

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

PJM Interconnection, L.L.C. ) Docket No. EL15-29-000

**COMMENTS**  
**OF THE PJM POWER PROVIDERS GROUP**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or the "Commission"), 18 C.F.R. § 385.212 (2014), the PJM Power Providers Group ("P3") respectfully submits these comments regarding the December 12, 2015, filing by PJM Interconnection, L.L.C. ("PJM"), pursuant to Sections 205 and 206 of the Federal Power Act ("FPA"),<sup>1</sup> that proposes reforms to PJM's Amended and Restated Operating Agreement ("Operating Agreement")<sup>2</sup> and related revisions in the PJM Open Access Transmission Tariff ("Tariff") to correct alleged deficiencies in those agreements on matters of resource performance and excuses for resource performance, in PJM-administered wholesale markets.<sup>3</sup> PJM requested an effective date for these requested changes of April 1, 2015.

The Commission initially established a deadline for interventions, comments, and protests for this filing of January 12, 2015. However, on December 24, 2014, the Commission

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<sup>1</sup> 16 U.S.C. §§824d and 824e.

<sup>2</sup> PJM notes that the referenced provisions in Schedule 1 of the Operating Agreement also are intended to encompass the identical, parallel provisions in Attachment K-Appendix of the Tariff.

<sup>3</sup> *PJM Interconnection, L.L.C.*, Docket No. EL15-29-000 (filed December 12, 2014) ("PJM Filing" or "PJM Resource Performance Filing").

issued a Notice Granting Extension of Time, setting January 20, 2015, as the deadline to file comments, interventions and protests.

On December 22, 2014, pursuant to Rule 214 of the Rules of Practice and Procedure of the Commission, 18 C.F.R. § 385.214 (2014), the PJM Power Providers Group (“P3”)<sup>4</sup> submitted a doc-less motion to intervene.

P3 respectfully submits comments, as more fully described herein.<sup>5</sup>

## **I. BACKGROUND**

PJM is proposing to make several revisions and amendments to its Tariff and Operating Agreement relating to resource performance in its energy market. These changes are meant to compliment the various Tariff and rule revisions that PJM is proposing to the design of its capacity markets in its Capacity Performance Filing (ER15-623-000). The proposed changes herein attempt to address four areas of PJM’s energy market rules that allegedly enable, or could enable, “unreasonable excuses for Market Participant performance in PJM’s markets.”<sup>6</sup> The proposed changes include:

- (1) Changes to the parameter limits that Market Sellers specify in Energy Market Offers for their generation capacity resource so that the parameter limits are based on

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<sup>4</sup> P3 is a nonprofit corporation dedicated to promoting policies that will allow the PJM region to fulfill the promise of its competitive wholesale electricity markets. P3 strongly believes that properly designed and well-functioning competitive markets are the most effective means of ensuring a reliable supply of power to the PJM region, facilitating investments in alternative energy and demand response technology, and promoting prices that will allow consumers to enjoy the benefits of competitive electricity markets. Combined, P3 members own over 87,000 megawatts of generation assets, own over 51,000 miles of transmission lines, serve nearly 12.2 million customers and employ over 55,000 people in the PJM region – encompassing 13 states and the District of Columbia. For more information on P3, visit [www.p3powergroup.com](http://www.p3powergroup.com)

<sup>5</sup> 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.

<sup>6</sup> PJM Resource Performance Filing, at p1.

- specific physical characteristics rather than economic or budgetary consideration allowed under the current rules;
- (2) Replacement of current force majeure provisions with a catastrophic force majeure definition which excuses market participant performance only in the most limited circumstances;
  - (3) Limiting the discretion of Market Sellers to declare their generation capacity resources as a Maximum Emergency Offer during certain extreme weather alerts or other more severe emergencies; and,
  - (4) Adding rules which allow PJM to withhold, withdraw or rescind prior approval of scheduled planned or maintenance generator outages during emergency conditions based on a 72 hour notice requiring a generator to return to normal operation.

While PJM urges the Commission to approve these proposed changes by April 1, 2015, the same requested effective date as its proposed changes in its Capacity Performance Filing, PJM states that the April 1, 2015, date herein is “less critical”<sup>7</sup> for the energy market changes than for the capacity market changes in the Capacity Performance Filing. PJM states that the capacity market changes proposed in the Capacity Performance Filing are intended to be implemented in the upcoming May 2015 Base Residual Auction (“BRA”) for the 2018/2019 Delivery Year. In contrast, PJM explains that energy market revisions can be implemented at any time, though it would be preferable to have the energy market reforms in place before the May 2015 BRA, so as to eliminate any uncertainty among Capacity Market Sellers about energy market rules that would most likely affect their capacity resources during the Delivery Year addressed by the May 2015 Auction.

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<sup>7</sup> PJM Resource Performance Filing, at p3.

## I. COMMENTS

### A. **PJM's Proposed, New Catastrophic Force Majeure Rule is Overly-Restrictive in its Creation and Would be Improperly Applied to Market Participants Should the Commission Grant PJM's Requested April 1, 2015 Effective Date.**

Although PJM states that its various force majeure rules and provisions have never been invoked, it proposes to make several changes to the current provisions, in addition to a proposed, new definition of “Catastrophic Force Majeure,” in order to circumvent the potential for a “wide range of excuses for non-performance (that) are incompatible with reasonable expectations of performance by Market Participants operating in PJM’s markets, including (the capacity market).”<sup>8</sup>

PJM proposes the creation of a new section 1.6.01 of the Operating Agreement to define Catastrophic Force Majeure as follows:

“Catastrophic Force Majeure” shall not include any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, or Curtailment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, unless as a consequence of any such action, event, or combination of events, either (i) all, or substantially all, of the Transmission System is unavailable, or (ii) all, or substantially all, of the interstate natural gas pipeline network, interstate rail, interstate highway or federal waterway transportation network serving the PJM Region is unavailable. The Office of the Interconnection shall determine whether an event of Catastrophic Force Majeure has occurred for purposed of the Agreement, the PJM Tariff, and the Reliability Assurance Agreement, based on an examination of available evidence. The Office of the Interconnection’s determination is subject to review by the Commission.<sup>9</sup>

As PJM states, the definition of Catastrophic Force Majeure explicitly excludes many of the events covered under “traditional” force majeure clauses, unless such events cause a

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<sup>8</sup> PJM Resource Performance Filing, at p16.

<sup>9</sup> PJM Resource Performance Filing, at p20.

catastrophe affecting all, or substantially all, of the PJM region.<sup>10</sup> PJM also proposes to apply these new provisions to all market participants, by stating that:

Catastrophic Force Majeure, which has significantly narrower protections than traditional force majeure provisions, should apply to all Market Participants and market transactions, including Capacity Performance Resources.<sup>11</sup>

P3 submits that this drastically narrowed definition of force majeure is unjust and unreasonable as applied to Market Participants, particularly due to the fact that it is unnecessarily narrow in its proposed application and, as applied, would improperly assign risk without appropriate compensation, on a retroactive basis, to Market Participants.

First, it is especially unreasonable to require Market Participants to bear the risk of “acts of God” under an exceptionally narrow definition. To require that traditional “acts of God,” for instances such as an explosion or storm, could only be used as an excuse for performance if all, or substantially all, of the entire PJM Region is affected, is far too draconian and unrealistic to impose upon Market Participants, particularly those who operate generating facilities that simply may be incapable of operating under localized, extreme conditions beyond their control. Indeed, this Commission has recognized the need not to penalize generators for significant, localized disturbances outside of their control.<sup>12</sup>

Equally as important, however, is the fact that PJM, either intentionally or unintentionally, is seeking to apply this overly-narrow definition of force majeure to all Market Participants on a *retroactive basis*. Although it may be arguable that a Market Participant could

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<sup>10</sup> PJM Resource Performance Filing, at p20.

<sup>11</sup> PJM Resource Performance Filing, at p18.

<sup>12</sup> *California Independent System Operator Corporation*, 139 FERC ¶61,207 (2012).

somehow plan for this type of risk and recover the associated costs of such risk in its Capacity Performance bid offer, that opportunity is not available for non-Capacity Performance products, such as the capacity that cleared in the 2011 through 2014 BRAs for the 2014-2015 through 2017-2018 Delivery Years, respectively, as well as future Base Capacity.

By requesting an April 1, 2015, effective date, PJM's proposed new Tariff and Operating Agreement would assign substantial risk to Market Participants who participated in previous BRAs without the benefit of having been able to properly account for the risk in their market bids.

The risk of force majeure was not included in the bids offered, or the prices cleared, in the May 2011 through 2014 BRAs for the 2014-2015 through 2017-2018 Delivery Years, respectively, because such risk was not even contemplated at the time. If these force majeure provisions become effective on April 1, 2015, as requested by PJM, Market Participants who now have obligations via cleared offers for the 2014-2015 through 2017-2018 Delivery years would be exposed to additional risk without compensation as of April 1, 2015.<sup>13</sup>

Saddling Market Participants with the risk from "acts of God" is onerous, even with respect to the Capacity Performance Resource product, but, at a minimum, PJM should be required to ensure that such risk is not imposed, retroactively, on capacity for which rates were established almost three years ago—rates that did not take into account this newly proposed force majeure risk.

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<sup>13</sup> It also appears that Base Capacity for the 2018-2019 Delivery Years and thereafter would not be allowed to recover a risk premium to account for force majeure risk.

For all of these reasons, PJM should clarify that the proposed new Catastrophic Force Majeure provision (1) will only be implemented on a prospective basis, and (2) would only apply to Capacity Performance Resources.

**B. PJM’s Proposed Generator Outage Approval Process is Overly Broad, Lacking in Necessary Details, and Would Amount to Potential, Unreasonable Decisions without Appropriate Compensation to Generation Owners.**

PJM states that the current generator outage provisions in the PJM market rules, particularly those relating to Generator Maintenance Outages, are “unreasonably vague and incomplete in their description of the interaction between outage approval and preservation of reliability.”<sup>14</sup> To this end, PJM proposes to make certain amendments to its Operating Agreement to, among other things, withdraw or rescind a prior approval for a planned or maintenance outage request and add details regarding a generator’s obligations to come back into service if PJM rescinds a prior-approved outage. Among other proposed changes, PJM seeks to revoke prior outage approvals and require generators to return to service with only 72-hour notice.

Although PJM claims that these proposed changes are “just and reasonable, as they will establish clear rules,”<sup>15</sup> the reality is that there are, in fact, a clear lack of details surrounding these significant changes to support their adoption by the Commission at this time. At a minimum, PJM included no justification for the selection of the 72-hour time period to be used for revoking a prior outage approval.

P3 is also concerned with the additional risk imposed upon generators pursuant to the proposed new provisions, and the nearly complete lack of stated cost compensation should PJM

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<sup>14</sup> PJM Resource Performance Filing, at p25.

<sup>15</sup> PJM Resource Performance Filing, at p27.

recall a prior-approved outage. The fact that a generator whose approved outage is cancelled or rescinded will incur costs relating to work force and equipment mobilization, and other administrative and system costs, appears completely unacknowledged in PJM's proposal. Also, it is unclear how often and wide-spread this newly-proposed approval and rescinding authority will be exercised by PJM. Certainly, rare instances of this new authority, affecting one or two generating units, may not be problematic on system reliability and overall operating costs. The same cannot be said if PJM utilizes this broad, new authority over numerous generating units on a frequent basis.

Besides recognizing the costs to unit owners when previously approved planned outages have to be cancelled and rescheduled, PJM should be instructed to change the CP non-performance calculations to excuse any under-performance for a unit whose planned outage schedule is changed from the time that PJM cancels or rescinds an outage until the unit is actually able to complete the planned work. Otherwise, PJM would be penalizing a unit owner for lack of performance that the owner had planned to correct during the outage that PJM, in its sole discretion, cancelled or rescinded.

The fact that PJM is proposing these significant new changes to planned and scheduled outages, without sufficient details regarding how and when these important changes will be implemented, coupled with the complete lack of detail or discussion regarding fair and reasonable compensation and treatment of costs involved, warrant the need for PJM to provide more information and clarified detail before the Commission approves these requested changes.

## **II. CONCLUSION**

**WHEREFORE**, for the foregoing reasons, P3 respectfully requests that the Commission consider these comments in developing the Order on PJM's Resource Performance Filing. P3

recommends that PJM be required to provide additional details and clarifications to both its proposed Catastrophic Force Majeure and Generator Outage Approval/Rescinding Process before seeking Commission approval of these important Tariff and Operating Agreement changes.

Respectfully submitted,

On behalf of the PJM Power Providers Group

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Dated: January 20, 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 20th day of January, 2015.

On behalf of the PJM Power Providers Group

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