

127 FERC ¶ 61,197
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

PJM Interconnection, L.L.C.

Docket Nos. ER09-730-000
ER09-730-001

ORDER ACCEPTING TARIFF REVISIONS SUBJECT TO CONDITIONS

(Issued May 29, 2009)

1. On February 19, 2009, in Docket No. ER09-730-000, PJM Interconnection, L.L.C. (PJM) filed tariff sheets, as modified on March 30, 2009 in Docket No. ER09-730-001, to revise the practices and rules governing the provision of black start service and related revenue recovery for black start service providers set forth in Schedule 6A of PJM's Open Access Transmission Tariff (Tariff). For the reasons discussed below, the Commission accepts PJM's proposed tariff sheets, to be effective April 21, 2009, subject to conditions.

I. Background

2. Schedule 6A of PJM's Tariff sets forth the details for generators to provide, and users of the transmission system to obtain, black start service. Black start service is the ability of a generating unit to start-up without an outside electrical supply or to continue operating at reduced levels when disconnected from the grid, which is critical for restoration of the transmission system in the event of a de-energizing event (e.g., a blackout). All transmission customers are required to take black start service pursuant to the terms of Schedule 6A.

3. Currently, Schedule 6A of the Tariff requires owners of black start units to commit to provide black start service for a rolling two-year period, until terminated either by PJM, the transmission owner or the black start service provider. In the event that a black start provider fails to fulfill its two-year rolling commitment to provide black start service, receipt of any black start service revenues associated with the non-performing black start unit will cease and the black start provider will forfeit any black start service revenues that it received or would have received had the black start unit performed, for

the period of the unit's non-performance, not to exceed revenues for a maximum of one year.

4. Under Schedule 6A currently, the annual black start service revenue requirement is the sum of the annual black start service revenue requirements for each designated black start service generator. The annual black start service revenue requirement for each designated black start service generator is determined in accordance with the formula set forth in paragraph 18 of Schedule 6A. This Schedule 6A formula includes an incentive factor designed to provide compensation for black start service, including reimbursement for the actual out of pocket costs of providing black start service plus an incentive payment to encourage provision of such service. The Schedule 6A formula also includes allocation factors for fixed and variable generation costs.

5. Transmission customers are billed by the transmission provider for black start service in accordance with the formulas set forth in paragraph 25 of Schedule 6A.

II. Description of Filing

6. PJM states that the revisions proposed herein represent the collective work of the Black Start Services Working Group, which was chartered to discuss and recommend courses of action to address additional black start issues, and PJM stakeholders and are designed to: (a) establish a tiered level of commitment for a black start unit to provide service based upon whether the provider is seeking to recover new or additional fixed black start capital costs or not; (b) allow black start providers to recover reasonable costs associated with maintaining their black start units in compliance with North American Electric Reliability Corporation (NERC) Reliability Standards (Reliability Standards); and (c) establish an alternative capital cost recovery mechanism under which black start service providers could seek Commission-approved cost of service recovery in lieu of the proposed Schedule 6A formula rate.

7. Accordingly, PJM states, the proposed revisions set forth two commitment periods for a black start unit provider depending upon the election of the black start provider to either forego or recover new or additional "Black Start Capital Costs."¹ Under the proposed paragraph 5 of Schedule 6A, a black start service provider that elects to forego recovery of new or additional Black Start Capital Costs is required to provide black start service on a rolling, two-year basis, until PJM, the transmission owner, or the black start

¹ "Black Start Capital Costs" are defined as the capital costs documented by the owner or accepted by the Commission for the incremental equipment solely necessary to enable a unit to provide black start service in addition to whatever other products or services such unit may provide. Black Start Capital Costs include those costs incurred by the black start owner to meet applicable NERC Reliability Standards.

unit owner provides one-year advance notice of termination. Failure to meet the two-year commitment will result in forfeiture of black start service revenues for the period of non-performance, not to exceed revenues for a maximum of one year.

8. Under the proposed paragraph 6 of Schedule 6A, a black start service provider that elects to recover new or additional Black Start Capital Costs is required to provide black start service for a term based upon the reasonable estimate of the expected life of the black start unit, as set forth in the new Cost Recovery Factor (or CRF) table in paragraph 18 of Schedule 6A. In addition, the transmission provider or the transmission owner may terminate the commitment made under paragraph 6 with one-year advance notice, provided that the transmission owner reimburses the black start unit provider for any amount of unrecovered Fixed Black Start Service Costs over a period not to exceed five years. Under proposed paragraphs 6 and 6(A) of Schedule 6A, if a black start service provider elects to terminate its service commitment or otherwise fails to fulfill its service commitment under paragraph 6, it must forfeit future revenues collected pursuant to Schedule 6A and fully refund any amount of Black Start Capital Costs recovered under a Commission-approved rate (recovered on an accelerated basis pursuant to the provisions of paragraph 17(i) of Schedule 6A) in excess of the amount that would have been recovered pursuant to the Schedule 6A formula rate during the same period.

9. PJM also proposes to revise paragraph 17 to allow a black start service provider to base its revenue requirement on either a Commission-approved rate or the formula rate set forth in paragraph 18. According to PJM, this provides a black start service provider three avenues of revenue recovery:² (a) it may establish a rolling two-year commitment pursuant to paragraph 5, forego recovery of any new or additional Black Start Capital Costs, and obtain its revenue requirements under the formula rate set forth in paragraph 18 of Schedule 6A; (b) it may establish a longer commitment period pursuant to paragraph 6 as discussed above, elect to recover new or additional Black Start Capital Costs, and obtain its revenue requirements under the formula rate set forth in paragraph 18 of Schedule 6A; or (c) it may elect to establish a commitment period pursuant to paragraph 5 or 6, but establish its revenue requirements based on a Commission-approved rate for the recovery of the cost of providing such service for the duration of the commitment period.

² PJM notes that an implicit fourth option also exists. PJM states that the black start unit owner may seek recovery of its black start costs by application of its own section 205 rights. However, in that case, PJM states, the black start unit owner would be responsible for billing and collection of its own revenue requirements and would operate outside the provisions of Schedule 6A. PJM March 30, 2009 Transmittal at 2-3, n.2.

10. PJM states that it does not propose to change the formula rate in any substantial way, but, rather, proposes to change the formula components.³ PJM proposes to revise the Fixed Black Start Service Costs formula component to capture two purposes: (a) allow black start service providers to recover the fixed costs of any capital improvements made to meet the requirements of NERC Reliability Standards; and (b) replace the now retired PJM Capacity Deficiency Rate component with the net Cost of New Entry (or CONE) component which is currently used in PJM's Reliability Pricing Model. PJM states that it also revised the Variable Black Start Service Costs formula component to (a) clarify that all black start units, regardless of their commitment level, will calculate this cost using the formula, and (b) define Black Start Unit O&M to be consistent with the new Schedule 6A.

11. PJM also proposes to limit the incentive factor component (or Z factor) to apply only to those black start units electing to forego recovery of new or additional Black Start Capital Costs. PJM proposes to review the Schedule 6A formulaic rate every two years and report the results of its findings to its stakeholders stating that this will ensure that: (a) black start unit providers are adequately compensated; and (b) proper incentives exist for the continuation of black start services.

III. Notice of Filing and Responsive Pleadings

12. Notice of PJM's February 19, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 9,236 (2009), with interventions and protests due on or before March 12, 2009. The Commission subsequently extended the time for filing interventions and protests to and including March 26, 2009. Notice of PJM's March 30, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 17,187 (2009), with interventions and protests due on or before April 20, 2009. Duke Energy Ohio, Inc. (Duke Energy), the Pepco Companies,⁴ the Mirant Parties,⁵ the Allegheny Companies,⁶ Dominion Resources

³ The formula for calculating a black start service provider's annual black start service revenue requirement under paragraph 18 is: $\{(Fixed\ Black\ Start\ Service\ Costs) + (Variable\ Black\ Start\ Service\ Costs) + (Training\ Costs) + (Fuel\ Storage\ Costs)\} * (1 + Z)$, where Z is equal to an incentive factor of ten percent.

⁴ The Pepco Companies include Pepco Holdings, Inc., Potomac Electric Power Company, Delmarva Power & Light Company, Atlantic City Electric Company, Conectiv Energy Supply, Inc., and Pepco Energy Services, Inc.

⁵ The Mirant Parties include Mirant Energy Trading, LLC, Mirant Chalk Point, LLC, Mirant Mid-Atlantic, LLC, and Mirant Potomac River, LLC.

⁶ The Allegheny Companies include Allegheny Power and Allegheny Energy Supply Company, LLC.

Services, Inc., Lincoln Generating Facility, LLC, University Park Energy, LLC, Exelon Corporation, Reliant Energy, Inc., Constellation Power Source Generation, Inc., Big Sandy Peaker Plant, LLC, the NRG Companies,⁷ Old Dominion Electric Cooperative, the PPL Companies,⁸ American Municipal Power – Ohio, Inc. (AMP-Ohio), Baltimore Gas and Electric Company, Monitoring Analytics, LLC (Market Monitor),⁹ Ameren Services Company, and the PSEG Companies¹⁰ each filed a timely motion to intervene.

13. Market Monitor filed comments to PJM's February 19, 2009 filing and AMP-Ohio, the Indicated Black Start Providers,¹¹ Duke Energy, and the Tenaska Parties¹² each filed a protest to PJM's February 19, 2009 filing. On April 10, 2009, PJM filed an answer to the protests of the Indicated Black Start Providers, Duke Energy, and the Tenaska Parties. On April 20, 2009, the Tenaska Parties filed comments to PJM's March 30, 2009 filing and an answer to PJM's April 10, 2009 answer. On April 22, 2009, Duke Energy filed an answer to PJM's April 10, 2009 answer.

⁷ The NRG Companies include NRG Power Marketing LLC, Conemaugh Power LLC, Indian River Power LLC, Keystone Power LLC, NRG Energy Center Dover LLC, NRG Energy Center Paxton LLC, NRG Rockford LLC, NRG Rockford II LLC, and Vienna Power LLC.

⁸ The PPL Companies include PPL Electric Utilities Corporation, PPL EnergyPlus, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC, PPL Martins Creek, LLC, PPL Montour, LLC, PPL Susquehanna, LLC, PPL University Park, LLC, and PPL Lower Mount Bethel Energy LLC.

⁹ Monitoring Analytics, LLC states that in this proceeding it is acting in its capacity as the Independent Market Monitor for PJM.

¹⁰ The PSEG Companies include PSEG Power LLC and PSEG Energy Resources & Trade LLC.

¹¹ The Indicated Black Start Providers include Reliant Energy, Inc., the Mirant Parties, the NRG Companies, the PSEG Companies, and the PPL Companies.

¹² The Tenaska Parties include Big Sandy Peaker Plant, LLC, Lincoln Generating Facility, LLC, and University Park Energy, LLC.

IV. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make those entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers of PJM, Duke Energy, and the Tenaska Parties because each has provided information that assisted us in our decision-making process.

B. Substantive Matters

15. As discussed below, the Commission accepts PJM's proposed tariff sheets, to be effective April 21, 2009, as requested, subject to conditions as discussed below.

1. Term of Commitment and Refund Obligation

16. Under PJM's proposed revised tariff sheets, a black start service provider that elects to forego recovery of new or additional Black Start Capital Costs need only agree to a rolling, two-year term of commitment, while a black start service provider that elects to recover new or additional Black Start Capital Costs must agree to a term of commitment from five to twenty years, depending upon the expected life of the black start unit. Originally, in its February 19, 2009 filing, PJM proposed that, if a black start service provider seeks to recover new or additional Black Start Capital Costs and then fails to fulfill its term of commitment, such provider would forego "any otherwise existing entitlement to revenues collected pursuant to this Schedule 6A and fully refund any amount of the Black Start Capital Costs recovered under a FERC-approved rate in excess of the amount that would have been recovered pursuant to paragraph 18 during the same period." In response to concerns that this would require black start units to fully refund any amount of black start revenues recovered, PJM revised paragraphs 6 and 6(A) in its March 30, 2009 errata filing.

17. Now, paragraphs 6 and 6(A) of Schedule 6A provide that if a black start unit provider elects to recover new or additional Black Start Capital Costs and fails to fulfill its service commitment, such provider will forego "any otherwise existing entitlement to future revenues collected pursuant to this Schedule 6A and fully refund any amount of the Black Start Capital Costs recovered under a FERC-approved rate (recovered on an accelerated basis pursuant to the provisions of paragraph 17(i)) in excess of the amount that would have been recovered pursuant to paragraph 18 during the same period."

a. Positions of the Parties

18. The Indicated Black Start Providers and the Tenaska Parties complain that the substantially longer terms of commitment create a significant disincentive for black start service providers to make capital investments and continue to provide black start service. They argue that the existing two-year, rolling commitment term for all black start units should be retained for this reason.

19. Duke Energy and the Tenaska Parties argue that it is unclear from PJM's February 19, 2009 filing whether PJM's proposed terms of commitment and refund obligations apply to all black start units, including existing units, or only to units that enter into black start service after April 21, 2009.¹³ They request that the proposed tariff sheets be modified to confirm that they may only be applied prospectively to units that begin providing black start service after the effective date of PJM's proposed tariff sheets. The Indicated Black Start Providers argue that the refund obligation in PJM's February 19, 2009 filing is unjust and unreasonable because it can be read to require a provider to refund payments it received for providing black start service during prior periods if it terminates service prior to the end of the black start unit's service life, as that term is defined in paragraph 18. They also argue that it is unduly discriminatory for black start service providers that seek capital cost recovery to be subject to a refund obligation when black start service providers that elect to forego capital recovery, but provide identical service, are not.

20. As described above, on March 30, 2009, PJM filed substitute Tariff sheets to clarify proposed paragraphs 6 and 6(A). On April 10, 2009, PJM filed an answer to the initial protests filed by the Tenaska Parties, Duke Energy, and the Indicated Black Start Providers. In its answer, PJM states that, under the substituted tariff sheets, a black start service provider that fails to fulfill its term of commitment under paragraph 5 or 6 will

¹³ Duke Energy's Lee facility provides black start service to PJM on the Commonwealth Edison Company (ComEd) transmission system under a five-year black start service agreement that was entered into between ComEd and the Lee facility prior to ComEd joining PJM. Duke Energy states that, after ComEd joined PJM, PJM filed the Lee facility's costs under the black start service agreement with the Commission. Thus, Duke Energy states, instead of the normal black start fixed cost allocation factor in the formula rate, the Lee facility is entitled to recover the cost documented in the black start service agreement. The Tenaska Parties state that Lincoln Generating Facility, LLC, one of the Tenaska Parties, also provides black start service and recovers its capital costs under a Commission-approved rate schedule pursuant to a five-year black start service agreement with ComEd.

only forfeit future black start revenues, with one exception.¹⁴ If a black start service provider establishes its revenue requirements based upon a Commission-approved rate and fails to fulfill its term of commitment, it will be required to refund any accelerated recovery of revenues. PJM states that, in this instance, the black start service provider will still be compensated for the service it provided by application of the formulaic rate, but the Commission-approved revenues it recovered above and beyond the formulaic rate would be subject to refund. PJM states that this ensures that PJM stakeholders are paying a rate for black start service commensurate with the black start service they are receiving. PJM also states in its answer that it does not intend to apply amended Schedule 6A changes retroactively to any outstanding or otherwise ongoing black start service agreements. PJM states existing agreements will be honored.

21. Regarding the lengthier paragraph 6 commitment terms, PJM maintains that these proposed commitment terms are reasonable and appropriate because, currently, transmission customers in the PJM region are paying, over a short time period, for the entire cost of substantial capital investment in black start capable resources with useful lives of twenty years or longer, with no attendant assurance that those resources will continue to provide black start service after the expiration of the initial two year commitment.

22. On April 20, 2009, the Tenaska Parties filed an answer to PJM's answer. The Tenaska Parties argue that PJM's proposed refund obligations in paragraphs 6 and 6(A) remain unjust and unreasonable. They contend that PJM's proposed revisions may still be interpreted to retroactively extend the term and reduce the rate collected under pre-existing, Commission-approved rate schedules. Specifically, the Tenaska Parties are concerned that PJM may interpret the applicable commitment period for purposes of assessing penalties under paragraphs 6 and 6A, as the period set forth in proposed paragraph 18 rather than the commitment period set forth in the applicable existing black start service agreement. They also argue that such retroactive application would violate the ban on retroactive ratemaking and would constitute a prohibited attempt by one public utility to change another utility's rates and the terms under which it provides service under Section 205 of the Federal Power Act.¹⁵

23. On April 22, 2009, Duke Energy also filed an answer to PJM's answer. In its answer, Duke Energy states that PJM's statement that "it does not intend to apply

¹⁴ This statement by PJM appears to be inconsistent with the refund obligations set forth in proposed paragraphs 6 and 6(A), which are only applicable to commitments made under paragraph 6.

¹⁵ The Tenaska Parties Answer at 6 (citing 16 U.S.C. § 824d (2006)).

amended Schedule 6A retroactively to any outstanding or otherwise ongoing Black Start service agreements” may not be binding because it is not in the Tariff. To remove any doubt, Duke Energy argues, the Commission should clarify that the proposed rates, refund obligations, term extensions and other amendments to Schedule 6A will only apply prospectively, if approved, and will not apply to Duke Energy’s and other existing black start service contracts.

b. Commission Determination

24. We accept PJM’s proposed term commitments set forth in paragraphs 6. PJM’s proposal ensures that PJM’s transmission customers are paying a rate for black start service commensurate with the black start service they are receiving. PJM is providing generators with two options for receiving payment for black start service: (a) continue (or elect) to forego recovery of new capital costs and receive reimbursement over the traditional two year period (paragraph 5); or (b) seek recovery of new or additional black start capital costs (paragraph 6). The protesters are concerned that the proposed tariff provisions may be ambiguous with respect to the applicability of some of the conditions in paragraph 6 to existing black start service providers that may be recovering capital costs pursuant to existing agreements.

25. We do not agree with the protesters that are concerned that PJM’s lengthier term commitments apply to those black start service providers currently using or seeking the two year recovery period under paragraph 5. First, paragraphs 5 and 6 both make clear that the more than two-year commitment terms apply only to providers incurring new black start capital costs. Paragraph 5 states:

Black Start Units selected to provide Black Start Service in accordance with Paragraph 4 and electing to forego any recovery of new or additional Black Start Capital Costs shall commit to provide Black Start Service for an initial term of no less than two years.¹⁶

Moreover, paragraph 6 also makes clear that its terms apply only to costs for black start service providers seeking recovery of new or additional capital costs, not previously incurred capital costs:

Black Start Units selected to provide Black Start Service in accordance with Paragraph 4 and electing to recover new or additional Black Start Capital Costs shall commit to provide Black Start Service for a term based upon a reasonable

¹⁶ Substitute Original Sheet No. 238A (emphasis added).

estimate of the expected life of the Black Start Unit, as set forth in the CRF Factor Table in Paragraph 18.¹⁷

As such, paragraph 6 would not be applicable to an existing black start service provider, unless and until such provider seeks to recover capital costs other than those being recovered by the black start service provider prior to effective date of PJM's proposed tariff sheets.

26. However, we find that there is some ambiguity concerning PJM's proposed refund obligations that requires further clarification. PJM, in its transmittal and answer, suggests that the refund obligation under paragraphs 6 and 6(A) would apply to black start service providers that establish their revenue requirements based on a Commission-approved rate, regardless of whether the provider establishes its commitment period under paragraph 5 or 6. On the other hand, proposed paragraphs 6 and 6(A) seem to correctly provide that the refund obligation would be triggered only when a black start service provider fails to fulfill its commitment established under paragraph 6 and not when it seeks two year recovery under paragraph 5. PJM is directed to clarify the refund obligation, as set forth in paragraphs 6 and 6(A), does not apply to existing black start service providers receiving recovery pursuant to paragraph 5.

2. X Factor

27. For black start service providers that elect to forego new or additional black start capital costs, PJM proposes that the Fixed Black Start Service Costs component of the formula rate be equal to: Cost of New Entry * 365 * Black Start Unit Capacity * X. The black start service allocation factor, or X factor, is designed to allocate a portion of the fixed costs of the operation of black start units to the provision of black start service, as well as to permit generators to recover capital investments which may be above the current caps used as allocation factors under PJM's Tariff. Currently, the X factor is one percent for hydro units, and two percent for diesel or CT units, unless another value is supported by the documentation of costs.¹⁸ In its proposal, PJM proposes to reduce the X factor "[f]or black start units having recovered new or additional Fixed Black Start Service Costs on an accelerated basis prior to April 21, 2009" to one half of one percent for Hydro units and one percent for Diesel or CT units.

¹⁷ *Id.* (emphasis added).

¹⁸ PJM is required to file with the Commission under Section 205 of the Federal Power Act any deviations from these allocation factors pursuant to 18 C.F.R. § 35.13. See *PJM Interconnection, L.L.C.*, Docket No. ER04-598-000, at 1 (Apr. 27, 2004) (unpublished letter order).

a. Positions of the Parties

28. The Tenaska Parties and Duke Energy oppose PJM's proposal to adopt different values for the X factor depending upon whether a black start service provider recovers its costs under a Commission-approved rate schedule. Duke Energy argues that PJM failed to support its change. The Tenaska Parties contend that the proposed change is unduly discriminatory. Moreover, the Tenaska Parties argue that PJM cannot justify the disparate treatment on the grounds that a black start service provider that recovered its costs under a Commission-approved rate schedule recovered a greater share of its fixed costs than a provider that did not. For example, the Tenaska Parties argue, if there were two providers that both recovered the same amount of Fixed Black Start Service Costs prior to April 21, 2009, but one of them recovered such costs on an accelerated, Commission-approved basis and the other pursuant to the current Schedule 6A, then, under PJM's proposed revisions, after April 21, 2009, the former would recover its fixed costs at one-half the rate that the latter would, despite the fact they are identically-situated in terms of the amount of costs recovered.¹⁹

29. PJM responds that adopting a lower allocation factor for units that have recovered new or additional fixed costs on an accelerated basis is meant to ensure that black start service providers are recovering appropriate costs and associated returns. It is not, PJM states, meant to penalize those providers for recovering their costs pursuant to a Commission-approved rate schedule. PJM states that amendment of the allocation factors to address this issue is crucial and nondiscriminatory as it is meant to place those black start units who provide service under the Schedule 6A formula rates on par with those black start units who seek cost recovery on an accelerated basis.

30. The Tenaska Parties argue in their answer that PJM's proposal discriminates among generators recovering costs on an accelerated basis based on the date on which they began to recover such costs, rather than on the basis of accelerated cost recovery, as PJM claims. The Tenaska Parties state that, under PJM's proposal, a black start unit that recovers its Fixed Black Start Service Costs on an accelerated basis prior to April 21, 2009 is compensated at the lower rate, whereas a unit that begins to recover its costs on an accelerated basis only after April 21, 2009, would be compensated at the higher rate applicable to black start service providers recovering their costs under proposed Schedule 6A. The Tenaska Parties also argue that PJM's proposal is all the more unjust and

¹⁹ In their answer, the Tenaska Parties state that the same result would apply if the former provider had recovered any amount of its costs under a Commission-approved rate schedule, even if it had recovered a smaller amount or proportion of such costs under a Commission-approved rate schedule than the latter provider had under the currently-effective version of Schedule 6A.

unreasonable because it penalizes such black start service providers based on agreements reached in the past, and the providers cannot take any actions going forward to avoid the imposition of these penalties.

31. The Tenaska Parties also argue that the proposed X factor should be rejected because it is based on retroactive application of the commitment periods in proposed paragraph 18 of Schedule 6A. The Tenaska Parties contend that, while it is clear what the applicable commitment period should be for periods after the proposed effective date of April 21, 2009, it is not clear what the applicable commitment period would be for service provided prior to April 21, 2009.²⁰ The Tenaska Parties state that in light of the unduly discriminatory elements and the potential for impermissible retroactive application of the revised Schedule 6A, the Commission should reject PJM's proposal to apply a lower X factor to black start service providers with pre-existing Commission-approved rate schedules. Instead, Tenaska Parties argue, PJM should be directed to revise its proposal such that the same X factor will apply to all black start service providers receiving compensation under paragraph 5 of Schedule 6A.

b. Commission Determination

32. The tariff provision, and its justification, is not clear. The tariff provision at issue states in relevant part:

²⁰ The Tenaska Parties state that under currently-effective Schedule 6A, there is only a rolling, two-year commitment period. However, the Tenaska Parties contend, PJM appears to intend to apply the commitment periods in proposed paragraph 18 on a retroactive basis to determine whether generators have recovered costs "on an accelerated basis" prior to April 21, 2009, as demonstrated in PJM's example. PJM states in its example that, where a black start service provider seeks to provide black start service for a commitment period on a mismatched basis with its cost recovery period (e.g. agreeing to provide black start service for a five-year commitment in return for a two-year, Commission-approved cost recovery period), after year two, the black start service unit could revert to the Schedule 6A incentive structure under the formula rates for the remaining term, thereby far exceeding returns typical for services procured under costs of service ratemaking. The Tenaska Parties state that, assuming the provision of service and cost-recovery commenced prior to April 21, 2009, there would be no mismatch between the two-year commitment period under currently-effective Schedule 6A and the two-year commitment period under the Commission-approved agreement. Thus, they argue, there could only be a mismatch between the commitment period in this example if PJM were to retroactively apply the commitment periods in proposed paragraph 18 of Schedule 6A.

For Black Start Units with a commitment established under Paragraph 5, X shall be .01 for Hydro units, .02 for Diesel or CT units. For Black Start Units having recovered new or additional Fixed Black Start Service Costs on an accelerated basis prior to April 21, 2009, X shall instead be .005 for Hydro units and .01 Diesel or CT units.

33. PJM has not explained adequately, given its prior use of the term “new or additional Black Start Capital Costs,” how new or additional fixed black start costs could be incurred prior to April 21, 2009²¹ or why the X factor should differ depending on the date on which a black start service provider is recovering costs.

34. Therefore, PJM is directed to further explain this proposed modification, including its justification for the fifty percent reduction. In its response to the Commission, PJM should explain the specific circumstances under which a black start service provider that establishes a two-year rolling commitment pursuant to paragraph 5 can end up with a five-year commitment and then, after year two, revert to the Schedule 6A incentive structure, as stated in its example. Also, PJM should address the Tenaska Parties’ claim that this provision discriminates between black start service providers solely on the basis of the date that they began to recover costs under their Commission-approved rate schedules, rather than on the grounds these providers recovered a greater share of their fixed costs than those that have not. PJM’s response is due 30 days from the date of this order.

3. Recovery of Non-NERC Costs

35. Under PJM’s proposal, the formula for calculating Fixed Black Start Service Costs for providers foregoing recovery of new or additional Black Start Capital Costs (i.e., $CONE * 365 * \text{Black Start Unit Capacity} * X$) is largely the same as the current formula for determining fixed costs. Where a black start service provider seeks to recover new or additional Black Start Capital Costs, PJM proposes to change the formula for calculating fixed costs to: $\text{Black Start Capital Costs} * CRF$, where the provider’s Black Start Capital Costs, including capital costs incurred to meet NERC Reliability Standards, must be documented or accepted by the Commission.

²¹ Given the use of the terms in the proposed tariff sheets, new or additional fixed black start costs would need to be recovered after the effective date of the proposed tariff sheets, April 21, 2009.

a. Positions of the Parties

36. The Indicated Black Start Providers and Tenaska Parties request that PJM allow black start service providers that are using the current formulaic rate be permitted the option to recover non-NERC fixed costs using the updated formulaic rate. The Indicated Black Start Providers claim that, otherwise, many existing units that have historically recovered Fixed Black Start Service Costs pursuant to the formula methodology would be required to spend substantial time and effort to calculate the non-NERC related capital costs for these units. To accomplish this, the Indicated Black Start Providers suggest adding another formula to paragraph 18 of proposed Schedule 6A²² and establishing a separate definition for “Black Start NERC Costs” to include only the NERC costs associated with the provision of black start service. The Indicated Black Start Providers argue that the burden of calculating black start costs from scratch does not seem to be warranted when the only change intended in this proceeding is the addition of an opportunity to recover NERC compliance capital costs. The Indicated Black Start Providers argue that both the formula methodology and the CRF methodology for calculating Fixed Black Start Service Costs are just and reasonable mechanisms to compensate black start providers for their non-NERC fixed costs.

37. PJM replies that the Indicated Black Start Providers’ argument is premised upon a misconception. PJM explains that the existing formula rate was designed to be a “black box,” catchall revenue requirement in recognition of the fact that actual black start capital costs could be burdensome. PJM states that “black box” revenue recovery is tied to a two-year commitment without the opportunity to recover NERC-related costs because it is assumed that the black start service provider is in the best position to evaluate its financial risk-reward attendant to recovering its costs pursuant to this relatively short commitment period. Allowing a black start service provider to lump together its “black box” revenue recovery, with its dramatically increased NERC-related recovery, in return for a two-year rolling commitment to provide black start resources, PJM argues, would allow cost recovery far in excess of typical returns for providing black start service.

b. Commission Determination

38. The issue is “whether the rates proposed by a utility are reasonable - and not to extend to determining whether a proposed rate schedule is more or less reasonable to alternative rate designs.”²³ The proposed revisions “need not be the only reasonable methodology.”²⁴ As a result, even if an intervenor develops an alternative proposal, the

²² The formula would sum together the product of [CONE * 365 * Black Start Unit Capacity * X] and [Black Start NERC Costs * CRF].

²³ *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,150, at P 254 (2009) (CAISO)
(continued)

Commission must accept a section 205 filing if it is just and reasonable, regardless of the merits of the alternate proposal.²⁵ The Indicated Black Start Providers and Tenaska Parties do not claim that PJM's proposed change is unjust and unreasonable. Instead they propose an alternative formula, which they assert is a just and reasonable mechanism to compensate black start providers for non-NERC fixed costs.

39. We find that PJM's proposed formulas are just and reasonable. Contrary to the Indicated Black Start Providers' assertion, the addition of an opportunity to recover NERC compliance capital costs was not the only change intended in this proceeding. The other intended change was to tie the recovery of new capital investment, including NERC-related capital investments, to a commitment period to provide black start service. If the Indicated Black Start Providers want to avoid the burden of calculating black start costs from scratch, they may do so by electing to forego new capital cost recovery. Accordingly, having found PJM's proposal just and reasonable, we need not address the merits of the alternative proposal of the Indicated Black Start Providers and Tenaska Parties.

4. Treatment of NERC Penalties and Related Insurance Costs; Magnitude of Black Start Costs

a. Positions of the Parties

40. AMP-Ohio objects to PJM's filing to the extent that it does not expressly disallow the recovery of NERC-imposed penalties related to black start activities and the cost of insurance related to such penalties. AMP-Ohio argues, any system that allows a utility to incur fines (or insure against them), but pass on the costs to others, significantly diminishes the incentives for compliance. AMP-Ohio states that this issue is nearly identical to that in *Midwest ISO*.²⁶ In that case, AMP-Ohio states that it also requested

(citing *Bethany, Bushnell, etc. v. Federal Energy Regulatory Com.*, 234 U.S. App. D.C. 32, 727 F.2d 1131, 1136 (D.C. Cir. 1984)).

²⁴ *CAISO*, 126 FERC ¶ 61,150 at P 254 (citing *Oxy USA v. FERC*, 314 U.S. App. D.C. 175, 64 F.3d 679, 692 (D.C. Cir. 1995)).

²⁵ *CAISO*, 126 FERC ¶ 61,150 at P 254 (citing *Southern California Edison Co., et al*, 73 FERC ¶ 61,219, at 61,608, n.73 (1995) ("Having found the Plan to be just and reasonable, there is no need to consider in any detail the alternative plans proposed by the Joint Protestors.")).

²⁶ AMP-Ohio's Comments at 4 (citing *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,106, at P 49 (2008) (*Midwest ISO*), *reh'g pending*).

the Commission to direct the Midwest Independent Transmission System Operator, Inc. to modify its proposed tariff as necessary to preclude any passing through of either NERC fines or related insurance costs. However, AMP-Ohio states, the Commission elected to address the issue on a case by case basis.²⁷ AMP-Ohio contends that the issue does not require specific facts, but instead is a matter of policy that the Commission can and should impose on a generic basis.

41. Though the Market Monitor does not oppose or seek delay of PJM's filing, the Market Monitor is concerned about the magnitude of black start cost increases that might result from the recovery of NERC-related costs applicable to black start service. The Market Monitor states that, since these additional costs could result in revenue requirement increases in excess of \$62 million for the PJM region, this is an appropriate time to explore whether alternative approaches could provide the same or superior black start protection to the system at lower cost. Specifically, the Market Monitor recommends that the Commission require PJM to reexamine the procurement of black start service.

b. Commission Determination

42. We will accept the provision subject to the condition that PJM clarify how NERC penalties or the cost of insurance will be treated. In the *Midwest ISO* order, we found that such issues would be considered on a case-by-case basis.²⁸ But in the black start service proposal in *Midwest ISO* the amount of compensation for black start service was based upon Commission-approved revenue requirements or the terms of a Commission-approved service agreement. Here, in contrast, under proposed Schedule 6A, the amount of compensation for black start service may be Commission-approved or certified to PJM, without a Commission proceeding. Accordingly, the Commission directs PJM to explain whether it intends to allow black start service providers that certify their costs to PJM, without separate Commission approval, to recover NERC penalties or the cost of insurance covering those penalties. PJM should include with its response its justification for its position.

43. The Market Monitor does not oppose PJM's tariff provision regarding the NERC-related costs, but is concerned about potential costs. However, PJM proposes to review the revenue requirement formula and its costs components every two years and report on the results of that review to the PJM stakeholders. At such time, the Market Monitor, as well as PJM and PJM stakeholders will have an opportunity to review the cost components of providing black start service, including NERC-related costs.

²⁷ AMP-Ohio's Comments at 4.

²⁸ *Midwest ISO*, 125 FERC ¶ 61,106 at P 49.

5. Adequate Stakeholder Input

a. Positions of the Parties

44. Duke Energy claims there is significant evidence that the proposed black start amendments were not carefully vetted. Duke Energy claims that: (a) PJM placed the black start proposal on the stakeholder consent agenda, resulting in it not being discussed when it was voted upon; (b) PJM sought an extension of time for comments because it needed time to obtain input from PJM's stakeholders to further clarify its proposed revisions; (c) stakeholders had to file comments before PJM made its errata filing and stakeholders have not had a chance to vote to approve any tariff amendments that may be contained in this filing; and (d) PJM's tariff filing contains errors, namely that PJM incorrectly stated it did not propose to change the allocation factors in its proposal when in fact it did.

45. PJM describes in its answer the vetting process it underwent to address stakeholder concerns. PJM rejects the notion that normal parliamentary procedures were subverted or that stakeholders were given an inadequate opportunity to approve the amendments to Schedule 6A. Regarding the March 30, 2009 errata filing, PJM concedes that the changes in the errata filing were not presented and reviewed by PJM stakeholders. However, PJM asserts that those amendments were only clarifying and not substantive. PJM states it was limited to clarifying the intent of the original revisions, as wholesale amendments would have required the approval of PJM's members.

b. Commission Determination

46. The Commission finds that the PJM's stakeholder process prior to the filing of its proposal was sufficient. As detailed in PJM's answer, the stakeholder process appears to have been robust. PJM's proposal is the culmination of a process that began in late 2007 and, with one exception (i.e., PJM's errata filing), PJM stakeholders appear to have had numerous opportunities to review the proposed Schedule 6A amendments, offer changes, propose comments, or make objections. Moreover, numerous parties availed themselves of the opportunity to protest the filing on the merits, and after reviewing the proposed tariff sheets, we find that except as noted earlier, the proposed tariff provisions are just and reasonable.

6. Minor Corrections

47. In the fourth sentence of paragraph 6 of Schedule 6A, PJM should change "fully refunds" to "fully refund."

48. In line 8 of paragraph 15 of Schedule 6A, PJM only references a commitment made pursuant to paragraph 5. PJM is directed to explain why this paragraph isn't

applicable to commitments established under paragraph 6 or add a reference to paragraph 6 in the compliance filing to be submitted within 30 days of the date of this order.

49. In the first sentence following “Fixed BSSC” in paragraph 18 of Schedule 6A, PJM should add the word “with” between the words “in accordance” and “the following.”

50. In the paragraph describing the “X” factor on Substitute Original Sheet No. 241A, PJM should (a) add a decimal before “02” in the third sentence; and (b) in the fourth sentence, add the word “for” between “.01” and “Diesel or CT units.”

The Commission orders:

(A) PJM’s proposed tariff sheets are hereby accepted to become effective April 21, 2009, subject to conditions, as set forth in the body of this order.

(B) PJM is directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Document Content(s)

ER09-730-000.DOC.....1-18