155 FERC ¶ 61,063
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C. Docket No. ER13-2108-001

ORDER ON REHEARING

(Issued April 21, 2016)

1. PSEG Companies (PSEG) seeks rehearing of an order issued February 28, 2014, accepting a tariff filing submitted under section 205 of the Federal Power Act (FPA),[1] by PJM Interconnection, L.L.C. (PJM).[2] In its filing, PJM proposed to revise its Open Access Transmission Tariff (OATT) and the Reliability Assurance Agreement among Load Serving Entities to require that a Demand Resource Provider seeking to participate in PJM's capacity market auctions submit certain information, in advance of the relevant base residual auction, demonstrating its ability to perform when called upon. On rehearing, PSEG asserts that the Commission erred in accepting PJM's filing. For the reasons discussed below we deny PSEG's request for rehearing.

## I. Background

2. On August 2, 2013, PJM submitted its filing, proposing new requirements applicable to demand response participation in PJM's capacity market. Specifically, PJM proposed to require that a Demand Resource Provider seeking to participate in PJM's capacity market, submit, at least 15 business days in advance of PJM's base residual auction: (i) a Demand Resource Sell Offer Plan demonstrating to PJM's satisfaction that the relevant resources it seeks to make available to PJM will have the physical capability to provide a reduction in demand, or otherwise control load, by the

[1] 16 U.S.C. § 824d (2012).

[2] *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,150 (2014) (February 2014 Order).

start of the relevant delivery year;[3] and (ii) a Demand Resource Officer Certification Form from its designated officer certifying its intent in this regard.[4]

3. In addition, PJM proposed that it be authorized to review a Planned Demand Resource submittal where there is evidence that more than one Demand Resource Provider may be targeting the same potential customers.[5] PJM proposed that, in this instance, it be authorized to require that the Demand Resource Provider submit "a letter of support from the [relevant] end-use customer indicating that it is likely to execute a contract with that Demand Resource Provider for the relevant Delivery Year, or provide[] other comparable evidence of likely commitment."[6] PJM proposed that, absent these assurances, it be authorized to disqualify a prospective customer, i.e., to prevent that customer from being claimed by the Demand Resource Provider.[7]

4. On October 1, 2013, the Commission issued an order conditionally accepting and suspending PJM's proposed tariff changes, subject to the outcome of a technical conference.[8] The technical conference was held by Commission Staff on November 13,

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[3] *See* Reliability Assurance Agreement at sections 1.14A (defining Demand Resource Sell Offer Plan) and Schedule 6, section A.1 and the PJM OATT at Attachment DD-1, section A-1.

[4] *See* Reliability Assurance Agreement at sections 1.13A (defining Demand Resource Officer Certification Form) and Schedule 6, section A-1.2.

[5] *See* Reliability Assurance Agreement at Schedule 6, section A-1.1.c. A Planned Demand Resource is "a Demand Resource that does not currently have the capability to provide a reduction in demand or to otherwise control load but that is scheduled to be capable of providing such reduction or control on or before the start the Delivery Year for which such resource is to be committed, as determined in accordance with the requirements of Schedule 6." *Id.* at section 1.69.

[6] *Id.* at Schedule 6, section A-1.3.

[7] *Id.* PJM proposed a two-step process for determining when customer-specific data would be required, involving an identification of: (i) zones of particular concern – to assess whether such a zone has aggregate cleared offers from the last base residual auction that exceed actual or reasonably expected demand response in that zone; and (ii) Demand Resource Providers whose offers are in excess of their previously achieved commitment levels. *Id.* at Schedule 6, section A-1.1.c.

[8] *PJM Interconnection, L.L.C.*, 145 FERC ¶ 61,001 (2013).

2013, with post-technical conference comments and reply comments submitted by the parties on December 3, 2013 and December 11, 2013, respectively.

5. In the February 2014 Order, the Commission accepted PJM's filing as just and reasonable. The Commission agreed with PJM that the demand response performance assurances, under its proposal, including the submission of a Demand Resource Officer Certification Form, were appropriate to ensure that PJM can meet its resource adequacy requirements as of the relevant delivery year.[9]

6. The February 2014 Order also addressed PSEG's objections to PJM's so-called "reasonable expectation standard," as set forth at Attachment DD-1, section A.5 of the PJM OATT, i.e., the requirement that a Demand Resource Provider demonstrate that the relevant resources it seeks to make available to PJM will have the physical capability to provide a reduction in demand, or otherwise control load, by the start of the relevant delivery year. The Commission rejected PSEG's argument that section A.5 (an existing provision that PJM's filing sought to revise) conflicts with Attachment DD, section 5.5 (also an existing provision which PJM's filing did not seek to revise and which PSEG interpreted as requiring that ownership or contractual control authority of a demand response resource must be obtained by the Demand Resource Provider as a condition to its right to submit an offer into PJM's base residual auction).[10]

7. The Commission found that, in fact, section 5.5 is ambiguous, as read in conjunction with section A.5's reasonable expectation of performance standard.[11]

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[9] February 2014 Order, 146 FERC ¶ 61,150 at P 22.

[10] Section 5.5 provides in relevant part as follows:

> A Capacity Market Seller may submit a Sell Offer for a Capacity Resource in a Base Residual Auction, [or an] Incremental Auction . . . only if such seller owns or has the contractual authority to control the output or load reduction capability of such resource and has not transferred such authority to another entity prior to submitting such Sell Offer. Capacity Resources must satisfy the capability and deliverability requirements of Schedules 9 and 10 of the [Reliability Assurance Agreement], the requirements for Demand Resources or Energy Efficiency Resources in Attachment DD-1 and Schedule 6 of the Reliability Assurance Agreement, as applicable, and, for the 2018/2019 Delivery Year and subsequent Delivery Years, the criteria in section 5.5A [addressing Capacity Performance Resources].

[11] February 2014 Order, 146 FERC ¶ 61,150 at P 29.

The Commission further found, however, that the two provisions can be interpreted in a manner that renders them consistent. The Commission further noted that, in addition to the reasonable expectation standard, section A.5 specified that a Planned Demand Resource must provide "a timeline including the milestones, which demonstrates to PJM's satisfaction that [it] will be available for the start of the Delivery Year."[12] The February 2014 Order also held that were section 5.5 to be read, as PSEG requested, i.e., as imposing a duty on a Demand Resource Provider to have end-user contracts in place as a condition to its right to submit an offer into PJM's base residual auction, the related provisions of PJM's tariff addressing additional post-auction assurances, under Attachment DD-1 and Attachment DD, section 5.5 itself, would be rendered superfluous.[13]

8. The February 2014 Order also accepted, as just and reasonable, PJM's proposed site-specific review procedures and thus rejected PSEG's request for more stringent standards. Specifically, the Commission held that requiring PJM to impose additional conditions on demand resources, including revisions to PJM's incremental auction procedures, was beyond the scope of PJM's section 205 filing. The Commission also accepted PJM's proposed site-specific safe-harbor thresholds.[14] The Commission found that PJM's proposal appropriately balanced the need to ensure that a Planned Demand Resource will have the capability to reduce load in the relevant delivery year while providing opportunities for continued participation from demand response in PJM's capacity market.[15]

## II. Request for Rehearing

9. PSEG renews its argument that PJM's reasonable expectation standard, including PJM's proposed revisions to Attachment DD-1, section A.5 of its OATT, should have been rejected, given the existing requirements set forth at Attachment DD, section 5.5 as

[12] *Id*.

[13] *Id*.

[14] Under PJM's proposal, as accepted by the February 2014 Order, a Demand Resource Provider is permitted to rely upon the higher of three alternatives as an exemption from a site-specific review, as based on: (i) the highest level it has cleared in any base residual auction over the previous three year period; (ii) its highest quantity of registered MWs over the previous three delivery years; or (iii) 10 MW. *See* PJM OATT at Attachment DD-1, section A-1.1.c.iv.

[15] February 2014 Order, 146 FERC ¶ 61,150 at P 32.

PSEG interprets this provision. Specifically, PSEG disputes the Commission's holding that section 5.5 is ambiguous, as read in conjunction with related provisions, including Attachment DD-1, section A.5. Rather, PSEG argues that section 5.5 expressly and unambiguously provides that a "Capacity Market Seller may submit a Sell Offer for a Capacity Resource in a Base Residual Auction or [incremental auction] only if such seller owns or has the contractual authority to control the output or load reduction capability of such resource and has not transferred such authority to another entity."

10. PSEG asserts that its reading of section 5.5 (to require ownership or control of a resource as of the date it is offered into the base residual auction), is consistent with all other related requirements under PJM's tariff, including the post-auction requirements identified by the February 2014 Order. PSEG argues that these post-auction requirements simply address the subsequent steps required to render the relevant demand response resource capable of qualifying as a capacity resource as of the relevant delivery year. PSEG characterizes these requirements as post-auction physical implementation details and specifications, including the requirement that the Demand Resource Provider provide notice to PJM regarding: (i) the type of demand response resources participating in its program;[16] (ii) additional information addressing the number of such participants;[17] and (iii) communications.[18] PSEG also characterizes, as unduly discriminatory, an interpretation of section 5.5 that imposes no ownership or control requirement on a Demand Resource Provider, given the comparable requirements applicable to generation resources.

11. PSEG also challenges the February 2014 Order's acceptance of PJM's proposed methodology for reviewing certain zonal patterns with possibly unwarranted elevated offer levels, in determining when a Demand Resource Provider must supply customer-specific data. PSEG argues that the benchmarks PJM proposes for identifying such zones, will under-identify offers that require review.[19] PSEG argues that using registered

[16] PSEG rehearing request at 9 (citing PJM OATT at Attachment DD-1, sections A.1-6 and Reliability Assurance Agreement at Schedule 6, sections A.1-6).

[17] *Id.* (citing PJM OATT at Attachment DD-1, sections A-1.3.J and Reliability Assurance Agreement at Schedule 6, sections A-1.3.J.

[18] *Id.* (citing PJM OATT at Attachment DD-1, sections A-1.3.G and Reliability Assurance Agreement at Schedule 6, sections A-1.3.G).

[19] PSEG notes that to trigger a review, under PJM's proposal, a zone must have cleared a level of demand response in the past three years in excess of the higher of two benchmarks: (i) the potential penetration as determined by a 2009 Commission Staff study, or a succeeding study (*see* Staff Report, Federal Energy Regulatory Commission,

(continued ...)

demand response as a benchmark will overstate actual or reasonably expected demand response in the relevant zone, given that registered MWs have been shown to exceed capacity commitments by as much as 16 percent. PSEG further argues that there is no justification for using customer registration data from one zone, within the larger RTO Zone (e. g., the Dominion Zone), to determine actual or reasonably expected demand response in a different zone (e.g., the APS Zone). In addition, PSEG asserts that it is unclear that the data extracted from PJM's proposed data source, the 2009 Staff Report, was intended to reflect the installed capacity value of the estimated potential levels of demand response participation.

12. PSEG also objects to PJM's proposed safe harbor thresholds, at Attachment DD-1, section A-1.1.c.iv, arguing that PJM's alternative bases for a site-specific review exemption fail to appropriately measure a Demand Resource Provider's demonstrated capability to supply demand response as a capacity resource. PSEG asserts that using the highest level cleared in a base residual auction as a benchmark gives undue credit to the Demand Resource Provider for MWs that may be bought back in an incremental auction and may reward speculative bids.

13. PSEG also challenges, as unsupported, the Commission's finding that adjusting historically cleared quantities to reflect historically booked-out positions imposes an unreasonable burden on entities attempting to develop new demand resources in areas that the market indicates are most supportive. PSEG further challenges PJM's proposed reliance on registered MWs as a basis for a site review exemption, arguing that such a benchmark overstates the demonstrated capability of Demand Resource Providers, given the disparities that have been shown between registered and committed MWs.

14. Finally, PSEG objects to PJM's proposed requirement that customer-specific information be submitted only for a quantity of MWs equal to the amount above the safe harbor threshold. PSEG asserts that this approach will inappropriately exempt MWs falling below the threshold and inappropriately allow Demand Resource Providers to choose which of their prospective customers are to be scrutinized by PJM.

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*A National Assessment of Demand Response Potential*, June 2009 www.ferc.gov/legal/staff-reports/06-09-demand-response.pdf) (2009 Staff Report),or (ii) the level of demand response registered as a percentage of the peak obligation in any of the previous three years in a zone or within another zone in the same large Locational Deliverability Area.

## III. Discussion

15. In its rehearing request, PSEG renews its argument that PJM's reasonable expectation of performance standard, as applied to demand response participation in PJM's base residual auction (and as set forth at Attachment DD-1, section A.5 of PJM's OATT), should be rejected as inconsistent with PSEG's reading of Attachment DD, section 5.5. However, we reaffirm for the reasons stated in the February 2014 Order that section 5.5, is "ambiguous in light of the existing requirement in section A.5 of Attachment DD-1 of [PJM's OATT] that a [Demand Resource] Provider 'demonstrate, in accordance with standards and procedures set forth in the PJM Manuals, that such resource shall have the capability to provide a reduction in demand, or otherwise control load, on or before the start of the Delivery Year for which such resource is committed.'"[20] We also reaffirm that, notwithstanding these ambiguities, the two provisions can be interpreted in a manner that renders them consistent, given the additional post-auction requirements that each section embodies.[21]

16. We further find that section 5.5 is a general statement of obligation applicable to all capacity resources; it is not specific to the requirements applicable to demand response participants. Section 5.5, moreover, operates as a cross-reference guide, noting (without specifying) the additional requirements of: (i) Schedules 9 and 10 of the Reliability Assurance Agreement (addressing a capacity resource capability and deliverability requirements); (ii) Attachment DD-1 of the OATT and Schedule 6 of the Reliability Assurance Agreement (addressing demand resources and energy efficiency resources); and (iii) Attachment DD-1, section 5.5A of the OATT (addressing Capacity Performance Resources). In this case, we interpret the more specific post-auction requirements, as cited by the February 2014 Order, as taking precedence over the more general statements in section 5.5, as referenced by PSEG.

17. PSEG also asserts that a failure to impose an ownership or control requirement under section 5.5 renders PJM's tariff unduly discriminatory as to generation resources that are required to satisfy a comparable requirement. As the February 2014 Order found, PJM need not treat a Planned Demand Resource in a manner that would be identical to its

[20] February 2014 Order, 146 FERC ¶ 61,150 at P 29.

[21] *Id.*

treatment of a Planned Generation Capacity Resource.[22] As the Commission further noted, PJM's proposal treated these two resource types on a comparable basis.[23]

18. We also reject PSEG's assertions of error regarding the February 2014 Order's acceptance of PJM's proposed site-specific review procedures. With respect to these procedures, we reaffirm the findings of the February 2014 Order that PJM's procedures represent an appropriate well-tailored approach for identifying those offers that may warrant additional scrutiny.[24] We note, in this regard, that the appropriateness of PJM's customer specific site-review procedures must be assessed within the broader context of PJM's proposals, including PJM's requirements regarding the submission of a Demand Resource Sell Offer Plan and a Demand Resource Officer Certification Form. While PSEG has identified alternative options for undertaking a site review, the existence of these alternative options does not render PJM's approach unjust or unreasonable.[25]

19. We also disagree that PJM's reliance on the 2009 Staff Report or a successor report is inappropriate for purposes of identifying the highest demand resource potential in a given zone or sub-zone, to the extent this data reflects registered MWs alone. As the February 2014 Order found, it is appropriate for PJM to rely on such a data source, given that it represents an independent published assessment of demand response potential.[26]

20. We also reject PSEG's objection to PJM's proposed safe harbor thresholds as applicable to PJM's customer-specific site reviews. We reaffirm that PJM's safe harbor proposal provides a reasonable balance between allowing demand response to participate in the market and providing reasonable assurances of the physical capability to do so,

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[22] *Id.* P 31 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 494; *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 47, P 50 and P 54 (2008); *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 333; *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323, at 155 (2011)).

[23] *Id.*

[24] *Id.* P 21.

[25] *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984).

[26] February 2014 Order, 146 FERC ¶ 61,150 at P 26.

ensuring that a Planned Demand Resource will have the capability to reduce load in the relevant delivery year, while also providing opportunities for demand response participation.[27]

21. Finally, PSEG argues that the February 2014 Order should have rejected PJM's proposed requirement that customer-specific information be submitted only for a quantity of MWs equal to the amount above the safe harbor threshold. We disagree. For the reasons noted above, we find that PJM's proposal strikes an appropriate balance between a policy that allows for demand response participation while also requiring that Demand Response Providers provide reasonable assurances regarding their physical capability to provide a reduction in demand, when called upon to do so.

The Commission orders:

PSEG's request for rehearing is hereby denied, as discussed in the body to this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[27] *Id*. P 32.