

188 FERC ¶ 61,191  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;  
Mark C. Christie, David Rosner,  
Lindsay S. See and Judy W. Chang.

Enerwise Global Technologies, LLC

Docket No. EL23-104-000

v.

PJM Interconnection, L.L.C.

ORDER DENYING COMPLAINT

(Issued September 19, 2024)

1. On September 28, 2023, pursuant to section 206 of the Federal Power Act (FPA),<sup>1</sup> Enerwise Global Technologies, LLC (CPower) filed a complaint against PJM Interconnection, L.L.C. (PJM). CPower argues that the PJM Open Access Transmission Tariff (Tariff) is unjust, unreasonable, and unduly discriminatory because it prevents Curtailment Service Providers from using approved statistical sampling rules to provide demand response for interval metered residential customers in PJM markets.<sup>2</sup> As discussed below, we deny the complaint.

**I. Background**

2. For the demand response programs that are the subject of this complaint, the Tariff provides that the Curtailment Service Provider is responsible for ensuring that program participants have metering equipment that provides integrated hourly kWh values on an electric distribution company account basis.<sup>3</sup> Additionally, the Tariff requires that load

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<sup>1</sup> 16 U.S.C. § 824e.

<sup>2</sup> Capitalized terms that are not defined in this order have the meaning specified in the Tariff.

<sup>3</sup> PJM, Intra-PJM Tariffs, OATT attach. K (App.), § 8.3 (Metering Requirements) (1.0.0). Section 8.3 applies to PJM's Emergency Load Response Program and Pre-Emergency Response Program, which compensate for reducing load through capacity and/or energy payments. *Id.* OATT attach. K (App.), § 8.1 (Emergency Load Response and Pre-Emergency Load Response Program Options) (1.0.0). Although CPower cites only to section 8.3 in the complaint, PJM has similar metering rules in its Economic Load Response program, which addresses participation in PJM's energy and ancillary services

reduction meter data must be submitted to PJM and failure to do so would result in no payment being provided for participation.<sup>4</sup> The Tariff further provides that non-interval metered residential customers that have Direct Load Control<sup>5</sup> may use current statistical sampling of interval metering equipment on an electric distribution company account basis in accordance with the PJM Manuals and subject to PJM approval.<sup>6</sup>

## II. Complaint

3. CPower argues that Curtailment Service Providers like CPower that want to aggregate residential customers to provide demand response face a barrier to participation in the PJM markets.<sup>7</sup> CPower states that PJM requires large volumes of data to enable participation for residential customers. CPower argues that electric distribution companies either cannot or will not provide Curtailment Service Providers with data from their advanced metering infrastructure (AMI) systems and meters to enable participation at scale, i.e., aggregating thousands of residential customers. In addition, CPower contends, the Tariff permits statistical sampling only if the electric distribution company has not installed AMI systems and meters. CPower contends that electric distribution companies have extensively adopted AMI systems and meters for residential customers in PJM, and the Tariff does not permit statistical sampling for those customers.

4. CPower argues that it is not feasible or scalable for Curtailment Service Providers to acquire interval meter data for all interval metered residential customers in an aggregation.<sup>8</sup> CPower further alleges that Curtailment Service Providers cannot obtain the data to satisfy PJM requirements for two main reasons. First, CPower contends, existing AMI systems do not allow a Curtailment Service Provider and/or electric distribution company to take steps needed to participate in PJM, such as verifying that

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markets through demand reductions. *See id.* OATT attach. K (App.), § 1.5A(Economic Load Response Participant) (14.0.0), § 1.5A.4.

<sup>4</sup> *Id.* OATT ATT K APPX Sec 8.7, OATT Attachment K Appendix Sec 8.7 – Verification (1.0.0).

<sup>5</sup> PJM’s Tariff defines Direct Load Control as load reduction that is controlled directly by the Curtailment Service Provider’s market operations center or its agent, in response to PJM instructions. *See id.* C-D, OATT Definitions – C-D (37.1.1).

<sup>6</sup> *PJM Interconnection, L.L.C.*, Docket No. ER15-1849-000 (July 23, 2015) (delegated order) (Sampling Order).

<sup>7</sup> Complaint at 2-3.

<sup>8</sup> *Id.* at 4.

the customer consents to release data as well as obtaining data to calculate summer peak load contributions, Winter Peak Loads, and energy baselines.<sup>9</sup> CPower argues that AMI meters are not designed to comply with PJM's extensive requirements; rather, they are designed for electric distribution companies' retail billing purposes and distribution system management purposes.<sup>10</sup> Second, CPower maintains, electric distribution companies have not cooperated with Curtailment Service Providers and/or refused to provide data at scale. CPower emphasizes that the problem is not just about the technological limitations of AMI systems.<sup>11</sup> CPower explains that under PJM's requirements, Curtailment Service Providers must also provide a loss factor that an electric distribution company determines and that is not available from AMI systems.<sup>12</sup>

5. CPower argues that the Tariff creates unjust and unreasonable prices for energy and capacity in PJM by preventing Curtailment Service Providers from using "valid" statistical sampling for interval metered residential customers.<sup>13</sup> CPower asserts that residential customers cannot participate as demand response, reduce market prices, and increase grid reliability because Curtailment Service Providers cannot obtain AMI data needed for such participation. CPower argues that *FERC v. EPSA* shows the value of demand response, because the Court in *EPSA* explained that Regional Transmission Organizations and Independent System Operators (RTO/ISO) accept demand response bids "if they bring down the wholesale rate by displacing higher-priced generation. And when that occurs (most often in peak periods), the easing of pressure on the grid, and the avoidance of service problems, further contributes to lower charges."<sup>14</sup> CPower estimates losses to Curtailment Service Providers of millions of dollars as a result of Curtailment Service Providers being unable to provide demand response through residential customers.<sup>15</sup>

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<sup>9</sup> *Id.* at 5.

<sup>10</sup> *Id.* at 6.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* at 4.

<sup>13</sup> *Id.* at 7-8.

<sup>14</sup> *Id.* at 8 (quoting *FERC v. EPSA*, 577 U.S. 260, 279 (2016) (*EPSA*)).

<sup>15</sup> *Id.* at 7.

6. CPower argues the Tariff is unduly discriminatory against Curtailment Service Providers in comparison to electric distribution companies.<sup>16</sup> CPower argues that electric distribution companies have adopted advanced metering infrastructure for their exclusive use and may be able to provide demand response in PJM with no meaningful competition from Curtailment Service Providers. CPower contends that electric distribution companies either cannot or will not provide Curtailment Service Providers with interval meter data to comply with the Tariff and Manual 19.<sup>17</sup>

7. To show that Curtailment Service Providers face challenges in getting data, CPower points to a recent decision issued by the Virginia State Corporation Commission (Virginia Commission).<sup>18</sup> CPower explains that the Virginia Commission approved Virginia Electric & Power Company's (Dominion) request for AMI-type expenses but did not require Dominion to adopt the capability to make data accessible to third parties, despite an intervenor's request for such functionality.<sup>19</sup>

8. CPower avers that there is no good reason to deny Curtailment Service Providers use of PJM's statistical sampling method for interval metered residential customers because PJM's method is extensive and well-established.<sup>20</sup> CPower argues that the Sampling Order confirmed that Curtailment Service Providers may use statistical sampling in the absence of valid AMI data.<sup>21</sup>

9. As relief, CPower requests that the Commission revise the Tariff to permit Curtailment Service Providers and electric distribution companies to use PJM's approved statistical sampling method regardless of whether the customers in an aggregation have interval meters.<sup>22</sup> Specifically, CPower suggests that the Commission revise Tariff, Attachment K, section 8.3 to strike the limitation regarding non-interval metered residential customers.

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<sup>16</sup> *Id.* at 9.

<sup>17</sup> *Id.* at 10 (citing attach. A, Aff. ¶ 9).

<sup>18</sup> *Id.* at 12.

<sup>19</sup> *Id.* at 12-14; see *Va. Elec. and Power Co.*, PUR-2021-00127 (Va. State Corp. Comm'n Jan. 7, 2022) (Dominion Order).

<sup>20</sup> Complaint at 15-16.

<sup>21</sup> *Id.* at 17.

<sup>22</sup> *Id.* at 18.

10. CPower alleges that it tried but failed to change the Tariff through PJM's stakeholder process.<sup>23</sup> CPower highlights that PJM stakeholders refused to discuss its concerns, let alone weigh solutions.<sup>24</sup> Based on the sector-weighted voting results, CPower argues that PJM members voted based on private economic interests.<sup>25</sup> CPower avers that its only recourse was to file the complaint.<sup>26</sup>

### **III. Notice of Filing and Responsive Pleadings**

11. Notice of the complaint was published in the *Federal Register*, 88 Fed. Reg. 69,176 (Oct. 5, 2023), with interventions and protests due on or before October 18, 2023. The Independent Market Monitor for PJM (Market Monitor), Calpine Corporation, PJM Power Providers Group, Constellation Energy Generation, LLC, American Electric Power Service Corporation (AEP),<sup>27</sup> Public Citizen, Inc., Organization of PJM States, Inc., NRG Business Marketing LLC and Midwest Generation, LLC, Advanced Energy United, Advanced Energy Management Alliance (AEMA), PPL Electric Utilities Corporation, Resideo Technologies, Inc. (Resideo), American Municipal Power, Inc., Sierra Club, and the Retail Energy Supply Association each filed a timely motion to intervene.

12. On October 18, 2023, PJM filed an answer to the complaint. Resideo, Sierra Club, and AEMA each timely filed comments supporting the complaint. On October 27, 2023, CPower filed an answer to PJM's answer and a motion for leave to answer. On November 3, 2023, the Market Monitor filed an answer and motion for leave to answer.

#### **A. PJM Answer**

13. PJM argues that allowing interval metered residential customers to have their usage measured by statistical sampling would reduce the accuracy of load reduction measurement, result in less accurate settlements, adversely impact both load and generator interests, and would be contrary to PJM's history of revising rules around residential demand response customer participation to increase accuracy as time and

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<sup>23</sup> *Id.* at 19.

<sup>24</sup> *Id.* at 19-20.

<sup>25</sup> *Id.* at 20.

<sup>26</sup> *Id.* at 21.

<sup>27</sup> AEP moves to intervene on behalf of its affiliates Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company.

technology improve, which is especially relevant in light of the issues stemming from Winter Storm Elliott.<sup>28</sup> PJM also explains that the Commission considers rates to be just and reasonable not only when they contribute to lower rates or remove barriers to competition, but also when they promote accuracy.<sup>29</sup> PJM notes that CPower unsuccessfully attempted to raise this issue with PJM stakeholders, demonstrating a clear stakeholder interest in requiring more accurate interval meter data rather than relying on less accurate statistical sampling.<sup>30</sup>

14. PJM explains that PJM adopted statistical sampling in 2015 as an improvement to measurement techniques then in use for non-interval metered residences and that this fact in no way means that the Commission should abandon use of interval meter data, nor that the revisions were intended as a substitute for the accuracy provided by actual meter data.<sup>31</sup>

15. Additionally, PJM argues that, contrary to CPower's assertions, *EPSA* does not stand for the proposition that rates are not just and reasonable unless they contribute to lower charges, but rather that the Commission has authority over practices that directly affect rates, and that the Commission's rule requiring that certain demand response providers be compensated as much for conserving electricity as generators do for producing it was not arbitrary and capricious.<sup>32</sup>

16. Next, PJM states that the Tariff's limit of statistical sampling to non-interval metered residential customers is not unduly discriminatory because those customers are not similarly situated to non-interval metered residential customers.<sup>33</sup> PJM argues that the difference lies in the existence of interval meters that allow PJM to more accurately compensate demand response and more effectively operate the bulk power system. PJM states that, rather than allege that the interval meters installed at residential premises do not provide interval metered data, the complaint is focused on Curtailment Service

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<sup>28</sup> PJM Answer at 6-8 (citing PJM, Filing, Docket No. ER15-1849-000 (filed June 4, 2015); PJM, Filing, Docket No. ER14-822-000 (filed Dec. 24, 2013)).

<sup>29</sup> *Id.* at 6 (citing *PJM Interconnection, L.L.C.*, 184 FERC ¶ 61,055, at PP 57, 112 (2023); *Midcontinent Indep. Sys. Operator, Inc.*, 182 FERC ¶ 61,096, at P 23 (2023)).

<sup>30</sup> *Id.* at 6, 13 (citing PJM, *Market Implementation Committee, Minutes* (Sept. 7, 2022), minutes.ashx (pjm.com)).

<sup>31</sup> *Id.* at 6-8.

<sup>32</sup> *Id.* at 7 (citing *EPSA*, 577 U.S. at 273, 275).

<sup>33</sup> *Id.* at 8-10.

Providers' inability to obtain the interval meter data from the relevant electric distribution company. PJM argues that Curtailment Service Providers that have issues obtaining interval meter data should address them before the Relevant Electric Retail Regulatory Authority whose rules and practices are the source of those issues, as the Commission has said it defers to states on such matters.<sup>34</sup> At most, PJM states, if there are concerns regarding electric distribution companies not giving data to Curtailment Service Providers or AMI meters not being automatically accessible to Curtailment Service Providers, Curtailment Service Providers could bring requests to the Commission for case-by-case exceptions if there is a concrete problem that prevents compliance with the Tariff. However, PJM states, the complaint offers broad assertions and it requests that no Curtailment Service Provider needs to rely on actual meter data.<sup>35</sup>

17. PJM argues that the complaint does not provide sufficiently concrete examples of failures to obtain interval meter data.<sup>36</sup> PJM also avers that the one example CPower offers—the Dominion Order—falls short of alleging facts sufficient to show that interval meter data is not available in Virginia, much less across PJM generally. PJM contends that the extent and scope of the alleged limitation in the Dominion Order is never made clear.

18. Next, PJM claims that the complaint ignores that the Commission approved metering requirements, consistent with existing demand response rules, for meter data from all distributed energy resources, including demand response, and only allowed statistical sampling for non-interval metered residential customers as part of PJM's Order No. 2222 compliance filing.<sup>37</sup> PJM argues that, because the Commission accepted PJM's Order No. 2222 metering construct, the complaint represents a collateral attack on that order.

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<sup>34</sup> *Id.* at 9 (citing *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,143, at P 407) (2023) (PJM 2222 Order) (acknowledging that “rules and processes that state commissions and electric distribution companies may need to revise as a result of Order No. 2222, and the associated timing of those changes, are outside the scope of the Commission’s jurisdiction”).

<sup>35</sup> *Id.* at 10.

<sup>36</sup> *Id.* at 11.

<sup>37</sup> *Id.* at 13-14 (citing PJM 2222 Order, 182 FERC ¶ 61,143 at P 250 (finding that “PJM has demonstrated that its proposed metering requirements do not pose an unnecessary and undue barrier to distributed energy resources, as Order No. 2222 requires”).

19. Finally, PJM states that if the Commission grants the complaint, the Curtailment Service Provider should be required to provide evidence of the electric distribution company's technical or procedural limitation in providing the interval meter data.<sup>38</sup> PJM argues such a limiting principle is necessary so that PJM is not denied large amounts of existing meter data.

**B. Comments Supporting Complaint**

20. Resideo requests that the Commission grant the complaint and direct PJM to modify the Tariff to permit the use of statistical sampling by all Curtailment Service Providers, regardless of whether an interval meter has been installed.<sup>39</sup> Based on its own experience, Resideo argues that certain electric distribution companies are unwilling to share information, which creates a situation where Curtailment Service Providers often cannot obtain the information necessary to meet PJM's requirements.<sup>40</sup> Resideo states that it has invested in residential aggregations consisting of connected residential thermostats within the service territories of four PJM electric distribution companies, and the growth of these programs has been hampered by the cumbersome and bureaucratic process needed to access interval meter data. Resideo states that Curtailment Service Providers can experience challenges associated with the collection, maintenance, and reporting of required information from individual residential participants. Resideo argues that reducing those challenges leads to rapid growth in residential demand response programs, and only when the programs are provided at scale can they provide value to wholesale markets and individual residential customers. Resideo also states that the issues raised by CPower are preventing residential demand response programs from scaling in PJM.

21. Sierra Club argues that PJM's rules assume AMI meters were designed to produce, or are otherwise capable of producing, data needed to comply with the measurement and verification requirements in the Tariff.<sup>41</sup> However, Sierra Club explains, data management systems for AMI data vary significantly between utilities in PJM, and those utilities do not have consistent data formats, data transmission protocols, and/or comprehensive interoperability standards to support connections

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<sup>38</sup> *Id.* at 15-16.

<sup>39</sup> Resideo Comments at 10.

<sup>40</sup> *Id.* at 9.

<sup>41</sup> Sierra Club Comments at 5.



between meters and communications and information systems.<sup>42</sup> Sierra Club argues that data access has been a well-documented problem for years, but even if aggregators have access to high-quality, consistently formatted data, it may still be overly burdensome to require aggregators to utilize actual AMI data rather than allowing them to use statistical sampling methods that Sierra Club contends have proven to be accurate and reliable.<sup>43</sup>

22. AEMA argues that many residential customers cannot participate with a third-party aggregator in PJM's markets because (1) aggregators, and sometimes electric distribution companies and utilities, struggle to access the data needed to fully participate in wholesale markets; and (2) installing a meter at a residential facility solely for participating in wholesale markets is expensive for aggregators (e.g., the cost of an interval meter could run between \$2,000-\$3,000).<sup>44</sup>

### C. CPower Answer

23. CPower argues that it has fully met its burden to prove that PJM's Tariff is unjust and unreasonable by presenting credible record evidence, in particular an affidavit from a demand response expert, showing that PJM's Tariff unjustly and unreasonably prevents Curtailment Service Providers from providing demand response service to interval metered residential customers.<sup>45</sup> CPower contends that PJM's Answer fails to challenge CPower's assertion that the Tariff creates practical and economic barriers that prevent residential demand response from participating in PJM markets.<sup>46</sup>

24. CPower avers that PJM fails to explain why statistical sampling is unreasonably inaccurate.<sup>47</sup> CPower also challenges PJM's contention that the Tariff "increases accuracy" for interval metered residential customers by noting that the existence of advanced metering infrastructure actually prevents participation in PJM's wholesale markets entirely.<sup>48</sup> CPower also states that other commenters have presented evidence

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<sup>42</sup> *Id.* (citing ACEEE, *Leveraging Advanced Metering Infrastructure to Save Energy* 33 (2020), <https://www.aceee.org/research-report/u2001>).

<sup>43</sup> *Id.* at 6.

<sup>44</sup> AEMA Comments at 3.

<sup>45</sup> CPower Answer at 2.

<sup>46</sup> *Id.* at 3.

<sup>47</sup> *Id.* at 3-4.

<sup>48</sup> *Id.* at 4.

that interval metered residential customers cannot currently participate in PJM's markets.<sup>49</sup> CPower notes that, according to PJM, residential customers currently comprise only 0.3% of total demand response resources in PJM, while residential load makes up 37% of PJM's total load.<sup>50</sup>

25. CPower disagrees with PJM's assertion that granting the complaint would deny parties the benefits of advanced metering infrastructure that has already been deployed, and CPower asserts that electric distribution companies will still benefit from information that AMI tools were designed to provide, such as retail billing data.<sup>51</sup>

26. CPower argues that the Commission's approval of PJM's tariff revisions to comply with Order No. 2222 does not make section 8.3 of the Tariff just and reasonable.<sup>52</sup> CPower states that PJM's Answer mischaracterizes the record evidence CPower provided regarding the Dominion Order, and CPower reiterates that the affidavit included in the complaint provided extensive unrefuted evidence of repeated failures to obtain meaningful interval meter data from electric distribution companies.<sup>53</sup> CPower also explains that it intentionally chose not to provide concrete examples of electric distribution companies that were unwilling or unable to provide interval meter data at scale because revealing such information could give away trade secrets and potentially tarnish the reputation of electric distribution companies that were otherwise cooperative.<sup>54</sup>

27. CPower responds to PJM's suggestion that the Commission require a Curtailment Service Provider to provide evidence that it cannot obtain interval meter data from the

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<sup>49</sup> *Id.* at 4-5 (citing Resideo Comments at 4; AEMA Comments at 2-4; Sierra Club Comments at 3).

<sup>50</sup> *Id.* at 5 (citing PJM Demand Side Response Operations, *2023 Demand Response Operations Markets Activity Report: April 2024* 6 (Figure 6) (2024); PJM Resource Adequacy Planning Department, *PJM Load Forecast Report 5* (2020), <https://www.pjm.com/-/media/library/reports-notices/load-forecast/2020-load-report.ashx>).

<sup>51</sup> *Id.* at 6-7.

<sup>52</sup> *Id.* at 8-9.

<sup>53</sup> *Id.* at 9-10.

<sup>54</sup> *Id.* at 10.

electric distribution company.<sup>55</sup> CPower indicates that it would not be unreasonable to require electric distribution companies to certify to PJM if they can make the required AMI data economically available to enable Curtailment Service Providers to serve residential customers.<sup>56</sup>

#### **D. Market Monitor Answer**

28. The Market Monitor disagrees with CPower's assertion that it is not feasible for Curtailment Service Providers to acquire required data for all residential demand response customers.<sup>57</sup> The Market Monitor asserts that consent to release data for demand response measurement and verification is obtained via a contract with the end use customer and is not a consequence of the type of metering. The Market Monitor also asserts that peak load contribution values for residential customers are determined and provided by the electric distribution company on a rate class basis, and do not require the Curtailment Service Provider to have access to advanced metering infrastructure to obtain a customer's peak load contribution.<sup>58</sup> The Market Monitor notes that PJM offers assistance where historical interval data is not available to calculate a customer's Winter Peak Load.<sup>59</sup> The Market Monitor maintains that interval data from advanced metering infrastructure or equivalent metering is vital to determining a customer baseline to accurately measure and compensate demand resources for their actual response to a PJM dispatch event.<sup>60</sup> Lastly, the Market Monitor explains that capacity demand resources must submit information after a Performance Assessment Interval, and that interval data makes it easier, rather than harder, to verify reductions.

29. The Market Monitor notes that CPower's own problem statement that it brought before PJM stakeholders characterizes CPower's problem as being one of cost and time-consuming administrative challenges, rather than unavailability of interval data.<sup>61</sup> The

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<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 10-11.

<sup>57</sup> Market Monitor Answer at 6.

<sup>58</sup> *Id.* at 6-7.

<sup>59</sup> *Id.* at 7.

<sup>60</sup> *Id.* at 8.

<sup>61</sup> *Id.* at 9 (citing PJM, *Problem/Opportunity Statement, Residential and Small Commercial Customer Measurement and Verification for Demand Response*, <https://www.pjm.com/-/media/committees-groups/subcommittees/drs/2022/20220802/item-03a---statistical-sampling-problem->

Market Monitor also notes that PJM stakeholders correctly recognized the value of using interval metering to accurately measure and compensate the performance of demand resources and voted to reject the adoption of CPower's problem statement.<sup>62</sup> The Market Monitor also notes that other Curtailment Service Providers have for years successfully aggregated residential demand response using interval meter data supplied by electric distribution companies.<sup>63</sup>

30. The Market Monitor states that the requirement to provide evidence of load reductions by demand resources is a natural barrier to entry, not an artificial one.<sup>64</sup> The Market Monitor asserts that removal of natural barriers to entry creates inefficiencies in the same way that the addition of artificial barriers to entry creates inefficiencies, and natural barriers should not be eliminated.<sup>65</sup>

#### IV. **Discussion**

##### A. **Procedural Matters**

31. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2024), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept CPower's and the Market Monitor's answers because they have provided information that assisted us in our decision-making process.

##### B. **Substantive Matters**

32. Under FPA section 206, "the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon ... the complainant."<sup>66</sup> In this case, we find that CPower has not shown that the Tariff is unjust, unreasonable, or unduly discriminatory or preferential, and we thus deny the Complaint.

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statement-cpower.ashx).

<sup>62</sup> *Id.* at 11-12.

<sup>63</sup> *Id.* at 3.

<sup>64</sup> *Id.* at 12-13.

<sup>65</sup> *Id.* at 13.

<sup>66</sup> 16 U.S.C. § 824e(b).

33. CPower first argues that the Tariff creates unjust and unreasonable energy and capacity market prices by preventing Curtailment Service Providers from using approved statistical sampling rules for interval metered residential customers. The Tariff requires Curtailment Service Providers to provide meter data for interval metered residential customers; for non-interval metered residential customers, the Tariff permits Curtailment Service Providers to use statistical sampling per the procedures in the PJM Manuals.<sup>67</sup> We find that CPower fails to demonstrate that this Tariff requirement is unjust and unreasonable. CPower offers no support for the broad assertions in the affidavit accompanying the complaint that CPower cannot obtain the required meter data, including the extent of the alleged problem in PJM.<sup>68</sup> Moreover, while CPower claims it provides a “documented example [in Virginia] of the challenges faced by [Curtailment Service Providers] in acquiring the requisite data from [electric distribution companies],”<sup>69</sup> CPower does not show how the Virginia Commission’s decision renders third parties like CPower unable to obtain a utility’s customers’ data that a Curtailment Service Provider would need to participate in PJM’s demand response programs.

34. CPower’s second argument is that the above Tariff requirement is unduly discriminatory against Curtailment Service Providers in comparison to electric distribution companies because electric distribution companies have adopted advanced metering infrastructure for their exclusive use, and they do not make AMI data available to Curtailment Service Providers. We find that CPower has not satisfied its burden under section 206 of the FPA to demonstrate that the Tariff is unduly discriminatory or preferential. “In general, discrimination is ‘undue’ when there is a difference of rates,

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<sup>67</sup> PJM, Intra-PJM Tariffs, OATT attach. K (App.), § 8.3 (Metering Requirements); *id.* OATT attach. K (App.) § 1.5A (Economic Load Resp Response Participant) (14.0.0), § 1.5A.4(a).

<sup>68</sup> *See* Complaint, Aff. ¶ 8 (claiming electric distribution companies stated that: (1) “[t]he AMI system is not configured to permit [interval meter data] to be compiled and provided to Curtailment Service Providers”; (2) “[p]ulling the AMI data” would be “very difficult and extremely labor intensive”; and (3) “customer consent protocols and procedures for transfer of data to a [third] party were manual and outside of AMI functionality”). As the Market Monitor also notes, and to which CPower does not respond, PJM has a standardized customer consent form so that a Curtailment Service Provider’s potential customers can authorize the electric distribution company to release the customer’s electric usage information to the Curtailment Service Provider for participation in PJM demand response programs. PJM Manual 11, Revision 132, eff. Sept. 1, 2024, section 10.2.2.2.

<sup>69</sup> Complaint at 12.

terms or conditions among similarly situated customers.”<sup>70</sup> “To say that entities are similarly situated does not mean that there are no differences between them; rather, it means that there are no differences that are material to the inquiry at hand.”<sup>71</sup> We are not persuaded by CPower’s undue discrimination argument because CPower does not show that the Tariff applies different terms to third-party Curtailment Service Providers in contrast to Curtailment Service Providers who are electric distribution companies. Rather, the Tariff requires all Curtailment Service Providers to provide meter data for interval metered residential customers.<sup>72</sup> To the extent CPower is arguing that the Tariff is unduly discriminatory because electric distribution companies have access to AMI data that Curtailment Service Providers do not, we find that CPower has failed to demonstrate that CPower cannot obtain the required meter data, for the reasons discussed above. Accordingly, we find that CPower has not carried its burden under FPA section 206 to show that the Tariff is unduly discriminatory or preferential.

35. While we find that CPower has not provided sufficient evidence to meet its FPA section 206 burden, we recognize the concern that, under PJM’s Tariff, residential demand response may not be able to participate in PJM’s wholesale markets if an electric distribution company is unable or unwilling to provide the requisite AMI data.<sup>73</sup> The Commission has found that well-functioning, competitive wholesale electricity markets should reflect the balance of supply and demand conditions, and that enabling demand-side resources, along with supply-side resources, improves the economic operation of markets by aligning prices more closely with the value that customers place on electric power.<sup>74</sup> Furthermore, the Commission has long worked to ensure that all resource types, including demand-side resources, have just and reasonable and not unduly discriminatory access to Commission-jurisdictional wholesale electricity markets.<sup>75</sup> In making these

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<sup>70</sup> *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,076, at P 369 (2007).

<sup>71</sup> *N.Y. Indep. Sys. Operator, Inc.*, 162 FERC ¶ 61,124, at P 10 (2018).

<sup>72</sup> *E.g.*, PJM, Intra-PJM Tariffs, OATT attach. K (App.), § 8.3, – (Metering Requirements) (“The Curtailment Service Provider is responsible to ensure that the Emergency Load Response Program and Pre-Emergency Load Response Program Participants have metering equipment that provides integrated hourly kWh values on an electric distribution company account basis.”).

<sup>73</sup> *See* CPower Answer at 5.

<sup>74</sup> *See, e.g., Wholesale Competition in Regions with Org. Elec. Mkts.*, Order No. 719, 125 FERC ¶ 61,071, at P 16 (2008), *order on reh’g*, Order No. 719-A, 128 FERC ¶ 61,059, *order on reh’g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

<sup>75</sup> *See, e.g., id.; Electric Storage Participation in Markets Operated by Reg’l Transmission Orgs. & Indep. Sys. Operators*, Order No. 841, 162 FERC ¶ 61,127 (2018),

findings, the Commission has acknowledged that demand response affects both federal and state regulatory interests.<sup>76</sup> Similarly, the Commission here respects the role of states with respect to issues such as electric distribution companies' policies around residential customer meter data. We recognize that some questions governing the availability to third parties of data held by electric distribution companies, including interval data, along with larger questions involving deployment of advanced metering infrastructure, are questions under the jurisdiction of state regulatory authorities.

36. PJM states in its answer that if the Commission grants the complaint, Curtailment Service Providers "should at least be required to provide evidence that the electric distribution company cannot provide the interval meter data," including the electric distribution company's technical or procedural limitation in providing the data, "despite the existence of interval meters at the residential customer site."<sup>77</sup> To the extent that CPower, PJM, or others present specific, demonstrable evidence that electric distribution companies are unwilling or unable to provide Curtailment Service Providers with the AMI data that PJM's Tariff requires, the Commission will consider such evidence. But, as stated above, such evidence is not in this record.

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*order on reh'g*, Order No. 841-A, 167 FERC ¶ 61,154 (2019), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 964 F.3d 1177 (D.C. Cir. 2020); *Participation of Distributed Energy Res. Aggregations in Mkts. Operated by Reg'l Transmission Orgs. & Indep. Sys. Operators*, Order No. 2222, 172 FERC ¶ 61,247 (2020), *order on reh'g*, Order No. 2222-A, 174 FERC ¶ 61,197, *order on reh'g*, Order No. 2222-B, 175 FERC ¶ 61,227 (2021).

<sup>76</sup> Order No. 2222, 172 FERC ¶ 61,247 at P 44 ("[T]he Commission recognizes a vital role for state and local regulators with respect to retail services and matters related to the distribution system, including design, operations, power quality, reliability, and system costs."); Order No. 2222-B, 175 FERC ¶ 61,227 at P 28 (recognizing "both federal and state regulatory interests" affected by the Commission's consideration of demand response participation in wholesale electricity markets).

<sup>77</sup> See PJM Answer at 15.

The Commission orders:

(A) The complaint is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Chang is concurring with a separate statement attached.

( S E A L )

Debbie-Anne A. Reese,  
Acting Secretary.



UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Enerwise Global Technologies, LLC

Docket No. EL23-104-000

v.

PJM Interconnection, L.L.C.

(Issued September 19, 2024)

CHANG, Commissioner, *concurring*:

1. I concur in today's order, which finds that Enerwise Global Technologies, LLC (CPower) has not met its burden under section 206 of the Federal Power Act to show that the PJM Interconnection LLC (PJM) tariff is unjust and unreasonable.<sup>1</sup> Further, I agree with the PJM Market Monitor that using actual metered interval data is the *ideal* method to measure and verify performance for demand-side resources.<sup>2</sup> It is essential that resources that are procured and compensated in the markets actually deliver on their reliability and economic commitments.

2. This case comes to FERC at a critical moment. Supply-side resources in PJM are constrained and demand is rapidly growing. PJM's power prices are rising, as reflected in its most recent capacity auction results.<sup>3</sup> Demand-side resources, when well-deployed, can help maintain system reliability and keep consumer costs down. Thus, it is essential that the Commission, states, market operators, market participants, and other stakeholders focus on fully using the resources available to ensure reliability and address the rising prices in PJM.

3. Considering these needs, this docket raises important questions regarding demand-side resources' ability to access the PJM market when metered interval data exist but are not accessible. Specifically, in areas where metered interval data do not exist because residential customers do not have the requisite meters, PJM allows Curtailment Service

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<sup>1</sup>*Enerwise Global Technologies, LLC v PJM Interconnection, L.L.C.*, 188 FERC ¶ 61,191 (2024).

<sup>2</sup> *Id.* at P 28; Market Monitor Answer at 3.

<sup>3</sup> PJM 2025/2026 Base Residual Auction Report, *available at* <https://pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2025-2026/2025-2026-base-residual-auction-report.ashx>.

Providers (CSPs) to use statistical sampling to first determine and select a subset of customers that represent the group the CSPs plan to use to provide demand response, and then measure, analyze, and verify their electricity usage during demand response events. The sampling data are used to determine the amount of demand response resources that the CSPs can offer into and be compensated by the wholesale market. On the other hand, in places where metered interval data exist, PJM requires the use of actual metered data, regardless of the availability of those data to the CSPs. I am concerned that metered interval data are often difficult or impossible to obtain for third parties interested in deploying demand-side resources, which highlights a potential gap where CSPs in areas with metered interval data may face a barrier to participation in the PJM market. This restriction in demand-side resources' access to the market would reduce competition that otherwise could bring value to customers.

4. More challenging, this potential gap occurs at the intersection of state and federal jurisdiction, as state regulatory commissions have authority to determine whether distribution utilities must provide third parties with metered interval data from retail customers. By comparison, FERC regulates PJM's tariff and market participation rules and must consider both PJM's interest in ensuring demand response resources perform, and the ability of those resources to access the wholesale market.

5. As the order indicates, the record before us is insufficient to establish the breadth of this potential gap, but a better record regarding data access barriers for demand-side resources might warrant further action by the Commission. I encourage PJM to continue to monitor this issue to determine whether its existing rules might unnecessarily restrict access to its markets, thereby leaving potential cost-reducing measures unexplored.

For these reasons, I respectfully concur.



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Judy W. Chang  
Commissioner