

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

PJM Interconnection, L.L.C.)

Docket No. ER17-2291-001

PROTEST OF AMERICAN MUNICIPAL POWER, INC.

On December 7, 2017, PJM Interconnection, L.L.C. (“PJM”) submitted a response to the Commission’s letter dated November 7, 2017 notifying PJM that its August 11, 2017 filing was deficient (“Deficiency Response”). PJM’s August 11 Filing, submitted pursuant to Federal Power Act (“FPA”) section 205,¹ contained PJM’s proposed revisions to the PJM Open Access Transmission Tariff (“Tariff”), Attachment K-Appendix, section 1.12 and the identical provisions of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”), Schedule 1, section 1.12 regarding Dynamic Transfers of generators into and out of the PJM Balancing Authority Area.² Additionally, the August 11 Filing included a reimbursement agreement applicable to generators seeking to pseudo-tie into PJM and a pair of *pro forma* pseudo-tie agreements.³ According to PJM, the filing will “provide PJM with a base standard for all Dynamic Transfers into the PJM Region and ensure there is consistency regarding the rules and requirements for Dynamic Transfers of generators,” which PJM states “include Dynamic Schedules and Pseudo-Ties.”⁴ The deficiency letter requested additional

¹ 16 U.S.C. § 824d.

² August 11 Filing at 1.

³ *Id.* at 1-2.

⁴ *Id.* at 2.

information from PJM in order to process the filing and stated that PJM's Deficiency Response would constitute an amendment to that filing.⁵

I. BACKGROUND

The Commission established December 28, 2017 as the deadline for comments on and protests of PJM's amended filing. Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure,⁶ American Municipal Power, Inc. ("AMP"), on behalf of itself and its members, hereby protests PJM's amended filing, including the proposed *pro forma* pseudo-tie agreements, the reimbursement agreement, and the related Tariff and Operating Agreement provisions.⁷ As AMP stated in its September 1, 2017 protest, AMP appreciates having had the opportunity to provide comments and proposed changes to PJM in advance of the August 11 filing, a number of which PJM incorporated in its filing. AMP, however, identified remaining and additional problems in the filing that required correction in order for the filing to be just and reasonable. These included, *inter alia*, a revision PJM made to the *pro forma* pseudo-tie agreements after AMP had provided comments on PJM's draft filing, an issue in the reimbursement agreement, vagueness in the Tariff provisions addressing pseudo-tie termination, and certain overarching problems. AMP renews by incorporation here the arguments made in its September 1, 2017 protest, noting that PJM's Deficiency Response did not cure any of the defects discussed in AMP's protest. Further, AMP submits the instant protest to address additional concerns raised by PJM's Deficiency Response, as discussed below.

⁵ Deficiency Letter at 3.

⁶ 18 C.F.R § 385.211.

⁷ AMP filed its doc-less intervention in this proceeding on August 14, 2017, and filed its protest of PJM's original filing on September 1, 2017. Additionally, AMP filed an answer on September 25, 2017.

PJM’s response to Question 3.b in the Deficiency Letter correctly recognizes that pseudo-tied external generating resources that do not participate in PJM’s capacity markets do not face a must-offer requirement in PJM’s energy market. PJM notes that parameters governing the ability of these resources to participate in their native Balancing Authority’s markets are found in PJM’s Tariff and Operating Agreement.⁸ Thus, for example, a pseudo-tied generator situated in MISO that is partially or fully pseudo-tied into PJM but does not participate in RPM should be free to offer its output in either MISO’s or PJM’s energy markets.

II. PROTEST

A. PJM’s Discussion of Pseudo-Tie Suspension and Termination Provisions Reveals PJM’s Intent to Impose Unfounded Restrictions on Native Market Participation by “Suspended” Resources.

In response to Question 2.a in the Deficiency Letter, PJM states that “[t]he word ‘suspension’ in section 17 of the PT Agreements means the temporary period of time during which PJM and/or the Native Balancing Authority have determined the pseudo-tied generator must not operate utilizing the Pseudo-Tie (unless the Attaining Balancing Authority directs the generator to operate to mitigate an emergency condition) or participate in the Attaining Balancing Authority’s markets”⁹ Additionally, in response to Question 2.e in the Deficiency Letter, PJM states that “[s]uspension of external generators will always involve curtailment of the generator by restricting the generator from participation in day-ahead and real-time market activities.”¹⁰ In this case, PJM does not limit the scope of the prohibition to the Attaining Balancing Authority’s markets, implying that PJM may intend to preclude

⁸ Deficiency Response at 15.

⁹ *Id.* at 7 (emphasis added).

¹⁰ *Id.* at 12.

participation in the Native Balancing Authority's markets as well. However, there should be no reason why, for example, a pseudo-tied resource in MISO that does not participate in RPM, and therefore does not face a must-offer requirement in PJM's energy market, should necessarily be precluded from participating in native markets during the period for which the pseudo-tie is suspended. In the absence of suspension, PJM acknowledges that this resource was free to participate in its native markets. PJM has provided no explanation supporting an interpretation of suspension that includes this punitive sanction. Given that PJM has had multiple opportunities to provide an explanation for its suspension provision and has instead offered only ambiguous and conclusory assertions as justification, the Commission should reject this element of PJM's filing.

B. If the Commission Accepts Some Version of PJM's Pseudo-Tie Suspension and Termination Provisions, Then It Should Direct PJM to Include these Provisions in the Tariff and Operating Agreement.

PJM's response to the Commission's questions regarding the suspension and termination provisions in its proposed *pro forma* pseudo-tie agreements shows that PJM has given itself unbounded power to impose severe consequences on pseudo-tied resources. However, PJM's proposed Tariff and Operating Agreement language describing these suspension and termination provisions is impermissibly vague. The "rule of reason" governing tariff requirements mandates that the filed tariff recite "those practices that affect rates and service significantly, that are realistically susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous."¹¹ Here, suspension and termination significantly affect service because the consequence of PJM invoking such terms is either a

¹¹ *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985).

temporary or permanent denial of pseudo-tie service resulting in the inability to use an external resource within PJM. That PJM's proposal is not generally understood without further explanation is evident from the fact that the Commission found it necessary to elicit an explanation from PJM through the Deficiency Letter. At the same time, PJM's Deficiency Response demonstrates that the proposed practices are capable of specification, notwithstanding that PJM failed to provide a specification of these practices in either its August 11 Filing or the December 7, 2017 amendment.

In any event, this component of PJM's August 11 filing is impermissibly vague. The explanation of the filing contained in PJM's Deficiency Response provides details that cannot reasonably be described as "minor revisions." Accordingly, the Commission should reject PJM's filing, consistent with *NRG*,¹² rather than conditionally accept it subject to inclusion of these practices in the Tariff and Operating Agreement. PJM would then be free to submit a complete proposal in a new filing under FPA section 205 that includes the requisite level of detail.

¹² *NRG Power Marketing, LLC v. FERC*, 862 F.3d 108, 109 (D.C. Cir. 2017).

III. CONCLUSION

WHEREFORE, for the foregoing reasons, AMP respectfully requests that the Commission: (1) direct PJM to modify its filing in accordance with the foregoing Protest; (2) alternatively, reject the filings; and (3) grant such further relief as the Commission may deem appropriate.

Respectfully submitted,

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Dated: December 28, 2017

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 at Washington, D.C., this 28th day of December, 2017.

By: /s/ Gerit F. Hull
Gerit F. Hull