

April 11, 2011

PJM Moves to Rein in Demand Response “Double Counting”

Responding to the Federal Energy Regulatory Commission’s recent order in *EnerNOC, Inc.*, 134 FERC ¶ 61,158 (2011), on April 7, 2011, PJM Interconnection, L.L.C. (PJM) submitted a Federal Power Act section 205 filing intended to clarify the measurement of capacity curtailment by demand response resources in PJM’s capacity market. PJM’s filing proposes changes to its tariff, Operating Agreement and Reliability Assurance Agreement to resolve the so-called “double counting” controversy discussed in *EnerNOC*. Consistent with its position in *EnerNOC*, PJM’s proposals ultimately would cap the load reduction that a demand response resource could provide during system emergencies at its Peak Load Contribution (PLC).

Measuring Demand Response

PJM’s filing seeks to change the way in which demand response provided to meet a system emergency can be measured. Measuring a demand response resource’s performance requires a comparison of its actual metered demand during an emergency with a predetermined reference point. The crux of the double-counting debate is the appropriate reference point.

PJM maintains that the proper reference point is a demand response resource’s PLC. An entity’s PLC represents its contribution to PJM’s need to procure capacity resources, and is determined based on the average of the entity’s actual load during the five coincident peak hours of the preceding delivery year. PJM’s emergency load response program, however, also permits a reference point based on the Guaranteed Load Drop (GLD) baseline methodology, which measures the amount of demand response that an entity would have consumed absent the emergency conditions, referred to as the Customer Baseline Load (CBL).

PJM contends that load reduction “double counting” occurs because many end use consumers reduce their load during system peak hours to minimize their PLC and that load reduction “counts” toward a lower PLC. At the same time, the GLD method also “counts” that same load reduction (the reduction between CBL and PLC) toward the amount of demand response provided to meet a system emergency. Curtailment Service Providers (CSPs) that maintain portfolios of demand response resources may use an “overperforming” resource (*i.e.*, one providing load reduction in excess of its PLC) to offset an underperforming resource. PJM maintains that such double counting skews its capacity procurements and poses a threat to system reliability.

The EnerNOC Order

PJM first addressed its double-counting concerns through issuance of a “Joint Statement” with its Independent Market Monitor. The Joint Statement maintained that a load reduction between an entity’s CBL and PLC during a system emergency did not count as “over-performance” that could offset underperforming demand response resources. The Joint Statement warned that future attempts to claim such offsets could result in referrals to the Commission’s Office of Enforcement.

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One CSP, EnerNOC, challenged the Joint Statement as an improper attempt to amend the PJM tariff without Commission authorization. EnerNOC argued that the Joint Statement effectively eliminated the GLD method and demand response aggregation. EnerNOC sought a declaratory order allowing the continued use of the GLD method without the threat of enforcement actions, and without prejudice to any party's position regarding future proposed tariff changes.

Finding general agreement that PJM's tariff "could have been clearer" on the matter, the Commission declared that it would not consider the Joint Statement in assessing market manipulation matters, "and will treat it as if it were never issued." The Commission further declared that it would not institute any enforcement actions against EnerNOC or any other CSPs for registering customers and settling under the GLD method. The Commission also stated that its determinations were without prejudice to PJM submitting a section 205 filing to amend its tariff on the double-counting issue.

The PJM Filing

Barely one month after *EnerNOC*, PJM took the Commission up on its implicit offer and submitted its current section 205 filing. PJM's filing ultimately would limit the maximum load reduction an entity may provide during system emergencies to its PLC. As a "transitional" matter, PJM proposes a slightly higher cap – PLC times 1.25 – for delivery year 2011-2012. In addition, load reductions recognized for purposes of compliance with capacity commitments in the Reliability Pricing Model will be "added back" to an electric distribution company's peak load for purposes of load forecasting and establishing the following year's PLC for individual customers.

According to PJM, its rules already set the maximum demand response quantity that a retail customer may provide at the customer's PLC; its filing harmonizes the measurement of CSP compliance with this existing limitation. PJM asserts that its proposal would still permit "legitimate aggregation" of demand response resources, and that actual load reductions between an entity's CBL and PLC remain fully eligible for compensation through PJM's load response programs in the energy market. PJM also emphasizes that its filing is the result of a "robust" stakeholder process and has been endorsed by the PJM Markets Implementation Committee, Markets and Reliability Committee, and Members Committee.

Interventions, protests and comments concerning PJM's section 205 filing in Docket No. ER11-3322-000 must be submitted no later than April 28, 2011.



If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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