163 FERC ¶ 61,029
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

PJM Interconnection, L.L.C. Docket No. ER18-870-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued April 17, 2018)

1. On February 16, 2018, pursuant to section 205 of the Federal Power Act,[1] PJM Interconnection, L.L.C. (PJM) submitted proposed revisions to PJM's Open Access Transmission Tariff (Tariff) and the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region (RAA). The proposed revisions establish a procedure to facilitate the implementation of any restrictions imposed on energy efficiency resources (EERs) by a relevant electric retail regulatory authority authorized by the Commission to opt-out and restrict the sale of EERs into PJM's market (Authorized RERRA). As discussed below, we accept the proposed revisions, effective April 17, 2018, as requested.

I. Background

2. An EER is a project that exceeds building codes, appliance standards, or other relevant standards designed to achieve a continuous reduction in electric energy consumption at the End-Use Customer's retail site.[2] Such projects typically include the installation of more efficient devices or equipment or the implementation of more efficient processes or systems. EERs are allowed to participate in PJM's capacity market as a Capacity Resource pursuant to RAA, Schedule 6, section L.

3. On June 5, 2017, Advanced Energy Economy (AEE) filed a petition for declaratory order seeking, among other things, a Commission finding stating that a RERRA lacks authority to bar, restrict, or otherwise condition the participation of certain

[1] 16 U.S.C. § 824d (2012).

[2] RAA, Schedule 6, § L.1.

EERs in the wholesale electricity markets. In a separate proceeding before the Kentucky Public Service Commission (Kentucky Commission), the Kentucky Commission issued an order finding that "[n]o retail electric customer is authorized to participate directly or indirectly in any PJM wholesale market, including but not limited to [demand response] programs and EER programs, except under a tariff or special contract on file with the Kentucky Commission."[3] The Kentucky Commission premised this finding upon an agreement between PJM and Kentucky Power Company (Kentucky Power) during Kentucky Power's integration into PJM that stipulated, among other things, that demand response or load interruption programs may not be made available by PJM directly to a retail customer of Kentucky Power and that such programs will be made available to Kentucky Power for its retail customers only at Kentucky Power's election.[4]

4. On December 1, 2017, the Commission issued an order on AEE's petition for declaratory order, concluding that "RERRAs may not bar, restrict, or otherwise condition the participation of EERs in wholesale electricity markets unless the Commission expressly gives RERRAs such authority."[5] Notwithstanding, the Commission held that "the Kentucky Commission may bar or restrict its retail customers from participating as suppliers in PJM's capacity market due to the fact that the Commission accepted such condition at the time the Kentucky Commission approved the integration of Kentucky Power into PJM."[6]

II. PJM's Proposal

5. PJM states that, consistent with the Declaratory Order, its filing represents the culmination of PJM and its stakeholders' efforts to develop new market rules related to EERs.[7] PJM argues that proactively implementing a market rule for sellers of EERs in

[3] *In re:* Ky. Pub Serv. Comm'n, *Application of East Kentucky Power Cooperative, Inc. for a Declaratory Order Confirming the Effect of Kentucky Law and Commission Precedent on Retail Electric Customers' Participation in Wholesale Electric Markets*, Case No. 2017-00129, at ordering para. 1 (June 6, 2017).

[4] *Id.* at Appendix A, at 3-4.

[5] *Advanced Energy Economy*, 161 FERC ¶ 61,245, at P 57 (2017) (Declaratory Order). The Declaratory Order also makes clear that only the Commission "has discretion to decide whether to grant states an opt-out from allowing participation of EERs in wholesale electricity markets." *Id.* P 62. For the purposes of the Transmittal Letter, PJM refers to a RERRA that is authorized by the Commission to opt-out and restrict the sale of EERs into PJM's market as an "Authorized RERRA."

[6] *See id.* PP 66-68.

[7] Transmittal Letter at 4.

PJM's capacity market is prudent in order to provide guidance and minimize regulatory risk for all market participants in the event that a RERRA is authorized to restrict EERs from future participation in PJM's markets.[8]

6. PJM's proposed Tariff and RAA revisions provide a verification process to ensure that all EERs offered and cleared in PJM's capacity market comply with any restrictions that may be imposed by an Authorized RERRA.[9] Further, the proposed revisions also grant relief for sellers of EERs that already cleared in a prior PJM capacity market auction and are subsequently restricted from participation in PJM's market by an Authorized RERRA.[10]

7. In order to provide a process for verifying compliance by a seller of EERs with an Authorized RERRA's rules, PJM proposes to add two new sections to its Tariff and RAA. The first section describes the roles and responsibilities of PJM, Capacity Market Sellers, and the relevant electric distribution company when an Authorized RERRA promulgates rules that restrict EER participation within PJM. PJM proposes to post any Commission-authorized order, ordinance, or resolution promulgated by an Authorized RERRA that qualifies or restricts EER participation within PJM. PJM also proposes to require all Capacity Market Sellers to itemize any EERs that are located within the boundaries of an Authorized RERRA.[11]

8. PJM further proposes to require Capacity Market Sellers to submit itemized EERs as a part of the Energy Efficiency measurement and verification plan and the certified post-installation measurement and verification report to PJM. Under PJM's proposed revisions, after receiving the list of Capacity Market Sellers from PJM, the relevant electric distribution company will review whether the EERs offered by such Capacity Market Sellers are in compliance with any Authorized RERRA rules and must affirmatively notify PJM that such resources are in compliance with Energy Efficiency rules promulgated by the Authorized RERRA. PJM states that its proposal recognizes the differences between EERs and other demand-side resources. For instance, PJM explains that the proposed EER process assumes that all EERs are eligible to participate in PJM's capacity market unless restricted by an Authorized RERRA. In contrast, PJM states that demand resources are ineligible to participate in PJM's market unless a RERRA

[8] PJM notes that with the exception of Kentucky, the Commission has not granted any RERRA an opt-out from allowing participation of EERs in PJM's capacity market.

[9] *See* Transmittal Letter at 5-9.

[10] *See id.* at 9-11.

[11] *Id.* at 5-6.

affirmatively permits such resource to participate.[12]

9. The second part of PJM's proposed revisions address concerns for sellers of EERs that offer and clear EERs in a Base Residual Auction or an Incremental Auction, but are subsequently prohibited from delivering such resources due to a restriction imposed by an Authorized RERRA prior to the start of the Delivery Year. Under PJM's proposal, an affected EER seller may obtain replacement capacity for EERs that become ineligible to participate due to a rule promulgated by an Authorized RERRA.[13] Alternatively, PJM proposes that the affected EER seller may elect to be relieved of capacity commitments for those EERs that are restricted from participation. If the capacity commitments are excused, however, such sellers will not be paid any capacity revenues for those EERs. PJM states that this proposed rule protects sellers of EERs in PJM's capacity market from being assessed Deficiency Charges or Capacity Performance Non-Performance Charges in the event an Authorized RERRA restricts such EERs from participating in PJM's capacity market.[14]

III. Notice of Filing and Responsive Pleadings

10. Notice of the filing was published in the *Federal Register*, 83 Fed. Reg. 8070 (2018), with interventions and protests due on or before March 9, 2018. Timely motions to intervene were filed by East Kentucky Power Cooperative, Inc.; Dominion Energy Services, Inc.; NRG Power Marketing, LLC and GenOn Energy Management, LLC; AEE; Affirmed Energy, LLC; North Carolina Electric Membership Corporation; Duke Energy Corporation; National Rural Electric Cooperative Association; and The Dayton Power and Light Company. American Municipal Power, Inc. (AMP); American Public Power Association (APPA); and PJM Utilities Coalition filed timely motions to intervene and comments.

[12] *See id.* at 8-9.

[13] When a capacity resource is not available for a delivery year, the owner of the resource may purchase replacement capacity for the purpose of buying back positions to which they have previously committed. *See, e.g.*, existing PJM OATT, Attachment DD, § 8 (Capacity Resource Deficiency Charge); proposed PJM OATT, Attachment DD-1, § L. 9 (Energy Efficiency).

[14] *See* Transmittal Letter at 9-11.

IV. Comments

11. The PJM Utilities Coalition filed comments in support of PJM's proposed Tariff and RAA revisions.[15] APPA and AMP also support PJM's proposed revisions, but assert that because some revisions proposed by PJM are premised upon rulings in the Declaratory Order, the Commission should make any acceptance of PJM's filing subject to the resolution of the pending requests for rehearing and clarification of that order.[16] AMP specifically requests that the Commission accept and suspend the EER market rules to become effective only upon and subject to the final resolution of the jurisdictional issue in question.[17]

V. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the timely, unopposed motions to intervene serve to make entities that filed them parties to this proceeding.

B. Substantive Matters

13. For the reasons discussed below, we find that PJM's proposed Tariff and RAA revisions are just and reasonable and accept them for filing, effective April 17, 2018, as requested.

14. We agree with commenters that the proposed revisions minimize market uncertainty by ensuring an orderly process to ensure compliance with existing and future rules implemented by an Authorized RERRA. The proposal is also consistent with the Commission's commitment to ensure that EERs that participate in PJM's capacity market comply with restrictions approved by Authorized RERRAs.[18]

15. We also find that PJM's proposal to grant relief for sellers of EERs that cleared in a prior capacity market auction and are subsequently restricted from participation in PJM's market by an Authorized RERRA are just and reasonable. Regarding EERs originating in Kentucky, the Commission found in the Declaratory Order that "EERs that

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[15] PJM Utilities Coalition Comments at 2-3.

[16] APPA Comments at 4; AMP Comments at 5.

[17] AMP Comments at 5.

[18] *See* Declaratory Order, 161 FERC ¶ 61,245 at PP 66-69.

already cleared [PJM capacity market] auctions should be permitted to fulfill their capacity obligations in the Delivery Years for which they cleared, including participation in the incremental auctions associated with such Delivery Years, and receive compensation for that performance."[19] Consistent with this Commission finding, PJM proposes that, in addition to fulfilling their capacity obligations in the Delivery Years for which they cleared, EERs that already cleared in a prior PJM capacity market auction and are subsequently restricted by an Authorized RERRA, also have the option to obtain replacement capacity or elect to be relieved of capacity commitments and not receive any capacity revenues for those EERs. Such a rule protects sellers of EERs from being assessed Deficiency Charges or Capacity Performance Non-Performance Charges in the event an Authorized RERRA restricts such EERs from participating in PJM's capacity market.

16. We need not address AMP's and APPA's concerns regarding the timing of the issuance of this order as it relates to the requests for rehearing and clarification of the Declaratory Order. This order is being issued concurrently with the Order on Rehearing and Clarification of the Declaratory Order in Docket No. EL17-75-001, in which the Commission reaffirms its jurisdictional findings in the Declaratory Order.[20]

The Commission orders:

The proposed Tariff and RAA revisions are hereby accepted, effective April 17, 2018, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[19] Declaratory Order, 161 FERC ¶ 61,245 at P 70. The Commission cited its previous demand response ruling to make clear that EER providers' participation in the incremental auctions for EERs that cleared and were subsequently restricted, is for the sole purpose of buying back positions to which they have previously committed. *See id.* P 70, n.138.

[20] *Advanced Energy Economy*, 163 FERC ¶ 61,030 (2018).