

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

Virginia Electric and Power Company)

Docket No. ER20-2759

COMMENTS OF THE PJM POWER PROVIDERS GROUP

On August 27, 2020, Dominion Energy Services, Inc., on behalf of Virginia Electric and Power Company, doing business as Dominion Energy Virginia (“Dominion”), requested that the Federal Energy Regulatory Commission (the “Commission” or “FERC”) grant its request for a waiver of (or remedial relief from) the requirements of PJM Interconnection, L.L.C.’s (“PJM”) Tariff related to PJM’s calculation of the equivalent demand forced outage rate (“EFORD”)¹ of certain Dominion generation resources for the EFORD measurement period of October 1, 2019 to September 30, 2020 (“Waiver Request”). On August 28, 2020, the Commission issued a Notice of Filing, setting September 17, 2020, as the comment date.² The PJM Power Providers Group (“P3”)³ respectfully submits these comments in response to Dominion’s Waiver Request.

As explained more fully below, P3 agrees with Dominion that generators operating in PJM’s capacity market during the COVID-19 pandemic (“Pandemic”) encountered extreme circumstances that affected the normal operations of its generating units. However, while P3 can

¹ See PJM Manual 18, Section 4.2.5; Schedule 5, PJM Reliability Assurance Agreement (“RAA”); Attachment DD, Sections 5.6.1 and 6.6, PJM Open Access Transmission Tariff (“Tariff”).

² Combined Notice of Filing #1, Virginia Electric Power Company, Docket No. ER20-2759 (August 28, 2020).

³ 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.

commiserate with Dominion’s dilemma, the sought-after relief should not be granted. The circumstances facing Dominion were not unique and were faced, to different degrees, by most every generator in the PJM footprint during this time. Exceptions should not be made to accommodate one operator. Instead, the Commission should treat Dominion as P3 members would treat themselves and deny Dominion’s request for special treatment during a time when others were managing similar concerns and facing similar risks. If the Commission is persuaded that generators should be excused from the implications of having outages delayed by COVID-related travel and other restrictions, then it should grant an exception for all generators on a prospective basis, which would enable them to make decisions based on the same risks and potential alleviation from EFORd impacts.

I. Background

Dominion states, in part, that it participates in PJM’s Base Residual Auctions (“BRA”).⁴ The “Unforced Capacity” that each resource is allowed to offer into the BRA is limited by PJM’s calculation of the resources’ EFORd. Under PJM’s Tariff, the amount of capacity a resource can actually provide during the relevant Delivery Year can be impacted by PJM’s EFORd calculation. Dominion offered its Unforced Capacity from its generation resources into the BRA for the 2021/2022 Delivery Year in May 2018.⁵ According to PJM’s EFORd requirements, forced outages experienced by committed capacity resources between October 1, 2019 and September 30, 2020, can significantly impact the amount of Unforced Capacity available to meet a resource’s capacity obligations for the 2021/2022 Delivery Year in Dominion’s situation, it requires Dominion to secure replacement capacity during the Third Incremental Auction.⁶

⁴ Waiver Request, pp. 3-4.

⁵ Id., p. 4.

⁶ Id., p. 5.

Dominion asserts that it experienced extensions of planned and forced outages of several of its generation resources from March 22, 2020, through June 8, 2020, as a direct result of actions taken in response to the Pandemic. In particular, Dominion cites to the March 12, 2020, Executive Order 51, issued by Virginia Governor Ralph S. Northam, declaring a state of emergency due to COVID-19, as well as additional Executive Orders and declarations of a public health emergency.

Dominion states that because it was unable to bring its resources in planned/maintenance outages online before June 8, 2020, due to the Pandemic, beginning on June 8, 2020, PJM treated the resources as forced outages. Given the forced outages determination, Dominion claims that it will be “forced to secure replacement capacity in the Third Incremental Auction pursuant to Attachment DD, Section 5.4(d) of PJM’s Tariff.”⁷

Accordingly, Dominion requests that the Commission (1) waive the requirement that PJM take into consideration the forced outage periods for Dominion’s generation resources that were a direct result of the Pandemic; or alternatively, (2) grant remedial relief in line with the Commission’s April 2, 2020 *Proposed Policy Statement on Waiver of Tariff Requirements and Petitions or Complaints for Remedial Relief*,⁸ pursuant to Federal Power Act (“FPA”) Section 309.

Dominion claims that good cause exists to grant Dominion's requested waiver because it (1) is made in good faith; (2) is of limited scope; (3) addresses a concrete problem that will be remedied; and (4) does not have undesirable consequences.⁹

⁷ Id., p. 8.

⁸ Proposed Policy Statement on Waiver of Tariff Requirements and Petitions or Complaints for Remedial Relief, 171 FERC ¶ 61,156, at P 5 (2020) (“Proposed Policy Statement”).

⁹ Waiver Request, p. 2, citing Midcontinent Indep. Sys. Operator, Inc., 154 FERC ¶ 61,059, at P 14 (2016); Calpine Energy Serv., Inc., 154 FERC ¶ 61,082, at P 12 (2016); New York Power Auth., 152 FERC ¶ 61,058, at P 22 (2015); Indianapolis Power & Light Co., 149 FERC ¶ 61, 047 at P 64 (2014); PJM Interconnection, L.L.C., 146 FERC ¶ 61, 078 at P 38 (2014); Cal. Indep. Sys. Operator Corp., 146 FERC ¶ 61,184 at P 18 (2014); Southwest Power Pool, Inc., 148 FERC ¶ 61,013 at P 13 (2014); Midcontinent Indep. Sys. Operator, Inc., 146 FERC ¶ 61,132 at P 8 (2014).

II. Comments

While P3 sympathizes with the hardship faced by Dominion given the Pandemic, the waiver relief sought would indeed have undesirable consequences, as it would provide a preference to one utility's generation units to the exclusion of all other similarly-situated utilities in PJM's footprint. The impacts of COVID-19 did not distinguish among generators.

Specifically, it is likely that all electric generation units operating in PJM's energy and capacity markets experienced some form of hardship in terms of operations given the implementation of gubernatorial executive orders in response to the Pandemic beginning in March 2020. According to the National Governors Association, all of the PJM states, as well as the District of Columbia, have been under a State of Emergency, Public Health Energy, Disaster Declaration or State of Preparedness since early March 2020.¹⁰

Similarly-situated generators faced similar operational challenges in response to their respective state's executive emergency orders.¹¹

The courts have held that in order to survive an arbitrary and capricious review, FERC bears the burden to provide some reasonable justification for any adverse treatment of similarly situated parties. Thus, the D.C. Circuit Court of Appeals recently ruled that:

FERC bears the burden “to provide some reasonable justification for any adverse treatment relative to similarly situated competitors.” *ANR Storage Co. v. FERC*, 904 F.3d 1020, 1025 (D.C. Cir. 2018). To determine whether an agency must justify a prior contrary decision, therefore, we ask whether the regulated parties at issue are “similarly situated.” *See, e.g., W. Deptford Energy, LLC v. FERC*, 766 F.3d 10, 20 (D.C. Cir. 2014) (“It is textbook administrative law that an agency must provide[] a reasoned explanation for departing from precedent or treating *similar situations* differently, and Commission cases are no exception.”) (citations and quotation marks)

¹⁰ National Governors Association, Status of State COVID-19 Orders, <https://www.nga.org/state-covid-19-emergency-orders/>

¹¹ It is worth nothing that multiple nuclear units in PJM managed refueling outages during the pandemic. See, <https://outagecalendar.com/>

omitted) (emphasis added); *LeMoyne-Owen College v. NLRB*, 357 F.3d 55, 60–61 (D.C. Cir. 2004) (Roberts, J.) (“An agency is by no means required to distinguish every precedent cited to it by an aggrieved party. But where, as here, a party makes a significant showing that *analogous cases* have been decided differently, the agency must do more than simply ignore that argument.”) (citations omitted) (emphasis added).¹²

Therefore, while P3 can understand Dominion’s operational difficulties during the Pandemic, the Commission arguably cannot grant the company’s requested relief in a vacuum. Granting Dominion’s waiver request would call into question the potential need to give the same relief to all operators that had extended outages due to the Pandemic. P3 submits that granting the waiver request would result in undesirable consequences by unfairly discriminating against other operators that elected to manage plant outages during the Pandemic without extensions, or delayed outages with the accompanying risks associated with such delay. The ramifications of providing special treatment to one entity that handled its outages in a certain way would result in the “unintended consequences” that courts have cautioned could happen to “similarly situated” parties in “similar situations.”

At the very least, the Commission should only grant a waiver on a prospective basis and for all generators. Given the uncertainty surrounding the degree to which COVID-19 will spread this fall and winter, it is possible generation owners will face challenges similar to those faced last spring. If the Commission is persuaded that generators should be excused from the implications of having outages delayed by COVID-related travel and other restrictions, then it should grant an exception for all generators on a prospective basis. This will ensure that all generators are on an equal-playing field with respect to decisions about extending or delaying outages, knowing, before-hand, that they bear the same risks and the same potential to receive exemption from EFORd impacts. Retroactive relief should not be allowed because it is discriminatory.

¹² *Baltimore Gas and Electric Company v. FERC, et al*, (No. 18-1298) (D.C. Cir. 2020), pp. 7-8.

In order to ensure that unintended consequences do not occur, and that the Commission not be viewed as providing preferential treatment to one utility, at the expense of all other similarly-situated utilities, the Commission should deny Dominion's requested relief.

III. Conclusion

Wherefore, for the foregoing reasons, P3 urges the Commission to consider these comments and deny Dominion's request limited waiver or remedial relief.

Respectfully submitted,

On behalf of the PJM Power Providers Group

September 17, 2020

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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 17th day of September, 2020.

On behalf of the PJM Power Providers Group

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