



**MC Legal Report
Summary of Significant Filings, Legal Activity
and
Federal Energy Regulatory Commission (Commission) and Court Orders
(July 10, 2020 – August 31, 2020)**

ORDERS

On August 28, 2020, the Commission issued an order denying arguments raised on rehearing to Linden VFT, LLC's April 28, 2017 Complaint. The Commission disagreed with the request for rehearing, and sustained its previous decision of February 20, 2020 that the cost allocation of PJM and its solution-based DFAX method are just and reasonable. (ER17-950-005 and E17-68-002) (PF)

On August 17, 2020, the Commission accepted revisions to PJM Tariff, Schedule 12-Appendix A to incorporate cost responsibility assignments for one economic project (b3145) included in the update to the Regional Transmission Expansion Plan approved by the PJM Board of Managers on December 4, 2020. The revisions are effective August 26, 2020. (ER20-1913) (MS)

On August 17, 2020, the Commission accepted revisions to PJM Tariff, Schedule 12-Appendix A to incorporate cost responsibility assignments for thirteen new baseline transmission projects included in the recent update to the Regional Transmission Expansion Plan approved by the PJM Board of Managers on April 22, 2020. The revisions are effective August 20, 2020. (ER20-1883) (PF)

On August 11, 2020, the Commission accepted the revisions to Tariff, Attachment M-3, submitted by PJM on behalf of the PJM Transmission Owners acting through the PJM Consolidated Transmission Owners Agreement. The revisions expand the scope of the Attachment M-3 process to (i) encompass certain transmission owner asset management activities and projects and (ii) improve coordination between transmission owners' planning of certain asset management projects to replace transmission facilities nearing their end of useful lives with PJM's development of the regional transmission expansion plan. The revisions are effective August 12, 2020. (ER20-2046) (PF)

On July 28, 2020, the Commission accepted PJM's revisions to the PJM Operating Agreement enhancing the existing rules on Fuel Cost Policies by reducing some of the administrative burdens on Market Sellers associated with developing and maintaining Fuel Cost Policies as well as easing, in certain circumstances, the penalties for cost-based offers that do not adhere to an approved Fuel Cost Policy. The revisions are effective September 1, 2020. (ER20-1764) (CL)

On July 24, 2020, the Commission issued an order accepting proposed revisions to the CTOA, Attachment A to add Silver Run Electric, LLC (Silver Run) as a new transmission owner and to add a fully executed signature block for Silver Run. These revisions are effective April 28, 2020. (ER20-1132-001) (SP)

On July 24, 2020, the Commission issued an order accepting proposed revisions to the PJM Tariff, Attachment L to add Silver Run Electric, LLC as a new transmission owner. These revisions are effective April 28, 2020. (ER20-1133-001) (SP)

On July 23, 2020, the Commission accepted the revisions, submitted by PJM, to the MISO-PJM JOA including the inclusion of a new subsection clarifying that MISO and PJM are explicitly permitted to release Energy Management System (EMS) models and the data used for current and future EMS modeling,

exchanged in accordance with the JOA, to their respective Transmission Owners for operational and reliability compliance purposes. MISO submitted a simultaneous filing, in Docket No. ER20-1902-000, to incorporate identical revisions in its own version of the JOA. The revisions are effective July 27, 2020. (ER20-1903) (SP)

On July 20, 2020, the Commission rejected several requests for rehearing of the May 21, 2020 Reserve Price Formation Order. The Commission's rejection was procedural (by operation of law under FPA Section 313), and did not reach the merits of the rehearing requests. Parties who sought rehearing may now file petitions for review of the May 21, 2020 Reserve Price Formation Order at a federal appeals court. (EL19-58-001 and ER19-1486-001) (TD)

On July 16, 2020, the Commission accepted, subject to further compliance, PJM's third compliance filing submitted to comply with the requirements of Order No. 841, which removes barriers to the participation of electric storage resources in the capacity, energy, and ancillary services markets operated by RTOs/ISOs. Most of the revisions in the third compliance filing are effective December 3, 2019. The revisions specifically related to more appropriately accounting for an ESR's State of Charge are effective March 31, 2024. The further compliance filing is due **October 14, 2020**. (ER19-469-003) (TD)

On July 16, 2020, the Commission issued Order No. 554-B, addressing arguments raised on rehearing of Opinion No. 554-A, filed by two pro se petitioners on February 24, 2020. Opinion No. 554-A addressed an Initial Decision ruling on disputes related to the Potomac-Appalachian Transmission Highline Project (PATH Project) that was approved by the PJM Board of Managers for inclusion in the regional transmission expansion plan and later canceled by PJM. In its July 16 Order, the Commission finds the arguments of the petitioners to be unfounded speculation, and without factual support. Accordingly, the Commission rejected the petitioners' arguments and confirms the result of Opinion No. 554-A. (ER09-1256-006 and ER12-2708-008) (PF)

On July 16, 2020, the Commission accepted PJM's Tariff and Operating Agreement revisions to provide PJM Market Sellers with the ability to submit hourly differentiated segmented ramp rates for resources in both the PJM Day-ahead Energy Market and the Real-time Energy Market, and to update those values intraday. The effective date is January 5, 2021. (ER20-1414) (TD)

On July 16, 2020, the Commission found that PJM's current uplift allocation rules that do not allocate uplift to UTCs are unjust, unreasonable, and unduly preferential. Additionally, the Commission directed PJM to submit a compliance filing, by August 31, 2020, that revises PJM's current uplift allocation rules to allocate uplift to UTCs in a manner that treats a UTC, for uplift allocation purposes, as if the UTC were equivalent to a DEC at the sink point of the UTC. (EL14-37) (TD)

On July 16, 2020, the Commission established paper hearing procedures to address the issue of the proxies that may be used to establish, for reactive supply ratemaking purposes, a merchant generator's capital structure and cost of capital, under PJM Tariff, Schedule 2. One potential proxy that will be explored is PJM's CONE Study. Initial comments are due **August 31, 2020**. (EL19-70) (TD)

On July 15, 2020, the Commission issued an order granting Public Service Electric and Gas Company's (PSE&G) request for a one-time, limited waiver to allow certain adjustments to PSE&G's 2019 Transmission Formula Rate True-up Adjustment filing to account for clarification provided by the Internal Revenue Service in its April 1, 2020 Private Letter Ruling reclassifying certain excess deferred income taxes from protected to unprotected status. As noted by PSE&G, granting the waiver will allow PSE&G to add the reclassified balance to the unprotected amount that is to be returned to customers in the 2019 TFR True-up. (ER20-2061) (PF)

On July 10, 2020, the U.S. Court of Appeals for the 7th Circuit granted FERC's motion to hold the pending MOPR appeal proceedings in abeyance, and directed the parties to brief the court within 14 days of the earlier of: (1) FERC action on rehearing of the April 16 Order, or (2) DC Circuit action on the 12 petitions pending before it. Separately, the 7th Circuit directed FERC and the Illinois Commerce Commission to respond, by July 20, 2020, to EPSA's motion to transfer the MOPR appeals to the DC Circuit. (Case Nos. 20-1645, 20-1759, 20-1760, 20-1761, 20-1762, 20-1819, 20-1849, 20-2010, and 20-2016) (CL)

FILINGS

On August 31, 2020, PJM submitted proposed revisions to PJM Open Access Transmission Tariff, Schedule 12-Appendix A to reflect the City of Rochelle's removal as a transmission owner from PJM governing documents and Commonwealth Edison Company's (ComEd) assumption of transmission owner responsibilities for facilities formerly owned by the City of Rochelle. PJM requested an effective date of June 9, 2020 to correspond with the date of the transaction between ComEd and the City of Rochelle. (ER20-2785) (MS)

On August 31, 2020, PJM submitted proposed revisions to MISO-PJM JOA, section 9.3.3 to comply with the requirements of the June 30, 2020 order issued by the Commission partially accepting PJM's February 3, 2020 compliance filing in response to the Commission's September 19, 2019 order in Docket No. EL18-26-000 regarding affected system issues between PJM and MISO. The RTOs submitted contemporaneously separate filings with parallel JOA language to comply with the June 30 Order. PJM and MISO requested an April 6, 2020 effective date, which is the same effective date the Commission granted for the revisions in PJM's first compliance filing in the docket. (ER20-944-002) (PF)

On August 31, 2020, PJM submitted, in compliance with the Commission's directive in its July 16, 2020 Order in Docket No. EL14-37-000, revisions to the PJM Tariff and PJM Operating Agreement pertaining to Up-to Congestion Transactions uplift allocation. PJM submitted the eTariff records with a designated effective date of 12/31/9998, but is recommending a prospective effective date of November 1, 2020. (ER20-2775) (TD)

On August 28, 2020, PJM submitted proposed revisions to PJM Tariff, Schedule 12-Appendix A to incorporate cost responsibility assignments for 11 baseline upgrades included in the recent update to the Regional Transmission Expansion Plan approved by the PJM Board of Managers on July 29, 2020. PJM requested an effective date of November 26, 2020, which is 90 days after the date of the filing to allow a 30 day comment period. (ER20-2762) (PF)

On August 28, 2020, PJM submitted a filing in compliance with the Commission's June 30, 2020 letter order issued in response to PJM's proposed revisions to its Tariff submitted in compliance with the Commission's September 19, 2019 order on the complaint filed by EDF Renewable Energy, Inc. against PJM, Midcontinent Independent System Operator, Inc. and Southwest Power Pool, Inc., in Docket No. EL18-26-000. In this compliance filing, PJM proposes revisions to Tariff, section 202 to state the location in its respective manuals where interconnection customers can find modeling details PJM uses when studying an energy or capacity resource for PJM interconnections. (ER20-939-001) (PF)

On August 27, 2020, PJM submitted on behalf of PPL Electric Utilities Corporation ("PPL Electric") a supplemental filing that updates the Accumulated Deferred Income Tax Worksheet previously submitted in compliance with Order No. 864 to revise PPL Electric's transmission formula rate template in PJM Tariff, Attachment H-8G. PPL Electric requested an effective date of January 27, 2020 for these revisions. (ER20-1719-001) (MS)

On August 24, 2020, The ISO-RTO Council filed comments in response to FERC's Notice of Inquiry on: (1) the adequacy of CIP reliability standards to address cybersecurity risks pertaining to data security; (2) the detection of anomalies and events; and (3) the mitigation of cybersecurity events. In addition, the ISO-RTO Council provided comments on the potential risk of a coordinated cyberattack on geographically distributed targets and whether potential modifications to the CIP reliability standards would be appropriate. (RM20-12) (JB)

On August 24, 2020, The ISO-RTO Council (IRC) filed comments and responses in reply to United States Department of Energy's (DOE) Notice of Request for Information (RFI) on the supply chain for components of the bulk-power system. In its filing IRC recommended the DOE, (i) apply some reasonable limit on the scope of the order, (ii) consider providing clear guidance to the industry for procuring equipment during the period before the rules implementing the order are finalized and implemented, and (iii) establish a means to protect the security of the information that the industry is being asked to provide through the RFI and through related efforts as part of implementation of the President's Executive Order 13920. Additionally, the IRC provided responses to some of the more pertinent DOE questions in the RFI that relate to the role of RTOs and ISOs in supply chain risk management. (DOE-HQ-2020-00280) (1259 and 12 62) (JB)

On August 21, 2020, PJM submitted an answer to several comments and protests regarding PJM's July 6, 2020 Compliance Filing, which was submitted in response to the Commission's May 21, 2020 Order largely accepting PJM's proposed reforms to its Reserve Market. PJM defended its proposed effective date and responded to the IMM's comments regarding the exclusion/exemption processes for reserve eligibility. (EL19-58) (TD)

On August 21, 2020, PJM filed comments in support of AEP's petition for declaratory order relating to the Middle Creek energy storage project (Project), asserting that the Project qualifies as a Transmission Facility as defined in the PJM Operating Agreement. (EL20-58) (MS)

On August 19, 2020, PJM submitted an informational filing to provide the Commission with indicative energy and ancillary service offset and Net Cost of New Entry values for various resource types based on the methodology proposed in PJM's August 5, 2020 compliance filing. (EL19-58-003) (CL)

On August 17, 2020, PJM and Exelon Corporation, on behalf of Commonwealth Edison Company (Exelon) filed a Petition for Review to the DC Circuit of the Radford Run Order on Paper Hearing issued on April 16, 2020 (April 16 Order) and Requiring Rehearing and the Commission's Order Granting Rehearing for Further Consideration issued on June 16, 2020 (Tolling Order). PJM and Exelon filed a request for rehearing of the April 16 Order directive for PJM to rebill ICTRs for the 2019/2020 Delivery Year. PJM and Exelon filed the petition because the recent DC Circuit decision in Allegheny Defense Project v. FERC, finding that FERC's practice of using tolling orders to avoid rehearing requests being deemed denied by operation of law is not authorized by the Natural Gas Act (which has a rehearing and judicial review provision identical to the Federal Power Act's), arguably means that PJM's request for rehearing of the April 16 Order, filed on May 18, 2020, was deemed denied by operation of law on June 17, 2020, notwithstanding FERC's Tolling Order. (EL18-183) (SP)

On August 17, 2020, PJM submitted a filing in compliance with the Commission's June 18, 2020 order regarding the Commission's section 206 review into PJM's implementation of its proposal window exemption for immediate-need reliability projects. In addition to providing an explanation as to how PJM will comply prospectively with Criteria Two and Three, PJM submitted proposed revisions to the Operating Agreement, Schedule 6, section 1.5.8(m)(1) in compliance with Criterion Four. In addition and to address the Commission's requirement that PJM post all immediate-need reliability information in a manner more easily accessible to stakeholders, PJM explained its effort to develop a web page designated solely to immediate-reliability issues. PJM requested an effective for its revisions to the Operating Agreement as of

the date of the Commission's order accepting the compliance filing. (ER20-2686 and EL19-91) (PF)

On August 12, 2020, PJM submitted a limited request for clarification as to which settlement timeline PJM should use to bill the reallocations of the Form No. 715 projects back to May 25, 2015, i.e., Linden's alternative which provides for equal installments over a 12-month period or PJM's proposed plan to bill the reallocations by issuing monthly billing adjustments with interest for each refund year. (ER15-1387 and ER15-1344) (PF)

On August 10, 2020, PJM filed a motion for a 30-day extension to answer the complaint filed by Duquesne Light on July 31, 2020. PJM's answer to the Complaint is currently due on August 19, 2020 and the motion seeks to extend the deadline to answer to September 18, 2020. (EL20-59) (MS)

On August 7, 2020, PJM submitted a motion for leave to answer and answer to comments and protests filed on proposed revisions to the Operating Agreement, Schedule 6 developed by Joint Stakeholders and filed by PJM on July 2, 2020 in this docket and comments filed by PJM in this docket on that same day related to the planning of end of life facilities under the PJM regional transmission expansion planning process. (ER20-2308) (PF)

On August 6, 2020, PJM submitted an answer to respond to the Independent Market Monitor for PJM (Market Monitor)'s July 23, 2020 answer. In particular, PJM (1) clarifies that the requested ability to update the planning parameters is limited to significant changes in the load forecast and (2) reiterates that PJM will make available all data to the Market Monitor relating to the election and use of voluntary renewable energy credits. (EL16-49-000, ER18-1314-001 and EL18-178) (CL)

On August 5, 2020, PJM submitted Tariff revisions to effectuate a forward-looking E&AS Offset, in compliance with the Commission's May 21, 2020 order on reserve market enhancements, a compliance filing concerning a forward-looking net Energy and Ancillary Services revenues offset. PJM will submit a supplemental information filing that includes indicative EAS offset values in the next two weeks. (EL19-58 and ER19- EL16-49-000, ER18-1314-000,001 and EL18-178-0001486) (CL)

On August 5, 2020, PJM submitted a limited answer and clarification to the July 31, 2020 motion for extension of abeyance of the Independent Market Monitor for PJM, pertaining to PJM's pending fast-start compliance proceeding and the "short-term" dispatch/pricing Tariff and Operating Agreement revisions submitted on July 31, 2020 in Docket No. ER20-2573-000. (ER19-2722) (TD)

On August 5, 2020, PJM submitted a supplement to its July 31, 2020 filing proposing changes to the Tariff and Operating Agreement to effectuate the "short-term" pricing/dispatch reforms endorsed by PJM stakeholders. PJM's August 5, 2020 supplement makes minor corrections to a table designed to illustrate the impact of the "intermediate-term reforms," which was contained within the Carroll Affidavit that accompanied the July 31, 2020 filing. (ER20-2573) (TD)

On July 31, 2020, PJM submitted proposed revisions to PJM Tariff, Attachment K-Appendix, section 2.5, and to the identical corresponding provisions in PJM Operating Agreement, Schedule 1, section 2.5, to effectuate greater accuracy in the pricing and dispatch of resources in PJM's footprint through what was known in the stakeholder process as the "short-term" reforms. PJM is requesting an effective date of October 15, 2020. (ER20-2573) (TD)

On July 31, 2020, PJM submitted an informational filing in PJM's pending fast-start compliance proceeding: (i) notifying the Commission of PJM's submission in Docket No. ER20-2573-000 containing Tariff and Operating Agreement revisions to effectuate reforms to PJM's pricing and dispatch practices, known as the "short-term" reforms; (ii) explaining that the short-term reforms address the "pricing/dispatch

misalignment” issue that the Commission had previously identified in its January 23, 2020 Order holding PJM’s pending fast-start compliance proceeding in abeyance; and (iii) requesting that the Commission rule on PJM’s pending fast-start compliance filing as soon as possible. (ER19-2722) (TD)

On July 30, 2020, PJM and Midcontinent Independent System Operator, Inc. (MISO) (collectively, the RTOs) submitted a joint request for rehearing of the Commission’s June 30, 2020 Order on the RTOs’ compliance filings related to Affected System generator interconnection coordination procedures. Under the request for rehearing, the RTOs requested that the Commission revisit its ruling under the June 30 Order requiring the RTOs to use the fuel-based dispatch assumptions of the host RTO for the affected system interconnection studies. In addition, the RTOs filed a motion requesting to extend the compliance deadline until 60 days after the rehearing request is addressed on the merits. (ER20-942 and ER20-944) (PF)

On July 23, 2020, PJM submitted the Comments of Andrew Levitt, Senior Market Design Specialist, for consideration during the July 23, 2020 FERC Technical Conference on Hybrid Resources. (AD20-9) (TD)

On July 22, 2020, American Electric Power Service Corporation, on behalf of its affiliate Kentucky Power Company (“AEP”), filed a petition for declaratory order at FERC, requesting that FERC confirm that AEP’s Middle Creek energy storage project is eligible for cost-of-service rate recovery through AEP’s Commission-approved transmission formula rates, and specifically confirm that it is appropriate to book the costs of the project to Account No. 351 Energy Storage Equipment – Transmission, under FERC’s Uniform System of Accounts. AEP emphasized that the Middle Creek energy storage project will *only* serve as a transmission asset, and will not engage in any market activity or provide ancillary services. AEP has requested a Commission ruling on its petition by the end of the year (2020). (EL20-58) (MS)

On July 21, 2020, PJM submitted a limited answer to comments filed by J-POWER USA Development Co., Ltd. for the sole purpose of correcting certain factual inaccuracies advanced by J-POWER regarding whether the transmission owner revisions proposed to the Open Access Transmission Tariff, Attachment M-3 specific to end of life transmission replacements will impact the timing and results of generator interconnection studies. (ER20-2046) (PF)

On July 20, 2020, PJM filed a response brief to the Old Dominion Electric Cooperative’s (“ODEC”) brief filed in the polar vortex litigation appeal to the U.S. Court of Appeals for the Fourth Circuit of a judgement of the U.S. District Court for the Eastern District of Virginia denying ODEC’s motion to remand the case to state court and dismissing ODEC’s claims on the merits. (Case No. 20-1483) (SP).

On July 14, 2020, PJM filed comments on Shell Energy’s May 29, 2020 Petition for Declaratory Order, advising that PJM does not oppose (with one clarification) the three tariff interpretations Shell seeks, but requesting that the Commission when acting upon the petition not make any findings or statements that undermine a tariff-prescribed guarantee and indemnity provided by sellers of FTRs in bilateral transactions reported to PJM. (EL20-49) (JH)

On July 13, 2020, PJM submitted a compliance filing to make explicit in the PJM Tariff and RAA that load management testing will alternate between a summer test for one Delivery Year and a winter test the next. (ER20-1590-001) (CL)