155 FERC ¶ 61,061
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 Nos. ER14-822-002
ER14-822-003

ORDER ON REHEARING AND COMPLIANCE

(Issued April 21, 2016)

1. EnergyConnect, Inc. and Comverge, Inc. (ECI/Comverge) seek rehearing of an order issued May 9, 2014, addressing a filing submitted by PJM Interconnection, L.L.C. (PJM), to increase the operational flexibility of demand response resources.[1] For the reasons discussed below, we deny rehearing. We also address PJM's June 22, 2014 compliance filing, in response to the May 2014 Order. For the reasons discussed below, we accept PJM's compliance filing.

I. Background

2. On December 24, 2013, PJM submitted proposed revisions to the PJM Open Access Transmission Tariff (OATT), the Amended and Restated Operating Agreement of [PJM] (Operating Agreement), and the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region (RAA).

3. In its filing, PJM proposed to promote increased operational flexibility and more efficient utilization of demand response resources, by: (i) requiring that all demand response that participates in PJM's capacity market serve as Pre-Emergency Load Response, unless the curtailment service provider or load serving entity utilizing that resource meets its capacity obligations by utilizing behind-the-meter generation that is subject to an environmental restriction; (ii) requiring, on a phased-in basis, that all demand resources reduce load within 30 minutes of notification from PJM to the curtailment service provider, in place of the prior two hour requirement, unless a curtailment service provider has requested (and PJM has granted) one of four specified

[1] *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,103 (2014) (May 2014 Order).

exemptions; [2] (iii) limiting the duration of the required minimum load response reduction period from two hours to one; (iv) establishing revised demand resource offer price caps, set at a level that recognizes both the demand resource's varying response time commitments, as made by these demand response resources, and their value when deployed in advance of a shortage pricing event; and (v) authorizing PJM, on a phased-in basis, to require compliance with a sub-zonal dispatch directive for sub-zones designated during the operating day.

4. The Commission in the May 2014 Order rejected, in part, and accepted, in part, PJM's proposed tariff changes, subject to conditions and the submission of a compliance filing. Specifically, the Commission rejected PJM's proposal to require compliance with a sub-zonal dispatch directive for sub-zones designated during the operating day. The Commission otherwise accepted PJM's filing as just and reasonable, subject to the satisfaction of certain compliance directives, as discussed below.

II. Rehearing

5. As summarized more fully below, ECI/Comverge seeks rehearing of the May 2014 Order on a limited issue addressing the May 2014 Order's acceptance of PJM's proposed one-year phase-in of a 30-minute notification requirement, in place of PJM's prior, two-hour notice requirement.

A. May 2014 Order

6. The May 2014 Order accepted PJM's proposal that a demand resource that clears in PJM's capacity auction be required to meet a default notification period of 30 minutes, unless that resource demonstrates, through PJM's proposed exceptions process, that a physical limitation precludes a reduction of load within 30 minutes (in which case, either a 60- or 120- minute notification time will apply).[3] The Commission agreed with PJM

[2] *See* PJM OATT at Attachment DD-1, section A.2 and the corresponding provision of the RAA at Schedule 6. Under PJM's proposed exceptions process, a curtailment service provider seeking an exception for a given resource will confirm to PJM, at the time it registers its resource, that the resource is not able to meet the 30-minute notification period based on a physical limitation, namely: (i) the avoidance of damage to major industrial equipment, the product generated, or the feedstock used in the manufacturing process; (ii) the time and manual effort required in excess of 30 minutes to transfer load to back-up generation; (iii) on-site safety concerns; or (iv) the inability to notify the mass-market residential customers that comprise the relevant demand response resource. *Id.*

[3] May 2014 Order, 147 FERC ¶ 61,103 at P 57.

that increasing operational flexibility and requiring demand resources to achieve full load reduction within a 30 minute response time will lead to a more reliable system and a more efficient use of demand response resources. The Commission further found that PJM's proposal balances PJM's need to quickly respond to system emergencies with the interests of demand response resources seeking to participate in PJM's markets. The Commission also found that PJM's proposal will incent demand response resources to utilize smart grid technologies and other automated systems.[4]

B. Request for Rehearing

7. ECI/Comverge renew their protest argument that a 30-minute notice requirement will impose prohibitive costs on demand resources and that in some cases the requirement may be impossible to comply with. ECI/Comverge state that based on delivery year data for 2013-14, approximately 26 percent of demand response MWs comes from heating ventilation and air conditioning sources. ECI/Comverge estimate, however, that of the end-use sources that comprise this share, approximately 25 to 50 percent cannot respond to PJM dispatch at current levels within 30 minutes. Therefore, ECI/Comverge assert that the 30-minute notice requirement will drive demand response out of the market.

8. With respect to cost impacts, ECI/Comverge argue that the tariff revisions will require end-users to invest in building management systems which cost at least $100,000. ECI/Comverge add that, with average Curtailment Service Provider customer commitments of less than 0.5 MW and capacity prices for the 2014-15 delivery year of approximately $46,000/MW-year, recovery of these investments could take years. ECI/Comverge further assert that PJM has failed to quantify other cost impacts, including regulatory risk. While ECI/Comverge acknowledge that PJM's notice requirement may encourage demand response resources to utilize smart grid technologies and other automated systems, they state that the Commission did not address that the investment costs at issue will reduce the amount of demand response that clears in PJM's auctions by forcing an increase in these resources' offer prices.

9. ECI/Comverge also argue PJM's notice requirement is unduly discriminatory, alleging that generation resources are given more flexible and tailored start-up times than demand response resources. ECI/Comverge state, for example, that nearly half of combustion turbines have start times in excess of 30 minutes, while combined cycle units commonly have longer start times and steam units even longer, requiring six hours or more and sometimes even days. In contrast, they state that PJM only allows rigid exceptions to the 30-minute start-up time for demand response resources.

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[4] *Id.* P 58.

C. Commission Determination

10. For the reasons discussed below, we deny rehearing. First, we note that while ECI/Comverge challenge the cost impacts of PJM's proposal, they do not challenge the reliability rationale giving rise to PJM's filing – the need to dispatch capacity demand resources on a flexible basis in response to system conditions, without the added step of declaring a system emergency.[5] Moreover, we continue to find that PJM's proposal, as conditioned, establishes a just and reasonable product definition that will allow PJM to more efficiently and cost-effectively integrate capacity demand response resources into its markets.[6] Increasing operational flexibility and requiring demand response resources to achieve full load reduction within 30 minutes will lead to a more reliable system and a more efficient use of demand response resources.[7]

11. ECI/Comverge argue that their resources may be unable to comply with PJM's notice requirement, absent additional investment in building management systems. ECI/Comverge, however, do not dispute the merits of this advanced technology or the benefits this technology can be expected to confer when deployed, as PJM's proposal contemplates. As the May 2014 Order found PJM's "proposal will encourage demand response resources participating in the capacity market to utilize smart grid technologies and other automated systems, which will facilitate demand response resources participation with as short a lead time as possible."[8]

12. We acknowledge, as ECI/Comverge assert, that the cost of this investment may ultimately be reflected (passed through) in the form of a higher demand response bid, which may, in turn, affect the overall amount of demand response cleared in PJM's auction. We agree that costs are an important consideration in evaluating the merits of PJM's proposal.[9] However, in determining whether tariff revisions are just and

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[5] *Id.* P 38.

[6] *Id.* P 36

[7] *Id.* P 57.

[8] *Id.* P 58.

[9] *Farmers Union Cent. Exch., Inc. v. FERC*, 734 F.2d 1486, 1502 (D.C. Cir. 1984).

reasonable, the Commission also has "broad authority to consider non-cost factors[.]"[10] We find that the investment costs at issue will allow PJM to more efficiently and cost-effectively integrate capacity demand response resources into its markets to meet the anticipated operating conditions documented by PJM in its filing.[11]

13. We also continue to disagree with ECI/Comverge that PJM's proposal was unduly discriminatory. The Commission has held that a finding of undue discrimination may be supported by a showing that there is a difference in rates or services among similarly situated entities that is not justified by some legitimate factor.[12] The Commission also has rejected the argument "that comparability requires that generation resources and demand resources be subject to the same operational parameters in every circumstance[,]" explaining that treating similarly-situated resources on a comparable basis does not necessarily mean that the resources are treated the same.[13] Here, we find that the considerations discussed above – including the need to dispatch capacity demand resources on a flexible basis in response to system conditions, without the added step of declaring a system emergency – adequately support a requirement that demand response resources achieve full load reduction within 30 minutes.

14. Moreover, we note that PJM has provided for appropriate exceptions for demand resources that could not reasonably be expected to meet PJM's 30-minute response requirement, further alleviating concerns about the potential for undue discrimination. Specifically, PJM has established guidelines requiring PJM to review and, if appropriate, certify an exception, as may be requested by a curtailment service provider, based on (i) the avoidance of damage to major industrial equipment, the product generated, or the feedstock used in the manufacturing process; (ii) the time and manual effort required (in

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[10] *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172, at P 26 (2008); *see also, Permian Basin Area Rate Cases*, 390 U.S. 747, 814-15 (1968); *Morgan Stanley Capital Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish County*, 554 U.S. 527, 558 (2008); *Pub. Utilities Comm'n of Cal. v. FERC*, 367 F.3d 925, 929 (D.C. Cir. 2004); May 2014 Order, 147 FERC ¶ 61,103 at P 37 (2014).

[11] *See* PJM December 24, 2013 Filing at pp. 5-8 (documenting the capacity needs presented by the warm weather, peak period events of July 18, 2013 and during the synchronized reserve event of September 11, 2013).

[12] *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,148, at P 34 (2010).

[13] S*ee Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g and clarification*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, at P 216 (2007).

excess of 30 minutes) to transfer load to back-up generation; (iii) on-site safety concerns; or (iv) the inability to notify the mass-market residential customers that comprise the relevant demand response resource.[14] These exceptions, moreover, generally track PJM's existing exceptions as applicable to generation resources. [15]

III. Compliance

15. The May 2014 Order required PJM to submit a compliance filing, including revising tariff language, as appropriate, to: either further justify, or withdraw its proposed exemption from its Pre-Emergency Load Response requirement for demand response that meets its capacity obligation by utilizing behind-the-meter generation that is subject to environmental restrictions restricting its operation to periods when PJM is in emergency conditions. The Commission found that PJM had not adequately demonstrated that all such behind-the-meter generation resources are, in fact, categorically prohibited from operating during pre-emergency conditions, and instead are restricted only to operating during emergency events.[16] The Commission further found that to the extent this

[14] *See* PJM OATT at Attachment DD-1.

[15] *Id.* at Attachment K-Appendix, section 6.6 (addressing parameter limitations for physical generation, including turn-down limitations, minimum down times, minimum run times, and maximum daily and weekly starts).

[16] May 2014 Order, 147 FERC ¶ 61,103 at P 41. Under a Final Rule issued by the Environmental Protection Agency (EPA) in 2004, governing backup generators relying on diesel fuel, such units were prohibited from participating in emergency demand response programs.. *See* National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines, 69 Fed. Reg. 33,474 (June 15, 2004). Subsequently, in 2013, and as noted by the Commission in the May 2014 Order, the EPA allowed for non-emergency operation for up to 100 hours. *See* National Emission Standard fir Hazardous Air Pollutants for Reciprocating Internal Combustion Engines; New Source Performance Standards for Stationary Internal Combustion Engines (2013 RICE Rule), 78 Fed. Reg. 6674 (Jan 20, 2013), *reversed*, *Del. Dept. of Nat. Resources and Environ. Control v. EPA*, 785 F.3d 1 (D.C. Cir. 2015) (*Delaware v. EPA*). Effective as of May 2, 2016, the EPA has issued revised guidelines, providing, consistent with its 2004 rule, that "an engine may not operate in circumstances described in the [2013 RICE Rule] for any number of hours per year unless it is in compliance with the emission standards and other applicable requirements for a non-emergency engine." *See* U.S Environmental Protection Agency, Office of Air Quality Planning and Standards, "Guidance on Vacatur of RICE NESHAP and NSPS Provisions for Emergency Engines," (Apr. 15, 2016) (EPA Guidance Memo).

proposed exemption is overbroad, it may improperly allow these resources to take advantage of PJM's market without satisfying the obligations required of other capacity demand response resources.

16. In addition, the May 2014 Order required PJM to (i) define in its tariff the terms: "Pre-Emergency Load Response Program" and "Emergency Load Response Program;" (ii) include small commercial customers similarly situated to residential customers in PJM's exemption to the 30-minute default notification time; and (iii) allow all demand response assets dispatched by PJM on the same operating day to aggregate their performance for the purpose of compliance calculations as agreed to by PJM in its answer.

A. PJM's Proposal

17. On June 2, 2014, PJM submitted its compliance filing in response to the May 2014 Order, including proposed tariff language clarifying the scope of its exemption for behind-the-meter generation that is subject to environmental limitations restricting its operation to periods when PJM is in emergency conditions.[17] PJM argues that, with these clarifications, its proposed exemption should be accepted. PJM asserts that demand resources that utilize such generation and are subject to environmental restrictions limiting their ability to operate the resource during emergency conditions should continue to participate in PJM's capacity market, given their reliability value to PJM.

18. PJM argues, however, that these demand resources should be exempt from the requirement to operate during pre-emergency conditions. PJM argues that there are other generation resources that PJM only dispatches during emergencies due to environmental restrictions limiting their operation. PJM argues that, as such, its proposed exemption for

[17] *See* proposed Operating Agreement at Schedule 1, section 8.5, providing, in relevant part, that all participants in the Pre-Emergency Load Response Program shall be subject to the procedures applicable to that designation, unless the participant can demonstrate that its demand resource:

> (1) relies on Behind the Meter generation to fulfill its load reduction obligations; (2) the Demand Resource has environmental restrictions imposed on it by Applicable Laws and Regulations that limit the Demand Resource's ability to operate only in emergency conditions; and (3) such limitation exists for any period of time. For the purposes of [this] Section 8, emergency conditions shall be defined either by the express terms of the Applicable Law or Regulation, or if not set forth therein shall be deemed to exist if PJM has declared a [North American Electric Reliability Corporation (NERC)] Energy Emergency Alert Level 2, as defined in the applicable NERC Standards.

demand resources that rely on behind-the-meter generation provides comparable treatment. PJM also asserts that the scope of its proposed exemption is appropriate, given its limited applicability, i.e., when federal, state, or local laws, regulations or ordinances permit the demand resource (as supported by behind-the-meter generation) to operate only if emergency conditions are present, and if this restriction is present for any period of time.

19. PJM also addresses the May 2014 Order's concern as to whether all behind-the-meter generation resources are, in fact, categorically prohibited from operating during pre-emergency conditions, or instead are restricted only to operating during emergency events.[18] PJM responds that its proposed exemption, as modified, will ensure that valuable demand resources are permitted to continue operating during emergency conditions. PJM notes that some federal, state and local rules may allow demand resources relying on behind-the-meter generation with certain environmental restrictions to operate for limited periods of time during non-emergency conditions, before imposing a restriction that they can only operate during emergencies. PJM asserts that these resources should nonetheless qualify for its proposed exemption, given that PJM will not know when an individual resource has reached its allowable limit for non-emergency operations under an environmental restriction.

20. PJM adds that it would not be administratively feasible for PJM to monitor and dispatch large volumes of demand resources if some were in the Pre-Emergency Load Response Program for part of the delivery year and the Emergency Load Response Program for other parts. PJM asserts that the amount of demand resources in each program would fluctuate based on information that would be unknown to PJM, specifically, the amount of time the relevant demand resources were allowed to operate during non-emergency conditions. PJM argues that it must be able to rely on a predictable amount of demand resources responding when called upon. PJM adds that a rule requiring demand resources with environmental restrictions to operate as Pre-Emergency Demand Resources, as a condition to their right to participate in PJM's capacity auctions, would drive these resources from the market.

21. To comply with the May 2014 Order's requirement that PJM define, in its tariff, the terms "Emergency Load Response Program" and "Pre-Emergency Load Response Program," PJM proposes definitions for inclusion in its OATT and Operating Agreement.

22. In response to the May 2014 Order's requirement that PJM include small commercial customers similarly situated to residential customers in PJM's mass-market exemption to the 30-minute default notification time, PJM proposes to define a small

[18] May 2014 Order, 147 FERC ¶ 61,103 at P 41.

customer as, among other things, having "an annual peak demand no greater than 100 kW."[19] PJM notes that its definition for small commercial customers takes into account that different states within PJM's footprint define this term differently. PJM nonetheless argues that it is appropriate to set a limit and that its proposed limit is both appropriate and consistent with the stated purpose of aggregation under its OATT (at Attachment K-Appendix, section 8.11) to permit end-use customers that provide less than 100 kW in demand reduction to participate in PJM's Pre-Emergency and Emergency Load Response Programs.

23. Finally, in response to the May 2014 Order's requirement that PJM submit revised tariff language allowing all demand response assets dispatched by PJM on the same operating day, and within the same zone, regardless of type, to aggregate their performance for the purpose of compliance calculations, PJM clarifies that it agreed, in its answer, to implement these measurement and verification procedures, as proposed by EnerNOC. PJM further clarifies that the proposal it agreed to implement would aggregate resources dispatched in electrically contiguous areas (which could be comprised of zones or sub-zones).

B. Notice of Filing and Responsive Pleadings

24. Notice of PJM's filings was published in the *Federal Register*, with interventions, protests and comments due on or before June 23, 2014. Protests and/or comments were timely filed by the Market Monitor, PSEG Companies (PSEG), the PJM Power Providers Group (P3), EnerNOC, Inc., Exelon Corporation (Exelon), and American Municipal Power, Inc. (AMP). Answers to protests and/or answers to answers were submitted on July 11, 2014, EnerNOC, and on July 25, 2014, by the Market Monitor.

1. Protests and Comments

25. Comments generally supportive of PJM's proposed exemption for behind-the-meter generation were submitted by AMP and EnerNOC. AMP argues that while units subject to the EPA's 2013 RICE Rule are permitted to operate during limited non-emergency situations for limited hours per calendar year, such usage rights are subject to strict limits and conditions. EnerNOC agrees with PJM that PJM's proposed exemption strikes the appropriate balance between being narrowly tailored and ensuring that valuable demand resources are permitted to continue operating during emergency conditions.

[19] *See* proposed OATT at Attachment DD-1, section A.2.b.4 and RAA at Schedule 6, section A.2.b.4.

26. Exelon, PSEG, P3, and the Market Monitor argue that PJM has failed to show that its proposed exemption for behind-the-meter generation is required to accommodate physical limitations. Exelon argues that PJM has failed to show that all behind-the-meter generation resources are categorically prohibited from operating during pre-emergency conditions or that the exemption is sufficiently tailored to the environmental restrictions that may be imposed on these units.

27. Exelon asserts that PJM has identified only informational shortcomings and administrative difficulties that might prevent PJM from being able to track, monitor and rely on behind-the-meter generation as Pre-Emergency Load Response. P3 adds that, in doing so, PJM has not demonstrated why PJM would not be able to require that this information be supplied by a Curtailment Service Provider.

28. PSEG asserts that PJM has failed to demonstrate why – of all the possible reasons for which a particular demand response customer may not be available for a particular demand response deployment – the operational limitations associated with environmental restrictions on behind-the-meter generators warrant special treatment. PSEG adds that there may be a myriad of reasons, other than environmental restrictions, that explain why a behind-the-meter customer may not be available for a particular deployment event. PSEG further asserts that PJM may not be aware when these other causes may affect demand response deployment (e.g., involving safety issues at particular points, or when residential or commercial customers may be unwilling to reduce consumption after repeated or closely-spaced calls during a heat spell).

29. Exelon asserts that to the extent that behind-the-meter generation resources are physically limited, PJM has not considered how groups of behind-the-meter generation resources could join together when participating in PJM's markets so as to assure the availability of the aggregated demand response resources in the group, while at the same time ensuring that none of the group member's permit restrictions are exceeded. PSEG agrees, noting that PJM has failed to show that its demand response construct, which appropriately places the onus of monitoring demand response customer availability on demand response providers, is not adequate to address the management of run-time limitations associated with environmental restrictions.

30. PSEG also addresses the extent of any environmental limitations that may be at play, as attributable to the 2013 RICE Rule.[20] PSEG argues that in the proceedings before the EPA, evidence was adduced showing that capacity markets provided more than adequate revenues to justify the addition of controls that would allow diesel-fired engines otherwise subject to a 100 hours per year run-time restriction, under the 2013

[20] *See supra* note 16.

RICE Rule, to operate without hourly limits. PSEG also argues that behind-the-meter generators with environmental restrictions that limit their run times have the option of operating as generation capacity resources.

31. P3 objects to PJM's proposed definition of small commercial customers, to be included in PJM's mass-market exemption to the 30-minute default notice requirement, arguing that this definition is too expansive in its proposal that a small customer have an annual peak demand no greater than 100 kW. P3 argues that such a standard is too large and that PJM should be required to adopt, instead, a standard of "up to 20 kW, consistent with the Commission Staff's 2009 report.[21] P3 asserts that commercial customers greater than 20 kW have the ability to activate load reduction plans within the first 30 minutes after activation initiated by PJM and therefore should not be provided an exemption to the 30-minute default notification time. P3 adds that customers greater than 20 kW and less than 100 kW are not generally small entities and are not similarly situated to residential customers.

32. Finally, the Market Monitor objects to PJM's proposed compliance in response to the Commission's directive, requiring PJM to submit revised tariff language allowing all demand response assets dispatched by PJM on the same operating day, and within the same zone, regardless of type, to aggregate their performance for the purpose of compliance calculations. The Market Monitor asserts that PJM's proposal reflects PJM's agreement with EnerNOC, and is thus non-compliant on its face. The Market Monitor argues that PJM should be required to adopt an alternative approach, as proposed by EnergyConnect, given the May 2014 Order's reference to the changes sought jointly by a coalition, EnergyConnect, Inc. and Comverge. The Market Monitor therefore characterizes PJM's compliance proposal as the beyond the scope of this proceeding. In the alternative, the Market Monitor argues that the measurement and verification proposed by PJM should be rejected on the merits, because it would weaken the rules for sub-zonal dispatch for sub-zones defined the day ahead of the operating day by permitting a broader area to be included.

2. Answers

33. EnerNOC responds to the Market Monitor's argument that PJM's measurement and verification proposal is beyond the scope of this proceeding. EnerNOC asserts that, in the May 2014 Order, the Commission directed PJM to implement its measurement and verification proposal as outlined in PJM's answer (to allow aggregation of demand resource load reduction for the purpose of compliance calculations, similar to the rights

[21] P3 Protest at 5 (citing Staff Report, Federal Energy Regulatory Commission, *A National Assessment of Demand Response Potential*, (June 2009) (2009 Staff Report)).

currently available to fleets of generators). EnerNOC argues that the Commission's intent was that PJM adopt the proposal that had been raised by EnerNOC, in its protest – the same proposal that PJM had agreed was appropriate in it answer. EnerNOC asserts that the Commission's intent, in this regard, is made clear by the Commission's reference to a methodology that would "allow all demand response assets dispatched by PJM on the same operating day and within zone … to aggregate their performance … *as agreed to by PJM*." [22]

34. EnerNOC also responds to the Market Monitor's argument that PJM's measurement and verification proposal would weaken the rules for sub-zonal dispatch for sub-zones defined the day ahead of the operating day by permitting a broader area to be included. EnerNOC argues that, in fact, PJM's proposal would not weaken the more granular dispatch that the Commission largely approved in the May 2014 Order, including the more granular sub-zonal dispatch and new incentive-based lead time requirements. EnerNOC adds that the Market Monitor, in this instance, confuses an operational concern (i.e., dispatch capability) with the need to establish an appropriate performance assessment.

35. The Market Monitor responds to EnerNOC's answer addressing the merits of PJM's measurement and verification proposal. The Market Monitor argues that, by measuring compliance across zones within a compliance aggregation area, PJM's proposal will degrade the response of demand resources to the PJM dispatch signal and therefore should be rejected.

C. Procedural Matters

36. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[23] prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the answers submitted by EnerNOC and the Market Monitor because they have assisted us in our decisional process.

D. Commission Determination

37. We find that PJM's compliance filing satisfies the requirements of the May 2014 Order and therefore accept it.

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[22] EnerNOC Answer at 4 (citing May 2014 Order, 147 FERC ¶ 61,103 at P 129 (emphasis added)).

[23] 18 C.F.R. § 385.213(a)(2) (2015).

38. We first consider whether PJM has sufficiently supported its proposed exemption for behind-the-meter generation that is subject to environmental limitations restricting its operation to periods when PJM is in emergency conditions. In its compliance filing, PJM has provided further support for its proposed exemption and revised Operating Agreement at Schedule 1, section 8.5. For the reasons discussed below, we accept as just and reasonable PJM's proposed exemption, as supported in its compliance filing.[24] In the May 2014 Order, the Commission questioned the need to exempt behind-the-meter diesel units from PJM's pre-emergency operational requirements, given the allowance in the 2013 RICE Rule, permitting these end-use sources to run during certain non-emergency hours. In *Delaware v. EPA*, however, the D.C. Circuit vacated the 2013 RICE Rule; in the EPA Guidance Memo, moreover, the EPA has reinstated its 2004 policy prohibiting the affected backup generators from participating in emergency demand response programs, absent their ability to comply with the EPA's emission standards and other applicable requirements for a non-emergency engine.[25] Under these circumstances, we find that PJM's exemption is appropriate. We also dismiss, as moot, the protests on this issue by Exelon, PSEG, P3 and the Market Monitor, each of which relies, implicitly, on the continued operation of the 2013 RICE Rule.

39. We also accept PJM's proposed definition of small commercial customers, to be included in PJM's mass-market exemption. We find that PJM's reliance on "an annual peak demand no greater than 100 kW" as a small commercial customer threshold is appropriate. As PJM states, the selection of 100 kW takes into account the varying definitions of small commercial customers in the different PJM states. In addition, small commercial customers with an annual peak demand of less 100 kW are eligible for aggregation, which establishes a symmetry with residential customers. P3 objects to PJM's proposal as too expansive in its allowance. However, P3 has not supported its claim that a customer with an annual peak demand of less 100 kW cannot, in fact, be regarded as a small commercial customer (i.e., the relevant classification defining the scope of PJM's compliance obligation).

40. Finally, we accept PJM's proposed tariff language allowing demand response assets dispatched by PJM on the same operating day, and within the same zone, to aggregate their performance for the purpose of compliance calculations, as proposed by EnerNOC and to which PJM agreed in its answer.[26] We concur with PJM that the Commission's compliance requirement was tied to the measurement and verification

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[24] *See supra* n. 17.

[25] *See supra* n. 16.

[26] May 2014 Order, 147 FERC ¶ 61,103 at P 129.

proposal "as agreed to by PJM" in its answer.[27] Accordingly, we agree that PJM's proposal satisfies its compliance obligation. Regardless, we are not persuaded, as the Market Monitor claims, that PJM's proposal would weaken the rules for sub-zonal dispatch for sub-zones, as defined the day ahead of the operating day, by permitting a broader, aggregated area to be included. PJM's proposal strikes an appropriate balance, allowing PJM to dispatch demand response resources on a sufficiently granular basis while still recognizing the legitimate interests of the demand response provider to manage its risks through aggregation.

The Commission orders:

(A) ECI/Comverge's request for rehearing of the May 2014 Order is hereby denied, as discussed in the body to this order.

(B) PJM's compliance filing is hereby accepted, as discussed in the body to this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[27] *Id.*