



**MC Legal Report**  
**Summary of Significant Filings, Legal Activity**  
**and**  
**Federal Energy Regulatory Commission (Commission) and Court Orders**  
**(January 8 – February 11, 2022)**

**ORDERS**

**On February 11, 2022**, the Commission granted clarification of its December 22, 2021 remand order in the reserve price formation proceeding, in response to PJM's January 18, 2022 motion for clarification. The Commission clarified, among other things, that the December 22, 2021 remand order did not remove certain price capping provisions applicable to PJM's reserve markets. (EL19-58-008)

**On February 10, 2022**, the Secretary's Office of the Commission issued an errata notice clarifying that the due date for comments in PJM's Order No. 2222 compliance proceeding is April 1, 2022. (ER22-962-000)

**On February 8, 2022**, the Commission issued its Order granting a joint motion to reject PJM's September 1, 2021 Updated Compliance Filing, without prejudice, on procedural grounds. The Commission further rejected PJM's assertion that FPA section 309 vests the Commission with authority to revisit an earlier phase of the compliance proceeding in this docket. The Commission noted, however, that if PJM thinks the proposed revisions to the definition of Designated Entity would also be consistent with Order No. 1000, PJM has other procedural options to use. (ER13-198-008)

**On January 31, 2022**, the Commission issued an order accepting PJM's July 19, 2021 compliance filing regarding the Financial Transmission Rights (FTR) forfeiture rule, and declined to direct refunds stemming from PJM's implementation of a prior version of the FTR forfeiture rule. PJM's July 19, 2021 compliance filing proposed a revised approach to triggering forfeiture of applicable FTR-related revenues when appropriate, and provided additional related information requested by the Commission in a May 20, 2021 order in the same proceeding. The Commission accepted PJM's compliance filing, effective February 1, 2022. (ER17-1433-003)

**On January 31, 2022**, the Commission issued a letter order accepting the December 3, 2021 filing by PJM of Tariff revisions removing inconsistencies associated with administrative timelines related to status changes for a facility to operate as a Generation Capacity Resource or Behind the Meter Generation. The tariff revisions become effective as of February 2, 2022. (ER22-548-000)

**On January 27, 2022**, the Commission Staff issued a deficiency notice in response to PJM's November 29, 2021 Governing Documents Enhancement and Clarifications Subcommittee (GDECS) Federal Power Act section 205 filing, requesting a response from PJM within 30 days. (ER22-486-000)

**On January 21, 2022**, the Commission established an order to show cause proceeding regarding its preliminary finding that the alternative offer cap provisions in the PJM Tariff appear to be unjust and



unreasonable. PJM is directed to submit an answer regarding the alternative offer cap provisions within 60 days and interested parties may submit responses within 30 days of PJM's filing. (EL22-22)

**On January 20, 2022**, the Commission issued an order dismissing Illinois Municipal Electric Agency's (IMEA) Incremental Capacity Transfer Rights (ICTRs) complaint filed on May 5, 2021. The Complaint sought to compel PJM to apply its allocation of 1,097 MW of ICTRs from the Upgrade Construction Service Agreement (UCSA) without reduction in the 2021/2022 Delivery Year and future Delivery Years. IMEA requested that the auction results for the 2021/2011 Delivery Year be resettled through Make Whole payments. (EL21-79-000)

**On January 20, 2022**, the Commission issued its order on remand and concluded that PJM's inclusion of the 10% adder used in the capacity market has not been shown to be just and reasonable. As a result, PJM is directed to submit a compliance filing within 30 days of the order to submit revised Tariff records reflecting the removal of the 10% adder from the energy and ancillary service offset calculation. (ER19-105-005)

**On January 20, 2022**, the Commission issued an order dismissing as moot the Market Monitor's motion for clarification and waiver regarding the Market Monitor's ability to update the net energy and ancillary service offsets used in the calculation of the market seller offer cap. (EL19-47-000, EL-63-000, ER21-2444-000, and ER21-2877-000)

**On January 20, 2022**, the Commission issued an order on compliance finding that the proposed revisions filed by Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc. (Together, DEOK) partially comply with the requirements of Order No. 864. DEOK's proposed revisions to the PJM Tariff filed on January 15, 2021 were accepted, effective January 27, 2020, and DEOK is directed to submit a further compliance filing due on or before March 21, 2022. (ER20-1832-000 and ER20-1832-001)

**On January 20, 2022**, the Commission issued an order approving the revisions to the PJM Operating Agreement, Schedule 12 and the RAA, Schedule 17, to reflect the permanent termination of Switch Energy, LLC (Switch) as a PJM Member in accordance with Operating Agreement, section 15.1.6 (c) and 4.1 (c), because Switch failed to make payments when due twice during a 12 month period. The revisions are effective as of January 24, 2022. (ER22-475-000)

**On January 19, 2022**, the United States Court of Appeals for the Fourth Circuit (Fourth Circuit) issued an opinion affirming on appeal the judgment of the United States District Court for the Eastern District of Virginia (District Court) granting PJM's motion to dismiss Old Dominion Electric Cooperative's (ODEC) claims for costs allegedly incurred during the January 2014 Polar Vortex. The Fourth Circuit agreed with the District Court that ODEC's claims for compensation fall entirely within the PJM Tariff and therefore are exclusively governed by federal law and barred by the filed-rate doctrine. Therefore, the judgment of the District Court denying remand and dismissing Old Dominion's claims with prejudice is affirmed. (Case No. 20-1483)



**On January 13, 2022**, the Commission issued a letter order accepting the November 18, 2021 filing by PJM of revisions to the Tariff and Operating Agreement definitions of No-load Cost and Incremental Energy Offer. The tariff revisions become effective as of January 18, 2022. (ER22-429-000)

**On January 10, 2022**, the Commission issued a letter order accepting the November 19, 2021 filing by PJM proposing revisions to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (OA), Schedule 6, section 1.5.8(e) that would permit PJM to modify the technical specifications of a project proposal submitted through a competitive proposal window in the event such project proposal fails the critical substation planning analysis. PJM's revisions to the OA become effective as of January 19, 2022. (ER22-451-000)

## **FILINGS**

**On February 10, 2022**, PJM submitted a Motion for Leave to Answer and Answer (Answer) to respond to Protests and Comments regarding PJM's January 31, 2022 Filings (Jan. 31 Filings) made under FPA sections 205 and 206 to propose revisions to the Transmission Constraint Penalty Factor rules. In this answer, PJM maintains that the existing Transmission Constraint Penalty Factor rules are unjust and unreasonable, as applied to the limited and unique circumstance currently occurring on the Northern Neck peninsula, and urges the Commission to accept PJM's proposed amendments. (ER22-957-000 and EL22-26-000 (not consolidated))

**On February 8, 2022**, PJM filed a protest to the January 18, 2022 Petition of Urbana Solar LLC (Urbana) for waiver of Tariff, section 212.4, to allow Urbana an additional 90 days to satisfy its deferred security obligations under section 5.0 of the Interconnection Service Agreement associated with PJM Queue No. AE2-278. PJM argued that Urbana has not met the Commission's requirements for granting a waiver of the Tariff, and the request should therefore be denied. (ER22-848-000)

**On February 7, 2022**, the ISO-RTO Council (IRC) filed an answer to the December 22, 2021 petition from Voltus, Inc. requesting a technical conference regarding issues associated with Order No. 2222. (RM18-9-008)

**On February 4, 2022**, PJM submitted comments pursuant to the notice issued on December 6, 2021 inviting post-technical conference comments in this proceeding, which is examining approaches related to Modernizing Electricity Market Design. PJM's comments describe how the changing energy landscape is driving a need for new market products that add flexibility. (AD21-10-000)

**On February 2, 2022**, PJM filed a limited answer to the Comments of the Organization of PJM States, Inc. (OPSI) responding to OPSI's recommendation that the Commission find PJM's December 20, 2021 filing deficient regarding PJM's plans to move toward implementing a 99% confidence interval in the FTR Credit Requirement calculation. PJM explained that its proposal to implement a 97% confidence interval is a substantial improvement to PJM's current collateral requirements, and has been properly supported as just and reasonable. (ER22-703-000, et al.)



**On February 1, 2022**, PJM submitted its Order No. 2222 compliance filing relating to the participation of distributed energy resource (DER) aggregators in PJM's energy, capacity, and ancillary services markets. PJM requested that the Commission grant an effective date of February 2, 2026 for the proposed Tariff, Operating Agreement, and RAA revisions, and an effective date of July 1, 2023 for a limited subset of revisions specific to the participation of DER aggregations in the 2026/2027 Delivery Year Base Residual Auction. PJM also requested an extension of the standard twenty-one day comment period, from February 22, 2022 to April 1, 2022, in order to provide PJM stakeholders with additional time to develop their responsive pleadings. (ER22-962-000)

**On February 1, 2022**, PJM submitted a supplemental filing to correct Attachment A of PJM's January 31, 2022 filing to show the proposed Tariff revisions in redline. (ER22-957-000)

**On January 31, 2022**, PJM submitted proposed revisions to the Tariff, section 5.6 under Sections 205 of the Federal Power Act, to modify the application of the Transmission Constraint Penalty factor for transmission constraints caused by the Lexana – Dunnsville – Northern Neck 230kV construction outage in the Dominion Zone. PJM requested that THE COMMISSION fast track processing of these filings, along with a shortened comment period of seven days. (ER22-957-000)

**On January 31, 2022**, PJM submitted proposed revisions to update its Operating Agreement, Schedule 1, section 5.6 under Section 206 of the Federal Power Act, respectively, to modify the application of the Transmission Constraint Penalty factor for transmission constraints caused by the Lexana – Dunnsville – Northern Neck 230kV construction outage in the Dominion Zone. PJM requested that the Commission fast track processing of these filings, along with a shortened comment period of seven days. (EL22-26-000)

**On January 28, 2022**, PJM submitted for filing consistent with the PJM Operating Agreement, Schedule 6, section 1.5.8(m)(1), the 2022 informational report that includes: (i) Appendix A - a list of Immediate-need Reliability Projects approved by the PJM Board of Managers in 2021 for which an existing incumbent transmission owner was selected as the designated entity; and (ii) Appendix B - a status update listing the Immediate-need Reliability Projects included in the 2021 informational report filed in this docket. (ER13-198-000)

**On January 27, 2021**, PJM submitted for filing the State Agreement Approach Agreement (SAA Agreement) between PJM and the New Jersey Board of Public Utilities (NJ BPU) (together, the Parties), designated as Rate Schedule THE COMMISSION No. 49, memorializing the Parties' understanding of the terms and conditions associated with the NJ BPU's request to implement PJM's State Agreement Approach process, pursuant to Operating Agreement, Schedule 6, section 1.5.9. PJM requests an effective date for the SAA Agreement of April 15, 2022. (ER22-902-000)

**On January 27, 2022**, PJM submitted a notice of withdrawal for its January 21, 2022 compliance filing, which contained certain formatting errors. PJM submitted the correct version of its compliance filing also on January 21, 2022 EL19-58-010 and that filing is not being withdrawn. (EL19-58-009)

**On January 26, 2022**, PJM filed a Motion for Leave to Answer and Limited Answer to the January 11, 2022 protest filed jointly by Long Island Power Authority (LIPA) and Neptune Regional Transmission System, LLC (Neptune) (Protest). LIPA and Neptune filed the Protest in response to PJM's December 21, 2021



filing proposing revisions to Tariff, Schedule 12-Appendix and Tariff, Schedule 12-Appendix A to update annual cost responsibility assignments consistent with PJM Tariff, Schedule 12. (ER22-702-000)

**On January 21, 2022**, PJM submitted a request for rehearing of the Commission's December 22, 2021 order on voluntary remand in the reserve price formation proceeding. (EL19-58-007 and ER19-1486-004)

**On January 21, 2022**, PJM submitted a compliance filing pursuant to the December 22, 2021 order on voluntary remand involving Operating Reserve Demand Curves. In this compliance filing, PJM proposes revised schedules for the upcoming RPM Auctions to adjust for the use of a historical looking Energy and Ancillary Services Offset. PJM included in its compliance a request for a shortened comment period of 7 days and a request for expedited consideration. (EL19-58-010)

**On January 19, 2022**, PJM filed an Answer to Chickahominy Power LLC's (Chickahominy) January 4, 2022 Protest (Chickahominy Protest) regarding PJM's December 14, 2021 notice of cancellation of Chickahominy's Interconnection Service Agreement, designated as Service Agreement No. 5493, for PJM Queue No. AC1-107 (Chickahominy ISA). PJM asked the Commission to reject the Chickahominy Protest and accept PJM's cancellation of the Chickahominy ISA for failure to meet milestones. (ER22-634-000)

**On January 18, 2022**, PJM filed a Motion for Clarification of the Commission's December 22, 2021 order on remand in the reserve price formation proceeding. Specifically, PJM requested clarification regarding whether the December 22, 2021 remand order: (i) retained the Commission's prior acceptance of the removal of certain price capping provisions applicable to PJM's reserve markets; or (ii) directed the restoration of the reserve market price caps. PJM also requested that the Commission provide such clarification by February 11, 2022. (EL19-58-007 and ER19-1486-004)

**On January 14, 2022**, PJM made a compliance filing to revise the PJM Tariff, Schedule 6A, concerning Black Start Service, as directed by the Commission in an order issued on December 16, 2022. The amendment removed from the definition of the Capital Recovery Factor (CRF) references to an assumed unit type, unit size, and level of capital investment. PJM requested an effective date of June 6, 2021, consistent with the effective date the Commission granted for prior filings in this docket. (ER21-1635-004)

**On January 11, 2022**, PJM filed a Motion to Intervene and Comments to the Joint Application For Authorization Under Section 203 of the Federal Power Act for Disposition Jurisdictional Facilities by Kentucky Power Company (Kentucky Power), AEP Kentucky Transmission Company, Inc. (Kentucky TransCo) and Liberty Utilities Co. (Liberty) for the transfer of Kentucky Power and Kentucky Transmission Company generation and transmission assets. (EC22-26-000)

**On January 10, 2022**, PJM submitted Operating Agreement and Tariff revisions that seek to implement several recommendations identified in a recent independently administered comprehensive review of PJM's Auction Revenue Right (ARR) and Financial Transmission Right (FTR) market rules by London Economics International LLC (LEI) and make certain complementary revisions to help ensure the ARR/FTR market functions as intended. PJM requested an order by March 11, 2022, and effective dates of September 1, 2022, for the FTR Enhancement Revisions and February 1, 2023 for the ARR Enhancement Revisions. (ER22-797-000)

