

185 FERC ¶ 61,112
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

PJM Interconnection, L.L.C.

Docket Nos. ER22-962-004
ER23-2841-000
(not consolidated)

ORDER ON COMPLIANCE FILING AND REJECTING TARIFF REVISIONS

(Issued November 13, 2023)

1. On June 14, 2023, in Docket No. ER22-962-004, PJM Interconnection, L.L.C. (PJM) submitted proposed tariff revisions to comply with the Commission's directives regarding capacity market mitigation rules¹ related to PJM's compliance with Order No. 2222² (Third Compliance Filing). In that filing, PJM proposed revisions to the PJM Open Access Transmission Tariff (Tariff) and the Amended and Restated Operating Agreement of PJM (Operating Agreement) to modify language related to capacity market mitigation and clarify the rules applicable to DER Capacity Aggregation Resources participating in the 2026/2027 Base Residual Auction (BRA).³
2. Separately, on September 14, 2023, in Docket No. ER23-2841-000, pursuant to section 205 of the Federal Power Act (FPA)⁴ and section 35.13 of the Commission's

¹ *PJM Interconnection, L.L.C.*, 183 FERC ¶ 61,157 (2023) (Second Compliance Order).

² *Participation of Distributed Energy Res. Aggregations in Mkts. Operated by Reg'l Transmission Orgs. & Indep. Sys. Operators*, Order No. 2222, 172 FERC ¶ 61,247 (2020), *order on reh'g*, Order No. 2222-A, 174 FERC ¶ 61,197, *order on reh'g*, Order No. 2222-B, 175 FERC ¶ 61,227 (2021).

³ Capitalized terms that are not defined in this order have the meaning specified in the Tariff and Operating Agreement.

⁴ 16 U.S.C. § 824d.

regulations,⁵ PJM filed proposed revisions to the Tariff and the Reliability Assurance Agreement Among Load-Serving Entities in the PJM Region (RAA) to postpone implementation of rules allowing DER Capacity Aggregation Resources to participate in PJM's capacity market (Section 205 Filing).

3. In this order, we accept in part and reject in part PJM's Third Compliance Filing, subject to a further compliance filing, and reject PJM's Section 205 Filing, as discussed below.

I. Background

4. In Order No. 2222, the Commission adopted reforms to remove barriers to the participation of distributed energy resource aggregations in the RTO/ISO markets.⁶ In compliance with Order No. 2222, PJM submitted, and the Commission accepted subject to further compliance, proposed revisions to PJM's tariff.⁷

5. In the First Compliance Order, the Commission accepted PJM's proposed implementation timeline for its DER Aggregator Participation Model that included: (1) a set of tariff revisions effective July 1, 2023 for the limited purpose of allowing Planned DER Capacity Aggregation Resources to participate in the 2026/2027 Delivery Year BRA, and (2) a set of tariff revisions effective February 2, 2026 for the Tariff, Operating Agreement, and RAA revisions effectuating the balance of the proposal including energy and ancillary services markets participation.⁸ In accepting PJM's proposal, the Commission specifically stated that "the July 1, 2023 effective date allows for DER Capacity Aggregations Resources to plan to participate in the 2026/2027 Delivery Year BRA." The Commission also found that PJM's proposal to align the effective date of energy and ancillary services market participation of DER Aggregation Resources with the 2026/2027 Delivery Year BRA is appropriately tailored to PJM's market design while also providing a reasonable amount of time for these implementation needs.⁹

6. In the First Compliance Order, the Commission also found that PJM's proposed tariff revisions relating to capacity market power mitigation of DER Capacity

⁵ 18 C.F.R. § 35.13 (2022).

⁶ Order No. 2222, 172 FERC ¶ 61,247 at P 1.

⁷ *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,143 (2023) (First Compliance Order); Second Compliance Order, 183 FERC ¶ 61,157.

⁸ First Compliance Order, 182 FERC ¶ 61,143 at P 405.

⁹ *Id.* at P 407.

Aggregation Resources containing Component DER directly connected to distribution facilities co-located with retail end-use load do not comply with Order No. 2222 because they constitute reforms to PJM's capacity market mitigation rules, which are outside the scope of Order No. 2222 compliance.¹⁰ The Commission stated that, under PJM's existing capacity market mitigation rules, resources are subject to the Minimum Offer Price Rule (MOPR) and Market Seller Offer Cap (MSOC) based on their resource type.¹¹ The Commission therefore directed PJM to make a further compliance filing that removes its proposed tariff language that exempts DER Capacity Aggregation Resources containing Component DER directly connected to distribution facilities co-located with retail end-use load from capacity market power mitigation rules, and that revises its tariff to apply its existing capacity market mitigation rules to DER Capacity Aggregation Resources based on the composition of the DER Capacity Aggregation Resource and consistent with such requirements applied to all resources in PJM.

7. In the Second Compliance Order, the Commission explained that PJM's existing capacity market mitigation rules are based on resource type and therefore rejected PJM's proposal to apply its capacity market mitigation rules based on whether the resource is connected to distribution facilities or co-located with retail end-use load.¹² The Commission directed PJM to either file a further compliance filing removing such language from Attachment K-Appendix, section 1.4B(k) or propose similar revisions that achieve the same result.

8. In the Second Compliance Order, the Commission also directed PJM to provide further explanation regarding the application of its capacity market mitigation rules.¹³ Specifically, the Commission directed PJM to clarify whether its capacity market mitigation rules in Attachment K-Appendix, section 1.4B(k)—which PJM filed with an effective date of February 2, 2026—would apply to DER Capacity Aggregation Resources participating in the 2026/2027 BRA scheduled to occur prior to February 2, 2026 and take effect prior to this auction. If so, the Commission directed PJM to clarify that those capacity market mitigation rules will be effective prior to the 2026/2027 Delivery Year BRA. But, the Commission stated, if such rules would not take effect prior to this auction, the Commission directed PJM to identify the tariff provisions that would apply the capacity market mitigation rules to DER Capacity Aggregation Resources in time for the 2026/2027 BRA, given that the 2026/2027 BRA was scheduled

¹⁰ *Id.* at P 86 (citing Order No. 2222, 172 FERC ¶ 61,247 at P 129).

¹¹ *Id.* at P 87 (citing PJM, Tariff, attach. DD, § 5.14 (33.0.0), § 5.14(h-2); *id.*, attach. DD, § 6.6A (1.0.0); *id.*, attach. M-app. (23.0.0), § II.E)).

¹² Second Compliance Order, 183 FERC ¶ 61,157 at PP 23-26.

¹³ *Id.* at P 27.

to occur prior to February 2, 2026. The Commission also directed PJM to revise its tariff to include definitions for terms embedded in several newly defined terms in the RAA and any others needed to close the definitional gap in the tariff provisions effective July 1, 2023.¹⁴

II. Filings

A. Third Compliance Filing

9. In its Third Compliance Filing, PJM proposes to remove certain language related to the capacity market mitigation rules in Tariff, Attachment K-Appendix, section 1.4B(k) and Operating Agreement, Schedule 1, section 1.4B(k) exactly as specified by the Commission in the Second Compliance Order.¹⁵

10. With respect to the applicability of the capacity market mitigation rules to DER Capacity Aggregation Resources participating in the 2026/2027 BRA, PJM explains that the capacity market mitigation rules should be in effect when DER Capacity Aggregation Resources can first participate in PJM's capacity market.¹⁶

11. In addition, PJM proposes an effective date of December 31, 9998, for the entirety of its Order No. 2222 compliance tariff revisions.¹⁷ PJM explains that, because the Order No. 2222 compliance language relating to capacity market participation is set to become effective on July 1, 2023, PJM is submitting two versions of each eTariff record: (1) effective July 1, 2023, which excludes the Order No. 2222 compliance language and maintains the currently effective language; and (2) effective December 31, 9998, with the identical language previously accepted by the Commission in the First Compliance Order.¹⁸ Additionally, PJM states that it is changing the effective date from February 2, 2026, to December 31, 9998, for Tariff, Attachment K – Appendix, section 1.4B and

¹⁴ *Id.* at P 28.

¹⁵ Third Compliance Filing, Transmittal at 4-5; PJM, Tariff, attach. K-app., §1.4B(k) and Operating Agreement, Schedule 1, §1.4B(k) (0.2.0).

¹⁶ Third Compliance Filing, Transmittal at 5-6.

¹⁷ *Id.* at 8 & n.28.

¹⁸ *See* First Compliance Order, 182 FERC ¶ 61,143.

Operating Agreement, Schedule 1, section 1.4B, which are tariff provisions implementing its DER Aggregator Participation Model.¹⁹

12. In support of its proposal, PJM states that the July 1, 2023 effective date for the rules allowing DER Capacity Aggregation Resources to participate in PJM's capacity market is no longer appropriate. PJM explains that it originally selected that date so that the rules would not be applicable until after the 2025/2026 BRA had been conducted and before the pre-auction activities for the 2026/2027 BRA were under way. PJM explains that the Commission recently accepted PJM's proposal to defer holding the 2025/2026 BRA until June 2024.²⁰ PJM explains that, because the capacity market participation revisions do not clearly specify that they apply starting with the 2026/2027 Delivery Year, a July 1, 2023 effective date could cause confusion with respect to whether DER Capacity Aggregation Resources could participate in the 2025/2026 BRA.

13. PJM states that it believes the software changes and other implementation matters necessary for an operable DER Aggregator Participation Model will be ready by February 2, 2026. PJM explains that this would allow DER Capacity Aggregation Resources to provide capacity in the 2026/2027 Delivery Year. However, PJM explains that it is submitting its tariff revisions with a December 31, 9998 effective date to provide flexibility to accommodate potential delays in implementation, in the event that the software updates required to implement the participation model are not in place by the start of the 2026/2027 Delivery Year.²¹ PJM asserts that the scope of the changes required to comply with the First Compliance Order, including a number of fundamental aspects of PJM's approach, reasonably prevent PJM from beginning to develop the software changes. PJM explains that successful implementation of the DER Aggregator Participation Model requires at least 24 months from a Commission order approving most of the major outstanding compliance directives to develop, test, and implement the approach. PJM states that the work required for implementation will include significant software changes for the PJM day-ahead and real-time energy market clearing engines, a database and system to support the registration process and data management around DER Aggregation Resources, design and implementation of locational mapping processing, planning study processes, and updated market procedures (including Markets Gateway) for registration and operation of DER Aggregation Resources.

14. PJM proposes to file by May 1, 2024, either a motion asking the Commission to make the enclosed revisions effective July 1, 2024 or an informational report on the

¹⁹ Third Compliance Filing, Transmittal at n.28.

²⁰ *Id.* at 6 (citing *PJM Interconnection, L.L.C.*, 183 FERC ¶ 61,172, at P 36 (2023)).

²¹ *Id.* at 6-8.

implementation status and a projected effective date.²² PJM recognizes that it will need to submit cleaned up sections that reflect the accepted Order No. 2222 compliance language and all intervening Commission-accepted revisions, and, as part of that filing, PJM will fix the definitional gap that the Commission identified in the Second Compliance Order.

B. Section 205 Filing

15. In its Section 205 Filing, PJM proposes to postpone implementation of the Commission-approved rules allowing DER Capacity Aggregation Resources to participate in PJM's capacity market.²³ Specifically, PJM proposes to revise Tariff, Attachment Q and RAA, Article 1 – Definitions and Schedule 6.2, to remove the provisions the Commission accepted effective July 1, 2023, related to capacity market participation by DER Capacity Aggregation Resources. PJM states that it filed the Commission-approved tariff records allowing for DER Capacity Aggregation Resources participation with a December 31, 9998 effective date.²⁴

16. PJM states that it is not appropriate for these provisions to be included in PJM's currently-effective capacity market rules because DER Capacity Aggregation Resources are not scheduled to start participating in Reliability Pricing Model (RPM) auctions until the 2026/2027 Delivery Year BRA.²⁵ In support of its request, PJM states that it seeks to avoid confusion surrounding the applicability of the capacity market mitigation rules and to ensure that the DER Aggregator Participation Model is fully operable prior to energy market participation by DER Capacity Aggregation Resources. PJM states that these proposed revisions are limited to the effective date only and do not include any substantive changes to the tariff.

17. PJM proposes to file, by May 1, 2024, either a motion asking the Commission to make the revisions effective July 1, 2024, or an informational report on the implementation status and a projected effective date.²⁶

²² *Id.* at 8.

²³ Section 205 Filing, Transmittal at 1.

²⁴ *Id.* at 2-3.

²⁵ *Id.* at 1-2.

²⁶ *Id.* at 7.

III. Notice of Filings and Responsive Pleadings

18. Notice of PJM's Third Compliance Filing was published in the *Federal Register*, 88 Fed. Reg. 40,254 (June 21, 2023), with interventions and protests due on or before July 5, 2023. None was filed.

19. Notice of PJM's Section 205 Filing was published in the *Federal Register*, 88 Fed. Reg. 64,903 (September 20, 2023), with interventions and protests due on or before October 5, 2023. Timely motions or notices to intervene were filed by Exelon Corporation; Public Citizen, Inc.; Delaware Division of the Public Advocate; Rockland Electric Company; Duquesne Light Company; Constellation Energy Generation, LLC; NRG Business Marketing LLC and Midwest Generation, LLC; Advanced Energy Management Alliance; Enel North America, Inc.; Old Dominion Electric Cooperative; American Electric Power Service Corporation; New Jersey Board of Public Utilities; FirstEnergy Service Company ("FirstEnergy"); and PPL Electric Utilities Corporation; Indiana Office of Utility Consumer Counselor; Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC (collectively, "PSEG"). Calpine Corporation filed an out-of-time motion to intervene.

20. FirstEnergy and PSEG jointly filed comments in support of PJM's Section 205 Filing.²⁷ FirstEnergy and PSEG state that PJM originally requested a July 1, 2023 effective date for rules necessary to allow DER Aggregation Resources to participate in the BRA for the 2026/2027 Delivery Year, but that the capacity-related provisions did not specify that they would start in that Delivery Year.²⁸ As such, FirstEnergy and PSEG argue that confusion may occur as a result of the July 1, 2023 effective date that could ultimately impact the 2025/2026 capacity market auctions.²⁹ FirstEnergy and PSEG also argue that it would be a fruitless endeavor for PJM to commence work on the software updates in advance of a Commission order resolving the pending Order No. 2222-related filings.³⁰ FirstEnergy and PSEG support PJM's proposal to refrain from prematurely identifying a specific effective date and urge the Commission to accept PJM's Section 205 Filing.

²⁷ FirstEnergy and PSEG Comments at 2.

²⁸ *Id.* at 3.

²⁹ *Id.* at 5.

³⁰ *Id.* at 6.

IV. Discussion

A. Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2022), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings.

22. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we grant Calpine Corporation's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Substantive Matters

1. Third Compliance Filing

23. We find that PJM partially complies with the directives in the Second Compliance Order. We therefore accept in part and reject in part PJM's Third Compliance Filing, subject to a further compliance filing, as discussed below.

24. We find that PJM's proposed capacity market mitigation rules in Tariff, Attachment K-Appendix, section 1.4B(k) and Operating Agreement, Schedule 1, section 1.4B(k) comply with the Commission's directive in the Second Compliance Order because PJM adopts tariff revisions identical to those prescribed by the Commission to apply its capacity market mitigation rules based on resource type.³¹ We therefore accept those tariff revisions, subject to further compliance as discussed below.

25. We find that PJM partially complies with the directive in the Second Compliance Order regarding application of the capacity market mitigation rules to the 2026/2027 Delivery Year BRA. In the Second Compliance Order, the Commission found that PJM's filing was unclear as to which capacity market mitigation rules would apply to the 2026/2027 BRA, given that PJM proposed an effective date of February 2, 2026 for those rules—which is after the 2026/2027 Delivery Year BRA that was, at that time, scheduled for November 2023.³² To address this inconsistency, the Commission directed PJM to explain whether its capacity market mitigation rules in Tariff, Attachment K-Appendix, section 1.4B(k) and Operating Agreement, Schedule 1, section 1.4B(k) apply to DER Capacity Aggregation Resources participating in the 2026/2027 Delivery Year BRA. If so, the Commission directed PJM to clarify that those rules will be effective prior to the

³¹ Second Compliance Order, 183 FERC ¶ 61,157 at P 26.

³² *Id.* at P 27.

2026/2027 Delivery Year BRA. If not, the Commission directed PJM to identify any tariff provisions that will apply capacity market mitigation rules to DER Capacity Aggregation Resources in time for the 2026/2027 Delivery Year BRA.

26. In response to the Commission's directive, PJM states, in reference to the proposed rules in Tariff, Attachment K-Appendix, section 1.4B(k) and Operating Agreement, Schedule 1, section 1.4B(k), that "these capacity market mitigation rules should be in effect when DER Capacity Aggregation Resources can first participate in PJM's capacity market."³³ PJM further explains that PJM initially proposed, and the Commission accepted, a July 1, 2023 effective date for rules allowing DER Capacity Aggregation Resources to participate in PJM's capacity market because that date would not be applicable until after the 2025/2026 Delivery Year BRA had been conducted and before the pre-auction activities for the 2026/2027 Delivery Year BRA were under way.³⁴ But PJM argues that the July 1, 2023 effective date is no longer appropriate because it could cause confusion given that the 2025/2026 Delivery Year BRA has been deferred and will now be held in June 2024, and the capacity market participation revisions that the Commission accepted in this proceeding do not clearly specify that they apply starting with the 2026/2027 Delivery Year BRA. Further, while PJM believes that the software changes and other implementation matters necessary for an operable DER Aggregator Participation Model should be ready by February 2, 2026, allowing DER Capacity Aggregation Resources to provide capacity in the 2026/2027 Delivery Year, PJM states that there is a risk that the software updates required to implement the DER Aggregator Participation Model will not be in place in time.

27. To address those concerns, PJM states that it submitted Tariff, Operating Agreement, and RAA revisions with a December 31, 9998 effective date because it provides flexibility to accommodate for potential delays in implementation.³⁵

28. We find that PJM partially complies with the directive to explain whether its capacity market mitigation rules in Tariff, Attachment K-Appendix, section 1.4B(k) and Operating Agreement, Schedule 1, section 1.4B(k) apply to DER Capacity Aggregation Resources participating in the 2026/2027 Delivery Year BRA. As an initial matter, we find that PJM has explained that its proposed capacity market mitigation rules in Tariff, Attachment K-Appendix, section 1.4B(k) and Operating Agreement, Schedule 1, section 1.4B(k) are intended to apply to DER Capacity Aggregation Resources participating in the 2026/2027 Delivery Year BRA.

³³ Third Compliance Filing, Transmittal at 5.

³⁴ *Id.* at 5-6.

³⁵ *Id.* at 7-8.

29. However, we are not persuaded that potential delay in the implementation of the DER Aggregator Participation Model by February 2, 2026 is reasonable grounds to revise the effective date to an indefinite date for the February 2, 2026 tariff revisions. While PJM correctly notes that its compliance with a number of issues related to Order No. 2222 remain pending before the Commission,³⁶ PJM fails to demonstrate that an indefinite effective date without a commitment to file a specific implementation date within a specific timeframe is consistent with Order No. 2222, which requires each RTO/ISO to propose a “reasonable implementation date” that implements the final rule “in a timely manner.”³⁷ In light of PJM’s concerns about potential delay in the implementation of the DER Aggregator Participation Model by February 2, 2026, and given our concerns above about an indefinite effective date, we note that PJM may submit a motion requesting an extension for the February 2, 2026 Order No. 2222 compliance tariff provisions that accounts for PJM’s ability to develop and implement necessary software changes in advance of DER Aggregation Resources participating in its markets. We address the July 1, 2023 tariff provisions below.

30. We also find that PJM’s explanation in response to the Commission’s directive regarding clarification of the capacity market mitigation rules is incomplete and warrants additional compliance. In the Second Compliance Order, the Commission required that, if the capacity market mitigation rules in Attachment K-Appendix, section 1.4B(k) apply to DER Capacity Aggregation Resources participating in the 2026/2027 Delivery Year BRA, then PJM must *clarify whether those provisions will be effective prior to the 2026/2027 Delivery Year BRA*.³⁸ Although PJM states that DER Capacity Aggregation Resources should be able to provide capacity in the 2026/2027 Delivery Year,³⁹ PJM does not clarify that the applicable tariff provisions will be effective prior to the

³⁶ *Id.* at 6-7.

³⁷ Order No. 2222, 172 FERC ¶ 61,247 at P 361; *see N.Y. Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,198, at P 344 (2022) (finding that New York Independent System Operator, Inc.’s proposed implementation timeline in the fourth quarter of 2022 complies with the effective date requirements of Order No. 2222 and directing NYISO “to propose an effective date for its compliance filing in the fourth quarter of 2022 at least two weeks prior to the proposed effective date, as NYISO proposes to do”); *N.Y. Indep. Sys. Operator, Inc.*, Docket No. ER21-2460-004 (Dec. 1, 2022) (notice of extension of time to extend the effective date for NYISO’s proposed tariff revisions in its compliance filing from the fourth quarter of 2022 to a flexible effective date no later than December 31, 2026).

³⁸ Second Compliance Order, 183 FERC ¶ 61,157 at P 27.

³⁹ Third Compliance Filing, Transmittal at 7-8.

2026/2027 Delivery Year BRA. Therefore, we direct PJM to submit a further compliance filing, within 30 days of the date of issuance of this order, to revise the tariff to make the capacity market mitigation rules in Tariff, Attachment K-Appendix, section 1.4B(k) and Operating Agreement, Schedule 1, section 1.4B(k) applicable to DER Capacity Aggregation Resources effective in time for the commencement of pre-auction activities for, and prior to, the 2026/2027 Delivery Year BRA. As part of this compliance filing, we also direct PJM to ensure that all other relevant tariff provisions necessary for DER Capacity Aggregation Resources' participation in the 2026/2027 Delivery Year BRA are included in the tariff and effective in time for the commencement of pre-auction activities for, and prior to, the 2026/2027 Delivery Year BRA.⁴⁰

31. We also find that PJM has not complied with the directive in the Second Compliance Order to include definitions in the tariff provisions for terms embedded in several newly defined terms in the RAA and any others needed to close the definitional gap that the Commission identified in the Second Compliance Order.⁴¹ Accordingly, we also direct PJM to address this directive as part of its further compliance filing.

2. Section 205 Filing

32. We reject the Section 205 Filing to postpone implementation of the Commission-approved rules allowing DER Capacity Aggregation Resources to participate in PJM's capacity market. For the reasons discussed above, we find that PJM has not demonstrated that its proposal to establish an indefinite effective date is just and reasonable. In response to PJM's and commenters' concern that the July 1, 2023 tariff revisions could cause confusion as to whether DER Capacity Aggregation Resources could participate in the 2025/2026 Delivery Year BRA, we note that our rejection of this filing does not preclude PJM from submitting an FPA section 205 filing with a specific revised effective date (e.g., July 1, 2024)⁴² or an indefinite effective date accompanied by a commitment to file a specific implementation date within a specific timeframe.

33. Similarly, we are not persuaded that a potential delay in the implementation of the DER Aggregator Participation Model by February 2, 2026 is reasonable grounds to

⁴⁰ See First Compliance Order, 182 FERC ¶ 61,143 at P 86 (noting that, with one exception, "PJM's proposed tariff revisions relating to capacity market power mitigation of DER Capacity Aggregation Resources comply with Order No. 2222 given that they are necessary 'tariff provisions that allow distributed energy resource aggregations to participate directly in RTO/ISO markets'") (quoting Order No. 2222, 172 FERC ¶ 61,247 at P 129).

⁴¹ Second Compliance Order, 183 FERC ¶ 61,157 at P 28.

⁴² See Section 205 Filing, Transmittal at 7.

preemptively establish an indefinite effective date in this case. While PJM correctly notes that its compliance with a number of issues related to Order No. 2222 remain pending before the Commission,⁴³ PJM fails to demonstrate that an indefinite effective date is just and reasonable under these circumstances given Order No. 2222's requirement that each RTO/ISO propose a "reasonable implementation date" that implements the final rule "in a timely manner."⁴⁴

The Commission orders:

(A) PJM's Third Compliance Filing is hereby accepted in part and rejected in part, subject to a further compliance filing, as discussed in the body of this order.

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

(C) PJM's Section 205 Filing is hereby rejected, as discussed in the body of this order.

By the Commission. Commissioner Christie is concurring with a separate statement attached.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

⁴³ *Id.* at 5-6.

⁴⁴ Order No. 2222, 172 FERC ¶ 61,247 at P 361.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.

Docket No. ER22-962-004
ER23-2841-000
(not consolidated)

(Issued November 13, 2023)

CHRISTIE, Commissioner, *concurring*:

1. The Order No. 2222 compliance morass keeps getting deeper, forcing market operators like PJM through a regulatory version of Dante’s Nine Circles of Hell, all pursuant to a special-interest driven exercise in rent-seeking advertised as “market competition.”¹ Despite repeated attempts by RTOs to meet their compliance tasks by

¹ I would be remiss if I did not again mention that the states are similarly dealing with this mess and the consumers will be paying for it. *See, e.g., PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,143 (2023) (First Compliance Order) (Christie, Comm’r, concurring at P 5) (available at <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-pjm-order-no-2222-compliance-filing-er22-962>) (“In my concurrence to the letter order granting PJM’s motion to extend the time in which it had to make its Order No. 2222 compliance filing, I noted: ‘*These motions offer a preview of what’s coming in terms of the complications and impacts on reliability caused by these orders and the substantial costs that will have to be expended not only to address those threats but to address the complexity of the requirements these orders impose, costs that will be piled on consumers.*’”) (emphasis in original) (quoting *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 175 FERC ¶ 61,013 (2021) (granting extensions to PJM, MISO and SPP for Order No. 2222 compliance filings) (Christie, Comm’r, concurring at P 7) (available at <https://www.ferc.gov/news-events/news/commissioner-mark-c-christie-concurrence-regarding-order-granting-compliance>) and citing *id.* P 3 (footnotes omitted) (“The motions filed by each of MISO, SPP and PJM illustrate the daunting complexities, potential negative impacts on reliability, and certain increased costs to consumers, all of which I referenced in my dissent to Order No. 2222-A and which apply equally to its forebear, Order No. 2222. The problems and complexities of compliance described in these motions is further evidence that implementing Order Nos. 2222 and 2222-A will be far more complicated, far more costly to consumers and far more burdensome to states, public and municipal power authorities, and electric co-operatives, than these orders and many of their supporters acknowledge.”)).

submitting proposals with credible explanations of the manifold real-world complexities they are facing because of the Order No. 2222 impacts on the operation of their markets, this Commission responds by repeatedly sending RTOs back to the drawing boards in rounds of micromanagement that have absolutely nothing to do with ensuring just and reasonable rates to consumers. Today's order is no different.

2. In fact, today's order makes clear that the number of Order No. 2222 round-trip compliance filings ordered by the Commission and the time required to make and respond to those multiple compliance filings means tariffs, facts and proposals may change in the interim. For example, the fact that PJM now has new Base Residual Auction (BRA) dates and that it cannot anticipate where the Commission will come down on a pending additional compliance filing (including whether there will be yet more compliance filings), led PJM to here ask to postpone implementation of the Commission-approved rules allowing DER Capacity Aggregation Resources to participate in PJM's capacity market.

3. In both its Third Compliance Filing² and its subsequent FPA section 205 filing,³ PJM makes clear that the original July 1, 2023 effective date for the rules allowing DER Capacity Aggregation Resources to participate in PJM's capacity markets beginning with the 2026/2027 BRA is no longer appropriate and, indeed, could cause confusion.⁴ Due to an intervening Commission order,⁵ the date for the 2025/2026 BRA is now June 2024 and the date for the 2026/2027 BRA is now December 2024. A July 1, 2023 effective date could incorrectly suggest the ability to participate in the 2025/2026 Auction.

4. Moreover, in both the Third Compliance Filing and the PJM 205 Filing, PJM also makes clear that it will need *at least* 24 months from the time the Commission approves major, outstanding Order No. 2222 submissions without "radical divergence" from PJM's proposals in order for PJM to get any DER Aggregator Participation Model up and running so as to permit DER Aggregation Resources to provide capacity in the 2026/2027 Delivery Year, all of which may impact a previously accepted February 2, 2026 effective date:⁶

² PJM June 14, 2023 Compliance Filing *passim*, Docket No. ER22-962-0004 (Third Compliance Filing).

³ PJM September 14, 2023 Filing *passim*, Docket No. ER23-2841-000 (PJM 205 Filing).

⁴ See, e.g., Third Compliance Filing at 5-6; PJM 205 Filing at 4-5.

⁵ *PJM Interconnection, L.L.C.*, 183 FERC ¶ 61,172 (2023).

⁶ As today's order notes, the February 2, 2026 effective date impacted Tariff,

[A]s PJM has explained, successful implementation *requires* at least 24 months from a Commission order approving most of the major outstanding compliance directives to develop, test, and implement the approach, *and any Commission directive that radically diverges from the current-contemplated market design would lengthen (maybe significantly) the implementation timeframe. As PJM explained in the February 1, 2022 Compliance Filing*, the DER Aggregator Participation Model requires significant software changes, including changes to the PJM Day-ahead and Real-time Energy Market clearing engines. PJM will also need to stand up a database and system to support the registration process and data management around DER Aggregation Resources, and design and implement locational mapping processing, planning study processes, and updated market procedures (including Markets Gateway) for registration and operation of DER Aggregation Resources. Thus, given the lack of a statutory date by which the Commission must act on PJM's upcoming September 1, 2023 compliance filing and the at least two-year-long implementation timeframe, PJM is unsure whether everything can be in place in time for DER Capacity Aggregation Resources to provide capacity in the 2026/2027 Delivery Year.⁷

5. As a result, in its June 2023 Third Compliance Filing PJM requested that the Commission accept an undefined effective date “for the entirety of its Order No. 2222 compliance tariff revisions.”⁸ PJM's proposal was not without limits, however: PJM proposed that by May 1, 2024 it would file either (i) a motion asking the Commission to make the Tariff revisions effective July 1, 2024 – to allow participation in the December

Operating Agreement, and RAA revisions effectuating the balance of PJM's original proposal (i.e., beyond those effective July 1, 2023 for the limited purpose of allowing Planned DER Capacity Aggregation Resources to participate in the 2026/2027 Delivery Year BRA) including energy and ancillary services markets participation. Order at P 5.

⁷ Third Compliance Filing at 7 (footnotes omitted) (emphases added). *See also* PJM 205 Filing at 5-6.

⁸ Order at P 11. *See also, e.g.,* Third Compliance Filing at 8 (footnote omitted) (“... PJM is submitting the enclosed Tariff, Operating Agreement, and RAA revisions with a December 31, 9998 effective date. Such an effective date provides the flexibility to accommodate for potential delays in implementation.”). PJM's request was applicable to effective dates including the previous July 1, 2023 effective date related to rules allowing DER Capacity Aggregation Resources to participate in PJM's capacity market and the previous February 2, 2026 effective date related to tariff provisions implementing PJM's DER Aggregator Participation Model. Order at PP 11-12.

2024 2026/2027 BRA or (ii) an informational report on the implementation status and a projected effective date.⁹

6. Three months later – during which time the Commission had not ruled on PJM’s Third Compliance Filing and PJM had filed its Fourth Compliance Filing with the Commission – PJM this time asked the Commission in the PJM 205 Filing to temporarily remove Commission-approved rules allowing DER Capacity Aggregation Resources to participate in PJM’s capacity market and to postpone implementation of those provisions. PJM represented:

[T]hese proposed revisions are *limited to the effective date only* and do not include any substantive changes to the Tariff or RAA. That is, PJM essentially is proposing to change the effective date for these rules to December 31, 9998 [, which is an indefinite] effective date, *a change that both eliminates confusion regarding the applicability of capacity market participation rules prior to the 2026/2027 Delivery Year and provides the flexibility to accommodate for potential delays in implementation.*¹⁰

PJM made a similar request as to timing as it did in its Third Compliance Filing.¹¹

7. Today’s order rejects PJM’s timing proposals in both its Third Compliance Filing and its PJM 205 Filing. With respect to PJM’s requests as they relate to the July 1, 2023 date, today’s order notes that PJM is not precluded from submitting another 205 filing providing a specific revised effective date or an indefinite effective date accompanied by a commitment to file a specific implementation date within a specific timeframe.¹² With respect to the February 2, 2026 effective date as raised in the Third Compliance Filing, today’s order instructs PJM that it could return with a motion requesting an extension for the February 2, 2026 Tariff provisions that accounts for PJM’s ability to develop and implement necessary software changes in advance of DER Aggregation Resources

⁹ Third Compliance Filing at 8.

¹⁰ PJM 205 Filing at 7 (emphases added).

¹¹ *Id.* (“PJM proposes to file by May 1, 2024, either a motion asking the Commission to make the enclosed revisions effective July 1, 2024 – to allow participation in the 2026/2027 BRA which is to be held in December 2024, or an informational report on the implementation status and a projected effective date.”).

¹² Order at P 32.

participating in its markets.¹³ Today's order expounds on this issue further in addressing the PJM 205 Filing on this issue:

[The Commission is] not persuaded that a potential delay in the implementation of the DER Aggregator Participation Model by February 2, 2026 is reasonable grounds to preemptively establish an indefinite effective date in this case. While PJM correctly notes that its compliance with a number of issues related to Order No. 2222 remain pending before the Commission, PJM fails to demonstrate that an indefinite effective date is just and reasonable under these circumstances given Order No. 2222's requirement that each RTO/ISO propose a "reasonable implementation date" that implements the final rule "in a timely manner."¹⁴

8. This pronouncement rings hollow to me given the Commission's failure to directly grapple with what PJM said: it is not simply a problem that PJM has filings "pending before the Commission," but rather it is that PJM is hamstrung by its inability to divine (i) how the Commission will rule on its compliance filings (or whether still other filings will be required) and (ii) when the Commission will do so. Moreover, it's not that PJM doesn't want to move forward; it's that PJM should not be required to invest time and resources without assurance that it is headed down a path that this Commission will ultimately bless.

9. I concur in today's order, but just barely; today's order appears consistent with the Commission's prior interpretation and application of Order No. 2222. It must be clearly recognized, however, that PJM's requests under consideration in today's order are unsurprising to any observer of the Order No. 2222 compliance process: the indefiniteness of the timeline PJM proposes is based on the indefiniteness of the Order No. 2222 compliance process.¹⁵ As I have said before, I do not blame PJM for the Order No. 2222 compliance problems it has encountered in this process.¹⁶ In its filing here,

¹³ *Id.* P 29.

¹⁴ *Id.* P 33; *see also id.* P 29.

¹⁵ As noted herein, PJM's Fourth Compliance Filing was filed on September 1, 2023 and currently has a number of filed comments and protests. My vote here does not reflect prejudgment of that matter.

¹⁶ First Compliance Order, (Christie, Comm'r, concurring at P 3) (emphasis in original) (footnotes omitted) ("Let me emphasize *I do not blame* PJM in any way for this complex and complicated compliance process. PJM did not ask for Order No. 2222 and has devoted enormous amounts of time and effort to try to implement it, as have other RTOs. It is indeed ironic that almost simultaneous with this order, PJM has just announced that it faces the prospect of losing nearly 40 gigawatts of dispatchable

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PJM informed the Commission of the problem it faces. If time later judges this order to have been ineffective – or worse, damaging to PJM’s market operation – it will not have been PJM’s delay in identifying the problem and relaying its concern that is the reason.

For these reasons, I respectfully concur.

Mark C. Christie
Commissioner

generation by 2030, a loss of essential resources that will clearly threaten reliability.”).

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