

(“CP Transition Incremental Auctions”), in contravention of its Open Access Transmission Tariff (“Complaint”).²

On June 30, 2015, the Commission issued a Notice of Complaint setting the deadline for interventions and protests to the Complaint as July 9, 2015. On July 2, 2015, pursuant to Rule 214 of the Rules of Practice and Procedure of the Commission, 18 C.F.R. § 385.214 (2015), P3 submitted a doc-less motion to intervene.

P3 respectfully submits this protest, as more fully described herein, opposing the AEMA Coalition Complaint and requests that the Commission dismiss AEMA’s Complaint.

I. PROTEST

The AEMA Coalition Complaint should be dismissed. In its June 9, 2015, Order, the Commission approved without modification specific tariff provisions submitted by PJM regarding the CP Transition Incremental Auctions for the 2016-17 and 2017-18 delivery years. The AEMA Coalition and others were on notice at least by March 2015 that DR and EE were not included in the CP Transition Incremental Auctions. If the AEMA Coalition or others had a concern, they should have indicated so prior to the issuance of a final order from the Commission. To raise this issue in a complaint 21 days following the Commission’s explicit approval of the Tariff provisions in question and to ask the Commission to act within 10 days of the first of the two scheduled CP Transition Incremental Auctions is troubling at best and dangerous at worst.

² *AEMA Coalition v. PJM Interconnection, L.L.C., Complaint and Request for Fast Track Processing of the Advanced Energy Management Alliance Coalition*, Docket No. EL15-80-000, June 29, 2015 (“AEMA Coalition Complaint”).

A. FERC Accepted PJM's Proposed Transition Mechanisms

In its June 9, 2015, Order, the Commission accepted without modification PJM's proposal to conduct two "CP Transition Incremental Auctions" for the 2016/17 and 2017/18 delivery years. The purpose of these auctions was to procure sufficient commitments of generation resources capable of meeting capacity performance requirements in order to meet PJM's short term reliability needs. The Commission reviewed PJM's proposal and proposed Tariff noting the role of generation resources and DR and EE during the transition period.³ The Commission stated that, "PJM proposes to hold two Incremental Auctions to seek voluntary offers of Capacity Performance Resources: one for the 2016-17 delivery year, covering up to 60 percent of PJM's reliability requirement; and the second for the 2017-18 delivery year, covering up to 70 percent of PJM's reliability requirement. PJM states that **external generation resources** will generally be permitted to offer into these auctions, subject to their receipt of a capacity import limit exception."⁴ In referring to this, the Commission cites to the PJM proposed Tariff at Attachment DD, section 5.14D, "(allowing **any generation resource** to be offered, regardless of whether it is already committed to provide capacity for the relevant delivery year")⁵

³ As P3 has previously stated in comments in the Capacity Performance docket, ER15-623-000, P3 does not believe that PJM has the legal authority to include DR as a capacity resource since FERC does not have legal jurisdiction over DR. On January 15, 2015, the United States Solicitor General on behalf of the Federal Energy Regulatory Commission filed a Petition for a Writ of Certiorari in the Supreme Court of the United States seeking review of the United States Court of Appeals for the District of Columbia Circuit's *EPSA v FERC* decision, *see Electric Power Supply Ass'n v. FERC*, 753 F.3d 216 (D.C. Cir. 2014), *cert. granted*, 135 S.Ct. 2049 (2015), vacating and remanding FERC'S Order 745 on DR compensation. On January 15, 2015, EnerNoc, In., *et al.*, also filed a Petition for a Writ for Certiorari in the Supreme Court of the United States in the same matter. On May 4, 2015, the United States Supreme Court granted certiorari

⁴ *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 at P 220, (emphasis added). ("FERC CP Order")

⁵ FERC CP Order at P 220, FN 189, (emphasis added).

and proposed Tariff at Attachment DD, section 5.14(B)(3), (“requiring, among other things, that the **external generation resource** be ‘reasonably expected’ to be pseudo-tied into PJM by the applicable delivery year”).⁶

The Commission also addressed DR and EE stating that, “PJM also proposes, on an interim basis (i.e., for 2018-19 and 2019-20 delivery years), and up to a maximum of 20 percent of PJM’s reliability requirement, that certain resources not capable of sustained, predictable operation (namely, Intermittent Resources, Capacity Storage Resources, **Demand Resources, and Energy Efficiency Resources**) be allowed to submit, on an aggregated basis, Capacity Performance Resource offers, Base Capacity Demand Resource offers, or coupled offers, provided that the relevant resources are located within the same Locational Deliverability Area.”⁷ Notably, this provision pertains to the Delivery Year starting with 2018-2019 and specifically excludes the Delivery Years covered by the CP Transition Incremental Auctions.

Additionally, there is only one subsection, Attachment DD 5.14D(3), setting forth who may offer in the CP Transition Incremental Auctions; and that subsection makes clear that only generation resources may offer. Even if one accepted the AMEA Coalition’s view that the lack of an offer provision applicable to DR means that DR is free to offer, then no limitations would apply to DR. Thus, since no limitations apply, the same DR resource could participate in **both** a FRR plan **and** CP. Such a double counting could result in a significant reliability issue and would certainly not be PJM’s intent.

⁶ FERC CP Order at P 220, FN 190, (emphasis added).

⁷ FERC CP Order at P 222 (emphasis added).

If the Commission had a concern with the PJM's proposal to only allow generation resources to participate in the CP Transition Incremental Auctions, the Commission could have rejected PJM's proposed Tariff language or ordered PJM to further clarify its proposed Tariff language. The Commission did not. Instead, the Commission approved PJM's proposed transition mechanisms.⁸

B. The AEMA Coalition and Others Could Have and Did Not Raise Their Concerns in an Appropriate and Timely Fashion

The AEMA Coalition and others were on notice in March 2015, three months prior to the issuance of a final order, that DR and EE were not included in the CP Transition Incremental Auctions. On March 5, 2015, in a FAQ, PJM clearly stated that the “DR is not permitted to participate in the transition auctions, only Generation Capacity Resources.”⁹ The AEMA Coalition actually attaches this FAQ to its Complaint as Exhibit 1, but fails to mention the date of March 2015 as the disposition of this issue. If there was a concern from the AEMA Coalition or even confusion on this point, any of the dozen or so of PJM members who are members of the complaining coalition should have raised this in the Capacity Performance docket much earlier.¹⁰ Had this issue been raised by any of the parties to the case in the Capacity Performance dockets, PJM would have been able to respond and the Commission would have been able to consider

⁸ FERC CP Order at P 253.

⁹ <http://www.pjm.com/~media/committees-groups/committees/elc/postings/motion-for-leave-to-answer-and-answer-faqs.ashx> Item 7. *See also*, AEMA Coalition Complaint, Exhibit 1, PJM FAQs, item 7.

¹⁰ In a Request for Expedited Clarification Or, In the Alternative, Expedited Rehearing, the Joint Consumer Representatives, stated that the issue of Annual Demand Resources excluded from Transition Auctions “was simply not a point of focus in the many pleadings, affidavits, and exhibits that were filed . . .” in the Capacity Performance proceeding. *See PJM Interconnection, L.L.C.*, Request for Expedited Clarification Or, In The Alternative, Expedited Rehearing, Docket Nos. ER15-623-000, EL15-29-000, ER15-623-001, at p. 13.

those comments. Instead this coalition has placed the Commission in the unfortunate position of being asked to issue a determination a mere 10 days before the first of the two CP Transition Incremental Auctions is scheduled to take place.

If the AEMA Coalition or others had this concern, they should have indicated so during the appropriate comment period. If the Commission decides to grant the relief request by the Complaint, it would lead to the absurd result of having PJM being forced to change its Tariff a few days before a capacity auction is to occur. The logistics of such a change are daunting on their face given the procedural requirements of changing a tariff. Logistics notwithstanding, the practical impact associated with a fundamental policy change so quickly after the Commission's decision and so close to two very important CP Transition Incremental Auctions should be completely unpalatable. As the Commission has held, collateral attacks on final orders are strongly discouraged.¹¹ Further, the Commission has previously not allowed a complainant to attack provisions on complaint when it failed to raise its concerns in the prior relevant proceedings.¹² As such, the AEMA Coalition Complaint should be dismissed.

¹¹“Collateral attacks on final orders and relitigation of applicable precedent, especially by parties that were active in the earlier case, thwart the finality and repose that are essential to administrative efficiency, and are therefore strongly discouraged.” *Central Vermont Pub. Serv. Corp.*, 123 FERC ¶ 61,128, at P 35 (2008).

¹² *NSTAR Elec. Co. v. ISO New England, Inc.*, 120 FERC ¶ 61,261, at P 33 (2007).

II. CONCLUSION

P3 respectfully requests that the Commission consider these comments and dismiss the AEMA Coalition's Complaint.

Respectfully submitted,

On behalf of the PJM Power Providers Group

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July 9, 2015

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 9th day of July, 2015.

On behalf of the PJM Power Providers Group

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