

Energy Efficiency in Kentucky



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MC Webinar
September 25, 2017

- PJM intends to file for a prospective waiver of its tariff, including but not limited to Attachment DD-1 relating to the participation of Energy Efficiency in Kentucky.
 - limited scope → Kentucky only.
 - limited in duration → prospective only until FERC rules on the AEE petition for declaratory order or provides other jurisdictional clarity.
 - No adverse market impact → not disrupting past market activities; preventing future participation of EE in Kentucky that the KY PSC has determined is not authorized.
 - PJM will ask FERC to issue a ruling in 60 days.
- PJM initiated stakeholder discussions resulting in a Problem Statement and Issue Charge approved by the MIC on June 7, 2017. Process is ongoing. Discussions focus on a process that could be implemented for KY and potentially be expanded for all states.

- KY PSC staff issued its opinion stating that PJM had committed to not allowing retail customers to participate in PJM's markets as demand response resources. Staff opined that demand response and energy efficiency are effectively the same under Kentucky law, and that PJM made commitments regarding demand response participation in the PJM markets in each of the integration proceedings. Staff further opined that because PJM participated in those proceedings, PJM is subject to the KY PSC jurisdiction.
- "PJM is knowingly allowing one or more retail electric customers within EKPC's service territory to bid energy efficiency resources into the Capacity Market. The actions of PJM and the unidentified bidder(s) will be harmful and prejudicial to the remainder of EKPC's retail electric customers and will result in service that – through no fault of EKPC – is inefficient and unreasonable in rates that – again through no fault of EKPC – are unfair, unjust and unreasonable."

- On June 2, 2017, AEE filed a Petition for Declaratory Order with FERC requesting that FERC declare:
 - under the FPA, FERC has exclusive jurisdiction over the rates, terms and conditions under which energy efficiency is sold in wholesale electricity markets;
 - a retail regulator may not bar, restrict or otherwise condition the participation of wholesale energy efficiency resources (EERs) in wholesale electricity markets unless FERC expressly adopts rules or regulations conferring such authority;
 - Order No. 719 does not provide for a retail regulator to exercise an “opt out” and bar or restrict the sale into the wholesale electricity markets of wholesale EERs; and
 - use of an RTO/ISO stakeholder process to develop tariff provisions giving a retail regulator such “opt in/opt out” authority is improper.
- Attracted attention and opposition from market participants from coast to coast.
- FERC determination unlikely in near future.

- The KY PSC issued its order in response to a petition for declaratory order filed by EKPC. The KY PSC did not assert jurisdiction over PJM (deferring the issue), but clarified that the state law treated demand response and energy efficiency effectively the same and thus its prior rulings prohibited retail customers from participating as energy efficiency in the wholesale market.
- Subject matter jurisdiction and personal jurisdiction issues.
- The order also requires that the three PJM utilities in Kentucky individually or jointly file a status report by December 6th describing the actions taken by PJM to comply with the commitments and provisions of the KY PSC's prior Orders approving the transfer of functional control of transmission assets to PJM (and warns of an investigation of whether a change needs to be made in the functional control of the transmission systems under the control of PJM).

Appendix



April 19, 2004 - AEP (Kentucky Power) - PJM Stipulation

- “The Parties agree and stipulate that this approval is premised on PJM’s operation of markets that are designed such that AEP Service Corporation’s (AEP) purchases of capacity and energy, and sales of capacity and energy to, the PJM Capacity Credit Market and PJM Interchange Energy Market on behalf of its operating companies are voluntary. AEP’s cost of service to retail customers is subject to appropriate Commission review through rate proceedings. The parties agree to resist any proposal to mandate PJM member participation in PJM’s Capacity Credit Market or Interchange Energy Market to effect sales or purchases of capacity or energy.”
- “Any PJM-offered demand side response or load interruption programs will be made available to Kentucky Power for its retail customers at Kentucky Power’s election. No such program will be made a available by PJM directly to a retail customer of Kentucky Power. Kentucky Power may, at its election, offer demand side response programs to its retail customers. Any such programs would be subject to the applicable rules of the Commission and Kentucky law.”
- “Nothing in this Stipulation shall be construed to alter the jurisdictional authority of the KPSC or the FERC or the parties’ respective positions concerning same. . . . The KPSC shall retain its existing jurisdiction to, and shall continue to, establish retail electric rates for Kentucky Power based upon its assets included in retail rate base.”

(Case No. 2002-00475)



January 14, 2011 - PJM Letter to KY PSC - Re: Duke Kentucky

- “PJM acknowledges that under the Conditions set forth in the Commission’s Order, no retail customer of Duke Kentucky is allowed to participate in any PJM demand-response program until that customer has entered into a special contract with Duke Kentucky which has been filed with, and approved by, the Commission, or until Duke Kentucky has an approved tariff authorizing customer participation.”
- The KY PSC order stated: “[t]o ensure clarity for all parties concerning the need for the Commission’s prior approval, we will condition the approval of membership in PJM upon Duke Kentucky’s commitment that no retail customer will be allowed to participate directly or through a third party in a PJM demand-response program until either: (1) the customer has entered into a special contract with Duke Kentucky and that contract has been filed with, and approved by, the Commission; or (2) Duke Kentucky receives Commission approval of a tariff authorizing such customer participation. In addition, we will require PJM to file a written acknowledgment of this requirement and require PJM to publicize this requirement according to its demand-response program rules.”
- The KY PSC order further stated: “No customer should be allowed to participate directly or through a third party in any PJM demand-response program until that customer has entered into a special contract with Duke Kentucky which has been filed with, and approved by, the Commission, or until Duke Kentucky has an approved tariff authorizing customer participation.”

(Case No. 2010-00203)

- EKPC proposed a prohibition of retail customers participating directly or indirectly in PJM’s markets as part of its application.
- PJM stipulated “The Commission shall have jurisdiction over PJM for the limited purpose of enforcing PJM’s commitments as set forth in this Stipulation and Recommendation to the extent not inconsistent with the jurisdiction of the FERC”
- The KY PSC noted that any customer on the EKPC system could *only* participate, directly or through a third party in PJM demand-response through a Commission approved contract.

(Case No. 2012-00169)

- Utility means any person . . . who owns, controls, operates, or manages any facility used or to be used for or in connection with: . . .

The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power or other uses;