UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Enerwise Global Technologies, LLC d/b/a CPower,	)	
	)	
v.	)	**Docket No. EL24-128-000**
	)	
PJM Interconnection, L.L.C.	)	

ANSWER AND MOTION FOR LEAVE TO ANSWER OF PJM INTERCONNECTION, L.L.C.

In accordance with Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"),[1] PJM Interconnection, L.L.C. ("PJM") submits this Answer and Motion for Leave to Answer ("Second Answer") in response to the Answer and Motion for Leave to Answer ("CPower Answer") filed by Enerwise Global Technologies, LLC d/b/a CPower.[2] In this answer, PJM further responds to CPower's distorted reading of PJM's Open Access Transmission Tariff ("Tariff") and other Governing Documents.[3]

I. MOTION FOR LEAVE TO ANSWER

The Commission has discretion to accept an answer for good cause when it will result in a more complete or accurate record, improve the Commission's understanding of the issues, clarify matters, or help the Commission reach its decision.[4] The Commission has good cause to accept

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[1] 18 C.F.R. §§ 385.212 & .213 (2023).

[2] *Enerwise Global Technologies, LLC d/b/a CPower v. PJM Interconnection, L.L.C.*, Docket No. EL24-128-000, Answer and Motion for Leave to Answer of Enerwise Global Technologies, LLC d/b/a CPower (Aug. 20, 2024) ("CPower Answer").

[3] Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Tariff, the PJM Operating Agreement, the PJM Reliability Assurance Agreement, or the PJM Manuals.

[4] 18 C.F.R. § 385.213(a)(2); *see, e.g.*, *PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,133, at P 12 (2017) (accepting answers to protests because they provided information that assisted in the Commission's decision-making process); *KO Transmission Co.*, 156 FERC ¶ 61,147, at n.5

PJM's Second Answer because the Second Answer will assist the Commission in reaching the correct decision in this matter.

II. ANSWER

A. CPower Misconstrues Commission Statements Regarding Energy Efficiency

PJM demonstrated in its Answer that the Tariff has only ever given energy efficiency ("EE") providers the *potential* to offer in up to four years of RPM Auctions, not a mandate that they *must* be allowed to do so. The Reliability Assurance Agreement ("RAA") and the Tariff both plainly state that "[a]n Energy Efficiency Resource that clears an auction for a Delivery Year *may* be offered in auctions *for up* to three additional consecutive Delivery Years, but *shall not be assured* of clearing in any such auction."[5] Notwithstanding the plain meaning of the Tariff, CPower argues that the Commission's order accepting EE participation in RPM Auctions requires more in order to ensure that EE Resources receive "adequate compensation."[6] CPower claims that PJM's interpretation "collaterally attacks" that order[7] because PJM may not "limit EE Resources' ability to participate in the auctions to less than the four years as the Commission ordered."[8] These arguments—including CPower's invention of a so-called "comity" principle—have no merit.

First, the Commission never "ordered" PJM to allow EE Resources to participate in RPM auctions for four years. This is plain on the face of the two passages CPower itself quotes, neither of which remotely approaches a mandate. CPower points to the Commission's statements in

(2016) (accepting an answer to a protest because it provided a better understanding of the issues and ensured a complete record); *TransColorado Gas Transmission Co.*, 111 FERC ¶ 61,208, at P 4 (2005) (accepting an answer to a protest because it clarified the issues).

[5] RAA, Sched. 6, § L.4; Tariff, Attach. DD-1 § L.4 (emphasis added).

[6] CPower Answer at 3.

[7] *Id.* at 4.

[8] *Id.* at 8.

paragraph 137 of a 2009 order accepting stakeholder-driven revisions to the Reliability Pricing Model ("RPM") "that EE providers should have the ability to obtain the full economic benefits of their investments" and that it was "unclear as to whether [PJM's] approach over time fairly and adequately allows EE providers to obtain the full economic benefit of their investments."[9] There is simply no mandate in those statements. Moreover, CPower omits the context of that statement as well as what the Commission actually ordered. As the Commission noted fifteen years ago, PJM had proposed to "exclude[] EE resources entirely," and that is the proposal the Commission was "uncertain" about at the time—and the Commission never mandated that PJM must allow EE to participate in the RPM Auctions.[10] In addition, the Commission reinforced the lack of any entitlement to a four-year participation when it directed PJM to "explore with its stakeholders whether EE providers should receive RPM capacity payments for *up to* four years, their full measure life, or *some other period of time*."[11] Implicit in this instruction is that a period of fewer than four years could satisfy EE providers' ability to obtain the economic benefit of their investment.[12]

Second, CPower alleges that PJM has taken a position here that is inconsistent with PJM's explanation of the EE addback mechanism in response to a contemporaneous complaint filed by the Independent Market Monitor.[13] In that parallel proceeding, PJM explained that the addback

[9] CPower Answer at 3 (quoting *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275, at P 137 (2009) ("RPM Revision Order")).

[10] RPM Revision Order at P 137.

[11] *Id.* (emphasis added).

[12] Later in its Answer, CPower appears to concede that the language in the Tariff is a "permissive 'may participate.'" CPower Answer at 4. However, the paragraph spanning pages 5-6 of CPower's Answer is a word soup that is difficult to decipher.

[13] *See* CPower Answer at 7-8.

"is equal to the amount of EE Resources that clear in an Auction."[14] From that simple statement of fact, CPower extrapolates that "since the addback negates the inclusion of EE in the load forecast, PJM has nullified its addition of EE to the load forecast" and "[t]here is no basis to limit EE Resources' ability to participate in the auctions to less than the four years as the Commission ordered."[15] That reasoning is unsound. As described above, the Commission never ordered a four-year participation period for EE as CPower claims. Moreover, CPower does not engage with the fundamental point that the Tariff and RAA explicitly deny EE resources the ability to participate in an auction if the load reduction from that resource has already been "reflected in the peak load forecast prepared for the Delivery Year for which the Energy Efficiency Resource is proposed."[16]

Third, CPower presses the notion that the Commission requires "comity" in capacity market participation between EE providers, generators, transmission solutions, and demand response resources.[17] Then, on the basis of that incorrect premise, CPower suggests that PJM has treated EE Resources unfairly because "CPower is not aware of any other resource whose ability to offer into capacity auctions to recover its investment costs would be reduced based on the truncated auction schedule."[18] CPower uses the word "comity" in a strange way as it is not a

[14] *Independent Market Monitor for PJM v. PJM*, Docket No. EL24-126, Answer of PJM Interconnection, L.L.C. at 9 (July 13, 2024).

[15] CPower Answer at 8.

[16] RAA, Sched. 6, § L.1; Tariff, Attach. DD-1 § L.1 (emphasis added).

[17] CPower Answer at 9.

[18] *Id.*

relevant concept here, and "comity" is not a term the Commission has ever used to compare EE Resources to other Capacity Resources.[19]

PJM suspects that CPower might have meant to use a word more like "parity," but EE resources are *not* similarly situated to other Capacity Resources. Unlike other Capacity Resources, EE Resources do not actively produce energy or reduce load in response to system conditions. EE neither receives nor responds to dispatch instructions. And no other Capacity Resource receives the benefit of avoided capacity and transmission costs through reduced load while simultaneously being compensated capacity revenues for the same underlying load reduction. In short, CPower's claim inverts the equities of capacity market participation because EE Resources presently enjoy unique and generous accommodations that no other class of Capacity Resources enjoy, including the addback mechanism and the unique ability to participate on both the supply and demand side in the capacity market. Other Capacity Resources are meant to perform, not merely exist, during a given Delivery Year. Moreover, CPower itself points to other characteristics that set EE Resources apart. CPower notes, for example, that "EE Resources are not subject to a must offer obligation," and CPower concedes that "an EE installation may not be in operation for four years and should not be able to offer if no longer in existence."[20]

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[19] This proceeding does not concern a "friendly social atmosphere" or "social harmony;" it is not about "a loose widespread community based on common social institutions;" and it does not involve "the informal and voluntary recognition by courts of one jurisdiction of the laws and judicial decisions of another" or "avoidance of proselytizing members of another religious denomination." Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/comity; *accord, e.g.*, Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/comity; Collins Dictionary, https://www.collinsdictionary.com/us/dictionary/english/comity.

[20] CPower Answer at 5-6. CPower added a third observation that "EE resources have no guarantee that they will clear the auction in the first year or any subsequent years of eligibility." *Id*. at 6. That is not distinctive because other Capacity Resources "have no guarantee that they will clear the auction" either.

In sum, CPower's allegations that PJM has treated CPower unfairly in violation of the Commission's 2009 RPM Revision Order are wide of the mark. The Tariff does not require PJM to provide the relief CPower requests; the Commission did not impose or even suggest a four-year participation mandate for EE Resources in the RPM Revision Order or any other order; and PJM's implementation of reasonable limits on EE participation is not only fair in comparison to other Capacity Resources, but also attempts to shield consumers from unjustified capacity costs.

B. PJM Correctly Imposed Restrictions on Replacement Eligibility for EE Resources

While CPower acknowledges that "replacement capacity are independent of the rules relating to the operation of the capacity auctions," CPower does not point to any specific language in the Tariff or Manuals that explicitly mandates the ability to allow previously cleared EE to serve as replacement capacity for three additional Delivery Years. To the contrary, the Tariff reference simply provides that EE may be *offered* in the RPM Auctions for *up to* four consecutive Delivery Years. Nowhere in this language does the Tariff specify that EE must be allowed to be claimed as replacement capacity for up to four consecutive Delivery Years. As a result, the Tariff language does not apply in the context of capacity replacement transactions as EE from the prior installation periods were claimed as replacement capacity and not being *offered* into the RPM Auction. Regardless, as explained above, limiting the eligible installation period for Delivery Years with compressed auction timelines is appropriate as such EE is already included in the load forecast and the Commission never mandated that PJM must allow EE to participate in the RPM Auctions for four years irrespective of the time period between the auction and the start of the Delivery Year.

While PJM previously accepted Post-Installation M&V Reports reflecting replacement capacity from up to four years of installation periods, PJM did so only due to concerns that EE providers had settled expectations based on the 2020 email CPower cites to support its point, which

was sent via email by a lone employee who is no longer with PJM.[21] Once PJM discovered that EE providers were relying on that improper email, it took decisive action through the Guidance Letter at issue prior to the commencement of the 2025/2026 Base Residual Auction so that all EE providers were on notice of this change in advance of offering into the auction and before any capacity commitments were awarded.[22]

C. CPower Bears the Burden of Disproving the Validity of PJM's Standard Practice for Residential Light Bulb Installation and Ignores that the Tariff Directs PJM to Apply the "Most Stringent" Standard

As the complainant in a proceeding under FPA section 206, CPower bears the burden of showing that the standard practice for residential lightbulb installation identified by PJM is unjust and unreasonable, a burden it has not met.[23] Nevertheless, CPower insists, that "PJM must carry a burden of proof before it can decide a new standard practice exists."[24] CPower further claims that the standard practice PJM has chosen as the "baseline for establishing Baseline Conditions" under Manual 18B section 8.1 is unjustifiable. CPower's attempt to invert the evidentiary burden must be rejected as a matter of law. Furthermore, CPower ignores that the rule in PJM Manual 18B, section 8.1 not only directs PJM to determine what the relevant standard is—whether Federal,

[21] *See id.* at 10-11.

[22] It would have been inappropriate to limit the eligible installation periods prior to the 2025/2026 Delivery Year given that EE providers already received capacity commitments, which could have included additional MWs based on an expectation that they could claim four installation periods in Post-Installation M&V Reports given the 2020 email.

[23] *See, e.g.*, *Emera Maine v. FERC*, 854 F.3d 9, 24 (D.C. Cir. 2017) ("The proponent of a rate change under section 206, however, bears the 'burden of proving that the existing rate is unlawful.") (quoting *Ala. Power Co. v. FERC*, 993 F.2d 1557, 1571 (D.C. Cir. 1983) ("the proponent of a rate change under § 206, here FERC, has the burden of proving that the existing rate is unlawful") (citations omitted))).

[24] CPower Answer at 14.

state, or standard practice—but also explicitly directs PJM to apply the "most stringent" standard available.[25]

Specifically, Manual 18B section 8.1 directs PJM to determine and enforce the *most stringent* level of efficiency required by applicable State code, Federal product efficiency standard, or standard practice. That provision states in full:

> 'Standard' Baseline: For projects in which equipment (whether failed or not) is replaced by a more efficient equivalent or by an alternative strategy for delivering comparable output, the Baseline Condition shall be the nameplate rating of the equipment meeting the level of efficiency required by applicable State code, Federal product efficiency standard, or standard practice, *whichever is most stringent*, in place at the time of installation, as known at the time of commitment. If there is no applicable State code or federal standard, then standard practice shall be used as the basis for establishing Baseline Conditions and shall be documented in the M&V Plan.[26]

This requirement to enforce the most stringent standard or practice is appropriate because there could be outdated standards or practices from many years ago that do not reflect reality. CPower hides the ball by deliberately ignoring this section's proviso that PJM may set the standard practice in place of state code or federal standards as long as that standard represents the *most stringent* one available and as long as it documents that standard in the M&V Plan.[27] The PJM Guidance Letter clearly satisfies the Manual's requirements.

Notably absent from section 8.1 is any requirement that PJM prove, at the time of setting the Standard Baseline, that the chosen standard is more stringent than federal or state standards. Rather, if CPower objects to how PJM has carried out its delegated role of determining the appropriate standard under Manual 18B section 8.1, CPower bears the burden of showing that PJM

[25] PJM Manual 18B § 8.1(2).

[26] *Id.* (emphasis added).

[27] *Id.*

has erred. But CPower is simply wrong to state that PJM must "justify its decision" to use the Apex Study or "explain how the Apex study remains valid."[28] CPower bears the burden of showing that the Apex Study is not the most stringent standard, and CPower's unsupported and unscientific allegations against the Apex Study do not satisfy that burden.

D. PJM Did Not Establish a "New IMM Role as to EE"

Finally, CPower again misconstrues the IMM's role under the Tariff to justify its weak due process argument. CPower asserts that the market rules only grant PJM and its auditor, not the IMM, access to information relevant to its M&V Plan and Post-Initial M&V Reports. Contrary to CPower's insinuation, many provisions of the Tariff, not just those "regarding reporting Material Adverse Changes and breaches in obligations" are relevant to PJM's requirement that EE providers submit information to the IMM.

Tariff Attachment M, section V.A. provides that among other things, the IMM will have access to "information required to be provided to PJM under the PJM Market Rules" and "any other information provided to PJM." Thus, even if PJM had only requested that CPower submit information directly to PJM, the IMM would still be entitled to that information pursuant to section V.A. Further, Tariff Attachment M, section V.B. authorizes the IMM to make reasonable information requests that are enforceable by law, and "the information request recipient shall provide the [IMM] with *all information* that is reasonably requested."[29] Despite this, CPower creates from nothing the false requirement that "the Tariff limits the IMM's ability to seek information to reasonable requests *as to which it is impartial*."[30]

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[28] CPower Answer at 13.

[29] Tariff, Attach. M, § V.B.2. (emphasis added).

[30] CPower Answer at 14-15 (emphasis added).

CPower's arguments again miss the mark. PJM is currently allowing the IMM to audit CPower's information, so even if the Tariff only permitted PJM and its auditors access to the relevant information, as CPower suggests, the IMM is entitled to the information it is requesting in its role as the independent monitor of the capacity market.[31] And as discussed, PJM acted within its right when it suggested it would provide information to the IMM—the Tariff requires the IMM have access to "any other information provided to PJM."[32] CPower's position conflicts with reality. The IMM regularly engages in litigation against utilities that nonetheless remain obligated to provide crucial information to PJM.

CONCLUSION

For the reasons set forth in this and PJM's previous Answer, the Commission should deny the Complaint.

Respectfully submitted,

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[31] *See id.* at 14.

[32] Tariff, Attach. M, § V.A.

CERTIFICATE OF SERVICE

I hereby certify that I have on this day caused to be served a copy of the foregoing upon all parties on the service list in these proceedings in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2023).

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