

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

**PJM Interconnection, L.L.C
FERC Order No. 841 Compliance Filing**

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Docket No. ER19-469-000

**MOTION FOR LEAVE TO ANSWER AND
ANSWER OF THE ENERGY STORAGE ASSOCIATION**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission (“FERC” or the “Commission”) Rules of Practice and Procedure,¹ the Energy Storage Association (“ESA”) submits this response to PJM Interconnection L.L.C.’s (“PJM”) Answer dated May 14, 2019.² Essentially, PJM has misconstrued ESA’s April 12, 2019 Answer to PJM’s Order 841 compliance as pertains to the 10-hour duration requirement.

I. MOTION FOR LEAVE TO ANSWER

Although responses to answers are not permitted pursuant to FERC rules as a course of normal business,³ the Commission does allow answers when the answer provides useful and relevant information that will assist the Commission in its decision-making process;⁴ to correct

¹ 18 C.F.R. §§ 385.212, 213 (2019).

² *Answer of PJM Interconnection, L.L.C.*, Docket No. ER19-469-000 (14 May 2019). (“PJM Answer”)

³ 18 C.F.R. § 385.213(a)(2).

⁴ *See, e.g.,* Pioneer Transmission, LLC v. N. Ind. Pub. Serv. Co. and Midwest Indep. Transmission Sys. Operator, Inc., 140 FERC ¶ 61,057 at P 93 (2012); Midwest Indep. Transmission Sys. Operator, Inc., 131 FERC ¶ 61,285 (2010); Sw. Power Pool, Inc., 131 FERC ¶ 61,252 at P 19 (2010), reh’g denied, 137 FERC ¶ 61,075 (2011) (accepting answers that “provided information that assisted us in our decision-making process”); Duke Energy Ky., Inc., 122 FERC ¶ 61,182 at P 25 (2008) (accepting answers in proceeding that “provided information that assisted us in our decision-making process”); Tallgrass Transmission, LLC, 125 FERC ¶ 61,248 at P 26 (2008); PJM Interconnection, L.L.C., 120 FERC ¶ 61,083 at P 23 (2007) (answer to protests permitted when it provides information to assist the Commission in its decision-making process).

factual inaccuracies and clarify the issues;⁵ to assure a complete record in the proceeding;⁶ to provide information helpful to the disposition of an issue;⁷ or to permit the issues to be narrowed.⁸ As demonstrated herein, by clarifying the issues that are before the Commission, this Answer satisfies each of those criteria.

Accordingly, ESA urges the Commission to find that good cause exists to accept ESA's Motion for Leave to Answer under Rule 213 of the Commission's Rules of Practice and Procedure.

II. ANSWER

A. Contrary to PJM's inaccurate and repeated claims in this docket, ESA has neither suggested nor advocated for special treatment of electric storage resources as a part of compliance with Order 841. Rather, ESA seeks to ensure that PJM's tariff is consistent with the Commission's mandates in Order 841.

Contrary to PJM's assertion that ESA's Answer "is in the nature of a supplemental protest",⁹ PJM's compliance with Order 841 requires it to "establish market rules that, recognizing the physical and operational characteristics of electric storage resources, facilitate their participation in the RTO/ISO markets."¹⁰ PJM's proposal to qualify the capacity of Capacity Storage Resources ("CSR") at the level of continuous output that they can maintain over 10 hours ("ICAP Proposal") maintains barriers to the participation of electric storage resources in its capacity market that exist as a legacy of the historic mix of technologies making

⁵ See, e.g., Entergy Servs. Inc., 123 FERC ¶ 61,227 (2009).

⁶ See e.g., Pac. Interstate Transmission Co., 85 FERC ¶ 61,378 at P 62,443 (1998), reh'g denied, 89 FERC ¶ 61,246 (1999); Morgan Stanley Capital Group, Inc. v. N.Y. Indep. Sys. Operator, Inc., 93 FERC ¶ 61,017, 61,036 (2000) (accepting an answer that was "helpful in the development of the record...").

⁷ See, e.g., CNG Transmission Corp., 89 FERC ¶ 61,100, 61,287, n.11 (1999).

⁸ See, e.g., PJM Interconnection, L.L.C., 84 FERC ¶ 61,224, 62,078 (1998); New England Ventures, Inc. v. S. Cal. Edison Co., 82 FERC ¶ 61,335, 62,323, n.1 (1998).

⁹ PJM Answer at 1.

¹⁰ Order 841 at P 2.

up the PJM supply mix. Rather than acknowledging the ‘physical and operational characteristics of electric storage resources’ that led to specific rule provisions in PJM’s governing documents regarding the capacity value of storage resources, PJM insists on inappropriately forcing storage into a false concept of comparable treatment by requiring electric storage resources to meet duration requirements that purportedly apply to, but do not limit, traditional generating resources.

PJM is pursuing this force-fit even though (a) CSRs are technically capable of providing full capacity value to the system at durations of continuous output less than 10 hours, and (b) PJM’s Capacity Performance tariff is clear on enabling CSRs to submit sell offers based on their “average expected output over peak-hour periods,”¹¹ with those periods specified far less than 10 hours for all other resources identically situated with CSRs in PJM’s tariff. Addressing these barriers is fundamental to the Commission’s underlying rationale in Order 841 to achieve just and reasonable rates. As the Commission explained:

[B]arriers to the participation of new technologies, such as many types of electric storage resources, in the RTO/ ISO markets can emerge when the rules governing participation in those markets are designed for traditional resources and in effect limit the services that emerging technologies can provide.... Where such conditions exist, resources that are technically capable of providing services are precluded from competing with resources that are already participating in the RTO/ISO markets. This restriction on competition can reduce the efficiency of the RTO/ISO markets, potentially leading an RTO/ISO to dispatch more expensive resources to meet its system needs.¹²

¹¹ PJM Tariff, Attachment DD, §5.6.1(h). See also PJM Transmittal Letter for *Compliance Filing pursuant to the June 9, 2015 Order on Proposed Tariff Revisions* in Docket No. ER15-623-000 (July 9, 2015) at 4-5. See also *Answer of PJM Interconnection, L.L.C.*, Docket No. ER15-623-000 (February 13, 2015) at 22-23.

¹² Order 841 a P 2.

The affidavit filed by Kevin Carden in ESA’s Answer dated April 12, 2019 (“Carden Affidavit”),¹³ demonstrates that CSRs capable of full output at 4- and 6-hour durations are technically capable of providing capacity market service that support system reliability in a manner competitive with existing conventional generation. Precluding such CSRs from doing so – and at the levels of sell offers as contemplated in the Capacity Performance tariff – will maintain a legacy barrier to the participation by electric storage resources, reduce the efficiency of PJM’s capacity market and potentially require load to incur avoidable higher costs for attaining resource adequacy.

ESA’s proposed remedy of PJM’s Order 841 violation relies on PJM’s present Capacity Performance Resources construct and tariff. PJM repeatedly and incorrectly argues that ESA seeks a new duration-limited capacity product that constitutes a “major departure” from the current capacity construct. It is unclear how PJM concludes this. Rather, ESA is focused on the original rationale and design of the Capacity Performance market in Docket No. ER15-623, in which PJM stated that “the tariff changes in this filing are not overly prescriptive on qualification or eligibility requirements of a Capacity Performance Resource.” The Carden Affidavit provides support as to why PJM’s proposed tariff changes are overly prescriptive and unjust and unreasonable.

PJM’s ICAP Proposal retreats from the rules established as part of the Capacity Performance rule changes and relies on non-tariff manual language to limit CSRs ICAP value based upon a continuous output over 10 hours. Remediating this Order 841 violation does not change the nature of the performance requirements for capacity market service, which as ever

¹³ *Motion for Leave to Answer and Answer of the Energy Storage Association*, Docket No. ER19-469-000 (12 April 2019).

remain open-ended and not defined by duration. In fact, PJM’s Capacity Performance construct enables CSRs to aggregate with other resources for a single capacity bid as a means by which market participants can manage the risks of open-ended service. Once again, this tariff provision begs the question as to why PJM should de-rate CSRs, rather than allow market participants to manage Capacity Performance requirements through strategies such as aggregation of those CSRs as needed to satisfy the desired performance or, alternatively, to set forth the same 4-hour ICAP value for CSRs as other variable resources with whom the aggregation provisions apply.

In designing Order 841, the Commission stated that effective integration of energy storage resources into the RTO/ISO markets would enhance competition and, in turn, help to ensure that these markets produce just and reasonable rates. In its Answer, PJM relies on *Advanced Energy Management Alliance v. FERC*,¹⁴ to argue that FERC should forego incorporating ESA’s recommendations into the Order 841 tariff provisions and instead allow PJM to develop rules that – as the court found – “require sustained, predictable operation of *all* capacity resources.”¹⁵ First, this holding solely related to aggregated offers by resources that could not provide year-around reliable capacity.¹⁶ Reliance on this order thus is not on point. PJM is not seeking to limit participation the ICAP value by energy storage resources based on a year-around capacity requirement, but instead is seeking to do so based on an inapplicable provision in a manual that was never approved by the Commission. Second, ESA’s

¹⁴ *Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656, 668 (D.C. Cir. 2017).

¹⁵ See PJM’s May 14, 2019 Answer at 5 (*emphasis added*).

¹⁶ See *Order on Rehearing*, 155 FERC ¶ 61,157 (2016) at P 59, the specific paragraph that PJM cites in its May 14, 2019 Answer. “We cannot find unreasonable PJM’s conclusion that non-year-round resources do not provide equivalent service as year-round resources. Permitting non-year-round resources to continue participating could result in a loss of reliability during the fall, winter and spring when PJM will not have as many resources to respond to emergencies, such as a polar vortex.”

recommendations are designed to ensure that PJM implements rules that will allow all capacity resources to provide sustained and predictable year-around operations.

ESA's contentions are based on significant concern over whether the terms and conditions of capacity market service are susceptible to arbitrary specification. PJM asserts that ESA's concerns are simply "economic," as if advocating for more efficient operation of the PJM markets is a bad thing. On the contrary, ESA's focus is on ensuring efficient access to PJM's markets for electric storage resources that will support system reliability and increase the efficiency of system dispatch, which the Commission stated as a rationale for Order 841.¹⁷ The Commission rightly expresses that Order 841 is not simply about allowing storage resources to participate in markets, but also to allow storage resources to do so in a manner that reflects their physical and operating characteristics such that they are utilized efficiently and contribute to just and reasonable rates. PJM's Capacity Performance tariff clearly allows electric storage resources to offer their capacity based on the average expected output over peak-hour periods, whereas PJM's ICAP Proposal would prohibit electric storage resources with less than 10-hours' duration from participating in this manner as capacity resources, erecting a barrier to access and creating an inefficient use of such resources.

Additionally, PJM has special accommodations for the characteristics of intermittent generation, which are generally not dispatchable and whose output varies with weather. Still another section of the manual specifies the ICAP qualification value for demand resources, where references to duration are important due to the block-loaded nature of demand resources

¹⁷ Order 841 at P 12. "...the Commission preliminarily found that current tariffs that do not recognize the operational characteristics of electric storage resources limit the participation of electric storage resources in the RTO/ ISO markets and *result in inefficient use of these resources*. As a result, the Commission stated that the RTOs/ISOs *may not efficiently dispatch* resources, including electric storage resources, thereby reducing competition in the RTO/ISO markets." [emphasis added]

and corresponding inability to respond to dispatch signals on a granular level. All of these resources have different physical and operational characteristics than electric storage. In contrast, PJM seeks to ignore the directive of Order 841 and presents the argument that only the 10-hour rule “creates the same expectations for all Capacity Performance Resources,” while in fact this ‘comparability’ is directed only to storage resources. Much as Anatole France wryly observed that “the law, in its majestic equality, forbids rich and poor alike to sleep under bridges,” PJM’s proposed rule forbids storage and non-storage resources alike from qualifying their full capacity at less than 10 hours of continuous dispatch. Acceptance of this proposal from PJM might nominally appear to enforce equal rules but in actuality would reinforce unjust and unreasonable limitations on recognizing the reliability contributions of storage in PJM’s capacity market.

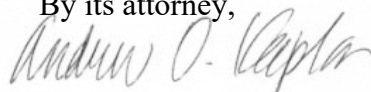
III. CONCLUSION

The Commission has rightfully focused on removing barriers to the participation of new technologies, including electric storage resources. As PJM’s proposed 10-hour requirement and a discussion of its validity remains within scope of Order 841, ESA respectfully requests that the Commission direct PJM to remedy this violation of Order 841. Doing so will ensure that the intent of the Commission’s rules are fully and faithfully implemented and also realize the Commission’s goal of enabling greater competition to ensure just and reasonable rates.

Respectfully submitted,

ENERGY STORAGE ASSOCIATION

By its attorney,



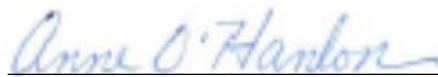
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CERTIFICATE OF SERVICE

I, Anne O'Hanlon, hereby certify that the foregoing Reply Comments of The Energy Storage Association were served via electronic mail to the service list.

Dated in Boston, MA this 1st day of July, 2019.



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