**UNITED STATES OF AMERICA**

**FEDERAL ENERGY REGULATORY COMMISSION**

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| Demand Response Coalition v.PJM Interconnection, L.L.C.  | ::::: | Docket No. EL13-57-000 |

**COMMENTS**

**SUBMITTED ON BEHALF OF**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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# INTRODUCTION

 On April 3, 2013, pursuant to sections 206 and 306 of the Federal Power Act (“FPA”) and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC”) the Demand Response Coalition[[1]](#footnote-1) (“Coalition”) filed a complaint against PJM Interconnection, L.L.C. (“PJM”), alleging that certain newly adopted provisions of PJM’s Manual 18 (“DR Plan Enhancements”) violate section 205 of the FPA and are therefore unenforceable. Specifically, the Demand Response Coalition contends that new provisions are unjust and unreasonable because: (1) they sig­nificantly affect jurisdictional rates, terms and conditions of service; (2) they have not been filed in accordance with the Commission’s Part 35 rules, and (3) the DR Plan Enhancements unlawfully restrict demand resources’ eligibility to participate in Relia­bility Pricing Model (“RPM”) Base Residual Auction (“BRA”).

# SUMMARY OF LEGAL ARGUMENTS

 On April 5, 2013, the Public Utilities Commission of Ohio (“Ohio Commission” or “PUCO”) filed its motion to intervene in this docket and is consequently a party to this investigation. Comments in this proceeding are due on or before April 15, 2013. The Ohio Commission hereby submits its comments responding to the Coalition’s request that FERC issue an order finding that the DR Plan Enhancements violate FPA Section 205 and are unenforceable.

The Coalition argues that FERC should take decisive action to preclude new busi­ness practices adopted by PJM because they curb the growth of the demand response market in PJM. Further, it contends that the new requirements will significantly restrict the ability of efficient, green demand response resources from participating in its RPM auctions. In addition, the Demand Response Coalition notes that PJM only afforded demand response suppliers with sixteen business days to comply with the new require­ments if they wish to participate in the 2016/2017 BRA.

 Among other things, the Coalition’s complaint maintains that PJM has imposed several new requirements that will significantly restrict the ability of demand response resources from participating in the RPM BRA via effectuation of PJM’s new rules that impose a “DR Sell Offer Plan.” The sell offer plan must be submitted and approved by PJM prior to the RPM BRA. The Coalition’s complaint states that the DR Sell Offer plan requires submittal of a variety of voluminous and competitively sensitive data about a demand response supplier’s customers, and includes a customer “letter of support” requirement in certain cases, in which the customer must attest to being “likely to execute a contract” obligating them to provide demand response three or more years in the future. The Coalition also notes that PJM’s Manual 18 revisions require that, if the customer declines to provide such a letter or provides one to more than one demand response sup­plier, capacity cannot be counted at all and will be removed by PJM from each demand response supplier’s plans that include that customer. The DR Sell Offer Plan also includes an “officer’s certification,” which requires that a Curtailment Service Provider (“CSP”) company officer attest to the reasonable expectation to physically deliver all megawatts that clear the RPM Auction through Demand Resource registrations. The DR Coalition’s complaint maintains that each of these DR Plan Enhancements is unreasona­ble and discriminatory because they impose significantly burdensome obligations that will be difficult to satisfy. For these reasons, among others, the Demand Response Coalition maintains that FERC should issue an order finding the DR Plan Enhancements violate FPA section 205 and are unenforceable.

# DISCUSSION

## PJM’s Authority

 PJM is authorized by its current Open Access Transmission Tariff (“OATT”), Oper­ating Agreement (“OA”) and Reliability Assurance Agreement (“RAA”) to ensure “the safe and reliable operation of the PJM region.”[[2]](#footnote-2) To that end, PJM requires that mar­ket participants agree to provide PJM not only all information specified in the governing tariffs and agreements but also “other information as the Office of Interconnection may reasonably require for the reliable and efficient operation of the PJM region.”[[3]](#footnote-3) Specifics regarding the required information and processes are found in PJM’s Manual 18 and are the subject of this complaint. As stated by the Complainants, PJM uses its manuals to provide the actual administrative and operating procedures of PJM and are not filed at FERC.[[4]](#footnote-4) However, it is the FERC-approved tariffs and operating agreements that vest PJM with authority to operate its Reliability Pricing Model (“RPM”), specifying how Capacity Market Sellers including Demand Response Providers will participate in the RPM. For example, Schedule 6 of the RAA provides the detailed criteria for Demand Resources and states that only the resources that qualify under those criteria may by offered in the RPM auctions.[[5]](#footnote-5) Furthermore, the RAA defines a Demand Resource product as a commitment to provide a real reduction in physical load attached to the PJM system.[[6]](#footnote-6) Thus, it is reasonable and consistent with current practice for PJM to update its Manual 18 to adopt implementing procedures to prevent conduct that is inconsistent with the explicit requirements of its governing tariffs and agreements.

## PJM’s Reporting and Verification Requirements

 The Ohio Commission maintains that FERC must dismiss as unreasonable the Coalition’s complaint. PJM not only possesses the requisite authority to amend its relia­bility pricing model’s parameters through changes to its Manual 18, it has an obligation make such changes to ensure that reliability standards are realized. The issue is simple, whether a DR provider should be afforded the potential for unwarranted profits for unde­liverable or overcounted DR resources to the detriment of PJM’s obligation to ensure reliability. If reliability standards are not realized, the resulting consequences could be deleterious and potentially catastrophic to the PJM region. Consequently, FERC has no course of action but to rule in favor of reliability and dismiss the instant complaint.

 In addition, the Ohio Commission maintains that PJM must be afforded the discre­tion to amend its RPM parameters via amendments to its Manual 18 to address legitimate concerns regarding a the lack of reliable information available for planned DR resources cleared in the auction in the RPM. Because the level of DR market penetration has sig­nificantly increased[[7]](#footnote-7) over the past several years, PJM must have the discretion to amend its policies, via the stakeholder process, to require the additional information necessary to ensure that all DR offered into the RPM is physically available and deliverable to that zone to maintain reliability standards. PJM’s discretion in this regard is imperative. That is, as DR penetration increases, PJM must be afforded the latitude to require suffi­cient information to ensure that reliability standards are realized. The Ohio Commission, therefore, maintains that PJM’s ongoing efforts to ensure reliability standards must be supported and sanctioned by FERC.

 In addition, to the extent necessary, PJM must possess the capability to require on a zonal basis any necessary additional DR reporting and verification data to ensure that the DR offered into the RPM is actually available and deliverable to that specific zone to ensure against double or overcounting of DR resources.[[8]](#footnote-8) Finally, clear and consistent DR reporting requirements and participant certifications are imperative to ensure that PJM can evaluate DR reporting numbers on an apples-to-apples basis to ensure that DR offered into the BRA is not being overcounted. PJM must have the discretion to ensure that DR plans are workable as supported by adequate reporting necessary for reliability-based planning.

 Likewise, the Ohio Commission maintains that is perfectly legitimate for PJM to require a CSP’s company officer to sign an attestation that the MWs bid into the RPM BRA are physically deliverable to the zone in which they are to receive compensation. Simple logic dictates that if a CSP is unable or unwilling to sign such an attestation, it should not be offering, nor should PJM be bound to accept, that quantity of DR into the BRA for that particular zone. Before one agrees to sell something, it seems axiomatic that one should own or control and be capable to deliver that service or product. The PJM requirement is nothing more than this. If one cannot attest to owning the item that one is offering, an observer could certainly be excused for questioning the reality of the offer. The greater goal of this enterprise is to ensure the reliability of the grid. This is not a mere financial game. The capacity market cannot be a casino with bets made on credit. If the demand response that clears the market does not appear when needed and con­tracted for, the lights may go out. This is the stark reality.

It is imperative that the demand response that is bid into the market be every bit as real as the generating plants that are also bid. Just as one could not offer generating capacity into the BRA when one does not have generating capacity, one should not be able to offer DR without the assurance that the DR is real. The PJM requirements are steps along the road to providing this necessary assurance. The demand response offered into the BRA must be as tangible as the dollars that customers are paying for it.

 The Ohio Commission further questions the Coalition’s position that PJM’s new requirements are unduly discriminatory and preferential as compared to other capacity resources. As opposed to generation and energy efficiency capacity resources whose locations and available MWs offered into the RPM can be readily verified, DR offered into the RPM auctions cannot. The newly adopted Manual 18 reporting requirements simply attempt to place DR capacity resources on a comparable playing field with other capacity resources that are more readily accounted for and verified.

 The Ohio Commission’s position regarding DR measurement and verification is supported by the PJM’s Independent Market Monitor (“IMM”). Specifically, the IMM’s 2012 State of the Market Report reflects that substantial improvement in measurement and verification methods must be implemented in order to ensure the credibility of PJM’s demand-side programs. The IMM’s report reflects that the goal should be to treat the measurement of demand-side resources like the measurement of any other resource in the wholesale power market, including generation and load, that is paid by other participants or makes payments to other participants. In addition, the IMM’s report reflects that there is a need for robust measurement and verification techniques to ensure that demand-side programs are resulting in the desired behavior.

 What is more, the Ohio Commission also observes that the IMM’s December 11, 2012 report[[9]](#footnote-9) entitled “Analysis of Replacement Capacity for RPM Commitments: June 1, 2007 to June 1, 2012” (“December 11, 2012 Report”) recommends that an additional rule requiring that DR providers demonstrate that they are actually in the business of providing DR resources would be an appropriate part of any package of rule changes. The December 11, 2012 Report maintains that evidence shows that some DR providers, including CSPs and individual customers, do regularly purchase replacement capacity for a substantial portion of their RPM commitments for DR at a significant discount to the initial sale price.[[10]](#footnote-10) Consistent with the IMM’s observations, the Ohio Commission main­tains that it is perfectly reasonable for PJM’s DR providers to demonstrate that the DR offered into the BRA is physically deliverable to that particular zone. Every effort must be taken via enhancements to PJM’s Manual 18 to ensure a physical DR product, as opposed to a financial product, is being furnished by the CSP. The Ohio Commission also notes the IMM’s December 11, 2012 Report’s conclusions that the risks to the mar­kets associated with the sale of DR without any supporting information on the plausibility of the underlying assets include the risk that multiple CSPs could be assuming that they will win the same customers and the risk that sellers are taking speculative positions with a low probability of fulfilling them.[[11]](#footnote-11) The IMM observes that the result in both cases is that the system is less reliable than it might otherwise be because: (1) the full amount of DR that cleared the RPM Auction is not actually available, (2) the price to other capacity resources has been suppressed by the sale of the speculative DR, (3) new entry of other capacity resources could have been forestalled by the sale of speculative DR, and (4) there may not be adequate replacement resources available with short notice prior to the delivery year.[[12]](#footnote-12) The Ohio Commission observes that, with these matters in mind, the CSP’s practice of buying themselves out of DR obligations via virtual transactions (*i.e.*, DR buy-backs) makes it more difficult to plan for transmission expansions. For example, if DR offers in the RPM auction from a specific location and the CSP purchases genera­tion from another remote location to buy its way out of the DR obligation, transmission planners will be constantly attempting to find transmission planning solutions for a mov­ing target.

## Ohio Renews its Call for a Comprehensive Demand Response Rulemaking Investigation for the PJM Region

 As noted in the Ohio Commission’s previous comments[[13]](#footnote-13) to FERC concerning PJM’s DR programs, the Ohio Commission maintains that the unlimited Annual DR product has an important and valuable role in ensuring reliability via its role in the RPM BRA as an ele­ment in the capacity resource mix, as does generation and energy effi­ciency. The Ohio Commission is concerned, however, that other DR products are con­tributing to DR oversaturation to the overall detriment of reliability because these resources have fewer obligations to deliver, as compared to the actual generation and the unlimited Annual DR product.

 The Ohio Commission, therefore, renews its previous recommendation to FERC that, in the near future, FERC initiate a rulemaking investigation to review whether it should significantly reduce or begin the phase out of the availability of all reduced DR capacity resources (*i.e.,* the Limited and Extended Summer DR products). That is, FERC should review whether all capacity products participating in the BRA should ultimately be subject to the same availability requirements as generation, in that they must be physi­cally available and respond on par with generation. FERC’s investigation also should work to ensure that penalties for nonperformance are uniform for both DR and generation and such penalties are suffi­ciently stringent to ensure that all capacity resources meet their respective obli­gations for delivery. Moreover, the Ohio Commission maintains that this proposed investigation be expanded to determine whether: (1) the DR buy-back rules should be strengthened to ensure against abuse or the situation where DR participa­tion in the RPM BRA is becoming more a monetary transaction though the proliferation of financial trades; and (2) whether credit requirements for finan­cial-only DR participants are significantly adequate to cover commitments in the event of a default. The Ohio Commission recommends that any such decision in this proposed investigation be issued in time for PJM to include the new requirements in PJM’s 2017-2018 auction parameters. Such an investigation could also invite public input on what additional reporting and veri­fication requirements are necessary to ensure DR offered into the BRA are physically deliverable and available to the zone to which the product is offered. The proposed investigation should inquire as to whether PJM should be required to confirm via audits that DR quantities are physically available and actually deliverable to the LDA to which it has committed. Such proposed audits would ensure that reliability objectives continue to be realized. Finally, the Ohio Commission maintains that FERC should invite com­ments on the proposed DR rule modifications listed in the IMM’s December 11, 2012 report[[14]](#footnote-14) entitled “Analysis of Replacement Capacity for RPM Commitments: June 1, 2007 to June 1, 2012,” In this report the IMM recommended to FERC that, as a starting point, the following new DR parameters and issues be addressed:

* Develop rules for planned DR that requires specification of actual sites above a MW threshold, and specification of the nature of sites on which offers are based.
* Require DR providers to maintain detailed business plans supporting offered levels of DR and provide them to the IMM and PJM upon Request.
* Require DR providers to provide evidence of an intent and capability to provide physical resources.
* Consider a cap on planned DR by LDA at a percentage of MW at existing registered sites. The level of the cap could be based on the current DR share of capacity in an LDA and the history of replacement capacity transactions.
* Reserve all Limited and Extended Summer DR sales to the Third Incremental Auction.

# CONCLUSION

 The Ohio Commission thanks FERC for the opportunity to provide com­ments on Coalition’s section 206 complaint.

Respectfully submitted,

*/s/ Thomas W. McNamee*

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**On behalf of**

**The Public Utilities Commission of Ohio**

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# CERTIFICATE OF SERVICE

 I hereby certify that the foregoing have been served in accordance with 18 C.F.R. Sec. 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 April 11, 2015.

1. The Demand Response Coalition includes Converge, Inc., Viridity Energy and Energy Curtailment Specialists (“ECS”). [↑](#footnote-ref-1)
2. PJM OA section 7.7(i). [↑](#footnote-ref-2)
3. *Id*. at Schedule 1, section 1.7.4(d). [↑](#footnote-ref-3)
4. Complaint at 10. [↑](#footnote-ref-4)
5. PJM RAA at Schedule 6, Section A. Available online: [http://www.pjm.com/~/media/documents/ agreements/raa.ashx](http://www.pjm.com/~/media/documents/%20agreements/raa.ashx), April 9, 2013. [↑](#footnote-ref-5)
6. *Id*. at Section 1.13. [↑](#footnote-ref-6)
7. For example, the PJM Independent Market Monitor’s 2012 State of the Market Report reflects that in the 2007/2008 delivery year 127.6 MW (UCAP) DR cleared the RPM auction. 962.9 MW (UCAP) of DR in cleared the 2010/2011 delivery year. In the 2015/2016 delivery year, PJM’s data reflect that 14,832 MWs (UCAP) cleared the RPM. [↑](#footnote-ref-7)
8. PJM Reliability Assurance Agreement, Schedule 6, Section A, and Operating Agreement, Schedule 1 section 1.7.4(d). [↑](#footnote-ref-8)
9. “Analysis of Replacement Capacity for RPM Commitments: June 1, 2007 to June 1 2012,” The Independent Market Monitor for PJM, December 11, 2012, at Page 30. [↑](#footnote-ref-9)
10. *Id.* [↑](#footnote-ref-10)
11. “Analysis of Replacement Capacity for RPM Commitments: June 1, 2007 to June 1 2012,” The Independent Market Monitor for PJM, December 11, 2012, at page 31. [↑](#footnote-ref-11)
12. *Id.* [↑](#footnote-ref-12)
13. PJM Interconnection, L.L.C., Docket No. ER13-486, December 21, 2012. [↑](#footnote-ref-13)
14. “Analysis of Replacement Capacity for RPM Commitments: June 1, 2007 to June 1 2012,” The Independent Market Monitor for PJM, December 11, 2012, at Pages 31 and 32. [↑](#footnote-ref-14)