

149 FERC ¶ 61,264  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
and Norman C. Bay.

PJM Interconnection, L.L.C.

Docket No. ER15-135-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued December 19, 2014)

1. On October 20, 2014, PJM Interconnection, L.L.C. (PJM) submitted proposed revisions (October 20 Filing) to the PJM Open Access Transmission Tariff (PJM Tariff)<sup>1</sup> pursuant to section 205 of the Federal Power Act (FPA)<sup>2</sup> in response to the Commission's May 9, 2014, order.<sup>3</sup> PJM states that its proposed revisions implement a transition mechanism to relieve demand resources affected by recent changes to the Reliability Pricing Model notification requirements of their pre-existing cleared capacity obligations for the 2015-16 delivery year and subsequent delivery years. PJM explains that the proposed transition provision only applies to those demand resources that are unable to meet the new 30-minute notification requirement, are ineligible for an exemption from that requirement, and cleared in the Base Residual Auction or First Incremental Auction for the 2015-16 delivery year or in the Base Residual Auction for the 2016-17 delivery year. For the reasons discussed below, we accept PJM's proposed tariff changes, effective December 19, 2014, as requested, subject to a further compliance filing to be submitted within 30 days of the date of this order.

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<sup>1</sup> PJM Interconnection, L.L.C., [Intra-PJM Tariffs](#), [OATT](#), [OATT OPEN ACCESS TRANSMISSION TARIFF, 0.0.0](#), [VI](#), [OATT VI. ADMINISTRATION AND STUDY OF NEW SERVICE REQUESTS; R, 0.0.0](#), [ATTACHMENT DD](#), [OATT ATTACHMENT DD, 0.0.0](#), and [OATT ATT DD.2](#), [OATT ATTACHMENT DD.2 DEFINITIONS, 19.0.0](#).

<sup>2</sup> 16 U.S.C. § 824d (2012).

<sup>3</sup> *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,103, at P 61 (2014) (May 9 Order).

## **I. Background**

2. In the May 9 Order, the Commission approved, in relevant part, PJM's proposed revisions to the PJM Tariff that established a phased-in 30-minute notification requirement for demand response load reductions.<sup>4</sup> This reduced the default notification time, i.e., the period between when PJM directs a Curtailment Service Provider to reduce consumption and when the demand response resources in its portfolio must act to reduce consumption, from two hours to thirty minutes.<sup>5</sup> The Commission also approved PJM's proposed exemptions of certain categories of resources from the default 30-minute notification requirement.<sup>6</sup> In the underlying proceeding, both the protesters and PJM acknowledged that some demand response resources may not qualify for any of the exemptions, and may still be unable to meet the notification requirement.<sup>7</sup> To address this issue, PJM pledged to work with its stakeholders to develop a transition mechanism to relieve these resources of their capacity supply obligations. The Commission, in approving PJM's proposed Tariff revisions, directed PJM to work with stakeholders to develop an appropriate transition mechanism through the 2016-17 delivery year and to submit a separate filing under section 205 of the FPA or to submit a report on the progress of stakeholder negotiations.<sup>8</sup>

## **II. PJM's Filing**

3. In the October 20 Filing, PJM proposes a transition mechanism, in response to the May 9 Order, pursuant to which a Curtailment Service Provider may inform PJM in writing that it will be unable to deliver a certain amount of megawatts that previously cleared in a capacity auction for a given delivery year, specified by the type of demand resource and by zone or sub-zone.<sup>9</sup> New section 5.14C to Attachment DD to the PJM Tariff: (1) specifies what capacity auctions the proposal applies to and why a resource may seek to use the transition mechanism; (2) provides that Curtailment Service

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<sup>4</sup> *Id.* PP 2–3, 57.

<sup>5</sup> *Id.* PP 57–62.

<sup>6</sup> *Id.* PP 81–86.

<sup>7</sup> *Id.* PP 51–52, 55.

<sup>8</sup> *Id.* P 61.

<sup>9</sup> PJM Interconnection, L.L.C. October 20, 2014 Transmittal Letter at 4 (PJM Transmittal Letter).

Providers must provide written notice to PJM by the applicable deadlines (which are specified in the section); and (3) restricts Curtailment Service Providers who used the transition mechanism from selling additional capacity in subsequent Incremental Auctions for the applicable delivery year. Further, PJM states that, in order to provide transparency to market participants, section 5.14C(C) provides that PJM will publish aggregate information on the amount of undeliverable megawatts declared under the transition provision (“non-viable megawatts”) before the relevant incremental auction.<sup>10</sup> PJM explains that it will then adjust the PJM Region Reliability Requirement<sup>11</sup> and Locational Deliverability Area Reliability Requirement,<sup>12</sup> along with its buy bids and sell offers,<sup>13</sup> to reflect these “non-viable megawatts” in the relevant incremental auctions.<sup>14</sup> PJM states that these changes are similar to those typically made before incremental auctions for a delivery year. PJM will reduce the capacity commitment for the Curtailment Service Provider by zone or sub-zone and type of demand resource, pursuant to proposed section 5.14C(D), and will make this reduction on a pro-rata basis if the “non-viable megawatts” had cleared multiple capacity auctions for a given delivery year, or include multiple demand response types or zone or sub-zones.<sup>15</sup> PJM also notes that proposed section 5.14C(E) provides that an affected Curtailment Service Provider that uses the transition provision will relinquish an affected demand resource’s Reliability Pricing Model Auction Credits for the amount of capacity commitment reduction that PJM calculated under proposed section 5.14C(D), with Locational Reliability Charges adjusted accordingly.<sup>16</sup> PJM also proposes certain conforming revisions to implement the

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<sup>10</sup> PJM Transmittal Letter at 4–6.

<sup>11</sup> PJM OATT, Attachment DD, § 2.55.

<sup>12</sup> PJM Transmittal Letter at 7 (referencing PJM OATT, Attachment DD, section 5.4(c)).

<sup>13</sup> PJM Transmittal Letter at 6–7 (referencing PJM OATT, Attachment DD, sections 5.12(b)(ii)–(iii)).

<sup>14</sup> The relevant incremental auctions, according to PJM, are the Third Incremental Auction for the 2015-16 delivery year, and the Second and Third Incremental Auctions for the 2016-17 delivery year. PJM Transmittal Letter at 6–7.

<sup>15</sup> PJM Transmittal Letter at 7–8.

<sup>16</sup> PJM Transmittal Letter at 8.

transition provision<sup>17</sup> as well as certain non-substantive cleanup and clarifying revisions.<sup>18</sup>

4. PJM acknowledges in its Transmittal Letter that the recent decision of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Electric Power Supply Association v. FERC (EPSA)*,<sup>19</sup> and the associated complaint filed by FirstEnergy Service Company (FirstEnergy) in Docket Nos. EL14-55-000 and EL14-55-001 (FirstEnergy Complaint), creates some uncertainty about the future participation of demand response resources in its markets. PJM states that it is making this filing to comply with the May 9 Order, which predates the *EPSA* decision, and that its proposed transition mechanism is prudent in order to provide certainty to market participants with demand resources that are unable to meet the 30-minute notification requirement, but which have pre-existing capacity commitments. PJM explains that the proposal is narrow in scope and should not be viewed as reflecting PJM's position on the future role of demand response in its markets.<sup>20</sup>

5. PJM states that, given this uncertainty, the Commission may decide that it is appropriate for the transition mechanism to apply only to the 2015-16 delivery year. PJM requests that, if the Commission reaches this determination, it should accordingly require PJM to submit a compliance filing to make the proposed Tariff revisions applicable only to the 2015-16 delivery year. PJM proposes that, under such a scenario, the Commission could require PJM to implement a "sunset provision," which would terminate the transition mechanism unless PJM submits a filing 60 days before the relevant Incremental Auctions for the 2016-2017 delivery year.<sup>21</sup>

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<sup>17</sup> PJM Transmittal Letter at 8–11 (providing changes to Attachment DD, sections 5.12(b), 2.69B, 2.69C, and 5.14(e)).

<sup>18</sup> PJM Transmittal Letter at 11–12 (explaining that the revisions are made to sections 5.12(b), 5.14A, and 5.14B of Attachment DD).

<sup>19</sup> 753 F.3d 216 (D.C. Cir. 2014).

<sup>20</sup> PJM Transmittal Letter at 12–13.

<sup>21</sup> PJM Transmittal Letter at 13.

### **III. Notice of Filing and Responsive Pleadings**

6. Notice of the October 20 Filing was published in the *Federal Register*, 79 Fed. Reg. 64,378 (2014), with comments, interventions, and protests due on or before November 10, 2014.

7. The PPL Companies,<sup>22</sup> American Electric Power Service Corporation,<sup>23</sup> the PSEG Companies,<sup>24</sup> Electric Power Supply Association (EPSA), Delaware Division of the Public Advocate, the NRG Companies,<sup>25</sup> Duquesne Light Company, Calpine Corporation, the PJM Power Providers Group, Dominion Resources Services, Inc.,<sup>26</sup> and Exelon Corporation filed timely motions to intervene. EPSA filed timely comments and the PPL Companies filed a timely protest.

8. EnergyConnect, Inc., Comverge, Inc., and CPower Corporation (EnergyConnect, Comverge, and CPower) filed out-of-time motions to intervene. Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (the Market Monitor), filed an out-of-time motion to intervene and comments. EnergyConnect, Comverge, and CPower also filed a motion for leave to answer and answer to the PPL Companies' protest and EPSA's and the Market Monitor's comments. PJM filed a motion for leave to answer and answer in response to the Market Monitor's comments as well.

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<sup>22</sup> The PPL Companies consist of PPL EnergyPlus, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC, PPL Ironwood, LLC, PPL Martins Creek, LLC, PPL Montour, LLC, PPL Susquehanna, LLC, Lower Mount Bethel Energy, LLC, PPL New Jersey Solar, LLC, PPL New Jersey Biogas, LLC, and PPL Renewable Energy, LLC.

<sup>23</sup> American Electric Power Service Corporation moved to intervene on behalf of its affiliates, AEP Generation Resources Inc., Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company.

<sup>24</sup> The PSEG Companies consist of Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC.

<sup>25</sup> The NRG Companies consist of NRG Power Marketing LLC and GenOn Energy Management, LLC.

<sup>26</sup> Dominion Resources Services, Inc. moved to intervene on behalf of Virginia Electric and Power Company d/b/a Dominion Virginia Power.

#### **IV. Discussion**

##### **A. Procedural Matters**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>27</sup> the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,<sup>28</sup> the Commission will grant the late-filed motions to intervene given the parties' interest in the proceedings, the early stage of the proceedings, and the absence of undue prejudice or delay.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority.<sup>29</sup> We will accept EnergyConnect, Comverge, and CPower's and PJM's answers because they have provided information that assisted us in our decision-making process.

##### **B. Substantive Matters**

###### **1. Responsive Pleadings**

11. The PPL Companies argue that the Commission should reject the filing because accepting it "could implicitly validate as just and reasonable the remaining provisions of the [PJM] Tariff as they relate to demand response serving as a wholesale capacity resource," in contravention of the D.C. Circuit opinion in *EPSA*.<sup>30</sup> The PPL Companies contend that the Commission should not only reject the October 20 Filing, but should also remove from the PJM Tariff all of the "extra-jurisdictional provisions and resources." The PPL Companies assert that, after the Commission issued the May 9 Order, the D.C. Circuit ruled in *EPSA* that the Commission lacks jurisdiction over demand response resources in energy markets, which "the Commission has been asked to

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<sup>27</sup> 18 C.F.R. § 385.214 (2014).

<sup>28</sup> 18 C.F.R. § 385.214(d) (2014).

<sup>29</sup> 18 C.F.R. § 385.213(a)(2) (2014).

<sup>30</sup> PPL Companies November 10, 2014 Protest at 2 (PPL Protest) (citing *EPSA*, 753 F.3d at 216).

apply to capacity markets.”<sup>31</sup> The PPL Companies further assert that, although the court has not issued a mandate,<sup>32</sup> the court’s opinion is binding precedent.<sup>33</sup>

12. According to the PPL Companies, the D.C. Circuit’s *EPSA* decision, which dealt with the Commission’s jurisdiction over demand response resources in energy markets, applies also to capacity markets, such that “capacity provided by demand response providers also must be considered a retail product that is subject to the states’ exclusive jurisdiction.”<sup>34</sup> The PPL Companies quote PJM as acknowledging that “capacity is simply a form of inchoate energy or on call energy” and that “[t]he linkage between the capacity and energy market is undeniably strong.”<sup>35</sup>

13. The PPL Companies also argue that the Commission must apply the *EPSA* opinion and relieve all demand response resources in PJM from their cleared capacity obligations. According to the PPL Companies, the Commission must apply the holding of *EPSA*

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<sup>31</sup> PPL Protest at 2 (citing FirstEnergy Service Company September 22, 2014 Amended Complaint, Docket No. EL14-55-001).

<sup>32</sup> The D.C. Circuit granted the Commission’s motion to stay issuance of the mandate until January 15, 2015. If a petition for a writ of certiorari is filed with the Supreme Court within the period of stay, the issuance of the mandate will be further stayed pending the Supreme Court’s final disposition.

<sup>33</sup> PPL Protest at 3–4 (citing *Ayuda, Inc. v. Thornburgh*, 919 F.2d 153, 154 (D.C. Cir. 1990) (Henderson, J., concurring); *Hicks v. Bush*, No. 02-299 (CKK), 2007 WL 902303, at \*5 (D.D.C. Mar. 23, 2007); *Chambers v. United States*, 22 F.3d 939, 942 n.2 (9th Cir. 1994), *vacated on other grounds*, 47 F.3d 1015 (9th Cir. 1995); *Martin v. Singletary*, 965 F.2d 944, 945 n.1 (11th Cir. 1992); *SEC v. Amerindo Investment Advisors, Inc.*, No. 05 Civ. 5231 (RJS), 2014 WL 405339, at \*4 (S.D.N.Y. Feb. 3, 2014)).

<sup>34</sup> PPL Protest at 5 (citing *EPSA*, 753 F.3d at 223, 224).

<sup>35</sup> PPL Protest at 5–6 (quoting Informational (Courtesy) Filing Assessing Possible Pathways for Evolution of Demand Response in PJM Markets, *FirstEnergy Service Co. v. PJM Interconnection, L.L.C.*, Docket No. EL14-55-000 (filed Oct. 7, 2014), attachment “The Evolution of Demand Response in the PJM Wholesale Market” at 4 (PJM Whitepaper)) (citing *Central Power & Light Co.*, 40 FERC ¶ 63,040, at 65,159 (1987); *Southern California Edison Co.*, 46 FERC ¶ 61,300 at 55 (1989) (Stalon, Comm’r, dissenting)).

retroactively, as well as prospectively,<sup>36</sup> such that the May 9 Order should not have required PJM to propose a transition mechanism to relieve only certain demand response resources from their cleared capacity obligations, while requiring others to satisfy their obligations.<sup>37</sup>

14. In its comments, EPSA states that it is not “tak[ing] a position on the merits or specific elements of the instant PJM Filing.”<sup>38</sup> Rather, EPSA explains that it understands that PJM made the October 20 Filing to comply with the May 9 Order, given that the Commission has not “address[ed] the implications of the *EPSC* decision for capacity markets,” and makes the filing “without prejudice to broader issues raised by the *EPSC* decision and the FirstEnergy complaint.” EPSA states that it is confident that the D.C. Circuit’s *EPSC* opinion “precludes demand response from participating as a supply-side resource in capacity markets,” but also notes that, “inasmuch as the PJM Filing involves elections by [Curtailment Service Providers] *not* to provide capacity, EPSA agrees with PJM that it is appropriate to move forward” at this time.<sup>39</sup> EPSA further asserts that the Commission and PJM should avoid expanding demand response participation in capacity markets until the *EPSC* decision is addressed, and attaches its comments filed in the FirstEnergy Complaint proceeding, which argue that *EPSC* applies to capacity markets as well as to energy markets.<sup>40</sup>

15. The Market Monitor does not object to the proposed revisions to the PJM Tariff, but finds them “incomplete” because they do not establish a “mechanism or requirement that the [Curtailment Service Providers]’ claims to qualify for the transition mechanism

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<sup>36</sup> PPL Protest at 6–9 (citing *Ithaca College v. NLRB*, 623 F.2d 224, 228 (2d Cir. 1980); *Nat’l Fuel Gas Supply v. FERC*, 59 F.3d 1281, 1289 (D.C. Cir. 1995); *Mid-Tex Elec. Co-op, Inc. v. FERC*, 822 F.2d 1123, 1130 (D.C. Cir. 1987); *Atlantic City Elec. Co. v. FERC*, 329 F.3d 856, 859 (D.C. Cir. 2003); *City of Cleveland v. Fed. Power Comm’n*, 561 F.2d 344–348 (D.C. Cir. 1977); *CNG Transmission Corp.* 53 FERC ¶ 61,191 (1990)).

<sup>37</sup> PPL Protest at 9.

<sup>38</sup> Electric Power Supply Association November 10, 2014 Comments at 3 (EPSA Comments).

<sup>39</sup> EPSA Comments at 3 (emphasis in original).

<sup>40</sup> EPSA Comments at 3–4.



be verified.”<sup>41</sup> The Market Monitor suggests that PJM should include such a mechanism, such that the Market Monitor and PJM can verify that Curtailment Service Providers are not seeking to be relieved of more of their obligation than is necessary and that:

no such claim for obligation relief originates from any [Curtailment Service Provider’s] bad contracts; customers that are unwilling to continue to provide demand resources; customers that are bankrupt; customers with peak load decreases and a reduced ability to provide demand response; customers that have reduced estimates of available reductions; or any other reason not directly related to the ability to reduce load in 30 minutes.<sup>42</sup>

The Market Monitor requests that the Commission direct the Market Monitor and PJM to develop a verification mechanism, which would include requiring a resource to submit a request for review, with supporting documents, the decision on which can be appealed to the Commission.<sup>43</sup>

16. EnergyConnect, Comverge, and CPower, in their answer to the PPL Companies, EPSA, and the Market Monitor, argue that the PPL Companies’ protest and EPSA’s comments seek to misapply the *EPSA* opinion to capacity markets.<sup>44</sup> Incorporating by reference protests filed by Comverge, CPower, and Advanced Energy Management Alliance in the FirstEnergy Complaint proceeding, EnergyConnect, Comverge, and CPower assert that *EPSA* “does not mandate excluding demand response resources from PJM’s capacity markets.” Furthermore, they dismiss the PPL Companies’ citation to the PJM Whitepaper filed in the FirstEnergy Complaint dockets as support for applying *EPSA* to PJM’s capacity markets. EnergyConnect, Comverge, and CPower contend, moreover, that the D.C. Circuit erred in its *EPSA* decision and has stayed its mandate.<sup>45</sup>

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<sup>41</sup> Monitoring Analytics, LLC November 19, 2014 Motion to Intervene Out-of-Time and File Late Comments and Comments at 2 (Market Monitor Comments).

<sup>42</sup> Market Monitor Comments at 2–3.

<sup>43</sup> Market Monitor Comments at 3.

<sup>44</sup> Comverge, Inc., EnergyConnect, Inc., and Enerwise Global Technologies, Inc. dba CPower Corporation November 21, 2014 Motion for Leave to Answer and Answer at 3 (EnergyConnect, Comverge, and CPower Answer).

<sup>45</sup> EnergyConnect, Comverge, and CPower Answer at 3–5.

17. As to the Market Monitor's comments, EnergyConnect, Comverge, and CPower answer that the verification requirement is unnecessary because PJM's proposed transition mechanism is easily applied—"[e]ither a physical operational limitation exists or it does not." EnergyConnect, Comverge, and CPower contend that the Market Monitor's proposal would mire the transition mechanism with the review of factors that have nothing to do with whether the resource can physically meet the revised notification requirements. According to EnergyConnect, Comverge, and CPower, the Market Monitor should have introduced its proposed verification requirement in the stakeholder process when PJM's proposal was being developed, and should still be required to do so.<sup>46</sup>

18. In its answer to the Market Monitor's comments, PJM asserts that the Market Monitor has not shown that PJM's proposal is unjust and unreasonable or that it provides an opportunity for market manipulation.<sup>47</sup> According to PJM, there is no opportunity for financial gain by requesting to use the transition mechanism because any Curtailment Service Provider that is relieved of its obligation is "prohibited from selling *additional* capacity to PJM in the relevant Incremental Auction in the same modeled LDA (Locational Deliverability Area) or sub-LDA where an Affected Demand Resource is located."<sup>48</sup> PJM contends that this feature prevents the possibility of market manipulation and diminishes any incentive for Curtailment Service Providers to use the transition mechanism beyond its intended purpose. As such, PJM states that the Market Monitor's proposed verification mechanism "may just provide additional complications and burdens for all parties . . . with little concomitant gain."<sup>49</sup> If the Commission grants the Market Monitor's request, PJM requests that the Commission clarify that PJM would be the entity to approve requests to use the transition mechanism, with input from the Market Monitor, because such approval would constitute determining Curtailment Service Providers' rates, which is PJM's jurisdiction.<sup>50</sup>

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<sup>46</sup> EnergyConnect, Comverge, and CPower Answer at 6–7.

<sup>47</sup> PJM Interconnection, L.L.C. December 4, 2014 Motion for Leave to Answer and Answer at 3 (PJM Answer).

<sup>48</sup> PJM Answer at 3 (emphasis in original).

<sup>49</sup> PJM Answer at 3.

<sup>50</sup> PJM Answer at 4 (citing *PJM Interconnection, L.L.C.*, 129 FERC ¶ 61,250, at P 156 (2009) and *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281, at P 354 (2008), *order on reh'g*, Order

## 2. Discussion

19. We accept PJM's proposed transition mechanism as just and reasonable, subject to PJM making a further compliance filing, as discussed below. In the May 9 Order, we expected PJM to work with its stakeholders to develop a transition mechanism to relieve Curtailment Service Providers "that are no longer able to deliver amounts of demand response previously cleared in PJM's capacity auctions . . . of part, or all of, their obligation and have their capacity payments commensurately reduced accordingly," for the 2015-16 and 2016-17 delivery years and to submit a filing under section 205 if agreement could be reached.<sup>51</sup> PJM has reached consensus and has submitted a filing under section 205 to provide a transition mechanism. We find that PJM's proposal conforms with the transition mechanism outlined in the May 9 Order. The transition mechanism creates an opportunity for resources physically unable to meet the new 30-minute notification requirement to be excused from their capacity obligations, while allowing PJM to, when necessary, purchase additional capacity to preserve system reliability. This ensures that Curtailment Service Providers that will be physically unable to deliver a certain amount of megawatts previously cleared in a capacity auction for a given delivery year as a result of the new notification requirement approved in the May 9 Order will be relieved of those capacity obligations.

20. We find that the Market Monitor raises reasonable concerns with respect to the lack of a mechanism to verify the claims of Curtailment Service Providers seeking to be relieved of their capacity obligations under the transition mechanism.<sup>52</sup> Under PJM's proposal, other than simply requiring a written notice,<sup>53</sup> the process for affected demand response resources to apply for relief under the transition mechanism, and for PJM to review those applications, is unclear. The Market Monitor expresses concern that Curtailment Service Providers could seek to be relieved of parts of their obligation for reasons besides a physical inability to meet the revised notification requirement.<sup>54</sup> The transition mechanism should include a method for verifying that no Curtailment Service

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No. 719-A, FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009)).

<sup>51</sup> May 9 Order, 147 FERC ¶ 61,103 at P 61. If agreement could not be reached, PJM was directed to file a report with the Commission as to the status of its discussions.

<sup>52</sup> Market Monitor Comments at 2.

<sup>53</sup> See Proposed Tariff § 5.14C(B).

<sup>54</sup> Market Monitor Comments at 2–3.

Provider seeks to be relieved of more obligation than is affected by the 30-minute notification requirement, or for any reason not directly related to the physical ability to reduce load in 30 minutes.<sup>55</sup> We will therefore require PJM to submit a compliance filing, within 30 days of the date of this order, proposing a verification mechanism, or explaining why such a mechanism is infeasible or not necessary.

21. We disagree with EnergyConnect, Comverge, and CPower's contention that a verification process would be counterproductive. In the May 9 Order, we indicated that the transition mechanism was for resources physically unable to meet the revised notification requirement.<sup>56</sup> The proposal before us does not include a verification mechanism or require a resource to explain why it is unable to meet the new notification requirement. We agree with the Market Monitor that it is reasonable to have some additional oversight over the application of the transition mechanism.

22. The issues raised by the PPL Companies in their protest, and by EnergyConnect, Comverge, and CPower in their answer to the PPL Companies' protest, are already before the Commission in the FirstEnergy Complaint, and we find that proceeding to be the appropriate venue for resolving these issues.<sup>57</sup> The Commission notes EPSA's comment that PJM's proposed revisions deal with Curtailment Service Providers electing *not* to provide capacity, meaning that accepting the proposal will not expand demand response participation in PJM's capacity market.<sup>58</sup>

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<sup>55</sup> See Market Monitor Comments at 2–3 (listing potential reasons besides physical inability that a Curtailment Service Provider may seek to be relieved of a portion of its capacity obligation).

<sup>56</sup> May 9 Order, 147 FERC ¶ 61,103 at P 57.

<sup>57</sup> See, e.g., *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 524–25 (1978) (confirming that agencies have discretion to develop their own procedures); *Tennessee Gas Pipeline Co. v. FERC*, 972 F.2d 376, 381 (D.C. Cir. 1992) (“The agency is entitled to make reasonable decisions about when and in what type of proceeding it will deal with an actual problem.”); *Richmond Power & Light v. FERC*, 574 F.2d 610, 624 (D.C. Cir. 1978) (“Agencies have wide leeway in controlling their calendars . . .”).

<sup>58</sup> EPSA Comments at 3–4.

The Commission orders:

(A) For the reasons discussed above, the proposed revisions to the PJM Tariff are accepted, effective December 19, 2014, as requested.

(B) PJM is directed to submit a further 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 )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.