

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

PJM Interconnection, LLC : Docket Nos. ER15-623-000
: ER15-623-001

Indicated Market Participants v. PJM : Docket No. EL15-88-000
Interconnection, LLC :

**MOTION TO FILE PROTEST OUT OF TIME
AND
PROTEST
SUBMITTED ON BEHALF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

August 19, 2015

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Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), the Public Utilities Commission of Ohio (PUCO) hereby submits the following protest in response to Direct Energy, Inc. and NextERA Energy, Inc.'s (Indicated Market Participants) expedited Request for Clarification or, in the Alternative, Fast Track Complaint against PJM Interconnection, LLC (PJM) regarding the selection of Capacity Performance resource sell offers in the Capacity Performance Transition Incremental Auctions (Transition Auctions).¹ The Commission issued a Notice requesting comments on the Indicated Market Participants' request by August 17, 2015.

¹

18 C.F.R. § 385.211

The PUCO intervened in the above-captioned dockets on January 12, 2015, and, August 17, 2015.

The PUCO respectfully requests that the Commission reject the Indicated Market Participants' request for clarification, or in the alternative, deny its complaint. Clarification of PJM's current tariff language is unnecessary, as the plain text provides clear parameters indicating how PJM will conduct its Transition Auctions. The Indicated Market Participants have not demonstrated that PJM's tariff is unjust or unreasonable. Further, the proposed modification conflicts with the rationale behind conducting Transition Auctions, which is to introduce a new capacity product, Capacity Performance, that improves system reliability in an expeditious and cost-effective manner. PJM's approved auction clearing algorithm correctly recognizes the value of the new product by selecting the lowest-cost Capacity Performance resources first.

I. Motion to File Protest Out of Time

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Commission, 18 C.F.R. Section 385.212, the PUCO hereby submits this motion to file a protest out of time in the above-captioned dockets. The PUCO filed its Notice of Intervention in these proceedings and is, therefore, a party to these cases. The PUCO does not wish to disrupt or delay the proceedings and notes that the protest is only two days out of time.

The PUCO, as the State regulator of electric utilities, affects every household in Ohio and is responsible for assuring that Ohio's electric consumers have access to adequate, safe, and reliable utility services at fair prices. The PUCO's protest is in the public

interest and the outcome of these proceedings may adversely impact the State's retail electricity marketplace. Moreover, no other party can adequately represent the PUCO's interests in this matter. Therefore good cause exists to grant this motion.² The PUCO respectfully requests that the Commission grant the PUCO's motion to file a protest out of time and consider the comments submitted herein.

II. Background

On June 9, 2015, the Commission approved PJM's Capacity Performance proposal and several related reforms necessary to improve generation performance during system peaks.³ PJM's recently-approved Capacity Performance requirements created two Transition Auctions to separately procure the newly-established Capacity Performance product to meet reliability needs for the 2016/2017 and 2017/2018 Delivery Years. The rationale behind conducting two Transition Auctions was to ensure that generation resources can make gradual improvements to meet the enhanced Capacity Performance requirements over a phased-in time frame to avoid short-term price volatility.⁴ Specifically, PJM's tariff provides that generation resources for the Transition Auctions shall be procured pool-wide, in accordance with the Commission-approved optimization algorithm. PJM's optimization

² See, *Trans Alaska Pipeline System, et al.*, 104 FERC ¶61,201, at 61,706 (2003) and *Natural Gas Pipeline Company of America*, 66 FERC ¶61,310 (1994) (motion granted for good cause shown).

³ *PJM Interconnection, LLC*, 151 FERC ¶61,208 (Capacity Performance Order).

⁴ *Id.* at 94.

algorithm for its Transition Auctions consists of two inputs: the target quantity of Capacity Performance resources, and, the sell offers submitted in the Transition Auction.⁵

The Indicated Market Participants request that PJM be required to conduct the Transition Auctions in a manner that selects generation resources based on the lowest total procurement costs.⁶ In its pleading, the Indicated Market Participants suggest that the Commission-approved Transition Auction process should now be changed to reflect the Transition Auction offer price difference, relative to the previously cleared Base Residual Auction (BRA) clearing price.⁷ In sum, the Indicated Market Participants request that the Commission, either through clarification or complaint, order PJM to revise its tariff to reflect not only the total payment required to accept a new Capacity Performance obligation, but also the price and quantity of any *existing* capacity obligation.

III. Protest

The PUCO urges the Commission to reject the Indicated Market Participants' request for clarification, or in the alternative, deny the complaint. Both the Commission's Capacity Performance order and PJM's tariff language on the Transition Auctions provide clear guidance on how sell offers shall be selected in the Transition Auctions. The Indicated Market Participants' request to unnecessarily restructure the Transition Auctions is

⁵ PJM OATT Section 5.14(D).

⁶ Expedited Request for Clarification, or, in the Alternative, Fast Track Complaint of Indicated Market Participants at 13-18, Docket No. EL15-88-000 (Aug. 6, 2015).

⁷ *Id.*

not only a final-hour collateral attack on the Commission's Capacity Performance order but also would result in the procurement of capacity resources in a manner that is not just and reasonable.

A. PJM's approved transition auction does not need clarification.

PJM's Transition Auction process is clearly defined and transparent. As the Commission determined in the Capacity Performance order, the Transition Auction process reasonably balances costs associated with generation unit investments, and the need for reliability improvements.⁸ In considering potential price impacts, the Commission noted that sell offer price caps on the Transition Auction clearing prices will limit load's exposure to potential price increases.⁹

In addition to reasonable price mitigation measures within the Transition Auction process, PJM's tariff language clearly establishes an algorithm for procuring Capacity Performance. The optimization algorithm for the Transition Auctions must consider both the target quantities and sell offers submitted in each auction, with the auction prices to be capped at a price no higher than .5 times Net CONE for the 2016/2017 Delivery Year, and .6 times Net CONE for the 2017/2018 delivery year.¹⁰

⁸ Capacity Performance Order at 94.

⁹ *Id.*

¹⁰ PJM OATT Tariff, Attachment DD, Section 5.14D.

PJM's tariff provides that Capacity Performance Resources that have cleared both in a BRA and a Transition Auction for the same delivery year will only receive a payment equal to the clearing price from a Transition Auction, and not from any prior BRA for that delivery year.¹¹ This is reasonable, as Capacity Performance is a new capacity product that has not been procured in previous auctions. The plain meaning of the tariff language negates the need for clarification, and consequently, the Indicated Market Participants' request for clarification should be rejected.

B. The Indicated Market Participants request is a collateral attack on the Commission's Capacity Performance Order.

The Indicated Market Participants' request should be rejected as a collateral attack on the Commission's Capacity Performance order. In the Capacity Performance order, the Commission unequivocally recognized that PJM's Transition Auction algorithm is designed to attain the lowest overall cost solution to meet PJM's capacity needs.¹² The Commission specifically rejected arguments raised by the Indicated Market Participants, affirming that costs attributable to the transition mechanisms are balanced with the reliability benefits created by the new capacity product.¹³ In fact, the Commission went so far

¹¹ PJM OATT Tariff, Attachment DD, Section 5.14D.

¹² Capacity Performance Order at 92-95.

¹³ Indicated Market Participants participated in the Capacity Performance proceeding as members of the Transition Coalition. *See* Capacity Performance Order at 11.

as to deny requests to allow existing capacity commitments to clear first in the Transition Auctions, again specifying that the PJM algorithm will result in the lowest cost necessary to meet PJM's needs.¹⁴

Despite the Commission directly addressing concerns on PJM's Transition Auction algorithm, the Indicated Market Participants propose a similar scheme that would result in generation units that have already cleared at higher capacity prices to receive disparate treatment, under the guise of minimizing total capacity costs. However, the Commission does not need to revise the already approved Transition Auction tariff in order to ensure costs are just and reasonable. PJM's Transition Auction process already safeguards customer costs by establishing firm offer caps on the Transition Auction clearing prices and avoids discriminatory treatment amongst capacity resources. Further, the Transition Auction process continues to ensure that the lowest cost generation resources clear first, to the benefit of consumers and consistent with the intent of having competitive wholesale electricity markets.

Further, the Commission has already rejected similar arguments raised in the Capacity Performance proceeding, determining that PJM's Transition Auction process strikes an appropriate balance by "allowing resources to make gradual improvements and reduce the burdens such improvements may impose."¹⁵ Not only did the Commission

¹⁴ Capacity Performance Order at 94-95.

¹⁵ *Id.* at 92.

reject similar arguments raised by the Indicated Market Participants in the Capacity Performance proceeding, but the Indicated Market Participants had ample opportunity to raise its proposal and failed to do so. The Indicated Market Participants' attempt to re-litigate the Capacity Performance proceeding is inappropriate and should be rejected.

C. The Indicated Market Participants proposal frustrates the intent of Capacity Performance and would lead to an unjust and unreasonable outcome.

The crux of PJM's Capacity Performance mechanism is to ensure that generation resources are available during system peaks. Identifying the need for capital investments and firm fuel capabilities, PJM determined that generation resources should be subject to higher performance requirements, and correspondingly receive the opportunity to reflect higher operating costs necessary for reliability investments in competitive auctions. By including two Transition Auctions, PJM identified the immediate need for a new capacity product in order to allow generation resources to begin making necessary investments to improve reliability for the 2016/17 and 2017/18 Delivery Years. As the Commission explained, the Transition Auction process is an appropriate means to mitigate risks associated with short-term shortages and price volatility that might otherwise occur in a flash cut approach to Capacity Performance requirements.¹⁶

Shifting away from PJM's current Transition Auction process in favor of the Indicated Market Participants' approach would cause a discriminatory impact against resources

¹⁶ Capacity Performance Order at 92.

that are able to offer the new Capacity Performance product in accordance with the current Transition Auction tariff. The impact of the Indicated Market Participants' discriminatory proposal could prevent generation units that have the ability to meet the more stringent Capacity Performance requirements from clearing in Transition Auctions. The Indicated Market Participants' proposal replaces a known, predictable capacity procurement process with an untested auction mechanism that picks winners and losers.

The practical implications of this proposed modification would result in a bias against resources in the majority of PJM zones that did not separate in previous capacity auctions. The Indicated Market Participants proposal actually works against the intent of a competitive market structure in which the most efficient, least-cost generation resources clear first, as the Transition Auctions would no longer select generation resources on a least-cost basis. Not only does this concept run afoul of the purpose of a competitive market structure, but also it may result in longer-term price increases, as this proposed distortion of market prices could discourage generation resources from making reliability investments or even cause existing generation units to prematurely retire.

Further, the Indicated Market Participants have failed to demonstrate that PJM's traditional methodology, in which capacity prices are set through the least-cost marginal resource is unjust or unreasonable in this circumstance. The Indicated Market Participants not only add an additional layer of complexity that minimizes market transparency, but also create the possibility of unforeseeable market power risks that might arise from an unnecessary structural change to PJM's existing capacity construct.

IV. Conclusion

The PUCO urges the Commission to reject the Indicated Market Participants untimely request to revise PJM's Transition Auction process. The Indicated Market Participants have failed to demonstrate that PJM's tariff, or the Commission orders regarding the Transition Auctions, are unclear. The Indicated Market Participants have not sustained their burden of proof under Section 206, as PJM's Transition Auction tariff is not unjust or unreasonable. Finally, the Indicated Market Participants' request frustrates the intent of Capacity Performance and would create a discriminatory administrative mechanism in which more expensive, higher-cost generation resources may be selected over lower-cost, more efficient resources. Accordingly, the PUCO respectfully requests that the Commission reject the Indicated Market Participants' untested and discriminatory request.

Respectfully submitted,

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**Attorney for the
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served in accordance with 18 C.F.R. Section 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Thomas W. McNamee

Thomas W. McNamee

Dated at Columbus, Ohio this August 19, 2015.

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Dockets

Docket	Description
EL15-88-000	Complaint
ER15-623-000	PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2) (iii): Revisions to the OATT and RAA re Capacity Performance submitted on 12/12/2014 3:00:40 PM, Filing Type code: 10
ER15-623-001	PJM Interconnection, L.L.C. submits tariff filing per 35.17(b): Response to Deficiency Letter in ER15-623-000 submitted on 4/10/2015 4:31:20 PM, Filing Type code: 180

Files

Security Level	Filename
Public	Protest 081915.pdf

Filing Party/Contacts

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Summary: Motion to File Protest Out of Time and Protest, submitted on August 19, 2015 by Assistant Attorney General Thomas W. McNamee to the Federal Energy Regulatory Commission, to be considered in FERC Docket Nos. ER15-623-000, ER15-623-001, and EL15-88-000, In re Indicated Market Participants v. PJM Interconnection, LLC. electronically filed by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio