

MC Legal Report
Summary of Significant Filings, Legal Activity and
Federal Energy Regulatory Commission (Commission) and Court Orders
(September 12, 2023 – October 13, 2023)

ORDERS

On October 6, 2023, in Docket No. ER23-1874-000 and ER23-1874-001, FERC issued an order (“Order”), as corrected by the Errata Notice issued on October 6, 2023, accepting PJM’s filing to revise PJM Tariff, Schedule 6A, to mitigate the adverse impacts of Black Start Units potentially being unavailable during a restoration event due to fuel unavailability. The Tariff changes provide qualification procedures, testing, performance requirements, and compensation for Fuel Assured Black Start Units. The revisions are effective July 12, 2023, subject to two minor compliance filing requirements due 30 days from the date of the Order.

On October 5, 2023, in Docket No. ER23-2637-000, FERC accepted a PJM ministerial clean-up filing to ensure the Tariff correctly reflects the language in Tariff, Attachment Q that was accepted by FERC as of various effective dates.

On October 3, 2023, in Docket No. ER23-2600-000, the Commission issued a letter order accepting PJM’s August 9, 2023 filing proposing amendments to Attachment DD, section 5.11(e) of the PJM Open Access Transmission Tariff to clarify that PJM will be required to only post smooth supply curves after each Base Residual Auction, and not after any Incremental Auction, effective October 8, 2023.

On October 2, 2023, in Docket No. ER23-1996-001, the Commission issued a letter order accepting PJM’s August 28, 2023 compliance filing refining and clarifying the definition of Emergency Action used for the purpose of determining Performance Assessment Intervals and correcting certain clerical errors, in compliance with the directives in the Commission’s July 28, 2023 order. PJM’s revisions in the compliance filing become effective as of July 30, 2023.

On September 29, 2023, in Docket No. ER23-2556-000, the Commission issued an Order rejecting the Informational Filing submitted by EFS Parlin Holdings, LLC (Parlin) on August 2, 2023 relating to its rate schedule for Reactive Supply and Voltage Control from Generation or Other Sources Service as defined in Schedule 2 of the PJM Tariff. The informational filing concerned the potential transfer or in the alternative, potential deactivation of its generating facility, located in Borough of Sayreville, New Jersey. Parlin also requested a waiver of the 90-day prior notice requirement. The Commission rejected Parlin’s informational filing as premature and Parlin’s waiver request as speculative due to uncertainty as to whether the facility in question will be deactivated or transferred.

On September 29, 2023, in Docket No. ER23-1609-001, the Commission issued a letter order accepting PJM’s June 26, 2023 compliance filing specifying the dates for conducting Base Residual Auctions and Incremental Auctions for the 2025/2026 delivery year through the 2028/2029 delivery year, effective June 10, 2023.

On September 25, 2023, in Docket No. EL23-53, et al., the Commission issued an Order granting PJM’s filing of Joint Movant’s request for waiver of tariff provisions in order to allow PJM to defer collection of the remaining unbilled Non-Performance Charges associated with Winter Storm Elliott, and defer disbursement of the revenue from those Non-Performance Charges to Market Participants entitled to Performance Payments during Winter Storm Elliott. The waiver will not be effective unless and until the Settlement is filed, and will be in effect until PJM can implement the billing consequences of the Commission’s approval or rejection of the Settlement.

On September 22, 2023, in Docket No. ER23-2484-000, the Commission issued a letter order accepting PJM’s Tariff and Operating Agreement revisions to (i) expand provisions from PJM’s Hybrids Phase I filing to a broader set of mixed technology facilities, and (ii) clarify uplift rules to reflect the inverter-based hybrids and standalone storage available capability utilizing back-cast and state of charge data, consistent with the existing uplift rules for wind

resources. The Commission accepted PJM's requested November 1, 2023 effective date for all aspects of the filing, with the exception of those provisions related to uplift, which have a requested placeholder effective date of December 31, 9998.

On September 21, 2023, in Docket Nos. EL22-32-000, et al., the Commission issued an Order accepting, in part, PJM's proposed Tariff revisions, addressing arguments raised on rehearing, and requiring PJM to file a compliance filing by October 23, 2023 to change the confidence interval employed in its Financial Transition Right (FTR) Credit Requirement from 97% to 99%. The Commission anticipates a 90-day transition period to implement the change in the FTR Market.

On September 21, 2023, in Docket No. ER23-2327-000, the Commission approved PJM's request for approval for the recovery of penalties arising from a Commission-approved Settlement Agreement between PJM and ReliabilityFirst Corporation effective as of August 30, 2023.

On September 14, 2023, in Docket No. ER19-469-005, the Commission issued a letter order accepting the filing of PJM of a supplemental filing proposing to remove the relevant provisions related to the state of charge characteristics for Energy Storage Resources in the PJM Tariff and the Operating Agreement. PJM's revisions become effective on the effective dates March 31, 2024 and Sept. 1, 2026.

On September 14, 2023, in Docket No. ER19-469-006, the Commission issued a letter order accepting the filing of PJM of a supplemental filing proposing to remove the relevant provisions related to the state of charge characteristics for Energy Storage Resources in the PJM Tariff and the Operating Agreement. PJM's revisions become effective on the effective dates March 31, 2024 and Sept. 1, 2026.

FILINGS

On October 6, 2023, in Case No. 23-2830 in the U.S. Court of Appeals for the Third Circuit, PJM filed a petition for review of the following FERC orders: (1) Improvements to Generator Interconnection Procedures and Agreements, Order No. 2023, 184 FERC ¶ 61,054, Docket No. RM22-14-000 (July 28, 2023); and (2) Improvements to Generator Interconnection Procedures and Agreements, Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration, 184 FERC ¶ 62,163, Docket No. RM22-14-001 (Sept. 28, 2023). PJM also filed a corporate disclosure statement in Case No. 23-2830.

On October 5, 2023, in Docket No. EL23-105-000, PJM and transmission owners in Ohio (AEP Ohio, AES Ohio, Duke Energy Ohio and FirstEnergy affiliate American Transmission Systems) (together, the Respondents) filed a joint motion requesting a 30-day extension of the answer period to respond to the recently-filed complaint by the Ohio Consumers' Counsel regarding supplemental projects in Ohio. The Respondents are seeking to extend the deadline from October 18th to November 17th, 2023.

On October 3, 2023, in Docket Nos. ER23-2612-000, -001 and -002, PJM filed a motion for leave to answer and answer in response to protests and comments filed by the Maryland Public Service Commission (MD PSC), the Maryland Office of People's Counsel (OPC) and the Organization of PJM States, Inc. (OPSI) (collectively, Protesters) in response to PJM's proposed revisions to Tariff, Schedule 12-Appendix A. PJM rejects Protesters' assertions specific to the retirement of the Brandon Shores generating units and the process used to identify necessary baseline upgrades. PJM demonstrates that Protesters' arguments are outside the scope of this proceeding.

On October 2, 2023, in Docket No. AD23-10-000, the ISO/RTO Council (IRC) filed comments in response to the American Clean Power Association's (ACP's) petition for a technical conference to discuss the accreditation of resources' capacity value in Independent System Operators/Regional Transmission Organizations (ISO/RTO) regions with and without capacity markets, as well as in non ISO/RTO regions.

On October 2, 2023, in Docket No. ER23-2355-001, PJM filed a response to the Commission's September 1, 2023 Deficiency Notice. The deficiency response provided additional information and justification for nonconforming Affected System provisions contained in the Interconnection Service Agreement among PJM, Powells Creek Farm Solar, LLC, and Virginia Electric and Power Company, previously filed with the Commission on July 7, 2023. PJM requested an effective date of September 6, 2023.

On October 2, 2023, in Docket No. ER23-2333-001, PJM filed a response to the Commission's August 31, 2023 Deficiency Notice. The deficiency response provided additional information and justification for nonconforming Affected System provisions contained in the Interconnection Service Agreement among PJM, Axton Solar LLC, and Appalachian Power Company, previously filed with the Commission on July 5, 2023. PJM requested a placeholder effective date of December 31, 9998 in order to allow for additional changes to the ISA.

On October 2, 2023, in Department of Energy Docket No. DOE-HQ-2023-0050, PJM submitted comments in response to the Notice of Proposed Rulemaking on Coordination of Federal Authorizations for Electric Transmission Facilities. While PJM generally supports many of the proposed revisions, PJM expresses concern that the proposed two-year timeline under the Coordinated Interagency Transmission Authorizations and Permits (CITAP) Program may not be accelerated enough to accomplish the transmission buildout required to meet the clean energy goals of both the Biden administration and the Federal Energy Regulatory Commission.

On October 2, 2023, PJM submitted public comments in response to the Illinois Commerce Commission's Notice Of Inquiry (23-NOI-01) on the Ameren Illinois RTO Cost-Benefit Analysis filed in Docket No. 22-0485.

On September 29, 2023, in Docket No. ER23-2975-000, PJM Interconnection, L.L.C. (PJM) along with 80 settling parties submitted a comprehensive Settlement with the Commission that resolves the fifteen complaints filed against PJM relating to Winter Storm Elliott (Docket Nos. EL23-53-000, et al.). The settling parties requested that the Commission approve the Settlement without modification or condition no later than December 29, 2023.

On September 29, 2023, in Docket No. EL23-122-000, Bottlebrush Solar and Pleasant Prairie Solar filed Section 206 Complaint against PJM. The Complainants are seeking an order from the Commission directing PJM to grandfather both projects and permit the Complainants an opportunity to execute ISAs under PJM's pre-Transition Date interconnection procedures. PJM's response to this complaint is due by October 19, 2023.

On September 29, 2023, in Docket No. ER23-2964-000, PJM on behalf of the PJM Transmission Owners submitted amendments to Section 4.11 of the Consolidated Transmission Owners Agreement and related definitions. The PJM Transmission Owners are requesting that the Commission accept this filing with an effective date of no later than July 12, 2025.

On September 29, 2023, in Docket No. ER22-2114-001, PJM on behalf of the PJM Transmission Owners (PJM TOs) notified the Commission that previously filed sections of Tariff, Parts VII and VIII, will become effective as of October 5, 2023 in compliance with the Commission's December 20, 2022 order accepting these interconnection Tariff reforms to the interconnection process. The filing included revised eTariff metadata to effectuate this October 5, 2023 effective date, but did not change any rates, terms or conditions of service under the Tariff.

On September 29, in Docket No. ER22-2359-002, in further compliance with the Commission's May 18, 2023 Order on Compliance, PJM submitted a third Compliance Filing as well as an errata to its July 18 Compliance Filing. This third Compliance Filing addresses the limited substantive issue specifying delineation of the roles and responsibilities between PJM and the PJM Transmission Owners. In addition, the errata filing proposes some ministerial changes to its July 18 Compliance Filing that included (i) resolving a minor inconsistency regarding capitalization of a non-defined term; and (ii) correcting the Attachment W tariff record to reflect language inadvertently omitted from the Attachment W tariff records filed on July 18, 2023.

On September 29, 2023, in Docket Nos. EL23-53-000, et al., PJM Interconnection, L.L.C. (PJM) along with 80 settling parties submitted a comprehensive Settlement with the Commission that resolves the fifteen complaints filed against PJM relating to Winter Storm Elliott. The settling parties requested that the Commission approve the Settlement without modification or condition no later than December 29, 2023.

On September 28, 2023, in Docket No. EL23-105-000, the Ohio Consumers' Counsel (OCC) filed a Section 206 Complaint against PJM and transmission owners in Ohio (AEP Ohio, AES Ohio, Duke Energy Ohio and FirstEnergy affiliate American Transmission Systems) (together, the Ohio TOs). The OCC raises several arguments regarding FERC, PJM and state oversight over local transmission projects in the state of Ohio, and requests that FERC: (i) direct PJM to amend the Tariff and Operating Agreement to include a mechanism for FERC to review local transmission projects; (ii) appoint an Independent Transmission Monitor; (iii) preclude the Ohio TOs from using formula rates; and (iv) require the Ohio TOs to obtain FERC approval for all local transmission projects at or exceeding a set cost threshold. PJM's response to this Complaint is due by October 18, 2023.

On September 27, 2023, in Docket No. ER18-2102-004, PJM submitted on behalf of the PJM Transmission Owners, revisions to Schedule 12-C Appendix C of the PJM Open Access Transmission Tariff, to comply with the Federal Energy Regulatory Commission's directives in its Order on Remand issued on July 31, 2023. The PJM Transmission Owners requested the revisions become effective as for January 1, 2016

On September 28, 2023, in Docket No. EL23-104-000, Enerwise Global Technologies, LLC d/b/a CPower (CPower) filed a complaint arguing that the existing Open Access Transmission Tariff (Tariff) rules limiting the use of statistical sampling to residential demand response customers without Advanced Metering Infrastructure (AMI) is unjust and unreasonable. In this complaint, CPower seeks a Commission order directing PJM to amend the Tariff and related governing documents to give third-party Curtailment Service Providers the option to use statistical sampling for residential demand response even where AMI is installed at such locations. The answer deadline for this complaint is October 18, 2023.

On September 26, 2023, PJM member Heritage Power Marketing, LLC (Heritage) and certain of its affiliates (collectively with Heritage, the Debtors) filed in the U.S. Bankruptcy Court for the Southern District of Texas (jointly administered at Case No. 23-90032) a proposed resolution with PJM as to the Debtors' Non-Performance Charges for the Performance Assessment Intervals relating to Winter Storm Elliott, as well as assumption by Heritage of the PJM Operating Agreement and other obligations to PJM. The proposed resolution is subject to Bankruptcy Court approval (hearing date scheduled for October 4, 2023). Notice of the Debtors' January 24, 2023 Chapter 11 bankruptcy petitions was previously provided to PJM membership.

On September 25, 2023, in Docket No. ER23-2649-000, PJM submitted a Motion for Leave to Answer and Answer to the September 8, 2023 Comments of the Market Monitor, which were made in response to PJM's August 18, 2023 proposed revisions regarding Critical Infrastructure Protection (CIP) Interconnection Reliability Operating Limit (IROL) Cost Recovery for Generators.

On September 25, 2023, in Docket No. EL23-53, et al., PJM Interconnection, L.L.C., on behalf of Answering Movants, submitted an Answer in opposition to the untimely intervention of Chief Conemaugh Power, LLC and Chief Keystone Power, LLC (the Chief Companies), and a Motion for Leave to Answer the Chief Companies' untimely September 22 protest of the September 8 Joint Waiver Request. The Answering Movants request that the Commission deny the Chief Companies' untimely motion to intervene, grant leave to answer the Chief Companies' untimely protest, and reject the untimely protest or reject the protest on the merits.

On September 22, 2023, in Docket No. ER21-201-003, PJM submitted on behalf of Atlantic City electric Company (ACE) its further compliance filing in response to the May 25, 2023 Order concerning its Order No. 864 compliance filing. ACE requested that its compliance filing become effective as of January 27, 2020.

On September 22, 2023, in Docket No. ER21-203-003, PJM submitted on behalf of Baltimore Gas and Electric Company (BGE) its further compliance filing in response to the May 25, 2023 Order concerning its Order No. 864 compliance filing. BGE requested that its compliance filing become effective as of January 27, 2020.

On September 22, 2023, in Docket No. ER21-204-003, PJM submitted on behalf of Commonwealth Edison Company (ComEd) its further compliance filing in response to the May 25, 2023 Order concerning its Order No. 864 compliance filing. ComEd requested that its compliance filing become effective as of January 27, 2020.

On September 22, 2023, in Docket No. ER21-205-003, PJM submitted on behalf of Delmarva Power & Light Co. (DPL) its further compliance filing in response to the May 25, 2023 Order concerning its Order No. 864 compliance filing. DPL requested that its compliance filing become effective as of January 27, 2020.

On September 22, 2023, in Docket No. ER21-206-003, PJM submitted on behalf of Potomac Electric Power Company (PEPCO) its further compliance filing in response to the May 25, 2023 Order concerning its Order No. 864 compliance filing. PEPCO requested that its compliance filing become effective as of January 27, 2020.

On September 22, 2023, in Docket No. ER21-209-003, PJM submitted on behalf of PECO Energy (PECO) its further compliance filing in response to the May 25, 2023 Order concerning its Order No. 864 compliance filing. PECO requested that its compliance filing become effective as of January 27, 2020.

On September 22, 2023, in Docket No. ER23-2916-000, PJM submitted on behalf of Public Service Electric and Gas Company (PSE&G) a Section 205 application seeking the Abandoned Plant Incentive PSE&G's State Agreement Approach (SAA) Project to recover 100 percent of prudently-incurred costs for certain transmission upgrades in the event the Project is abandoned or cancelled for reasons beyond PSE&G's control. PSE&G is requesting that Commission issue an order granting the Abandoned Plant Incentive for the Project effective November 22, 2023.

On September 20, 2023, in Docket No. RD23-2-000, PJM submitted reply comments in the Physical Security Technical Conference proceeding, in response to questions from Commission staff regarding the effectiveness of reliability standard CIP-014-3.

On September 19, 2023, in Docket No. EL23-53, et al., PJM Interconnection, L.L.C., on behalf of Answering Movants, submitted a Motion for Leave to Answer and Answer (the Movant Answer) in response to the September 15 answer of PSEG Companies and Enel North America, Inc. (the PSEG/Enel Answer) opposing the September 8 Joint Motion for Waiver. The Movant Answer contends that the relief requested in the September 8 Joint Motion for Waiver satisfies the Commission precedent for waiver of the specified Tariff provisions, subject to the express condition of a settlement filing, for the limited purpose and time frame proposed. The Movant Answer renews the request that the Commission issue an order by September 25, 2023, granting the relief requested in the September 8 Joint Motion for Waiver.

On September 15, 2023, in Docket Nos. ER23-9-000, et al. PJM filed reply comments to the comments filed by Monitoring Analytics, LLC on August 28, 2023, on the triennial filings of Doc Brown LLC and other sellers in support of their respective energy market-based rate authorizations.

On September 14, 2023, in Docket No. ER23-2841-000, PJM filed revisions to the Tariff and RAA, pursuant to section 205 of the Federal Power Act, to postpone implementation of Commission-approved rules allowing Distributed Energy Resource (DER) Capacity Aggregation Resources to participate in PJM's capacity market. PJM proposes to postpone implementation of the previously approved revisions until capacity market participation by DER Capacity Aggregation Resources is more assured, and requested an effective date of December 31, 9998.

On September 12, 2023, in Docket No. AD23-7-000, PJM submitted its response to comments following the Commissioner-led Forum on PJM's Capacity Market held on June 15, 2023.

On September 12, 2023, in Docket No. ER23-1874-000, PJM filed an answer to the comments filed by Monitoring Analytics, LLC on August 28 2023, on PJM's August 7, 2023 response to the Commission's July 7, 2023 deficiency notice in the Black Start Fuel Assurance proceeding.