BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	)	ER22-962-005

PROTEST AND COMMENTS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION TO THE PJM SECOND COMPLIANCE FILING CONCERNING FERC ORDER NO. 2222

Pursuant to 18 C.F.R. § 385.211, the Pennsylvania Public Utility Commission (PAPUC) files this Protest and Comments in response to the September 1, 2023, Compliance Filing of PJM Interconnection, L.L.C., (PJM Second Compliance Filing) with the Federal Energy Regulatory Commission (FERC) in the above-referenced docket.

I. BACKGROUND

On September 17, 2020, FERC issued Order No. 2222, requiring regional transmission organizations (RTOs), including PJM Interconnection, L.L.C. (PJM), to allow aggregations of distribution-interconnected resources to participate in PJM wholesale markets so that they may provide all services they are technically capable of providing.[1] In response, PJM filed changes to its tariff and operating agreement on February 1, 2022 (PJM First Compliance Filing). FERC accepted the PJM First Compliance Filing, subject to further compliance filings, on March 31, 2023.[2] On March 31, 2023, the PAPUC filed comments and a limited protest regarding the First Compliance Order. On April 11, 2023, FERC granted PJM an extension to file its

[1] *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Docket No. RM18-9 (Issued September 17, 2020) (Order No. 2222).
[2] *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,143 (2023) (First Compliance Order).

revised tariff and operating agreement until September 1, 2023.[3] FERC issued its order denying the PAPUC's protest on July 11, 2023.[4] PJM filed its revised tariff and operating agreement on September 1, 2023 (PJM Second Compliance Filing).

II. SUMMARY OF PROTEST AND COMMENTS

The PAPUC welcomes many of PJM's proposals and looks forward to working with PJM, Electric Distribution Companies (EDCs), and Distributed Energy Resource (DER) owners to implement Order No. 2222 and permit DER Aggregations to participate in PJM markets.

However, the PAPUC objects to PJM's treatment of two issues: (1) PJM's tariff provision designed to prevent duplicative compensation, § 1.4B(h), which mistakenly turns on whether a resource "provided" a service in a retail market, rather than whether that resource was "credited" or "received compensation" for that service in the retail market; and (2) PJM's tariff provision governing resolution of disputes arising from the EDC review process, § 1.4B(b), which intrudes on matters reserved to states.

The PAPUC further submits comments in support of PJM's proposed treatment of DERs that are co-located behind a single point of interconnection with DERs that cannot participate.

Finally, the PAPUC submits comments highlighting an issue that may become significant as DER Aggregations proliferate, which is how to account for behind-the-

[3] *PJM Interconnection, L.L.C.*, Docket No. ER22-962-001, Notice of Extension of Time (Apr. 11, 2023).
[4] *PJM Interconnection, L.L.C.*, 184 FERC ¶ 61,019 (2023) (Rehearing Order).

meter solar resources that do not interconnect with the grid, but nevertheless may wish to participate in a DER Aggregation.

III. PROTEST

A. Duplicative Compensation of Services

In Order No. 2222, FERC ruled that RTOs/ISOs should "limit the participation of resources in RTO/ISO markets through a distributed energy resource aggregator that are receiving compensation for the same services as part of another program."[5]

In the First Compliance Order, FERC found that:

> PJM's proposed tariff requires an assessment of whether the "same product is not also credited" rather than whether, as the Commission discussed in Order No. 2222, the *same service is being provided* by the Component DER. Being credited for a product may not be the same as providing a service. This difference may be relevant because a Component DER participating in a net energy metering retail program, for example, may be credited for a product or service that it does not actually provide. As a result, it is unclear whether PJM's proposed tariff fully complies with this requirement. Accordingly, we direct PJM to file, within 60 days of the date of the issuance of this order, a further compliance filing to clarify why Tariff, Attachment K-Appendix, section 1.4B(h) and Operating Agreement, Schedule 1, section 1.4B(h) assesses whether the "same product is not also credited as part of a retail program" rather than whether the same service is not also being provided in a retail program, to include an explanation of how this language as proposed is consistent with Order No. 2222, or alternatively to revise this language such that it is consistent with Order No. 2222.[6]

FERC explained that:

[5] Order No. 2222, P 159.
[6] First Compliance Order, P 136.

> According to Ohio Commission, generally net energy metering programs provide compensation for energy but do not provide credit for associated capacity. Ohio Commission Comments at 6-7. However, in Pennsylvania, the Pennsylvania Commission explains that a generator that provides energy as part of a net metering program is compensated through a fully bundled retail rate, which includes compensation for services other than energy, such as capacity and ancillary services. Pennsylvania Commission Comments at 6 ("As it relates to Pennsylvania, the Alternative Energy Portfolio Standards Act, provides that customer-generators in Pennsylvania shall receive 'full retail value' for energy produced as part of a net metering program. Interpreting this Act, the PAPUC determined that 'full retail value' is the fully bundled retail rate, which includes generation, transmission, capacity, ancillary services and distribution components as compensation for the electric the customer-generator sends to the distribution grid.").[7]

In PJM's Second Compliance Filing, its response to FERC's directive is:

> PJM proposes to amend its Tariff and Operating Agreement to indicate that the Electric Distribution Company will assess, for each Component DER and the associated PJM market(s) in which the Component DER seeks to participate, whether the same service is being **provided** by that Component DER, rather than credited to the owner of that Component DER through an existing retail program.[8]

PJM's response is deficient because the First Compliance Order only found that it was "unclear" whether PJM's original proposal "fully complies" with Order No. 2222 and directed PJM to reconsider its reliance on "credit[ing]" instead of "provid[ing]"[9]—FERC did not dictate that PJM switch to "providing." The First Compliance Order tasked

[7] First Compliance Order, n. 243.
[8] PJM Second Compliance Filing at 12 and Attachment B, § 1.4B(h)(emphasis added).
[9] First Compliance Order, P 136.

PJM "to include an explanation of how this language as proposed is consistent with Order No. 2222, or alternatively to revise this language such that it is consistent with Order No. 2222."[10] But PJM fails to explain how switching from "crediting" to "providing" is consistent with Order No. 2222. PJM appears to have mistakenly concluded that FERC simply ordered it to switch to "providing."

In the First Compliance Order, FERC specifically cites to P 159 of Order No. 2222, in which FERC "allow[ed] RTOs/ISOs to limit the participation of **resources** in RTO/ISO markets through a distributed energy resource aggregator **that are receiving compensation for the same services as part of another program**." (Emphasis added).[11]

As Pennsylvania noted in prior comments, and FERC acknowledged in the First Compliance Order, resources that participate in Pennsylvania's net metering program are entitled by state law to receive compensation equal to the full retail value of the energy they inject, even if they do not provide all of the services that factor into calculation of the full retail rate. When a net metering resource injects energy, it is not selling energy to the EDC. Instead, it is being reimbursed for the costs the customer would be causing to the EDC if the customer had not been injecting. By *crediting* net metering customers for all costs at the retail level, they are being compensated for the savings they are providing to the EDC on a variety of different services. Some of those savings are ancillary services savings. Thus, PJM's switch to "providing" runs afoul of Order No. 2222's directive against duplicative compensation for resources "that are receiving compensation

[10] *Id*.
[11] First Compliance Order, n. 242; Order No. 2222, P 159.

for the same services as part of another program."[12] The rate design on this issue is a state matter, and federal law has endorsed a state-focused approach to defining appropriate net metering structures.[13] FERC should not disturb Congress' state-based approach by overcompensating net metering resources in wholesale markets above and beyond how a state has chosen to design its rates.

Furthermore, using "crediting" or "receiving compensation" in lieu of "providing" would also be consistent with Order No. 2222's goals, which are to "enable efficient outcomes in RTO/ISO markets by capturing the full value of distributed energy resources and enabling efficient resource allocation while also requiring RTOs/ISOs to address double-counting concerns."[14] Preventing a resource from receiving duplicative compensation in the retail market and wholesale markets is economically efficient.

B. Dispute Resolution

Order No. 2222 relates to facilities and utility practices that are highly enmeshed between federal jurisdiction over wholesale sales in interstate commerce and state jurisdiction over any other sale as well as local distribution facilities.[15] Order No. 2222 recognized this, stating that FERC had no intent to regulate interconnection of Component DERs[16] and that Relevant Electric Retail Regulatory Authorities (RERRAs)

[12] Order No. 2222, P 159.
[13] Energy Policy Act of 2005, 16 U.S.C. § 2621(d)(11).
[14] Order No. 2222, P 163.
[15] 16 U.S.C. § 824.
[16] Order No. 2222, P 96.

could have numerous other responsibilities including "developing local rules to ensure distribution system safety and reliability, data sharing, and/or metering and telemetry requirements; overseeing distribution utility review of distributed energy resource participation in aggregations; establishing rules for multi-use applications; and resolving disputes between distributed energy resource aggregators and distribution utilities over issues such as access to individual distributed energy resource data."[17] Likewise, FERC's Rehearing Order held that the First Compliance Order does not imply that PJM can adjudicate disputes arising under state law.[18]

The First Compliance Order found only that PJM's proposal unreasonably restricts a DER Aggregator's use of PJM's dispute resolution procedures when those procedures may be appropriate.[19] In response to the requirements of the First Compliance Order, PJM now states:

> [T]he intent of the original language was to leave to the jurisdiction of the distribution utility and/or the RERRA the resolution of issues within disputes that deal *exclusively* with the rules and regulations of these entities. That said, PJM acknowledges that the phrase "arising under" may be inappropriately broad. In order to both preserve the original intent of the Tariff provision, as well as more precisely describe the situations which would be subject to this provision, PJM proposes to replace disputes "arising under…" with *issues within* disputes "that solely concern the application of…" any tariffs, agreements, and operating procedures of the Electric Distribution Company, and/or the rules and regulations of any Relevant Electric Retail Regulatory Authority.

[17] Order No. 2222, P 324.
[18] Rehearing Order, P 9.
[19] Rehearing Order, P 6, *citing*, First Compliance Order, P 322.

> At the same time, PJM recognizes that some issues within disputes may fall within its own purview. Accordingly, PJM proposes to add language to Tariff, Attachment K-Appendix, sections 1.4B(b) and Operating Agreement, Schedule 1, sections 1.4B(b) that specifies that issues within disputes that concern the provisions of the PJM Governing Agreements may be arbitrated under the dispute resolution processes described in Operating Agreement, Schedule 5.[20]

PJM's proposed tariff language for dispute resolution now reads:

> Issues within disputes that the Office of the Interconnection determines solely concern the application of any applicable tariffs, agreements, and operating procedures of the Electric Distribution Company, and/or the rules and regulations of any Relevant Electric Retail Regulatory Authority, shall be addressed in accordance with applicable state or local law, and shall not be arbitrated or in any way resolved by the Office of the Interconnection or through the dispute resolution processes under Operating Agreement, Schedule 5. Issues within disputes that the Office of the Interconnection determines concern the provisions of the PJM Governing Agreements may be arbitrated under the dispute resolution processes under Operating Agreement, Schedule 5.[21]

PJM's proposal for dispute resolution is deficient because it continues to intrude on matters reserved to state law and RERRA jurisdiction. As set forth above, PJM's proposal sets up a dichotomy between "issues within disputes that… solely concern the application of any applicable tariffs, agreements, and operating procedures of the Electric Distribution Company, and/or the rules and regulations of any Relevant Electric Retail Regulatory Authority", on the one hand, and "[i]ssues within disputes that… concern the provisions of the PJM Governing Agreements" on the other. The implication of this

[20] PJM Second Compliance Filing at 53-54.
[21] PJM Second Compliance Filing, Attachment B, § 1.4B(b).

dichotomy is that issues that concern the provisions of PJM rules (a broad category) could encompass issues that in part (but not solely) concern EDC tariffs and/or RERRA rules and regulations. Thus, under its proposed language, PJM would resolve issues that, in part, concern state-jurisdictional matters that would traditionally be resolved by the RERRA itself.

FERC has repeatedly stated that it respects and does not intend to diminish the RERRA's traditional role in this respect. However, PJM's distinction between "disputes" and "issues within disputes" does not resolve the problems identified in the First Compliance Order so much as it attaches new labels to the same problem. With that in mind, FERC should order PJM to amend its tariff to include language that provides:

> To the extent any issue concerning the provisions of the PJM Governing Agreements also concerns the application of tariffs, agreements, and operating procedures of the Electric Distribution Company, and/or the rules and regulations of any Relevant Electric Retail Regulatory Authority and is arbitrated under the dispute resolution processes under Operating Agreement, Schedule 5, such issues shall be resolved consistent with any applicable RERRA rules, regulations, and orders.

PJM's existing dispute resolution rules also appropriately recognize that, in any binding arbitration, the arbitrator "shall issue a written decision" based on "applicable… state law",[22] and that any party affected by the arbitrator's decision "may request… any… state [ ] regulatory… authority having jurisdiction to vacate, modify, or take such other action as may be appropriate with respect to any arbitral decision that is based upon

[22] PJM Operating Agreement, Schedule 5, Section 4.12 (Decisions).

an error of law, or is contrary to the statutes, rules, or regulations administered or applied by such authority."[23] These previsions set appropriate boundaries on the arbitrator's authority, but PJM's Order No. 2222 tariff provisions should explicitly incorporate mechanisms for RERRAs to be built into the process. As FERC ordered in Order No. 2222 itself, any role for RERRAs in coordinating the participation of DER Aggregations in PJM must be clearly stated in PJM's tariff.[24]

IV. COMMENTS

A. Co-located Resources

In the First Compliance Order, FERC directed PJM to explain how its proposal to limit participation of DERs that are not participating in a net energy metering (NEM) program but are co-located behind the same retail meter as a DER that is participating is narrowly designed and does not unduly limit DER participation in DER Aggregations.[25] In response, PJM notes that its First Compliance Filing relied on receiving data from a single point of interconnection to the distribution system, and that FERC declined to mandate that PJM permit device-level metering.[26] Thus, PJM's model for handling DER Aggregation requires that each Component DER be associated with a unique EDC account number. PJM asserted that enrollment in a NEM program is established at the level of the EDC account number; —all technologies associated with a single account number are either enrolled or not enrolled in a NEM program.[27] According to PJM, both

[23] PJM Operating Agreement, Schedule 5, Section 4.14 (Enforcement).
[24] Order No. 2222, PP 322-324.
[25] First Compliance Order at P 141.
[26] Second Compliance Filing at 17.
[27] Second Compliance Filing at 17-18.

participation in a NEM program and double counting is assessed and established at the level of a single point of interconnection to the distribution system, and is associated with a unique EDC account number.[28] Thus, the only scenario in which a resource behind a retail meter would be co-located with another resource that is participating in a NEM program but would not be participating in net energy metering itself, is if that resource were separately metered, with a separate EDC account number.[29] PJM concludes that its tariff is written as narrowly as is practical, because it already permits participation by any separately-metered Component DER.[30]

The PAPUC supports PJM's treatment of the separately metered NEM DERs. Based on discussions with Pennsylvania EDCs, the PAPUC understands that, generally speaking, EDCs assess participation in a NEM program at the level of a single point of interconnection to the distribution system, associated with a unique EDC account number. From a practical perspective, it is not technically feasible to disentangle the participation of a resource in PJM markets from a net metering resource with which it is co-located. Device level metering would be necessary to accomplish that disentanglement. For example, in Pennsylvania, batteries are prohibited from participating in a NEM program. When a customer wants to add a battery to its system, the electrical configuration is set to ensure the battery cannot inject to the EDC system. This is a circumstance where a co-located resource is not participating in a retail NEM

[28] Second Compliance Filing at 18.
[29] *Id.*
[30] Second Compliance Filing at 19.

program and therefore could theoretically participate in PJM markets. The limiting factor is the technical feasibility of measuring the participation of those separate resources.

The PAPUC supports the goals of Order No. 2222.[31] However, FERC should not mandate device level metering in order to shoehorn participation by co-located resources. It is more appropriate for the individual states to define interconnection and metering rules for their EDCs on a case-by-case basis. Pennsylvania EDCs have expressed the complexity of device level metering to the PAPUC, and further study is needed to ensure that device level metering does not negatively affect the EDCs' local distribution facilities. Different EDCs may be at different readiness levels and a PJM-wide rule would be inappropriate for that reason.

B. Behind the Meter Solar Resources that Do Not Participate in Net Energy Metering Programs

The PAPUC has identified a growing number of behind the meter solar resources (BTM Solar) that do not wish to interconnect with the grid by participating in Pennsylvania NEM programs. These BTM Solar resources will connect directly to load, and any backflow of energy onto the grid is restricted. Should these BTM Solar resources wish to participate in the PJM markets as a Component DER within a DER Aggregation, there is currently no provision in PJM's tariff to "add-back" the load curtailment provided by such resources to an EDC's load profile. In other words, there is no mechanism to move their energy from the reduced demand column to the energy supplied column, such that these resources could properly participate in PJM markets.

[31] See PAPUC Comments in response to First Compliance Filing at 4-5.

While the extent of this issue – in particular, the desire or incentive for these BTM Solar resources to participate in a DER Aggregation – is unknown, the PAPUC brings this issue to the attention of FERC and requests it be flagged for treatment in the future, should circumstances require.

V. CONCLUSION

For these reasons, the PAPUC requests that its Protest and Comments be considered by FERC and PJM be directed to implement the modifications contained herein.

Respectfully submitted,

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