

MC Legal Report
Summary of Significant Filings, Legal Activity and
Federal Energy Regulatory Commission (Commission) and Court Orders
(September 11, 2024 – October 10, 2024)

ORDERS

On October 10, 2024, in Docket No. ER23-1784-002, the Commission accepted PJM's compliance filing with the Commission's October 26, 2023 Order on Compliance and Request for Waivers, to amend the PJM Tariff, section 4.2 to incorporate by reference the North American Energy Standards Board (NAESB) Wholesale Electric Quadrant (WEQ) Business Practice Standards related to the cryptographic security module that were not already incorporated by reference in PJM's May 1, 2023 compliance filing in Docket No. ER23-1784-000.

On October 4, 2024, in Docket No. ER24-2716-000, 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to the PJM Operating Agreement, Schedule 12, and the RAA, Schedule 17, to (i) add the new members, (ii) remove withdrawn members, (iii) reflect members' whose corporate names changed and (iv) add new signatories to the RAA during the first and second quarters of 2024. The revisions are effective as of June 30, 2024.

On October 3, 2024, in Docket No. ER24-1743-000 and ER24-1743-002, the Commission accepted the ministerial clean-up filing and amendments filed by PJM submitted to amend and correct the attachments to reflect all Commission-accepted revisions on a historical and going-forward basis.

On September 30, 2024, in Docket No. EL24-90-001, the Commission issued a Notice of Denial of Rehearing by Operation of Law, regarding the Commission's July 31, 2024 order (July 31 Order) denying Energy Management Systems' (EMS) complaint against PJM (Complaint). The Complaint alleged that PJM's denial of EMS's membership application in January 2023 violated the PJM Operating Agreement. The July 31 Order found that PJM reasonably exercised its discretion in determining that EMS is an unmanageable credit risk and in denying its membership application.

On September 26, 2024, in Docket No. EL21-91-003 the Presiding Judge in the Black Start CRF hearing proceeding issued an Order Confirming Bench Rulings made during the conference held on September 25, 2024.

On September 24, 2024, in Docket No. ER24-2665-000, the Commission issued a letter order accepting the filing by PJM on behalf of UGI Utilities, Inc. (UGI) revisions to the transmission formula rate set forth in PJM Tariff, Attachment H-8C. UGI's revisions become effective as of October 1, 2024.

On September 23, 2024, in Docket Nos. ER24-2447-000 and ER24-2447-001, the Commission issued an order accepting proposed revisions to PJM's Reliability Assurance Agreement to more accurately allocate capacity obligations associated with forecasted load adjustments between Load Serving Entities that procure capacity through PJM's capacity auctions and those that elect the Fixed Resource Requirement Alternative. PJM's revisions become effective as of August 31, 2024, and PJM is directed to make a compliance filing by October 23, 2024 pursuant to this order.

On September 20, 2024, in Docket No. ER24-2564-000, the Commission issued an Order Accepting Tariff Proposal, Initiating a Proceeding Pursuant to Section 206 of the Federal Power Act, and Establishing a Refund Effective Date and Hearing and Settlement Judge Procedures in ER24-2564-000 and EL24-137-000.

On September 19, 2024, in Docket No. EL23-104-000, the Commission issued an order denying the complaint filed by Enerwise Global Technologies, LLC d/b/a CPower, which argued that the existing Tariff rules limiting the use of statistical sampling to residential demand response customers without Advanced Metering Infrastructure is unjust and unreasonable.

On September 16, 2024, in Docket No. EL21-91-003, the Chief Judge issued an Order scheduling oral arguments in the Black Start CRF proceeding.

On September 11, 2024, in Docket No. ER24-2529-000, the Commission issued a letter order accepting the filing by PJM of 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.

FILINGS

On October 10, 2024, in Docket Nos. EL21-91-003 and ER21-1635-010, PJM submitted comments opposing the Independent Market Monitor's Offer of Settlement in the Black Start CRF proceeding.

On October 10, 2024, in Docket Nos. ER21-1635-009 and EL21-91-003, PJM submitted a joint Rule 710(d) motion for waiver of the initial decision in relation to the Settling Parties' August 14, 2024 Settlement that would resolve pending proceedings related to the CRF rates for Black Start Units selected prior to June 6, 2021.

On October 9, 2024, in Docket No. ER24-2338-001, PJM submitted responses to the notice of deficiency issued on September 9 requesting more information regarding PJM's Section 205 filing revising the Tariff and Operating Agreement to provide PJM with FPA section 205 filing rights over planning.

On October 9, 2024, in Docket No. ER24-2336-001, PJM submitted, on behalf of Duquesne Light Company, the current Chair of the Transmission Owners Agreement Administrative Committee, a response to the Commission's deficiency notice with respect to proposed amendments to the Consolidated Transmission Owners Agreement (CTOA) to provide PJM with FPA Section 205 filing rights to propose changes to the Regional Transmission Expansion Planning Protocol as a Schedule to the PJM Tariff and other related changes.

On October 8, 2024, in Docket Nos. EL22-80-000 and EL22-85-000, PJM submitted to the Commission responses to the series of questions about the costs and benefits of requiring Designated Entity Agreements for in-progress Regional Transmission Expansion Plan projects set forth in Question 2 in the Appendix to the Commission's July 25, 2024 order in these dockets.

On October 8, 2024, in Docket No. EL25-5-000, PJM filed an answer in opposition to the request for a shortened period to answer the October 4, 2024 complaint filed by Welcome Solar LLC, Welcome Solar II, LLC, and Welcome Solar III, LLC (together, "Welcome Solar"). PJM argued that Welcome Solar's request to shorten the answer period to seventeen days is unduly prejudicial.

On October 8, 2024, in Docket No. ER25-51-000, in compliance with the Commission's order issued on July 2, 2008, PJM submitted proposed ministerial revisions to update the Schedule of Parties Adopting Local Transmission Loading Relief Procedures. PJM requested the updates be effective as of December 16, 2024.

On October 7, 2024, in Docket No. CP21-94-004, PJM submitted comments in support of the Sept. 6, 2024 application of Transcontinental Gas Pipe Line Company, LLC for a temporary emergency certificate to continue operating the Regional Energy Access Expansion Project.

On October 7, 2024, in Docket No. ER24-3090-000, PJM submitted a motion to intervene and comments in response to the Request for Limited Waiver and Expedited Consideration of EF Kenilworth LLC.

On October 4, 2024, in Docket No. EL25-5-000, Welcome Solar, LLC, Welcome Solar II, LLC and Welcome Solar III, LLC filed a complaint against PJM requesting the Commission to (1) direct PJM to withdraw the September 5 Notices of Breach; (2) direct PJM to convene a meeting with ATSI and Welcome Solar to discuss progress that needs to be made on developing the Facilities and associated matters; (3) direct PJM to file amended interconnection service agreements and interconnection constructions service agreements for the Facilities that reflect a revised COD milestone, and if the Commission deems appropriate, a revised Equipment Delivery Milestone approximately six months prior to the COD milestone; (4) find that PJM has exercised a pattern of unjust, unreasonable and unduly discriminatory conduct in applying its rules related to whether project development milestones have been met, whether alleged breaches have been cured, and whether requests for milestone extensions from Interconnection Customers should be granted; and (5) direct PJM to revise the PJM Tariff and manuals in a manner that will rectify PJM's conduct, or in the alternative, that the Commission initiate a proceeding to determine whether PJM's pattern of conduct is unjust and unreasonable. PJM's response is due on October 21, 2024.

On October 3, 2024, in Docket Nos. ER24-2698-000 and EL24-141-000, PJM filed a joint motion with Big Shoulders Storage LLC requesting that the Commission: (1) hold the Docket Nos. ER24-2698-000 and EL24-141-000 in abeyance for 32 days, until November 4, 2024; and (2) grant expedited treatment and a shortened answer period for this motion.

On October 3, 2024, in Docket No. ER25-19-000, FirstEnergy Service Company, on behalf of Potomac Edison Company submitted a Request for Order Authorizing Abandoned Plant Incentive. Potomac Edison is asking for an effective date of no later than December 3, 2024.

On October 1, 2024, in Docket No. ER24-2905-000, PJM submitted a motion for leave to answer and answer in response to the comments filed by the Independent Market Monitor of PJM regarding the multi-schedule selection proposal.

On September 30, 2024, Docket No. ER24-2881-000, PJM filed a Motion to Withdraw to its August 27, 2024 notice of cancellation filing for the Wholesale Market Participant Agreement by and among PJM, Kieffer Funk, LLC, and the Potomac Edison Company, associated with PJM Queue No. AC2-136. As noted in the Motion to Withdraw, based on its review of the Kieffer Funk's September 17, 2024 protest, in particular the material provided as part of Exhibit L, PJM has determined that Kieffer Funk has complied with the Tariff's requirement to "commence in good faith all steps that are reasonable and appropriate to cure the Breach within such thirty day time period and thereafter diligently pursue such action to completion," and that, at this point in time, Kieffer Funk is no longer in Breach of the substantial site work completed milestone set forth in section 3.1.1 of the Kieffer Funk WMPA.

On September 27, 2024, in Docket No. EL24-148-000, Sierra Club, Natural Resources Defense Council, Public Citizen, Sustainable FERC Project and Union of Concerned Scientists submitted a complaint against PJM requesting that the Commission find that PJM's capacity market rules to be unjust and unreasonable by not accounting for the resource adequacy contributions of Reliability Must Run resources. This complaint asks that the Commission delay the 2026/2027 Base Residual Auction to allow time for the updated rules to be added to the Tariff in advance of the next auction or subject the result of the upcoming auction to refund under section 206 of the Federal Power Act.

On September 27, 2024, in Docket No. EL24-128-000, PJM and Enerwise Global Technologies, LLC d/b/a CPower ("CPower") submitted a joint motion to dismiss and stipulated agreement to withdraw the CPower complaint.

On September 27, 2024, in Docket No. ER24-3135-000, PJM submitted proposed revisions for automating bid duration for economic load response participants in PJM's Energy Markets. PJM requested that the revisions become effective December 31, 9998.

On September 26, 2024, in Docket Nos. EL24-119-000, ER24-2336-000 and ER24-2338-000, PJM submitted an answer and supporting affidavit in response to answers regarding PJM's Section 206 and Section 205 filings to revise the Operating Agreement and Tariff, and the PJM Transmission Owners FPA Section 205 filing to amend the Consolidated Transmission Owners Agreement, to provide PJM with FPA Section 205 filing rights over regional planning.

On September 26, 2024, in Docket No. ER24-3121-000, PJM submitted revisions to the Tariff and Operating Agreement to use hourly notification times when clearing Non-Synchronized Reserves and offline Secondary Reserves in both the day-ahead and real-time market. PJM requested that the revisions become effective as of November 26, 2024.

On September 23, 2024, in Docket No. EL24-125-000, PJM filed a joint motion with EDP Renewables North America LLC requesting that the Commission: (1) hold the Docket No. EL24-125-000 proceeding in abeyance for 30 days, until October 22, 2024; and (2) grant expedited treatment and a shortened answer period for this motion.

On September 23, 2024, in Docket No. EL21-91-003, PJM filed with the Commission its answer opposing the Market Monitor's motion to deem its comments opposing the settlement timely filed or to accept it one day out of time in the Black Start Capital Recovery Factor Proceedings.

On September 20, 2024, in Docket No. ER24-3006-000, PJM filed a joint motion with Hummingbird Energy LLC requesting that the Commission: (1) hold the Docket No. ER24-3006-000 proceeding in abeyance for 31 days, until October 21, 2024; and (2) grant expedited treatment and a shortened answer period for this motion.

On September 20, 2024, in Docket No. EL24-135-000, PJM filed a joint motion with Freeman Solar, LLC requesting that the Commission: (1) hold the Docket No. EL24-135-000 proceeding in abeyance for 31 days, until October 21, 2024; and (2) grant expedited treatment and a shortened answer period for this motion.

On September 20, 2024, in Docket No. EL24-141-000, Big Shoulders Storage LLC (BSS) filed a complaint against PJM challenging PJM's implementation of its interconnection procedures for generators interconnecting pursuant to the transition process under, Tariff, Part VII. PJM has applied the Transition Tariff provisions to BSS's approximately 85 MW standalone energy storage facility in an unjust, unreasonable, and unduly discriminatory manner resulting in withdrawal of the project from the Transition Cycle #1 queue cluster. PJM's response to the BSS complaint is due October 10, 2024.

On September 19, 2024, in Docket No. ER06-78-000, PJM submitted an informational filing to provide the 2025 annual budget of the Organization of PJM States, Inc.

On September 19, 2024, in Docket No. ER16-561-000, PJM submitted an informational filing to provide the 2025 annual budget of the Consumer Advocates of PJM States, Inc.

On September 16, 2024, in Docket No. ER22-2359-003, PJM submitted a Motion for Leave to Submit Compliance Filing and Compliance Filing in further compliance with Order No. 881. This filing addressed a limited ministerial issue removing obsolete language in PJM's Operating Agreement and Tariff in light of PJM's previous Order No. 881 compliance filings and given the Commission-approved Tariff and Consolidated Transmission Owners Agreement language, consistent with Order No. 881 directives.

On September 13, 2024, in Docket Nos. ER21-1635-009 and EL21-91-003, PJM submitted a joint Rule 710(d) motion for waiver of the initial decision concurrent with the filing of reply comments in support of the August 14, 2024 Settlement that resolves pending proceedings relating to whether the CRF rates for Black Start Units selected prior to June 6, 2021 remain just and reasonable in light of the reduction in the federal corporate tax rate from the Tax Cuts and Jobs Act of 2017.

On September 13, 2024, in Docket Nos. ER21-1635-009 and EL21-91-003, PJM submitted reply comments in support of the August 14, 2024 Settlement that resolves pending proceedings relating to whether the CRF rates for Black Start Units selected prior to June 6, 2021 remain just and reasonable in light of the reduction in the federal corporate tax rate from the Tax Cuts and Jobs Act of 2017.

On September 13, 2024, in DC Circuit Case No. 24-1120, regarding the United States Environmental Protection Agency's Final Rule on the regulation of greenhouse gas emissions, PJM, MISO, SPP and ERCOT (together, the "RTOs") filed an Amicus Curiae Brief. The brief urges the Court to remand the Rule back to the EPA for consideration of the reliability concerns raised by the RTOs consistent with EPA's legal obligations under Section 111 of the Clean Air Act, more specifically to address the "reliability safety valve" proposals, which the RTOs previously advanced in the EPA's docket prior to issuing its Final Rule. In those earlier filings of Aug. 8, 2023, and Dec. 20, 2023, the four RTOs outlined their reliability concerns with the compliance deadlines in the then-proposed Rule and further outlined specific mechanisms that would help mitigate reliability and resource adequacy issues the Rule could trigger. In its Final Rule published on May 9, 2024, the EPA made some helpful modifications from the proposed Rule in response to the RTOs' feedback. However, the Final Rule did not address, let alone adopt, any of the RTOs' "reliability safety valve" recommendations meant to ensure the development of compliance plans that meet grid reliability needs.

On September 13, 2024, in Docket No. EL21-91-003, the Chief Judge granted a joint motion that suspends the procedural schedule in the Black Start CRF proceeding.

On September 12, 2024, in Docket No. EL24-135-000, PJM filed an answer to the August 23, 2024 complaint and request for fast track processing filed by Freeman Solar LLC (Freeman Solar), asserting that PJM violated the Federal Power Act and its Tariff by terminating Freeman Solar's New Service Request for not providing a response that included the data necessary to correct the newly created deficiencies resulting from Freeman Solar's late-stage changes to its New Service Request as of the deadline set forth in the Tariff. PJM stated that its actions were proper, and that Freeman Solar had not shown that its complaint was justified.

On September 11, 2024, in Docket No. EL24-81-000, PJM submitted its response to the Commission's June 13, 2024 show cause order finding that PJM's Tariff appears to be unjust, unreasonable, and unduly discriminatory or preferential because it includes provisions for transmission owners to unilaterally elect transmission owner initial funding for interconnection-related network upgrades.