

MC Legal Report
Summary of Significant Filings, Legal Activity and
Federal Energy Regulatory Commission (Commission) and Court Orders
(July 11, 2024 – August 9, 2024)

ORDERS

On August 8, 2024, in Docket No. ER22-962-005, the Secretary of the Commission granted PJM's July 30, 2024 motion for an extension of time to submit its compliance filing directed by the Commission's July 25, 2024 order in the Order No. 2222 compliance proceeding related to the participation of Distributed Energy Resource ("DER") aggregations in PJM markets. The deadline for PJM to submit its compliance filing is now October 23, 2024.

On July 31, 2024, in Docket No. EL24-90-000, the Commission issued an order (Order) denying the Energy Management Solutions, L.L.C.'s ("EMS") March 15, 2024 complaint (Complaint). The Complaint alleged that PJM's denial of EMS's membership application in January 2023 violated the PJM Operating Agreement. In the Order, FERC found that PJM reasonably exercised its discretion in determining that EMS is an unmanageable credit risk and in denying its membership application.

On July 31, 2024, in Docket No. ER24-2045-000, the Commission issued a data request further information regarding PJM's Order Nos. 2023 and 2023-A ("Final Rule") compliance filing, requesting (i) an item-by-item justification for each variation from the pro forma provisions in the Final Rule; (ii) information demonstrating that PJM's revisions addressing the elimination of the reasonable efforts standard and adoption of study delay penalties, affected system coordination, availability of surplus interconnection service, and the definition of network upgrades; and (iii) information demonstrating how PJM's conceptual proposal for handling study penalties complies with the Final Rule's requirements. The Commission directed PJM to submit a response by October 29, 2024.

On July 25, 2024, in Docket Nos. EL22-80-000 and EL22-85-000, the Commission issued an order addressing: (i) a complaint filed by American Municipal Power, Inc., the Office of the People's Counsel for the District of Columbia, and the PJM Industrial Customer Coalition against PJM regarding PJM's issuance of Designated Entity Agreements (DEAs) to entities designated to construct Regional Transmission Expansion Plan (RTEP) projects in PJM (Complaint) and (ii) a FPA section 206 filing by PJM requesting that FERC revise limited provisions of Operating Agreement, Schedule 6, section 1.5.8 regarding the process and associated requirements for DEAs (PJM Section 206 Filing). FERC granted both the Complaint and the PJM Section 206 Filing, in part, and denied them, in part. FERC also (i) directed PJM to submit a compliance filing within 30 days and (ii) instituted a paper hearing procedures to develop a further record to determine PJM's going-forward responsibilities regarding DEA requirements for certain in-progress RTEP projects.

On July 25, 2024, in Docket No. ER24-156-000, the Commission issued an order accepting PJM's compliance filing pursuant to Order No. 895 requiring RTOs and ISOs to propose tariff revisions to permit Credit-Related Information Sharing in Organized Wholesale Electric Markets. PJM's proposed Tariff and Operating Agreement revisions comply with the requirements in Order No. 895 and will permit PJM to share credit-related information of its members, market participants, and applicants with other FERC-jurisdictional RTOs/ISOs for the purpose of credit risk management and mitigation. PJM's revisions become effective July 26, 2024.

On July 25, 2024, in Docket No. ER22-962-005, the Commission issued an order on PJM's September 1, 2023 Order No. 2222 compliance filing related to the participation of Distributed Energy Resource ("DER") aggregations in PJM markets. The Commission directed PJM to submit a further compliance filing within 30 days.

On July 24, 2024, in Docket No. ER24-2203-000, the Commission issued a letter order accepting PJM's proposal to memorialize definitions in the Operating Agreement for cost components associated with synchronous condensers for Condense Startup Cost, Condense to Generate Cost and Condense Energy Use. This letter order also accepts

conforming references in relevant uplift provisions that incorporate these newly memorialized definitions. These revisions are effective August 6, 2024.

On July 18, 2024, in Docket No. ER24-2070-000, the Commission accepted revisions to PJM Operating Agreement, Schedule 12 to reflect the termination of (i) Mega Energy of Illinois, LLC; and (ii) Western Reserve Energy Services, LLC (together the Entities in Default), as PJM Members in accordance with Operating Agreement, section 4.1 (c). The Entities in Default were notified that they were in breach of the Operating Agreement and that a failure to cure said breaches within the specified time periods would result in, among other remedies, the loss of membership rights pursuant to Operating Agreement, section 15.1.5. The revisions are effective July 21, 2024.

On July 18, 2024, in Docket No. ER23-729-004, the Commission issued a letter order accepting PJM's compliance filing to remove the provisions of the Tariff that allowed PJM to adjust the Locational Deliverability Area Reliability Requirement based on actual offers submitted into the 2024/2025 RPM Auctions. PJM's Tariff revisions become effective as of May 6, 2024.

On July 12, 2024, in Docket No. ER24-1268-001, the Commission issued a letter order accepting the filing by PJM on behalf of The Dayton Power and Light Company d/b/a AES Ohio of a response to a deficiency letter from the Commission staff regarding AES Ohio's February 16, 2024 filing that sought to revise Attachment H-15A of the PJM Tariff to correct certain non-substantive inconsistencies in AES Ohio's formula rate, such as references, links and clarifying comments. AES Ohio's revisions are accepted effective April 17, 2024, and AES Ohio is directed to submit a compliance filing by August 12, 2024.

On July 12, 2024, in Docket No. ER24-1469-002, the Commission issued a letter order accepting the filing PJM filed an amendment to its April 2, 2024 effective date correction filing of the fourth quarter Membership revision filing of the PJM Operating Agreement, Schedule 12, and the RAA, Schedule 17. PJM requested the effective date December 31, 2023 and January 1, 2024, remain the same as previously requested in ER24-1469-000 and ER24-1469-001.

On July 12, 2024, in Docket No. ER24-1469-000, the Commission accepted proposed revisions to the PJM Operating Agreement, Schedule 12, and the RAA, Schedule 17, to (i) add the new members, (ii) remove withdrawn members, and (iii) reflect members' whose corporate names changed during the fourth quarter of 2023. The revisions are effective as of December 31, 2023 and January 1, 2024, as requested.

FILINGS

On August 9, 2024, in Docket No. EL24-125-000, PJM filed a motion for leave to answer and answer to comments filed in support of EDP Renewables North America LLC's ("EDPR") July 5, 2024 complaint. PJM argued that the comments are largely repetitive of the arguments raised in the complaint and do little to support EDPR's claims or request for relief.

On August 9, 2024, in Docket No. ER24-2447-001, PJM submitted its responses to the July 29, 2024 Letter from the Commission requesting further information regarding PJM's proposed revisions to the RAA to more accurately allocate capacity obligations associated with forecasted Large Load Adjustments. PJM requested a shortened seven business day comment period, waiver of the 60 day notice requirement, and expedited action for the Commission to issue an order by September 23, 2024.

On August 8, 2024, in Docket No. ER24-2716-000, PJM submitted for filing proposed revisions to the PJM Operating Agreement, Schedule 12, and the RAA, Schedule 17, to (i) add the new members, (ii) remove withdrawn members, (iii) reflect members' whose corporate names changed and (iv) add new signatories to the RAA during the first and second quarters of 2024. PJM requested the revisions be effective as of June 30, 2024.

On August 6, 2024, in Docket No. EL24-131-000, Millheim Solar, LLC (“Millheim Solar”) filed a complaint against PJM challenging PJM’s termination of queue position AG1-257 due to Millheim Solar’s failure to meet the requirements of Tariff, Part VII, Subpart D, section 309(A)(1)(e). Queue Position AG1-257 is a planned 19.9 MW solar project located in Centre County, Pennsylvania. Responses to Millheim Solar’s complaint are due August 26, 2024.

On August 6, 2024, in Docket No. ER24-1743-002, PJM submitted an amendment filing to the ministerial clean-up filing submitted in this docket that amends and corrects the attachments to reflect all Commission-accepted revisions on a historical and going-forward basis.

On August 5, 2024, in Docket No. EL24-128-000, PJM filed an answer in response to the complaint of CPower. In this answer, PJM maintains that the guidance related to the participation of Energy Efficiency Resources that was issued in advance of the deadline to submit measurement and verification plans for the Base Residual Auction associated with the 2025/2026 Delivery Year is consistent with the existing rules in PJM’s governing documents.

On August 5, 2024, in Docket Nos. ER22-957-000 and EL22-26-000 (not consolidated), PJM submitted its tenth informational update to provide the Commission with the most updated congestion pattern information on the Northern Neck Peninsula.

On August 2, 2024, in Docket Nos. EL24-26-000, *et al.*, PJM filed notice of its compliance filing in Docket No. ER24-2690-000 proposing Tariff revisions to clarify responsibility for the procurement of third-party land and land rights in the context of Site Control requirements for Generator Interconnection Requests.

On August 2, 2024, in Docket No. ER24-2690-000, PJM submitted proposed Tariff revisions pursuant to section 206 of the Federal Power Act to comply with the Commission’s directive in its December 20, 2023 order to show cause in Docket Nos. EL24-26-000, *et al.* The proposed revisions clarify responsibility for the procurement of third-party land and land rights in the context of Site Control requirements for Generator Interconnection Requests.

On August 1, 2024, in Docket No. ER24-2401-000, PJM filed an answer to the July 17, 2024 protest filed by Glidepath Ventures, LLC (“Glidepath”) and Astor I, LLC in response to PJM’s June 28, 2024 filing to cancel the Interconnection Service Agreement (ISA) entered into among PJM, Glidepath and Mid-Atlantic Interstate Transmission, LLC. PJM asserted that despite the claims raised in the protest, the cancellation is proper because Glidepath failed to satisfy the milestones under the ISA, and the cancellation should be accepted as filed.

On August 1, 2024, in Docket No. ER24-2665-000, PJM submitted on behalf of UGI Utilities, Inc. (“UGIU”) revisions/modifications to OATT Attachment H-8C, Attachment 9 Depreciation Rates to update the depreciation rates for UGIU’s Formula Rate. UGIU is requesting that the revisions to Attachment H-8C be effective as of October 1, 2024.

On July 31, 2024, the Docket No. EL24-126-000, PJM submitted its answer to the Independent Market Monitor for PJM’s Complaint regarding the Energy Efficiency addback in the PJM load forecast.

On July 30, 2024, in Docket No. ER22-962-005, PJM requested an extension of time to submit its compliance filing directed by the Commission’s July 25, 2024 order in the Order No. 2222 compliance proceeding related to the participation of Distributed Energy Resource (“DER”) aggregations in PJM markets. PJM’s motion requests that the Commission extend the deadline for PJM to submit its compliance filing from August 26, 2024 to October 23, 2024.

On July 29, 2024, in Docket No. EL24-118-000, PJM filed responses to various comments in the Joint Consumer Advocates’ complaint docket. In this response, PJM maintains that adding Energy Efficiency Resources that participate in the capacity market back into the load forecast is consistent with the Tariff and Federal Power Act.

On July 25, 2024, in Docket No. EL24-125-000, PJM filed an answer to EDP Renewables North America LLC's ("EDPR") July 3, 2024 complaint. PJM argued that EDPR failed to show that denial of its request for Surplus Interconnection Service violates the Federal Power Act, the requirements of Order No. 845, or the Tariff.

On July 22, 2023, in Docket No. ER24-2336-000, PJM filed a motion to intervene and comments in support, in the proceeding related to revisions to the Consolidated Transmission Owners Agreement ("CTOA") that would, among other things, facilitate PJM's ability to make independent submissions under FPA section 205 regarding regional transmission planning.

On July 22, 2024, in Docket No. ER24-2564-000, PJM submitted on behalf of Mid-Atlantic Offshore Development, LLC ("MAOD") three new PJM Tariffs, Attachment H-35, H-35A and H-35B, which contain the initial Formula Rate Tariff to establish MAOD's formula rate tariff and related formula rate protocols. MAOD is requesting that the Formula Rate Tariffs be effective as of September 21, 2024.

On July 17, 2024, in the United States Court of Appeals for the Third Circuit (Case No. 24-1045), PJM as amicus curiae submitted a brief offering PJM's perspective and experience as the organization responsible for regional transmission planning in the Mid-Atlantic Region. The brief sets forth PJM's authority to engage in regional planning pursuant to the Federal Power Act, FERC regulation, and PJM's tariffs. The brief also contends that the district court correctly held that the Pennsylvania Public Utility Commission's decision rejecting the "need" for Transource's IEC Project is contrary to federal law and PJM's FERC-approved "filed rate" for selecting market efficiency projects. The brief explains that state commissions like the PAPUC have a role in siting, but that is not the same as authority over transmission planning.

On July 17, 2024, in Docket No. EL21-91-003, PJM filed testimony of Glen Boyle, Michael E. Bryson, and Dr. Walter Graf in response to previously-filed testimony of the Independent Market Monitor and Trial Staff, and to support the pre-June 2021 stated Capital Recovery Factors as just and reasonable for Black Start Units selected to provide Black Start Service prior to June 6, 2021.

On July 16, 2024, in Docket No. EL24-128-000, Enerwise Global Technologies, LLC d/b/a CPower ("CPower") filed a complaint against PJM related to guidance that was provided to Energy Efficiency Providers in advance of the deadline to submit measurement and verification plans for the 2025/2026 Base Residual Auction. In the complaint, CPower argues that the guidance represents a departure from past practices and is inconsistent with the rules specified in the governing documents.

On July 16, 2024, in Docket No. EL24-121-000, PJM submitted an answer to the complaint filed by Old Dominion Electric Cooperative ("ODEC") with the Commission against FirstEnergy Service Company and Potomac Edison Company with respect to a billing dispute related to energy, capacity, and transmission charges between those parties. Although the Complaint does not allege any wrongdoing or violation by PJM, PJM may be implicated in the resulting order because PJM may be directed to effectuate the transfer of funds if the Complaint is granted. PJM takes no position on whether or not the Commission should grant or deny the Complaint. PJM requests that if the Commission were to grant the Complaint that the Commission afford PJM latitude in implementing any potential transfer of funds.

On July 16, 2024, in Docket No. ER24-2529-000, PJM submitted a ministerial clean-up filing to ensure the Tariff correctly reflects the language in Tariff, Schedule 1A, Schedule 7, and Schedule 8 that was accepted by the Commission as of various effective dates but displaced as a result of overlapping filings.

On July 15, 2024, in Docket No. EL24-124-000, PJM and Affirmed Energy filed a joint motion to stay the proceeding, which includes a stipulation and standstill agreement. This joint motion requests that the Commission stay the proceeding and extend the comment deadline to October 30, 2024.

On July 12, 2024, in Docket No. ER24-2045-000, PJM filed an answer to comments and protests in response to its May 16, 2024 filing in compliance with Order Nos. 2023 and 2023-A (“Final Rule”). PJM requested that the Commission reject the protests and comments and accept the May 16 filing as compliant and consistent with the Final Rule applying the independent entity variation standard.

On July 12, 2024, in Docket Nos. EL24-73-001, ER24-994-002, ER24-995-002 and ER24-1001-002, PJM filed an answer to the request for rehearing and clarification of the Commission’s May 28, 2024 order filed by Welcome Solar, LLC, Welcome Solar II, LLC, and Welcome Solar III, LLC (collectively, “Welcome Solar”). PJM argued that Welcome Solar’s request for rehearing essentially seeks to strip PJM of its discretion under the Tariff to extend service agreement milestone dates for a reasonable amount of time, if the developer meets the test. PJM also argued that Welcome Solar’s requested clarification would require consideration of legal arguments that are beyond the scope of these proceedings.

On July 11, 2024, in Docket No. ER22-2200-002, PJM submitted on behalf of Atlantic City Electric Company a compliance filing pursuant to the Commission’s June 11, 2024 order, in Docket No. ER22-2200-001, approving the executed, uncontested Settlement Agreement resolving all issues in Docket No. ER22-2200 and all sub-dockets thereto. Pursuant to the Commission’s order and consistent with the Settlement Agreement, the requested effective date of the tariff revisions is September 1, 2022.