

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.

)

Docket No. EL09-68-000

**MOTION OF THE ELECTRIC POWER SUPPLY ASSOCIATION
TO REJECT OR, IN THE ALTERNATIVE, FOR EXTENSION OF TIME**

Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure,¹ the Electric Power Supply Association ("EPSA")² respectfully moves for rejection, without prejudice, of the September 16, 2009 filing by the Demand Response Supporters in the above-captioned proceeding.³ Although styled as comments on, and a protest to, an August 26, 2009 filing by PJM Interconnection, L.L.C. ("PJM"),⁴ the September 16 Filing is, in reality, an alternative proposal for revising PJM's open access transmission tariff (the "PJM Tariff") that should have been submitted as a separate complaint pursuant to Section 206 of the Federal Power Act (the "FPA").⁵ Rejecting the September 16 Filing without prejudice to the arguments and proposals set forth therein being re-filed in a complaint will ensure that EPSA, its members and other interested persons have notice

¹ 18 C.F.R. § 385.212 (2009).

² EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities serving global power markets. EPSA seeks to bring the benefits of competition to all power customers. The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

³ Comments and Protest of Demand Response Supporters, Docket No. EL09-68-000 (filed Sept. 16, 2009) (the "September 16 Filing").

⁴ Supplemental Report And Submittal Of PJM Interconnection, L.L.C. In Support Of Further Commission Action On Rehearing, Docket No. EL09-68-000 (filed Aug. 26, 2009) (the "August 26 Filing").

⁵ 16 U.S.C. § 824e (2006).

of, and a meaningful opportunity to comment on, the complex and important issues presented by that filing.

In the alternative, if the Commission declines to reject the September 16 Filing, EPSA respectfully requests an extension of time for the filing of responses to that filing to October 30, 2009. Such an extension will enable EPSA, its members and other parties to this proceeding to prepare and file substantive responses to the September 16 Filing.

In submitting this motion, EPSA and its members would like to reiterate their support for the participation of demand response resources in the PJM wholesale energy, capacity and ancillary services markets on just and reasonable terms.⁶ EPSA members have been actively involved in the stakeholder processes to develop and facilitate increased demand response within PJM. There is currently substantial participation and opportunity for demand-side resources to compete in the PJM wholesale markets, as evidenced by the most recent capacity market auction. While such resources are an important element of robust, competitive electricity markets, they must compete on a level playing field with other market participants under comparable rules and market price signals.

I. BACKGROUND

PJM initially submitted the August 26 Filing as a “supplemental report and submittal . . . in support of further Commission action on rehearing”⁷ in a proceeding arising out of a complaint filed by the PJM Industrial Consumer Coalition (“PJMICC”)

⁶ Motion For Leave To Intervene And Protest Of The Electric Power Supply Association at 5-6, Docket No. EL09-68-000 (filed Sept. 16, 2009).

⁷ August 26 Filing at 1.

that asked the Commission to remove the sunset date in the PJM Tariff for incentive payments to demand response resources and to institute PJMICC's alternative proposal for continued incentive payments. The Commission denied that complaint on December 31, 2007.⁸ Presumably in recognition of the importance of providing notice and an opportunity for comment with respect to the proposed tariff changes set forth in PJM's August 26 Filing, the Commission established a new docket for, and noticed, that filing on August 31, 2009.⁹

EPSA, various of its members, and other parties filed substantive comments on, and protests to, the August 26 Filing on or before the prescribed comment date of September 16, 2009.¹⁰ The Demand Response Supporters, consisting of PJMICC and others, also submitted the September 16 Filing on that date.

II. MOTION TO REJECT THE SEPTEMBER 16 FILING WITHOUT PREJUDICE

By its terms, the September 16 Filing, consisting of 44 pages of comments, as well as the five affidavits consisting of 135 pages attached thereto, is intended to demonstrate "that: (1) the current approach to demand response compensation is not just and reasonable; and (2) Demand Response Supporters' proposed remedy is just and reasonable. . . ."¹¹ The procedural vehicle for alleging an existing rate is unjust and unreasonable and proposing a just and reasonable substitute is a complaint pursuant to Section 206 of the FPA, not a protest. Indeed, the Commission has consistently held

⁸ *PJM Industrial Customer Coalition v. PJM Interconnection, L.L.C.*, 121 FERC ¶ 61,315 (2007).

⁹ See *PJM Interconnection, L.L.C.*, Notice of Filing, Docket No. EL09-68-000 (Aug. 31, 2009) (unreported).

¹⁰ Motion For Leave To Intervene And Protest Of The Electric Power Supply Association, Docket No. EL09-68-000 (filed Sept. 16, 2009).

¹¹ September 16 Filing at 9.

that “complaints must be filed separately from motions to intervene and protests.”¹² Allowing a complaint to be buried in a protest would “not allow interested parties sufficient notice of the complaint because it is not formally docketed and noticed.”¹³ Moreover, it would impose “an enormous burden” on the Commission if it were to attempt “to search through every one of the many protests and motions to intervene that are filed every year in order to identify those that are also ‘complaints’ . . . [,] so that they may be separately docketed and noticed. . . .”¹⁴

Consistent with its longstanding precedent, the Commission can and should reject the September 16 Filing, without prejudice to the Demand Response Supporters renewing their proposals and arguments in a complaint pursuant to Section 206 of the FPA. Such an approach will ensure that EPSA, its members and other interested persons, including persons who may not be parties to the above-captioned proceedings but who nevertheless have legitimate interests in the broader issues presented by the September 16 Filing, have notice of, and a meaningful opportunity to comment on, the Demand Response Supporters’ proposals. Not only would rejection without prejudice be consistent with established Commission precedent, it would also be consistent with the Commission’s having re-docketed and noticed the August 26 Filing, presumably in order to ensure that all interested persons, not just those who were parties to the

¹² *Entergy Servs., Inc.*, 52 FERC ¶ 61,317 at 62,270 (1990). See also, e.g., *New England Power Co., et al.*, 83 FERC ¶ 61,328 at 62,329 (1998) (“The Commission has explained on numerous occasions that a complaint cannot be submitted as part of a protest and motion to intervene in an ongoing proceeding.”); *Nevada Power Co.*, 70 FERC ¶61,391 at 62,139 (1995) (“The Commission does not permit complaints to be filed in motions to intervene in rate filings. . . .”).

¹³ *Louisiana Power & Light Co.*, 50 FERC ¶ 61,040 at 61,062-63 (1990).

¹⁴ *Id.* at 61,063 n.3.

PJMICC complaint docket, had notice of that filing and meaningful opportunity to intervene and to comment.

III. ALTERNATIVE REQUEST FOR EXTENSION OF TIME

If the Commission declines to reject the September 16 Filing without prejudice, EPSA, its members and other interested parties will have no choice but to attempt to respond to the substance of the Demand Response Supporters' arguments and proposals in this proceeding despite the limited time to do so. Clearly, given the extensive nature of the September 16 Filing, such a filing by EPSA cannot be fully prepared and filed to the meaningful extent the matters at issue require within the 15-day period allowed by the Commission's Rules of Practice and Procedure for answers to motions.¹⁵ In order to ensure that the Commission has a full and complete record before considering the important and complex issues presented by the Demand Response Supporters, EPSA respectfully requests that the deadline for responding to the September 16 Filing be extended to October 30, 2009.

EPSA does not make this request lightly. While this period of time is somewhat lengthy, this date is requested after considering the critical nature of the issues involved and the need to ensure a complete record, the extensive nature of the Demand Response Supporters filing, and the lack of a looming deadline for implementation. Further, this extension would allow EPSA and other interested parties the opportunity to

¹⁵ See 18 C.F.R. § 385.213(d)(1) (2009). The 15-day time period would apply to the extent the September 16 Filing were regarded as a motion. To the extent it is regarded as a protest, EPSA and other parties would need to seek leave to respond, which is routinely granted where, as would be true here, the responses provide further explanation or otherwise help ensure a full and complete record and Commission understanding of that record. See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 128 FERC ¶ 61,229 at P 34 (2009); *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,154 at P 14 (2003); *Williams Energy Mktg. & Trading Co. v. Southern Co. Servs., Inc.*, 104 FERC ¶ 61,141 at P 10 (2003); *Ameren Servs. Co.*, 100 FERC ¶ 61,135 at P 15 (2002).

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, this 25th day of September, 2009.

/s/
Nancy Bagot, VP Regulatory Affairs