

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.) **Docket Nos. ER15-623-000**
and EL15-29-000

Independent Market Monitor for PJM)
v. **Docket No. EL19-47-000**
PJM Interconnection, L.L.C.

(Not consolidated)

**REQUEST FOR LEAVE TO ANSWER AND ANSWER OF
CALPINE CORPORATION AND THE ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”),¹ Calpine Corporation (“Calpine”) and the Electric Power Supply Association (“EPSA”)² respectfully request leave to answer³ and answer the comments filed on December 16, 2019, by the Independent Market Monitor (the “IMM”)⁴ for PJM Interconnection, L.L.C. (“PJM”),⁵ in the above-captioned proceedings. As explained herein, even assuming that any modifications are required with respect to the number of Performance

¹ 18 C.F.R. §§ 385.212, 385.213 (2019).

² EPSA is the national trade association representing competitive power suppliers in the U.S. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. EPSA seeks to bring the benefits of competition to all power customers. This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

³ The Commission regularly accepts otherwise impermissible answers that assist the Commission’s decision-making. *See, e.g., ISO New England Inc.*, 169 FERC ¶ 61,195 at P 19 (2019); *Midcontinent Indep. Sys. Operator, Inc.*, 169 FERC ¶ 61,173 at P 24 (2019); *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,168 at P 4 (2019).

⁴ Comments of the Independent Market Monitor for PJM, Docket Nos. ER15-623-000, *et al.* (filed Dec. 16, 2019) (the “IMM Comments”).

⁵ Capitalized terms not otherwise defined herein have the meaning set forth in PJM’s Open Access Transmission Tariff (the “Tariff”).

Assessment Intervals (“PAI”) currently assumed under PJM’s Reliability Pricing Model (“RPM”) rules, the relief requested by the IMM in its comments and in its pending complaint against PJM in Docket No. EL19-47-000⁶ is unjust, unreasonable, and antithetical to the Capacity Performance framework, which relies on the threat of stringent penalties and robust bonuses to ensure that capacity resources will be available when required for reliability.

I.

BACKGROUND

The IMM Comments argue that PJM’s November 27, 2019 informational filing⁷ demonstrates that the existing RPM rules are flawed because they assume that there will be 360 PAI in a delivery year,⁸ while “PJM has reported zero, six and 18 PAI for the three delivery years since the implementation of the capacity performance design.”⁹ The IMM Comments further claim that the use of a PAI that is too high results in an “overstated” default Market Seller Offer Cap (“MSOC”).¹⁰ The IMM therefore –

recommends that PJM develop a forward looking estimate for the Balancing Ratio (B) during PAIs to use in calculating the MSOC. Both H and B parameters should be included in the annual review of planning parameters for the Base Residual Auction, and should

⁶ See Complaint of the Independent Market Monitor for PJM, Docket No. EL19-47-000 (filed Feb. 21, 2019) (the “EL19-47 Complaint”).

⁷ Informational Filing on the use of 30 hours as the number of Performance Assessment Hours, Docket Nos. ER15-623-000, *et al.* (filed Nov. 27, 2019) (the “Informational Filing”).

⁸ This is equivalent to 30 Performance Assessment Hours (“PAH”) in the delivery year. See IMM Comments at 3 (explaining that PJM moved from a PAH to a PAI metric when it switched to five minute billing).

⁹ *Id.* at 4.

¹⁰ *Id.* at 2.

incorporate the actual observed reserve margins, and other assumptions consistent with the annual IRM study.¹¹

At the same time, the IMM requests that, on an interim basis, the Commission grant the relief requested in the EL19-47 Complaint, wherein the IMM requested that the “PAI should be set to a level consistent with a reasonable and supportable expectation of PAI, five PAH or 60 PAI.”¹² As it did in the EL19-47 Complaint,¹³ the IMM “recommends that the Nonperformance Charge Rate be left at its current level.”¹⁴

II.

COMMENTS

As an initial matter, the IMM Comments represent an impermissible new complaint or an impermissible amendment to the pending EL19-47 Complaint. The Commission has long made clear that any person seeking to challenge existing market rules should file a separate complaint, rather than trying to embed such a challenge in other pleadings.¹⁵ The IMM already has its EL19-47 Complaint pending before the Commission regarding the number of PAI/PAH assumed under

¹¹ *Id.* at 6.

¹² EL19-47 Complaint at 20.

¹³ *See id.* at 17 (“To adjust the default MSOC using a reasonable and supportable estimate of H, the Market Monitor proposes using 60 intervals (5 hours) as the estimate for H, while keeping the nonperformance charge rate unchanged.”).

¹⁴ IMM Comments at 6.

¹⁵ *See, e.g., Public Service Co. of Colorado*, 139 FERC ¶ 61,223 at P 25 (2012) (noting that the Commission has clearly articulated that complaints must be made in separate pleadings and not included in interventions/protests or requests for rehearing); *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,116 at P 16 & n.22 (2009) (holding that it is impermissible to bring a complaint under Section 206 of the Federal Power Act in the form of a protest), *on reh’g*, 131 FERC ¶ 61,058, *reh’g denied*, 132 FERC ¶ 61,255 (2010); *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,248 at P 5 (2004) (noting that the Commission has consistently rejected efforts to combine complaints with other types of filings); *Consolidated Edison Co. of N.Y.*, 97 FERC ¶ 61,241 at 62,092 & n.14 (2001) (explaining that the Commission has consistently rejected efforts to treat various filings as Section 206 complaints).

the existing RPM rules. To the extent that the IMM now wishes to modify the relief it requested in the EL19-47 Complaint,¹⁶ it should have done so by filing an amended complaint that would be properly noticed and subject to comment, rather than doing so in the form of comments on PJM's Informational Filing. Indeed, permitting the IMM to challenge PJM's PAI/PAH rules here would be particularly unfair given that, in requiring PJM to submit informational filings regarding the 30 PAH assumption, the Commission made clear that any such filing would be "for informational purposes only and will not be noticed for comment or subject to Commission order."¹⁷

In any event, even assuming that the IMM Comments were procedurally proper, or that the IMM has satisfied its burden to demonstrate that PJM's existing rules with respect to the use of 30 PAH/360 PAI are unjust and unreasonable, there is no basis for the IMM's requested relief. As explained at length in the comments filed by Calpine, EPSA and others in response to the EL19-47 Complaint,¹⁸ PJM's Capacity Performance structure relies on strict penalties that are intended to "provide incentive to capacity sellers to invest in and maintain their resources by tying capacity revenues more closely with real-time delivery of energy and reserves during emergency system conditions."¹⁹ Under the RPM rules, a resource that fails to perform during a PAI is assessed a Non-Performance Charge that is based on its Performance Shortfall and the Non-Performance Charge Rate, where the Non-Performance Charge Rate is calculated based on "an estimate of

¹⁶ See IMM Comments at 6.

¹⁷ *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 at n.142 (2015) ("CP Initial Order"), *on reh'g*, 155 FERC ¶ 61,157 (2016) ("CP Rehearing Order") (together, the "CP Orders"), *aff'd sub nom. Advance Energy Mgmt. Alliance v. FERC*, 860 F.3d 656 (D.C. Cir. 2017).

¹⁸ See Comments of the Indicated Parties, Docket No. EL19-47-000 (filed Apr. 15, 2019) (the "EL19-47 Indicated Parties Comments").

¹⁹ CP Initial Order, 151 FERC ¶ 61,208 at P 158.

30 hours of Emergency Actions”²⁰ Any collected penalties are then distributed as bonus payments among the resources that performed better than expected.²¹ As the Commission recognized, a competitive offer properly incorporates expectations of these penalties and bonus payments.²² The default MSOC is therefore intended to represent the amount of potential bonus payments that a capacity resource will forego, and offers at or below the default MSOC are not deemed to be an exercise of market power. Accordingly, the 30 PAH/360 PAI assumption underlies both the Non-Performance Charge Rate and the default MSOC.²³

The IMM, however, now seeks to myopically reduce the PAI used in the default MSOC calculation, while leaving the Non-Performance Charge Rate untouched. As in the EL19-47 Complaint, the IMM puts forward no valid justification for this one-sided approach. To the contrary, and as discussed in the EL19-47 Indicated Parties Comments, the IMM’s recommendation would undercut the rationale underlying the default MSOC (*i.e.*, that the default MSOC is intended to represent the amount of foregone bonus payments). Even more critically, the IMM is essentially arguing that the Non-Performance Charge Rate should be calculated using a PAI that the IMM itself is claiming is too high. This, in turn, would result in penalties and bonuses that are too low to properly incentivize resources to perform when needed, thereby undercutting the intent and design of the Capacity Performance construct.

In testimony supporting the EL19-47 Indicated Parties Comments, Dr. Roy J. Shanker explained that, to the extent the Commission finds that any changes to the PAI/PAH assumptions

²⁰ *Id.* at P 163.

²¹ *See* Tariff, Attachment DD, § 10A(g).

²² *See* CP Initial Order, 151 FERC ¶ 61,208 at P 163; CP Rehearing Order, 155 FERC ¶ 61,157 at P 175.

²³ *See* EL19-47 Indicated Parties Comments at 4-6 (describing relevant rules).

are required, it should modify the PAI/PAH used in both the Non-Performance Charge Rate and default MSOC calculation. This approach would ensure that the RPM rules continue to provide performance incentives through higher penalties and bonuses, while also fully addressing the IMM's concerns regarding market power.²⁴ Dr. Shanker further explained that the IMM's recommendation of five PAH is much too low. While Dr. Shanker conducted his own analysis of the appropriate PAH, he acknowledged that his recommendation was only intended to capture the low end of the range of appropriate PAH, and that his calculations would need to be adjusted using additional data from PJM.²⁵ In any event, regardless of whatever PAH is ultimately found to be appropriate, it is critical that such PAH be used in the calculation of the Non-Performance Charge Rate to ensure that the Capacity Performance construct continues to provide the necessary financial incentives for resources to perform when needed.

²⁴ *See id.* at 11-17.

²⁵ *See id.* at 17-20 (explaining that the low end of the range of the appropriate PAH would be 11.5 to 17 hours).

III.

CONCLUSION

WHEREFORE, Calpine and EPSA respectfully request that the Commission accept this Answer and take it under consideration.

Respectfully submitted,

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Dated: January 10, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on each person designated on the official service lists compiled by the Secretary of the Federal Energy Regulatory Commission in these proceedings.

Dated at Washington D.C., this 10th day of January, 2020.

/s/ Neil L. Levy
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