

I. MOTION FOR LEAVE TO ANSWER

A party may answer comments or a protest where the decisional authority permits the answer for good cause shown.⁶ The Commission frequently has accepted such responses when doing so will ensure a more accurate and complete record or will assist the Commission in its deliberative process by correcting errors and clarifying the issues.⁷ All of these criteria are met. Accordingly, the Clean Energy Industries respectfully request that the Commission grant its Motion because the Answer will help clarify the record and contribute to an understanding of the issues.

II. ANSWER

A. *The PJM Response Does Not Accurately Reflect Positions Taken By The Clean Energy Entities*

The PJM Response provides answers to several Commission questions posed in the Request for Additional Information, which was issued by the Commission because it was “necessary to process [the PJM Compliance Filing⁸].” While the Clean Energy Entities take no position on the majority of PJM’s answers in the PJM Response, the Clean Energy Entities feel

⁶ See 18 C.F.R. § 385.213(a)(2).

⁷ See, e.g., *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,165, at P 24 (2012) (accepting answers to a protest because “they have provided information that assisted [the Commission] in [its] decision-making process”); *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,031, at P 10 (2003) (accepting answer because “it will not delay the proceeding, will assist the Commission in understanding the issues raised, and will [e]nsure a complete record upon which the Commission may act”); *Ne. Utils. Serv. Co.*, 86 FERC ¶ 61,161, at 61,568 (1999) (accepting an answer to a pleading that sought affirmative relief and because the response aided in the Commission’s analysis and disposition).

⁸ Order No. 841 Compliance Filing- ESR Markets and Operations Proposal, Docket No. ER19-469-000 (Dec. 3, 2018) (“PJM Compliance Filing”). The PJM Compliance Filing sought to implement the Commission’s directives in Order No. 841. See *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 841, 162 FERC ¶ 61,127 (2018) (“Order No. 841”).

compelled to respond to certain PJM statements which mischaracterize positions taken previously in the above-captioned proceeding by the Clean Energy Entities.

More specifically, in its Request For Additional Information, the Commission posed the following question to PJM (“Question 3(b)”):

The Reliability Assurance Agreement, Schedule 9 states that the rules and procedures “shall recognize the difference in types of generating units and the relative ability of units to maintain output at stated capability over a specified period of time.” Please explain how the rules and procedures specifically recognize the unique characteristics and capabilities of Capacity Storage Resources and their relative ability to “maintain output at stated capability over a specified period of time.”⁹

Notably, most of PJM’s “answer” to the Question 3(b) does not seek to directly explain how PJM’s “rules and procedures specifically recognize the unique characteristics and capabilities of Capacity Storage Resources and their relative ability to ‘maintain output at stated capability over a specified period of time’”, but instead seeks to rebut arguments raised previously by parties in the above-captioned proceeding opposing PJM’s proposal to measure electric storage resources’ (“ESR”¹⁰) capacity value (measured in MW) “based on their discharge/output capability over ten hours of sustained continuous operation.”¹¹ (hereinafter, the “10-hour duration requirement”). In the midst of reiterating its flawed positions attempting to justify the proposed 10-hour

⁹ See Request for Additional Information at 3 (emphasis added).

¹⁰ In Order No. 841, the Commission defined ESRs as “a resource capable of receiving electric energy from the grid and storing it for later injection of electric energy back to the grid,” and clarified that “this definition is intended to cover electric storage resources capable of receiving electric energy from the grid and storing it for later injection of electric energy back to the grid, regardless of their storage medium (e.g., batteries, flywheels, compressed air, and pumped-hydro).” See Order No. 841 at P 29. Unless otherwise indicated, the Clean Energy Entities references to “ESRs” refer to the definition of ESRs adopted by the Commission in Order No. 841. Further, the Clean Energy Entities will sometimes refer to “non-hydro ESRs” herein, meaning that the Clean Energy Entities intend to refer to ESRs that are not pumped-hydro in such instances.

¹¹ See PJM Compliance Filing at 20.

duration requirement, PJM mischaracterizes several positions previously taken by the Clean Energy Entities, as described in more detail below.

i. The Clean Energy Entities' Objections to The 10-Hour Duration Requirement Are Not Merely "Essentially Economic"

In its response to Question 3(b), PJM states that "[t]he objections to PJM's proposal are instead *essentially economic*, i.e., that CSRs would receive less capacity revenue if their capacity level is based on the discharge rate they can sustain over ten hours."¹² PJM erroneously cites the Clean Energy Entities' February 7, 2019 protest¹³ to support its position.¹⁴ Notably, the Clean Energy Entities' objections to PJM's proposed 10-hour duration requirement are not "essentially economic." Instead, the Clean Energy Entities' Protest noted the following, among other issues: 1) PJM failed to provide evidence to support the 10-hour duration requirement;¹⁵ 2) the evidence PJM provided to support the 10-hour duration requirement was inappropriate because it was based on a 2010 study of Demand Response resources which inappropriately applied outdated and unreasonable assumptions to ESRs;¹⁶ 3) the 10-hour duration requirement is not supported by any reasonable interpretation of PJM's governing documents¹⁷ or

¹² See PJM Response at 11-12 (emphasis added).

¹³ Protest of America Wind Energy Association and the Solar Council, Docket No. ER19-469-000 (Feb. 7, 2019) ("Protest").

¹⁴ See PJM Response at 12, note 12.

¹⁵ See Protest at 6-10.

¹⁶ See *e.g., id.* at 9.

¹⁷ PJM's governing documents are the PJM Open Access Transmission Tariff ("Tariff"), the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. ("Operating Agreement"), and the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region ("RAA").

manuals;¹⁸ and 4) PJM’s governing documents and Commission precedent demonstrate that ESRs’ capacity value should be measured over “peak-hour periods”, and how such peak-hour period cannot reasonably be interpreted to be 10 hours.¹⁹ The Clean Energy Entities’ objections to the 10-hour duration requirement were thus based on far more than “essentially economic” reasons.

Moreover, page 21 of the Protest, which was directly cited by PJM, does not discuss *any* economic rationale for opposing the 10-hour duration requirement. Instead, the Clean Energy Entities requested that the “Commission reject PJM’s use of the 10-hour duration requirement when determining the capacity value of non-hydro ESRs, and order PJM to file governing document changes that utilize a 4-hour duration requirement when calculating non-hydro ESRs’ capacity value.”²⁰ Importantly, the Clean Energy Entities averred that this request was appropriate because “the most logical interpretation of PJM’s currently effective governing documents and manuals is to conclude that the ‘peak-hour period’ applicable to non-hydro ESRs is four hours, and therefore the duration requirement that should be utilized when calculating the capacity value for non-hydro ESRs is also four hours.”²¹

The Clean Energy Entities also requested that if the Commission concluded that PJM’s currently effective governing documents and manuals are ambiguous as to what the proper duration requirement for non-hydro ESRs should be, that the Commission

¹⁸ See Protest at 10-16.

¹⁹ See *id.* at 16-20.

²⁰ See *id.* at 21.

²¹ See *id.*

order PJM to utilize a 4-hour duration requirement when calculating non-hydro ESRs' capacity value on an interim basis.²² The Clean Energy Entities requested this alternative relief based primarily on the arguments that 1) the 4-hour duration requirement it is the *maximum* duration requirement for ESRs permitted by other Commission-jurisdictional Regional Transmission Organizations or Independent System Operators, and 2) the Commission implicitly acknowledged in Order No. 841 that an ESR with a 4-hour duration requirement is able to "reliably provide" capacity, at least in some instances.²³

For the foregoing reasons, it is clear that PJM's reliance on the Clean Energy Entities' Protest to support its position that other parties' objections to PJM's proposed 10-hour duration requirement are "essentially economic" is misplaced and misleading.

ii. PJM Mischaracterizes The Testimony of Dr. Nicholson To Support Its Arguments

In responding to Question 3(b), PJM asserts that "[p]arties opposing PJM's ten-hour standard for determination of Installed Capacity also focus most of their arguments on disagreement with PJM's determination of the PJM system's reliability needs,"²⁴ and referenced, *inter alia*, the testimony of Dr. Emma L. Nicholson,²⁵ which Clean Energy Entities relied upon to support some of the arguments outlined in the Protest. However, PJM's reference to Dr. Nicholson's testimony is misleading for several reasons.

First, as previously described herein, "most" of the Clean Energy Entities' arguments opposing the 10-hour requirement did not focus on "disagreement with PJM's

²² See *id.*

²³ See *id.* at 12-13.

²⁴ See PJM Response at 12.

²⁵ See *id.*, note 13.

determination of the PJM system’s reliability needs”, but instead on other distinct issues.²⁶ Second, the purpose of Dr. Nicholson’s testimony was not to express “disagreement” with “PJM’s determination of the PJM system’s reliability needs,” but instead demonstrated that the studies PJM relied on to support its proposed 10-hour requirement did not in fact do so. Dr. Nicholson’s testimony did not make any claims about the reliability needs of the PJM system nor take a position on the reliability impacts of any specific ESR duration requirement. Dr. Nicholson’s testimony instead reviewed and analyzed the evidentiary support PJM put forth in the PJM Compliance Filing and other publicly available evidence (*e.g.*, noting that PJM’s 2010 Demand Response Study assumed an 8.5% percent penetration for demand response resources which was not a reasonable assumption for non-hydro ESRs²⁷) available in the proceeding at the time. Dr. Nicholson found that the evidence PJM relied on to support the 10-hour duration requirement did not support that requirement.²⁸ Dr. Nicholson’s main conclusion was that “the studies PJM cites as support for the non-hydro ESR duration requirement do not in fact support the duration requirement because the studies did not analyze the correct questions and are based on either outdated information or unreasonable assumptions.”²⁹

Importantly, Dr. Nicholson did not take *any* position on the manner in which PJM should determine the system’s reliability needs. Nor did Dr. Nicholson propose a specific duration requirement for non-hydro ESRs. Instead, Dr. Nicholson stated, *inter*

²⁶ See *e.g.*, notes 15, 16, 18, 19, *supra*.

²⁷ See *e.g.*, Protest, Prepared Testimony of Emma L. Nicholson on Behalf of American Wind Energy Association, at 9-10 (“Nicholson Aff.”).

²⁸ See Nicholson Aff. at 2.

²⁹ See *id.* at 2-3.

alia, that “PJM should study whether a 10-hour continuous duration requirement for non-hydro ESRs is needed to maintain reliability given the non-hydro ESR penetration levels expected over the next few years.”³⁰ For the foregoing reasons, PJM mischaracterizes Dr. Nicholson’s testimony in its response to the Question 3(b).

B. PJM Has Not Meaningfully Addressed The Clean Energy Entities’ Argument Demonstrating How The 10-Hour Duration Requirement Is Not Supported By PJM’s Governing Documents and Manuals

Tellingly, in neither the PJM Answer nor PJM Response does PJM meaningfully address the Clean Energy Entities’ argument detailing how the only reference to the 10-hour duration requirement in any of PJM’s governing documents or manuals did not support PJM’s proposal to apply the 10-hour duration requirement to calculate the capacity value of non-hydro ESRs. As explained by the Clean Energy Entities, PJM essentially argued in the PJM Compliance Filing that the RAA authorizes PJM to rely on implementing technical language in Manual 21, Section 2.1(13) to impose the 10-hour duration requirement.³¹ Notably, Manual 21, Section 2.1(13) is the *only* place in PJM’s governing documents or manuals where the 10-hour duration requirement is specified.³² The Clean Energy Entities explained that the Manual 21 language that PJM relied upon to justify its proposed 10-hour duration requirement did not address measuring the capacity value of ESRs.³³ Moreover, the Clean Energy Entities averred that “unless PJM can explain otherwise, it appears that the *key language* that PJM points to in order to justify

³⁰ Nicholson Aff. at 21.

³¹ See Protest at 11.

³² See *id.*

³³ See *id.* at 10-14.

utilizing the 10-hour duration requirement when calculating ESRs' capacity value apparently has *nothing* to do with actually calculating ESRs' capacity value."³⁴

Importantly, in neither the PJM Response nor PJM Answer does PJM meaningfully rebut the aforementioned arguments that the Clean Energy Entities raised. The Clean Energy Entities note this to highlight the fact that PJM has failed to explain how the only language in any of PJM's governing documents or manuals that describes the 10-hour duration requirement has anything to do with calculating non-hydro ESRs' capacity value. Accordingly, for this reason, and the additional reasons set forth herein and in the Protest, the Clean Energy Entities respectfully request that the Commission grant the relief outlined in the Protest.³⁵

III. CONCLUSION

For the aforementioned reasons, the Clean Energy Entities request that the Commission grant the Motion and consider its Answer, as set forth herein.

Respectfully submitted,



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³⁴ See *id.* at 14 (emphasis in original).

³⁵ See *id.* at 20-22 (describing the relief requested by the Clean Energy Entities).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 21st day of May, 2019.



Steven Shparber