

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

PJM Interconnection, L.L.C.

)

Docket No. ER15-1470-000

**PROTEST OF
AMERICAN MUNICIPAL POWER, INC.,
OLD DOMINION ELECTRIC COOPERATIVE, AND
SOUTHERN MARYLAND ELECTRIC COOPERATIVE, INC.**

On April 7, 2015, PJM Interconnection, L.L.C. (“PJM”) filed a Request for Expedited Grant of Tariff Waiver (“Waiver Request”) seeking authority from the Federal Energy Regulatory Commission (“Commission”) for a one-time waiver of the PJM Open Access Transmission Tariff (“Tariff”). The requested waiver would permit PJM to delay its next Base Residual Auction (“BRA”)¹ under the Reliability Pricing Model (“RPM”) for an unidentified period (but not beyond the week of August 10-14, 2015) so that PJM might reflect in the BRA the outcome of the Commission’s deliberations on PJM’s Capacity Performance filing in Docket No. ER15-623-000.

Pursuant to Rule 211 of the Commission’s Rules of Practice and Procedure,² American Municipal Power, Inc. (“AMP”), Old Dominion Electric Cooperative (“ODEC”) and Southern Maryland Electric Cooperative, Inc. (“SMECO”) (collectively, “Joint Protestors”) hereby protest PJM’s April 7, 2015 Waiver Request.³ As explained below, PJM’s request fails to satisfy the Commission’s well-established requirements for waiver of an effective tariff provision, and, for that reason, the Waiver Request should be

¹ PJM’s May 2015 BRA would procure capacity resources for Delivery Year 2018/19.

² See 18 C.F.R. §385.211.

³ Each of the Joint Protestors has filed separately to intervene in this proceeding.

promptly denied. The Commission should not allow PJM to create destabilizing market uncertainty by holding the BRA hostage until it secures a Capacity Performance ruling to its liking. Indeed, PJM's transparent attempt to blame the Commission for the uncertainty - by requiring that PJM provide additional support for its deficient Capacity Performance proposal⁴ - only underscores that it is PJM, through the filing of its Waiver Request, that has created the very uncertainty it now asks the Commission to cure. PJM has recently compounded this uncertainty by introducing new, never-discussed concepts in its April 10 answer to the Commission's March 31 Deficiency Letter, as well as offering to modify or reconsider other aspects of its original Capacity Performance proposal. Finally, although PJM argues that a grant of its Waiver Request will give market participants greater assurance about the status, schedule and rules for the next BRA, the truth is that, much like PJM's Demand Response Stop-Gap proposal in Docket No. ER15-852-000, the requested waiver actually would "introduce[] uncertainties that may exceed those it seeks to avoid..."⁵ Accordingly, and for the reasons further explained below, the Commission should promptly deny PJM's Waiver Request and direct PJM to proceed with the BRA for Delivery Year 2018/19 under the currently effective rules.

⁴ *PJM Interconnection, L.L.C.*, Letter Order, Docket No. ER15-623-000 (March 31, 2015) ("March 31 Deficiency Letter").

⁵ *PJM Interconnection, L.L.C.*, Order Rejecting Tariff Provisions at ¶32, Docket No. ER15-852-000 (March 31, 2015).

I. ARGUMENT

In its April 7, 2015 submittal, PJM requests Commission authorization to waive Attachment DD, Sections 5.4(a) and 2.5 of the PJM Tariff. In support of that request, PJM claims that its Waiver Request is of limited scope, that it addresses a concrete problem that must be remedied, and that it does not have undesirable consequences, such as harming third parties.⁶ As explained in detail below, however, PJM has not demonstrated that its Waiver Request satisfies the criteria it cites. On the contrary, (i) PJM's Waiver Request is unreasonably broad in scope, (ii) a grant of the Waiver Request would fail to resolve anything more than a hypothetical problem (and one created by the Waiver Request itself, at that), and (iii) a grant of the requested waiver indeed could inflict significant harm on market participants. Accordingly, PJM's Waiver Request should be denied.

A. PJM's Waiver Request Is Not Limited in Scope.

PJM argues that the Waiver Request is limited in scope because, if granted, the waiver would apply only to the BRA for a single Delivery Year, and that it would only reschedule the BRA from May to a subsequent (though yet-to-be-determined) week in the summer of 2015. PJM even goes as far as to argue that the "singular focus of this waiver request on a scheduling change *necessarily* means that this waiver request is of limited scope." Waiver Request at 7 (emphasis added).

PJM's claim of limited scope disregards the fact that a delay in the BRA has profound ramifications for every market participant in its footprint. PJM's request

⁶ See Waiver Request at 7.

renders uncertain not merely the timing of the BRA but also the applicability of a vast number of existing and proposed (and continuously changing) RPM-related market rules. This is true because the acknowledged purpose of the delay is to be able to implement whatever changes in PJM's capacity market rules result from a Commission order on the Capacity Performance proposal. But, at this point, there is no guarantee that the Commission will not reject Capacity Performance outright or, alternatively, require drastic changes in that proposal.

Granting PJM's Waiver Request would not only suspend the timing of the next BRA, it also would put into limbo nearly every rule, practice and procedure governing the actions of Market Participants in relation to Delivery Year 2018/19. For however long a grant of the waiver might leave these essential factors "up in the air," market participants would be prevented from making well-founded decisions – decisions having profound and long-lasting financial and reliability implications – about their resource and load commitments for Delivery Year 2018/19. So, while a shift in the BRA schedule might seem a "narrow" matter to PJM, the Waiver Request also carries broad impacts for all of the market participants that must make important decisions in the coming months. A grant of the waiver would force them to make those decisions without knowledge of when the BRA will occur, or the rules that will govern that process, or even whether Capacity Performance will (or won't) be in effect for Delivery Year 2018/19. PJM's characterization of these impacts as "narrow" belies a lack of appreciation for the plight of the market participants who actually must make serious and important decisions in the conditions of uncertainty that would be extended by a grant of the requested waiver.

PJM's Waiver Request also confirms that the concerns raised by Joint Protestors and many others in the Capacity Performance docket – particularly, that the haste with which PJM seeks to implement Capacity Performance effectively prevents well-informed decision-making by affected market participants – were warranted. The Commission should recognize that, if it approves the Capacity Performance proposal or some variant thereof, market participants must have a reasonable opportunity to understand the new rules before they are compelled to make long-lasting decisions and commitments. That task was daunting enough given the complexity of the rules and procedures proposed in Docket No. ER15-623, but it was made even more difficult by the shifting nature of those rules and by the barrage of other changes in market rules that PJM submitted both before and after its Capacity Performance filing.⁷ Indeed, PJM has added to the difficulty by unveiling yet another series of proposed changes in its April 10 answer to the Commission's Deficiency Letter. Thus, contrary to PJM's assertion, there is not an extensive record supporting any changes in RPM. Instead, all that exists is an unclear and incomplete Capacity Performance filing, a string of unsupported claims by PJM that have been repeated many times in hopes of bolstering support for the incomplete proposal, a stream of modifications to the initial proposal, and widely divergent opinions on whether and how to proceed. The result, as noted, is deep uncertainty that pervades PJM's resource adequacy mechanism and confounds rational decision-making by

⁷ See "Protest and Motion to Reject Filing or, in the Alternative, For Suspension and Hearings by American Municipal Power, Inc., Old Dominion Electric Cooperative, and Southern Maryland Electric Cooperative, Inc.," filed in Docket No. ER15-623-000 on January 20, 2015, at 16-17 (listing the rapid succession of capacity and energy market tariff change filings submitted by PJM in late 2014 and early 2015).

market participants in that sphere. By extending the duration of this pervasive uncertainty, a grant of the requested waiver would serve only to make matters worse.

In short, PJM's Waiver Request not only highlights the continuing instability of PJM's capacity market rules, but actually deepens the uncertainty attending the implementation of Capacity Performance. That proposal calls for sweeping changes, including the replacement of existing capacity products with a single new product, the imposition of new capacity performance requirements, changes in offer caps, and new eligibility requirements for participating in PJM's capacity auctions. The continuing instability in PJM's capacity market spawns pervasive uncertainty and doubt about the market rules that will govern the recovery of long-term investments. Such uncertainty and doubt is ill-conducive to the long-term investments PJM seeks to promote, and a grant of PJM's Waiver Request would send the message that *even the most basic components* of PJM's resource adequacy construct – even components as fundamental as the next BRA's timing and the rules that will govern it – can be changed with very little notice or process. That message would deepen the uncertainty and doubt, creating an atmosphere that can only discourage the long-term investments in facilities and equipment that PJM claims are needed.

The Waiver Request also ignores the fact that, in its Capacity Performance filing, PJM had proposed to hold new “transitional incremental auctions” for the 2016/2017 and 2017/2018 Delivery Years *before* the BRA for the 2018/2019 Delivery Year.⁸ PJM's

⁸ See *PJM Interconnection, L.L.C.*, Filing Letter at 29, Docket No. ER15-623-000 (December 12, 2014). The transitional auctions were scheduled to be held in April and May of 2015 to procure 60 and 70 percent, respectively, of the Reliability Requirement.

Waiver Request filing offers no clue as to where those plans stand at this point, or how they may be affected by a grant of the requested waiver. PJM's failure to address the status of its "transitional incremental auctions" adds further to the uncertainty created by the Waiver Request.

PJM's Waiver Request, premised as it is on PJM's somewhat presumptuous belief that the Commission will approve the Capacity Performance proposal, is yet another attempt by PJM to modify the market rules in ways that will have serious implications for future RPM auctions. Viewed in this light, it is clear that the Waiver Request is in no way "narrow" in scope; on the contrary, it is unreasonably broad in scope. The Waiver Request therefore should be denied for failing to satisfy the first cited requirement for tariff waivers.

While this element of PJM's Waiver Request is reason enough for the Commission simply to reject the request, there is a better way (indeed, the only way) to mitigate the uncertainty PJM has created – namely, for the Commission to (i) direct PJM to conduct the 2015 BRA in May, as originally scheduled, and to do so applying the currently effective rules, and (ii) expressly order that the implementation of any Capacity Performance plan the Commission might approve must be delayed until the May 2016 BRA. That delay would give market participants needed additional time to make the determinations required to move forward with rational, well-analyzed commitments.

B. The Waiver Request Does Not Address a Concrete Problem That Must Be Remedied.

PJM asserts that the "concrete problem" addressed by the Waiver Request is that the Commission's issuance of its March 31 Deficiency Letter created doubt as to whether Capacity Performance could be implemented in time for the BRA for the

2018/2019 Delivery Year.⁹ What PJM fails to acknowledge, however, is that any uncertainty in this regard arises *not* from the issuance of the Deficiency Letter, but from PJM's own filing of the Waiver Request.

PJM acknowledges that “without this waiver, the Commission would lose any ability to include such [Capacity Performance] rules in the 2015 BRA even if it later finds that such rules are just, reasonable, and needed to promote reliability.”¹⁰ PJM also acknowledges that, if the Commission issues an order on Capacity Performance that only partially approves PJM’s plan, then the “better course at that point may be to conduct the auction under PJM’s current tariff rules.”¹¹ Through these statements, PJM effectively concedes that there is no “concrete problem” the waiver would address because proceeding with the BRA under the current rules – the course PJM deems potentially “preferable,” depending on how its Capacity Performance proposal turns out – is always an option. PJM’s recognition of the availability, and viability, of that option means that the requested waiver is unnecessary to resolve any “concrete problem.”

PJM also states that “[g]iven the need for improvements in PJM’s rules for Capacity Resource performance, this important question of timing of *full implementation* of those improvements should not be decided through silence or by mere default.”¹² AMP recognizes the operational performance issues that PJM faced in the winter of

⁹ Waiver Request at 8.

¹⁰ *Id.* at 9.

¹¹ *Id.* at note 12.

¹² *Id.* at 8 (emphasis added).

2013/2014, and it supports and respects the efforts by PJM and others to prevent a recurrence of those issues.¹³ PJM's own analysis, however, shows that January 2014's operational challenges resulted in large measure from factors that already are being effectively addressed by PJM through focused initiatives.¹⁴ As a result, "full implementation" of Capacity Performance in this year's BRA is in no way critical to ensuring either resource adequacy or reliability. What could have adverse implications for resource adequacy and reliability, however, is PJM's plan to delay the BRA to include any Capacity Performance requirements that have not been significantly modified by the Commission's order, and then to conduct a BRA with a highly abbreviated time for market participants to review and understand any modifications. Forcing market participants to engage in this sort of scramble creates an atmosphere that is not helpful in promoting the long-term investments in facilities and equipment that PJM claims to seek.

In issuing the March 31 Deficiency Letter and requiring that PJM fill in crucial gaps in its Capacity Performance filing¹⁵, the Commission did not create a "concrete problem" that now must be resolved through the requested waiver. Rather, PJM's "concrete problem" claim depends on a scenario (Commission approval of Capacity

¹³ It should be remembered that the operational performance issues PJM faced during the 2014 "polar vortex" events also were the cause of hundreds of millions of dollars in "uplifted" costs that ultimately are borne by load. Consequently, load interests have powerful reasons to seek to avoid a recurrence of 2014's operational performance issues.

¹⁴ These initiatives and their demonstrated benefits are discussed in the "Supplement to Protest" filed in Docket No. ER15-623-000 on March 19, 2015 by AMP, ODEC and SMECO (see eLibrary Accession No. 20150319-5177).

¹⁵ Such as how a radical shift in market power mitigation rules, in a region with a history of structural market power and a mitigation strategy of unit-specific cost-based bids, can be implemented without doing great harm to load or providing a competitive advantage to suppliers with large and diverse generation portfolios.

Performance) that may or may not come to pass. Viewed even in the best light then, PJM's concern about fully implementing Capacity Performance in this year's BRA is one that falls well short of the type of "concrete problem" that must exist for the Commission to waive tariff provisions. Because no concrete problem exists, PJM's Waiver Request should be denied.

C. The Waiver Request Creates Undesirable Consequences That Harm Third Parties.

PJM claims that its Waiver Request meets the Commission's requirement of having no adverse impact on third parties, not because there will be *no* harm to third parties, but because PJM believes that, on balance, "an auction delay is the *only* means available to ensure that favorable Commission action on the Capacity Performance Filing can be implemented in the BRA for the 2018/2019 Delivery Year" to meet the "needs of the PJM Region as a whole." Waiver Request at 10 (emphasis added). Although PJM may be correct that its Waiver Request is the only means to ensure that the Capacity Performance Filing can be implemented through this year's BRA, PJM is incorrect both that Capacity Performance must be implemented this year to meet the region's needs *and* that its requested BRA delay will not harm third parties.

As Joint Protestors and many others have argued from the outset, PJM has failed to demonstrate any need for the drastic changes to RPM that Capacity Performance would bring. As noted above, operational performance issues are a rapidly shrinking concern in PJM. In fact, PJM recently reported on reduced forced

outage rates this past January and February,¹⁶ which indicate yet another operational performance improvement that was accomplished without the imposition of Capacity Performance. Indeed, during the February 19 and 20 cold snap, PJM set a new all-time Winter peak demand without significant real time price spikes or emergency actions. Additionally, PJM reported the results of its Cold Weather Generation Resource Preparation testing to the February 10, 2015 meeting of the PJM Operating Committee, and that report was that 94% of all units by unit count and 96% of all units tested by MW passed. Thus, several of the operational performance issues that PJM cited as proving the need for Capacity Performance now, through more focused measures, have been addressed and essentially eliminated. Other factors that affected operational performance in January 2014 – primarily, gas-electric coordination – are matters that require the Commission’s direct involvement in the first instance.

PJM concedes that its requested delay will adversely affect third parties. Specifically, PJM acknowledges that a BRA delay will harm developers of new entry projects who are relying on the current BRA schedule, and that the requested delay will impact those parties’ costs, construction schedules and possibly financing. Waiver Request at 3. The overwhelmingly likely result of granting of PJM’s waiver request therefore would be a needless reduction in new capacity bid into the BRA (due to

¹⁶ See *Winter Operations* January 2015, slide 4 (available at <http://www.pjm.com/~media/committeesgroups/committees/toa-ac/20150203/20150203-winter-update.ashx>) and February Cold Weather Review, February 2015 slide 4 (available at <http://www.pjm.com/~media/committees-groups/subcommittees/sos/20150225/20150225item-02a-february-2015-cold-weather-update.ashx>). Forced outage rates during the January 8 2015 event were 10.8% as opposed to the 22% experienced in January 2014. This result was recently affirmed during the extremely cold weather of February 19 and 20 where a new all-time winter peak demand was set with forced outage rates ranging from 8.2% to 12.3%.

disruption in financing schedules and reduced amount of time to bring projects to completion), with a concomitant reduction in reliability levels and an associated increase in charges to be borne by load. PJM nevertheless contends that the Commission's waiver standard is not a "zero impact" standard, and that a grant of the waiver will benefit the region generally.¹⁷ The Commission, however, has never stated this element of its waiver test as a "balancing of interests" standard, and doing so would open the Commission's well-established waiver analysis to a host of new subjective considerations. In any case, PJM's claim that the region as a whole will be benefited is subjective and self-serving, and should be given little or no weight by the Commission.

Additionally, PJM complains that without a delay, if the Commission finds that all of the changes in the capacity resource performance rules are warranted, they cannot be implemented until the 2016 BRA.¹⁸ Rather than being a negative, that outcome would provide both PJM and its market participants a much-needed opportunity to evaluate and understand the details of Capacity Performance as it may ultimately be approved by the Commission (should approval be forthcoming). On the other hand, a grant of the requested waiver would impose on PJM loads the increased costs and risks that result from a compelled acceleration (or change in course) of any measures required to implement Capacity Performance in the 2015 BRA.

¹⁷ See Waiver Request at 9.

¹⁸ See *id.* at 10.

II. CONCLUSION

PJM has failed to demonstrate why the requested waiver – which will increase costs to developers of the new entry projects PJM insists are needed, and will likely increase costs to all other market participants, without any demonstration of commensurate benefits – is necessary or reasonable. Indeed, PJM's rush to implement Capacity Performance and its proclivity for continuously modifying its proposal are the primary sources of the uncertainty currently felt by market participants. Accordingly, the Commission should promptly reject PJM's Waiver Request, direct PJM to conduct the May 2015 BRA under the currently effective rules, and state that whatever plan emerges from the Capacity Performance docket will be implemented no earlier than the 2016 BRA.

CERTIFICATE OF SERVICE

I hereby certify that I have on this date caused a copy of the foregoing document to be served on each person included on the official service list maintained for this proceeding by the Commission's Secretary, by electronic mail or such other means as a party may have requested, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated this the 14TH of April, 2015 at Columbus, Ohio.

 /s/ Lisa G. McAlister

Lisa G. McAlister