

Interconnection, L.L.C. (“PJM”) in the above-captioned proceeding.⁵ As discussed below, notwithstanding the DR Supporters’ claims to the contrary, allowing their unauthorized answer will not “facilitate the development of the record”⁶ or otherwise assist the Commission’s decision-making in this proceeding, as the DR Supporters merely rehash arguments from their earlier pleading. Furthermore, while EPSA is reluctant to engage in a procedural game of “back and forth,” the egregious manner in which the DR Supporters has presented their version of the facts on these important issues has left EPSA with no choice but to urge the Commission to deny the motion and move forward with a decision in this proceeding. Accordingly, the motion for leave to answer should be denied, consistent with established Commission precedent.⁷

The only purpose that would be served by granting the motion for leave to answer would be to sow further confusion regarding appropriate compensation of demand resources in the PJM energy market Economic Load Response Program (“ELRP”). For example, while the DR Supporters insist that demand

Docket No. EL09-68-000 (filed Sept. 25, 2009). See also, e.g., *Entergy Servs., Inc.*, 52 FERC ¶ 61,317 at 62,270 (1990) (explaining that “complaints must be filed separately from motions to intervene and protests.”).

⁵ Supplemental Report And Submittal Of PJM Interconnection, L.L.C. In Further Support Of Commission Action On Rehearing, Docket No. EL09-68-000 (filed Aug. 26, 2009) (“PJM Proposal”).

⁶ DR Supporters Answer at 4.

⁷ See, e.g., *PPL Wallingford Energy L.L.C.*, 103 FERC ¶ 61,185 at P 7 (2003) (rejecting an answer to a protest that “raise[d] no new argument not presented in its [earlier filings]” and that had “not assisted in the decision-making process”); *California Power Exch. Corp.*, 92 FERC ¶ 61,093 at 61,372 (2000)(rejecting an answer that “essentially reiterate[d]” the party’s earlier pleading and that had “not aided us in the decision-making process.”).

response “should receive the same compensation” as generation,⁸ the DR Supporters Answer repeats their earlier assertions that demand response performs a grid balancing service,⁹ *i.e.*, something different from the service provided by generators. To make matters worse, what the DR Supporters call the “same compensation” is, in fact, superior compensation to that provided to generators. Such doubletalk does nothing to aid the Commission’s decision-making in this proceeding or to make the case that there is any sort of undue discrimination occurring. There is nothing unduly discriminatory about treating differently-situated market participants differently or about treating similarly-situated market participants the same.¹⁰

Similarly unhelpful to the development of a full and complete record that will aid the Commission’s decision-making process are the DR Supporters’ tortured arguments in support of their proposal for so-called “full LMP” compensation. The DR Supporters attempt to unilaterally re-write the long-accepted definition of LMP, such that, instead of representing the cost of the next MW available to serve load,¹¹ LMP would be re-conceptualized as the cost of the

⁸ DR Supporters Answer at 3.

⁹ DR Supporters Answer at 3 and 7; Freifeld Affidavit at 3-6. *See also*, DRS September 16 Filing at 6, 10-11.

¹⁰ *Cf., e.g., Sebring Utils. Comm’n v. FERC*, 591 F.2d 1003, 1009 n.24 (5th Cir. 1979) (stating that the “essence of the principle” of the prohibition against undue discrimination “is that those who are similarly entitled must be treated equally”); *Transwestern Pipeline Co.*, 38 FERC ¶ 61,175 at 61,433 (1986) (“Undue discrimination is in essence an unjustified difference in treatment of similarly situated customers.”).

¹¹ *See* PJM Open Access Transmission Tariff, Att. K, § 2.2, First Revised Sheet No. 370A-Fifth Revised Sheet No. 371 (explaining that PJM calculates LMP by “determ[ing] the least cost security-constrained dispatch, which is the least costly means of serving load at different locations in the PJM Region based on actual operating conditions existing on the power grid . . . and on the prices at which Market Sellers have offered to supply energy and offers by

next MW of generation produced or MW of load avoided to keep the transmission system in balance.¹² The DR Supporters' pricing argument is not only erroneous, but raises a generic issue broadly affecting wholesale electric markets that is beyond the scope of this proceeding, and accordingly, should be dismissed.

Finally, the DR Supporters Answer continues to sow confusion on jurisdictional issues, recognizing the Commission's jurisdiction to provide compensation for demand response through FERC-jurisdictional markets but objecting to the Commission's factoring retail generation charges into the calculation of that compensation.¹³ Interestingly, State commissions, whose powers would be most directly affected by such an alleged "usurpation of areas of traditional state regulatory authority,"¹⁴ have **supported** a strikingly similar mechanism proposed by the Midwest Independent Transmission System Operator, Inc. (the "MISO") in Docket No. ER09-1049-000. In that proceeding, MISO proposes to compensate Aggregators of Retail Customers ("ARCs") using a formula based on LMP minus the applicable retail rate. In November 5, 2009

Economic Load Response Participants to reduce demand that qualify to set Locational Marginal Prices in the PJM Interchange Energy Market"). See also, e.g., PJM Interconnection, L.L.C., *Locational Marginal Pricing* at 1 (Apr. 4, 2009) ("The LMP tells PJM market participants the cost to serve the next megawatt of load at a specific location."), available at <http://www.pjm.com/~media/about-pjm/newsroom/downloads/locational-marginal-pricing-fact-sheet.ashx>.

¹² DR Supporters Answer at 6-10; Freifeld Affidavit at 6, which states: "LMP is not, as EPSA and Professor Hogan suggest, the marginal cost of the next increment of load on the grid. Rather, the appropriate measure of LMP is the combination of the increment of generation or decrement of load that occurs in order to achieve balance." Also, see DRS September 16 Filing, Attachment C at 11-12.

¹³ See DR Supporters Answer at 9-10.

¹⁴ *Id.* at 10.

comments, the Organization of MISO States (“OMS”) supported the proposed compensation formula for ARCs, including, specifically, the reflection of the “buy side” of an ARC’s business through the offset for State-regulated retail rates.¹⁵ OMS expressly rejects the notion that ARCs should receive full LMP without an offset for retail rates because it would lead to an “absurd result” in which “an ARC would find it profitable to sell load reductions when the retail rate exactly follows the LMP or even when the retail rate exceeds the LMP.”¹⁶

CONCLUSION

WHEREFORE, the Commission should deny the DR Supporters’ motion for leave to submit an unauthorized answer to EPSA’s answer.

Respectfully Submitted,



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¹⁵ See Comments of the Organization of MISO States at 3, Docket No. ER09-1049-002 (filed Nov. 5, 2009).

¹⁶ *Id.* at 5.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the Answer via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 30th day of November, 2009.

A handwritten signature in cursive script that reads "N. Bagot".

Nancy Bagot, VP of Regulatory Affairs