

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

PJM Interconnection, L.L.C.)

Docket No. EL19-58-002

**COMMENTS OF THE PJM POWER PROVIDERS GROUP AND
THE ELECTRIC POWER SUPPLY ASSOCIATION**

In accordance with the Federal Energy Regulatory Commission’s (the “Commission”) July 13, 2020, Notice of Filing,¹ the PJM Power Providers Group (“P3”)² and the Electric Power Supply Association (“EPSA”)³ (jointly, “P3/EPSA”) respectfully file these comments in conditional support of PJM Interconnection, L.L.C.’s (“PJM”) July 6, 2020, compliance filing (“PJM Compliance Filing”) in the above-referenced proceedings.⁴ As further explained herein, while the substance of the tariff changes proposed in PJM’s Compliance Filing complies with the requirements of the Commission’s May 21 Order, PJM’s proposal to delay the implementation of

¹ Notice of Filing, PJM Interconnection, L.L.C., Docket No. EL19-58-002 (July 13, 2020).

² P3 is a non-profit organization that supports the development of properly designed and well-functioning markets in the PJM region. Combined, P3 members own approximately 67,000 megawatts of generation assets, produce enough power to supply over 50 million homes in the PJM region covering 13 states and the District of Columbia. For more information on P3, visit www.p3powergroup.com. The comments contained in this filing represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue.

³ 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.

⁴ *PJM Interconnection, L.L.C., Docket Nos. EL19-58-002; ER19-1486-00 Compliance Filing*, dated July 6, 2020 (“PJM Compliance Filing”). EPSA and P3 are parties to Docket No. EL19-58-000. See *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,153 at P 17 & Appendix B (2020) (“May 21 Order”). As such, they are automatically parties to this and other subsequent sub-dockets of Docket No. EL19-58. See *Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶ 61,131 at P 5 (2007) (“When an entity is already a party in a particular docket, it need not file a separate motion to intervene in individual subdockets to maintain its party status.”).

these changes until June 1, 2022 is inconsistent with the requirements of the May 21 Order and will unnecessarily result in the continued application of market rules that the Commission has expressly found to be unlawful under the Federal Power Act (the “FPA”). Accordingly, P3/EPSCA urge the Commission to require PJM to implement the substantive changes proposed in PJM’s Compliance Filing by May 21, 2021, or, at latest, October 15, 2021. Even if the Commission is not prepared to impose a firm deadline on PJM, it should require PJM to submit a report on its progress towards implementation by May 21, 2021.

I. Background

On March 29, 2019, PJM submitted separate filings proposing revisions to identical provisions of the PJM Open Access Transmission Tariff (the “Tariff”) and the Amended and Restated Operating Agreement of PJM (the “Operating Agreement”) relating to procurement of operating reserves.⁵ Because PJM lacks authority to unilaterally propose revisions to the Operating Agreement, the latter filing was submitted pursuant to section 206 of the FPA and stated that the currently effective operating reserve rules are unjust and unreasonable. PJM requested Commission action by December 15, 2019, in order to give it “sufficient time to implement the proposed revisions, including the necessary software changes,” on June 1, 2020.⁶

After a comprehensive review of the record in these proceedings, the Commission agreed that the currently effective rules are unjust and unreasonable, stating:

We find that PJM has met its burden under section 206 of the FPA to show that its current reserve market is unjust and unreasonable. PJM presents record evidence that its reserve market is systematically failing to acquire within-market the reserves

⁵ PJM Interconnection, L.L.C., Docket No. EL19-58-000, Enhanced Price Formation in Reserve Markets of PJM Interconnection, L.L.C. (filed Mar. 29, 2019); PJM Interconnection, L.L.C., Docket No. ER19-1486-000, Enhanced Price Formation in Reserve Markets of PJM Interconnection, L.L.C. (filed Mar 29, 2019) (collectively, “PJM March 29 Application”).

⁶ PJM March 29 Application at 115-16.

necessary to operate its system reliably, to yield market prices that reasonably reflect the marginal cost of procuring necessary reserves, and to send appropriate price signals for efficient resource investment. PJM also demonstrates that the reserve products it procures in the day-ahead and real-time markets produce poor incentives for resource performance and inhibit efficient procurement of the types of reserves needed to address various operational uncertainties.⁷

The Commission largely accepted PJM’s proposed replacement rate as just and reasonable and directed PJM to submit a compliance filing proposing the required tariff revisions within 45 days.⁸

While generally accepting PJM’s filings, the Commission found that “adoption of the proposed [reserve market] revisions” rendered the historical Energy and Ancillary Services (“E&AS”) Offset used in PJM’s capacity market unjust and unreasonable.⁹ Accordingly, the Commission directed PJM “to implement a forward-looking E&AS Offset that reasonably estimates expected future energy and ancillary services revenues for all Tariff provisions that rely on a determination of the E&AS Offset (e.g., Net CONE).”¹⁰ On July 1, 2020, the Commission granted PJM’s request for a 30-day extension (until August 5) to submit a methodology for developing the forward-looking E&AS Offset.

In the May 21 Order, the Commission emphasized the need for PJM to implement the replacement rate approved therein “as early as practicable.”¹¹ Specifically, the Commission found that:

As part of its further compliance filing, we direct PJM to propose an effective date **as early as practicable** that will allow it sufficient time to implement the revisions directed herein, including any necessary software changes. We recognize the interaction between

⁷ May 21 Order, P 74.

⁸ *See id.* at P 2.

⁹ *Id.*

¹⁰ *Id.* at P 320.

¹¹ *Id.*

the directives in this order and the pending revisions to the capacity market minimum offer price rules in Docket Nos. EL16-49-000 et al. PJM's compliance filing should therefore present an implementation schedule for the instant revisions that appropriately harmonizes the revisions here with ongoing revisions in the other proceeding while minimizing any auction delays.¹²

In PJM's Compliance Filing, PJM acknowledged the May 21 Order's direction to present a schedule for implementing the reserve market changes and the forward-looking E&AS Offset that "allows the reserve market changes to go into effect 'as early as practicable' and 'appropriately harmonizes' implementation of the reserve market changes and the forward-looking E&AS Offset with the capacity market changes pending in Docket Nos. EL16-49, et al., "while minimizing any [capacity] auction delays."¹³ PJM proposes to implement on May 1, 2022, the reserve market changes accepted in the May 21 Order and included in this compliance filing, and to implement the directed forward-looking E&AS Offset beginning in the Base Residual Auction for the Delivery Year starting June 1, 2022. Specifically, PJM states that due to the "complexity" of the reserve market changes, and the need to "develop requirements, code the software changes, and conduct extensive testing and quality assurance," implementation of the reserve market changes will not occur until "likely sometime between January 1, 2022, and June 1, 2022."¹⁴

II. Comments

As the Commission noted in its May 21 Order, P3 and EPSA were just two of the many parties that agreed with PJM that its current reserve market was unjust and unreasonable and that supported the reforms proposed in the PJM March 29 Application.¹⁵ Their support was consistent with P3's and EPSA's longstanding support for improvements to PJM's reserve market design in

¹² May 21 Order, P 2 (footnote omitted; emphasis added).

¹³ PJM's Compliance Filing at 13 (quoting May 21 Order, P 2).

¹⁴ *Id.* at 14 (emphasis added; footnote omitted).

¹⁵ See May 21 Order, P 42 (citing P3 Comments at 3-6; EPSA Comments at 5-13).

order to improve price formation and transparency and provide a better market design. With the Commission having expressly found that the currently effective reserve market rules are unjust and unreasonable and having directed PJM to implement the proposed reforms “as early as practicable,” it is disappointing, to say the least, that PJM proposes to delay implementation of these reforms until May 1, 2022, nearly *two years* after the issuance of the May 21 Order.

Significantly, while PJM offers a litany of excuses for the delayed implementation of the proposed operating reserve market reforms that it proposed roughly 18 months ago, it does not claim that any of the delay is attributable to the Commission’s requirement that it modify the E&AS Offset or, indeed, to any of the modifications required by the Commission. Notwithstanding PJM’s assertion to the contrary, PJM’s proposed implementation schedule for the operating reserve market rules changes appears to have little or nothing to do with “harmonizing the changes in this proceeding with the pending capacity market changes,” and this harmonizing will be addressed in its upcoming E&AS Offset compliance filing through a proposed effective date for the modified E&AS Offset that coincides that for pending revisions to the capacity market rules.¹⁶ Of course, that is all consistent with the fact that, in the May 21 Order, the Commission was concerned about the possibility that implementation of the modified E&AS Offset would further delay the next capacity auction, for the 2022/2023 delivery year, and had no inkling that there was any risk of PJM failing to implement the proposed reforms before that delivery year.

There is no justification for retaining rules found to be unjust and unreasonable – and thus unlawful under the FPA¹⁷ – for this long, particularly when the PJM March 29 Application contemplated implementation of these same reforms within *five and a half months* of approval

¹⁶ PJM’s Compliance Filing at 13.

¹⁷ See 16 U.S.C. § 824d(a) (2018) (stating that any “rate or charge that is not just and reasonable is hereby declared to be unlawful”).

and approximately 14 months of filing. As in past cases where regulated entities sought to delay implementation of a just and reasonable rate practice for a practice found to be unjust and unreasonable, accepting PJM’s proposed implementation schedule will “only perpetuate the existing unjust and unreasonable [rate practice]” and “delay the just and reasonable [practice] which the Commission is obligated to fix”¹⁸

In a masterful piece of understatement, PJM concedes that “[t]his software implementation timeframe is longer than the 14-months PJM had indicated in its initial filing of these changes”¹⁹ PJM weakly claims that “other priorities,” including changes required by other Commission orders, having made implementation as quickly as contemplated by the PJM March 29 Application “impossible.”²⁰ Even if these “other priorities” excuse PJM’s failure to work on the necessary software changes while the PJM March 29 Application was pending before the Commission, as PJM’s original June 1, 2020 implementation date contemplated, it was incumbent on PJM to adjust its priorities in light of the Commission’s finding in the May 21 Order that the existing operating reserve market rules are unjust and unreasonable.

PJM further asserts that “the software and system changes are also more complex than initially expected, and as such, more time will be required to ensure they are thoroughly tested prior to implementation.”²¹ Again leaving aside the fact that PJM could have been working on these issues while the filings were pending, it is hard to accept that PJM’s initial estimates were

¹⁸ *Ceiling Prices; Old Gas Pricing Structure*, 36 FERC ¶ 61,102 at 61,255 (1986) (addressing implementation of changes in rate practices required by a Commission order under a provision of the Natural Gas Act analogous to Section 206 of the FPA). *See also, e.g., ISO New England Inc.*, 138 FERC ¶ 61,238 at P 40 (2012) (expressing concern about an independent system operator’s failure to propose a replacement rate where “the Commission ha[d] already made a finding that the existing tariff provisions are no just and reasonable, and [those provisions] remain[ed] in place solely until just and reasonable provisions can be implemented”).

¹⁹ PJM Compliance Filing at 14 n.38.

²⁰ *Id.*

²¹ *Id.*

this far off and that what was supposed to take 14 months will now take two years. It is equally hard not to suspect that the real timing issue here is that PJM needs to adjust its priorities consistent with the directives of, and findings in, the May 21 Order.

That the May 1, 2022 implementation date has more to do with PJM’s priorities than with genuine technical obstacles is evidenced by PJM’s admission that, even under its less than ambitious schedule, it could implement the changes “sometime between January 1, 2022, and June 1, 2022.”²² PJM’s choice of a date at the outer end of this range, May 1, 2022, is all the more glaring in light of the fact that, while not mentioned in PJM’s Compliance Filing, PJM stakeholders voted overwhelmingly for PJM to implement the reserve market changes “as soon as possible,” rather than PJM’s preference of a June 1, 2022 timeframe. Specifically, when put to a vote of the Market Implementation Committee, 63% of stakeholders urged that the changes be implemented “as soon as possible,” while only 30% supporting delaying implementation until June 1, 2022.²³

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Implementation Time

A question exists as to whether PJM should synchronize implementation of the reserve market changes with the delivery year for which the forward-looking E&AS Offset will be first used. Given the complexity of the changes and the time likely needed for development, testing and implementation, should PJM prioritize synchronizing the implementation of the reserve market pricing changes on June 1, 2022 with the start of the delivery year, or, should PJM prioritize implementing the reserve market changes as soon as it is technically able to do so?

Implementation Time	% in Favor
As soon as possible	63%
June 1, 2022	30%
Other	7%

²² *Id.* at 14 (footnote omitted).

²³ PJM MIC Special Session – Reserve Price Formation Order - Reserve Price Formation Poll Results, June 30, 2020, p. 4.

Notwithstanding the Commission's May 21 Order and the clearly expressed will of its stakeholders, PJM has proposed to delay implementation until May 1, 2022. The Commission can and should demand better of PJM.

The Commission should require PJM to implement the changes proposed in PJM's Compliance Filing on May 21, 2021, or, at latest, on October 15, 2021. That would still give PJM nearly 12-17 months from the issuance of the May 21 Order to make the necessary software changes and test them. It would also allow for implementation "during a shoulder period in which the region's weather is usually mild and the strain on the system is comparatively low."²⁴ Even accepting PJM's claim that it will not be ready to implement the changes until January 1, 2022, there is no reason it cannot implement the changes at some period during 2021. A May 21, 2021 or, at latest, October 15, 2021 implementation date would give PJM more than sufficient time to implement the changes and would also provide for implementation during a shoulder period.

At a bare minimum, if the Commission is not going to reject PJM's proposed implementation schedule and require implementation by October 15, 2021 or March 1, 2022, the Commission should require PJM to submit a report on the status of its software implementation efforts by May 21, 2021 (*i.e.*, within one year after the issuance of the May 21 Order). If, at that time, PJM still proposes to delay implementation until May 1, 2022, it should be required to explain why. The filing of such a report will provide both PJM and the Commission with an opportunity to revisit the timing issue. Such a requirement would be consistent with past reporting requirements used to monitor progress with Commission compliance directives and to ensure a

²⁴ PJM's Compliance Filing at 14.

proper balancing of software challenges and other factors against Commission market design objectives.²⁵

III. Conclusions

Wherefore, for the foregoing reasons, P3/EP SA urge the Commission to accept the proposed tariff revisions proposed in PJM's Compliance Filing but to require that PJM (1) implement the required operating reserve market reforms on May 21, 2021 or, at latest, on October 15, 2021 or (2) require PJM to file a report on its progress towards implementing those reforms by May 21, 2021.

Respectfully submitted,

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July 27, 2020

²⁵ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,043 at P 86 (2005).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 27th day of July, 2020.

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