order to make payment to EE resources, PJM created rules in its manuals that it relies on to make payments. PJM adjust the auction parameters, as described in Section 2.4.5 of Manual 18, for the EE resource(s) in order to avoid any impact on auction prices or clearing quantities of the EE resources.¹³ This is referred to as the addback.¹⁴ As a result, EE resources are not actually included in the capacity market. EE resources are not capacity resources in PJM.

The goal of the addback mechanism is to ensure that EE resources do not directly affect the price for capacity in the capacity markets. Payments to EE resources are a subsidy

¹³ See PJM Manual 18B (Energy Efficiency Measurement & Verification) § 1.1 Rev. 05 (September 21, 2022) (“PJM Manual 18B”).

¹⁴ The Market Monitor explained the addback mechanism in a presentation at the May 1, 2024 MIC Meeting, which can be found on the Monitoring Analytics, LLC website at https://www.monitoringanalytics.com/reports/Presentations/2024/IMM_MIC_EE_Education_20240501.pdf.

paid directly by load via an uplift charge, through the capacity market mechanism. The term capacity market mechanism is used rather than capacity market because EE resources do not participate in the capacity market but are nonetheless paid the capacity market clearing price. EE resources should not continue to be paid the capacity market clearing price because PJM's load forecasts now account for EE resources. Revisions to the PJM load forecast to incorporate energy efficiency were endorsed at the November 19, 2015, MRC with EE explicitly incorporated in PJM load forecasts beginning with auctions conducted in 2016 for Delivery Years starting with 2016/2017.¹⁵

When EE was added to the forecast and EE was removed from the capacity market, PJM should have simply followed the tariff, recognized that EE was not capacity, recognized EE resources do not meet the definition of EE Resources in the filed tariff, and eliminated payment to EE resources. Instead, PJM recognized that EE resources are not capacity, stopped including EE resources in the capacity auction, and began to pay EE resources an uplift payment equal to the capacity market clearing price without making any provision for such payments in the filed tariff. PJM instead included the addback rule in its manuals and began using the addback method to reflect the inclusion of EE resources in the peak load forecast, to eliminate the impact of EE resources on the capacity market and to provide for payment to EE resources at the capacity market clearing price. The rationale for continuing to pay EE resources as if they were a capacity resources was and is unclear. PJM never stated that rationale clearly. EE resources are already compensated through the PJM markets to the extent that they actually reduce customer payments for energy and capacity. The complete removal of EE resources from the capacity market mechanism would make it unnecessary to address the multiple outstanding issues related to the task of accurately

¹⁵ See *Approved Minutes from the Markets and Reliability Committee*, <<https://www.pjm.com/-/media/committees-groups/committees/mrc/20151217/20151217-item-01-draft-minutes-20151119.ashx>> (December 17, 2015).

measuring the impact of EE, determining the ownership of any imputed savings, ensuring that the same EE are not submitted by multiple participants, and ensuring that the resources are not paid for more than four years.

II. COMPLAINT

Under Section 205 of the Federal Power Act, “[u]nless the Commission otherwise orders, no change shall be made by any public utility in any such rates, charges, classification, or service, or in any rule, regulation, or contract relating thereto, except after sixty days’ notice to the Commission and to the public.”¹⁶ Section 205 states: “[s]uch notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect.”¹⁷ Charging rates other than the rates on file with the Commission is unlawful.

The filed rates that define EE are included in Section L.1 of Schedule 6 to the RAA and Section L.1 of Attachment DD-1 to the OATT. The definition of EE resources explicitly includes only resources “not reflected in the peak load forecast prepared for the Delivery Year for which the Energy Efficiency Resource is proposed.” Resources reflected in the peak load forecast are excluded.

PJM unlawfully changes the filed tariff rules when it creates an “addback” in Manual 18 that identifies a quantity of EE resources and pays them based on the results of capacity auction clearing prices while recognizing that the EE resources are not capacity resources and are not EE Resources as defined in the tariff. PJM cannot properly rely on manual provisions not included in the filed tariff when those provisions change the filed

¹⁶ 16 U.S.C. § 824d(d).

¹⁷ *Id.*

tariff rules as a basis to make payments to EE resources and to impose charges on PJM customers. Such charges for the 2024/2025 Delivery Year are \$126,000,000.

PJM's actions violate the filed tariff and violate Section 205 of the Federal Power Act.

Accordingly, PJM should be directed to discontinue payments based on EE resources that do not meet the definition of EE Resources in the filed tariff.

III. RULE 206 REQUIREMENTS

A. Rule 206(b)(1): Action or Inaction Alleged to Violate Statutory Standards or Regulatory Requirements

The alleged violations are set forth in Section II.

B. Rule 206(b)(2): Legal Bases for Complaint

The legal bases for this Complaint are set forth in Section II.

C. Rules 206(b)(3) and 206(b)(4): Issues Presented as They Relate to the Complainant and Quantification of Financial Impact on Complainant

The issues are presented in the introduction and Section II.

D. Rule 206(b)(5): Nonfinancial Impacts on Complainant

Not applicable.

E. Rule 206(b)(6): Related Proceedings

The issues raised in this Complaint are closely related to issues raised in the complaint filed by Joint Consumer Advocates on June 20, 2024, and now pending in Docket No. EL24-118. The Market Monitor would support a determination of the Commission to consolidate this proceeding with Docket No. EL24-118, when and if the Commission sets that matter for hearing. The Market Monitor may determine to file a motion to consolidate the proceedings in the future if it deems it appropriate.

A complaint filed by the Market Monitor against the Indicated Energy Efficiency Suppliers that concerns the requirements to support the measurement and verification of EE in order to receive payments for the 2024/2025 Delivery Year is pending in Docket No. EL24-113-000.

F. Rule 206(b)(7): Specific Relief Requested

PJM should be directed to cease making payments to EE resources for energy efficiency that is included in its forecasts, in violation of Section L.1 of Schedule 6 to the PJM Reliability Assurance Agreement and Section L.1 of Attachment DD-1 to the OATT. PJM should also be directed to recoup past payments for EE in violation of the same provision because such payments were not authorized under the filed tariff, as required by Section 205 of the Federal Power Act.

G. Rule 206(b)(8): Documents that Support the Complaint

This pleading supports the complaint.

H. Rule 206(b)(9): Dispute Resolution

The Market Monitor has not contacted the Enforcement Hotline or Dispute Resolution Service or made use of the tariff-based dispute resolution mechanisms. Such mechanisms are neither intended nor appropriate for resolving disputes of this nature.

I. Rule 206(b)(10): Form of Notice

A form of notice suitable for publication in the Federal Register is included as an Attachment A.

J. Rule 206(c): Service on Respondent

The Market Monitor certifies that copies of this Complaint were served by email to Respondent.

IV. COMMUNICATIONS

All communications with respect to this pleading and in connection with this proceeding should be addressed to the following:

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V. CONCLUSION

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

Respectfully submitted,



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Dated: July 10, 2024

ATTACHMENT A

Draft Notice

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Independent Market Monitor for PJM)
v.) Docket No. EL24-____-000
PJM Interconnection, L.L.C.)
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NOTICE OF COMPLAINT

(____, 2024)

Take notice that on July 10, 2024, pursuant to section 206 of the Rules and Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR § 385.206 (2011), Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (Complainant) filed a formal complaint against PJM Interconnection, L.L.C. (Respondent) requesting that the Commission direct Respondent to cease making unlawful payments to EE resources and to recoup past unauthorized payments.

The Complainant states that copies of the Complaint were served on representatives of the Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent’s answer and all interventions, or protests must be filed on or before the comment date. The Respondent’s answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, DC. There is an “eSubscription” link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on __, 2024.

Acting Secretary, Debbie –Anne A. Reese