UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	)	Docket No. ER13-535-000

PROTEST OF THE NRG COMPANIES TO
PJM INTERCONNECTION, L.L.C. COMPLIANCE FILING

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"),[1] the NRG Companies[2] respectfully submit this protest to the filing submitted by PJM Interconnection, L.L.C. ("PJM")[3] in compliance with the Commission's May 2, 2013 order in the above-captioned docket.[4]

I. INTRODUCTION

As PJM acknowledged in its December 7, 2012 filing initiating this docket, the most recent round of changes to the Minimum Offer Price Rule ("MOPR") was designed to increase transparency and definition with respect to the process required to obtain an exemption from mitigation, thus providing clear guidance to the marketplace and increasing market confidence as to the integrity of the Reliability Pricing Model ("RPM") auction price signals.[5] Indeed, these MOPR changes have their roots in the publicly-aired dispute between the Independent Market

[1] 18 C.F.R. § 385.211 (2013).

[2] The NRG Companies are NRG Power Marketing LLC, GenOn Energy Management, LLC, Conemaugh Power LLC, GenOn Mid-Atlantic, LLC, Indian River Power LLC, Keystone Power LLC, NRG Chalk Point, LLC, NRG Energy Center Dover LLC, NRG Energy Center Paxton LLC, NRG Power Midwest, LP, NRG REMA, LLC, NRG Rockford LLC, NRG Rockford II LLC, NRG Wholesale Generation, LP, and Vienna Power LLC. The NRG Companies filed a motion to intervene in this proceeding on December 28, 2012. *PJM Interconnection, L.L.C.*, Motion to Intervene of NRG Companies, Docket No. ER13-535-000 (filed Dec. 28, 2012).

[3] *PJM Interconnection, L.L.C.*, PJM Interconnection, L.L.C. Compliance Filing, Docket No. ER13-535-003, at 8 (filed June 3, 2013) ("June 3 Filing").

[4] *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 (2013) ("May 2 Order").

[5] *PJM Interconnection, L.L.C.*, PJM Interconnection, L.L.C. Stakeholder-Driven MOPR Tariff Revisions Filing, Docket No. ER13-535-000, at 1 (filed Dec. 7, 2012) ("December 7 Filing").

Monitor and PJM[6] over the proper interpretation of tariff language concerning the unit-specific review process and the ripple effect that that dispute had in the marketplace, undermining confidence in the ability of the then-existing MOPR to protect RPM.[7] Unfortunately, PJM's proposed language governing its obligation to review and update the net-short and net-long thresholds, which are a key component of the new "self-supply exemption" from the MOPR, are so vague and opaque as to the grounds on which PJM will determine to adjust the thresholds and the disclosures that it will make to the stakeholders, that they are virtually certain to engender the same type of disputes and market uncertainty that PJM and its stakeholders were attempting to avoid with the new MOPR. Moreover, PJM's proposal regarding the frequency of the review is wholly inadequate to address "evolving market conditions," as the Commission directed. The Commission should reject PJM's June 3 Filing with respect to Section 5.14(h)(6)(v) of Attachment DD to its Open Access Transmission Tariff ("Tariff"), and require PJM to submit language consistent with the NRG Companies' proposals set forth herein.

II. PROCEDURAL BACKGROUND

On December 7, 2012, PJM submitted revisions to its Tariff, pursuant to Section 205 of the Federal Power Act,[8] proposing, among other things, to adopt an exemption from the MOPR for certain self-supply resources ("Self-Supply LSEs").[9] In order to qualify for the exemption, a Self-Supply LSE must not be either significantly net-short or net-long on capacity, as determined

[6] *See PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,160 (2012).

[7] *See PJM Capacity Market Update, MOPR Proves a Farce, Undermining Investor Confidence in PJM*, International Strategy & Investment Group, Inc., May 30, 2012. *See also Losing Faith, US IPP Power Shock*, UBS Securities LLC, May 24, 2012 at 4.

[8] 16 U.S.C. § 824d (2012) ("Section 205").

[9] December 7 Filing at 17-18. The term "Self-Supply LSEs" includes: cooperative and municipal utilities, including public power supply entities; vertically-integrated utilities; and single-customer Load Serving Entities ("LSEs"). *Id.* at 18.

by the net-short and net-long thresholds set forth in the Tariff.[10] In addition, the self-supply exemption shall not be permitted to the extent the Self-Supply LSE has an arrangement for any payments or subsidies specifically tied to the Self-Supply LSE clearing its project in an RPM auction or to the construction of a project.[11] If it meets the criteria in Section 5.14(h)(6) of Attachment DD of the Tariff, a market seller may offer its resources at a price below the MOPR floor price, including an offer price of zero.[12]

In response to a Commission deficiency letter requesting more information on the development of its net-short and net-long thresholds,[13] PJM provided an explanation of its analysis, which was based on data from the 2012 Base Residual Auction ("BRA").[14] In particular, PJM's Senior Vice President, Markets, Mr. Ott, explained that PJM assessed the potential benefit to a LSE of an uneconomic new entry strategy by analyzing the impact on the RPM clearing prices from the 2012 BRA assuming the addition of a 150 MW combustion turbine plant or a 600 MW combined cycle plant by a net-short LSE offering at $0/MW-day.[15] Based on this analysis, PJM concluded that net-short thresholds contained in the December 7 Filing were "well below the levels at which uneconomic new entry could become profitable."[16] Mr. Ott also acknowledged, however, that "the thresholds were not developed with an eye

[10] *Id.* at 19-20. The net-short thresholds are: 150 MW for a single-customer LSE, 1000 MW for a public power entity, 1800 MW (at the regional transmission organization ("RTO") level, or 1000 MW for three specified Locational Deliverability Areas ("LDAs")) for a multi-state public power entity, and 20% of the LSE's RPM Reliability Requirement for an investor-owned LSE. *Id.* In addition, PJM proposed maximum net-long allowances, ranging from 15% for smaller LSEs to 4% for the largest LSEs. *Id.* at 20.

[11] *Id.* at 19. The rules also provide guidance as to the differing costs and revenues that give rise to price suppression concerns.

[12] *Id.* at 21.

[13] *PJM Interconnection, L.L.C.*, Deficiency Letter re PJM Minimum Offer Price Rule Revisions, Docket No. ER13-535-000 (issued Feb. 5, 2013) ("February 5 Deficiency Letter").

[14] *PJM Interconnection, L.L.C.*, PJM Interconnection, L.L.C. Response to February 5 Deficiency Letter, Affidavit of Andrew L. Ott on Behalf of PJM Interconnection, L.L.C., at 3:11-15, Docket No. ER13-535-001 (filed Mar. 4, 2013) ("March 4 Deficiency Filing, Ott Affidavit").

[15] *Id.* at 4:1-10.

[16] *Id.* at 21:8-9.

toward precision. Rather, they are intended to reasonably balance the need to protect the market against the need to accommodate normal business operations of the LSEs that fall into these categories."[17] Mr. Ott emphasized that the thresholds were proposed by stakeholders, but were subjected to a confidential portfolio review by PJM of the LSEs to which the thresholds would apply.[18] PJM further asserted that its net-long levels were "reasonable because they serve to limit a self-supply entity from substantially overbuilding while recognizing that the addition of a large resource . . . may put the LSE in a net long position at the beginning of the resource's life."[19]

On May 2, 2013, the Commission accepted PJM's proposed Self-Supply LSE exemption from the MOPR, subject to a compliance filing.[20] The Commission found that PJM's net-short and net-long thresholds adequately protect the market from the price effects attributable to uneconomic new self-supply, as applied to existing market conditions.[21] The Commission also emphasized, however, that "the effectiveness of the exemption depends critically on the thresholds that limit the incentive of self-supply entities to influence market-clearing capacity prices"[22] and that "evolving market conditions could affect the accuracy and/or usefulness of these thresholds in the future."[23] Accordingly, the Commission required PJM to submit a compliance filing within 30 days "memorializing its obligation . . . to review and, if necessary, revise these thresholds on an appropriate, periodic basis . . . ."[24]

[17] *Id.* at 21:14-16.
[18] *Id*. at 21:22-27.
[19] *Id.* at 23:15-18.
[20] *See* May 2 Order.
[21] *Id.* at P 107.
[22] *Id.* at P 110.
[23] *Id.* at P 113.
[24] *Id.*

On June 3, 2013, PJM submitted its compliance filing, stating that it was adding a new MOPR subsection that establishes a review of the net-short and net-long positions once every four years.[25] PJM further stated:

> Such review may include, without limitation, analyses under various appropriate scenarios of the minimum net short quantities at which the benefit to an LSE of a clearing price reduction for its capacity purchases from the RPM Auction outweighs the cost to the LSE of a new generating unit that is offered at an uneconomic price, and may, to the extent appropriate, reasonably balance the need to protect the market with the need to accommodate the normal business operations of Self-Supply LSEs.[26]

Based on the review, PJM provides that it will prepare a recommendation to modify or retain the existing thresholds, post the proposal for stakeholder comment, and file any changes with the Commission by October 1 prior to the conduct of the BRA for the first Delivery Year in which the new thresholds would be applied.[27]

III. COMMUNICATIONS

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[25] June 3 Filing at 8.

[26] *Id.* at 9.

[27] *Id.*

[28] The NRG Companies respectfully request waiver of Section 385.203(b)(3) of the Commission's regulations to permit the designation of more than two persons upon whom service is to be made in this proceeding.

IV. PROTEST

A. FERC Should Reject PJM's Compliance Filing with Respect to the Standard that It Will Apply in Determining to Update the Net Position Thresholds Because It Is Unreasonably Vague.

PJM's June 3 Filing provides that "[b]ased on the results of [its] review, PJM shall propose either to modify or retain the existing Maximum Net Short and Net Long positions." As proposed by PJM, this review shall include, without limitation,

> analyses under various appropriate scenarios of the minimum net short quantities at which the benefit to an LSE of a clearing price reduction for its capacity purchases from the RPM Auction outweighs the cost to the LSE of a new generating unit that is offered at an uneconomic price, and may, to the extent appropriate, reasonably balance the need to protect the market with the need to accommodate the normal business operations of Self-Supply LSEs.[29]

In essence, PJM proposes to perform some analyses of the thresholds at which a Self-Supply LSE would benefit from adding a new unit at a zero price, but then it will "reasonably balance" the results of those analyses against the thresholds needed for Self-Supply LSEs to conduct their "normal business operations." The standard proposed by PJM is so vague and indefinite as to be unjust and unreasonable.

As Mr. Ott acknowledges in his affidavit submitted with the March 4 Deficiency Filing, the phrase "normal business operations" in the context of Self-Supply LSEs covers such a wide variety of circumstances as to be meaningless. For instance, as Mr. Ott explains in his affidavit, a Self-Supply LSE's "normal business operations" encompass a broad span of net-short positions that differ over time, and may even include a 100% net-short position, in which the Self-Supply LSE purchases all supply through RPM from time to time.[30] In essence, the range runs from 0% net short to 100% net short, and the guideline of "normal business operations" of a Self-Supply

[29] June 3 Filing, Section 5.14(h)(6)(v) of Attachment DD to the Tariff.

[30] March 4 Deficiency Filing, Ott Affidavit at 21:38-22:30.

LSE is a wholly illusory standard. In addition, the language proposed by PJM provides no detail as to how it will decide what the appropriate balance is between "the need to protect the market" and the "need to accommodate the normal business operations of Self-Supply LSEs" or the point at which the scale will be tipped in favor of one set of interests or another. It simply provides PJM total discretion to engage in "reasonable balancing." One can presume, moreover, the assessment of "normal business operations" of the Self-Supply LSEs will involve the same type of confidential portfolio review that PJM engaged in with respect to the current thresholds, which will, in turn, limit stakeholders' ability to challenge the validity of PJM's judgment call, assuming they even know that some "balancing" or adjustment took place. It is ironic that PJM proposes tariff language incorporating this level of discretion and lack of transparency when PJM has eloquently spoken to the negative effects that such aspects of market rules can have on the marketplace when speaking about other facets of the MOPR—namely, the unit specific exemption. For example, in its March 4 Deficiency Filing, PJM stated:

> This level of discretion does not promote market confidence in the outcome of MOPR exemption requests. As discussed in the December 7 Filing, market confidence is further unsettled by the confidential nature of the exemption request. The market knows that the MOPR permits PJM wide discretion to make unit-specific exemption determinations, including determining the mitigated offer levels, but the market is not aware of which determinations PJM makes, or how PJM makes or supports those determinations.
>
> This degree of uncertainty and opacity can discourage lenders and investors from making commitments to a project . . . . [T]his unknown presents a risk that will either drive capital elsewhere or introduce a premium to the project's cost of capital that unfairly degrades its competitiveness relative to other capacity market sellers. Since MOPR offers can influence the price set by the auction, doubts about the validity of the MOPR offers can lead to lack of faith by market participants in the legitimacy and accuracy of the price signals sent by the RPM auctions.[31]

These words ring equally true with respect to proposed Section 5.14(h)(6)(v).

[31] March 4 Deficiency Filing, Answer to Question No. 1 at 2-3.

The Commission has rejected tariff revision compliance filings on the basis that they are impermissibly vague or contain insufficient information in the past,[32] and the Commission should likewise reject PJM's compliance filing with respect to PJM's proposal to review the net-short and net-long threshold provisions. For example, in the context of capacity deliverability in the New York Independent System Operator, Inc. ("NYISO"), FERC rejected NYISO's proposal to impose a standard that was "to the satisfaction of the NYISO" with regard to deliverability of capacity because it lacked sufficient specificity.[33] Similarly, PJM proposes tariff language that purports to define and describe the review, but leaves the decision over to whether to update the thresholds entirely up to PJM. Language such as "appropriate scenarios", "to the extent appropriate", and "reasonably balance" lead back to the very ambiguity the new MOPR was supposed to resolve. The Commission should reject this language as impermissibly vague.

Instead of the vague review standard proposed by PJM, the Commission should direct PJM to adopt a straightforward standard for updating the net-short threshold that eliminates this discretion and provides transparency as to how PJM will determine whether to update the thresholds. For example, PJM should be required "to determine the net short level at which an LSE's strategy to offer a new unit or portion of a new unit as a price taker becomes profitable (taking into account the net cost of the new unit)" and to update the thresholds on that basis. In short, the determination should be replicable by market participants and the Commission if they had the same information about the supply curves that PJM possesses. Any such analyses should

[32] *See, e.g.*, *Southwest Power Pool, Inc.*, 129 FERC ¶ 61,163 at P 47 (2009) (rejecting compliance filing and finding that "the filing lacks substantive discussion of the technical requirements, policies and procedures" and requiring further compliance filing); *see also Midwest Indep. Transmission Sys. Operator*, 131 FERC ¶ 61,228 at P 1 (2010) (rejecting compliance filing for failing to adequately address prior order's directives requiring compliance filing); *Cal. Indep. Sys. Operator Corp.*, 127 FERC ¶ 61,156 at P 9 (2009) (rejecting certain provisions as "overly vague, unsupported, and [which] could produce unjust and unreasonable results"); *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,130 at P 54 (2012) (finding that PJM failed to provide sufficient information as to how an input to its calculation of the Total Regulation Market Clearing Price would be calculated).

[33] *See N.Y. Indep. Sys. Operator, Inc.*, 101 FERC ¶ 61,216 (2002).

be applied to multiple years of BRA data and should also consider scenarios other than ownership of an entire unit by a single Self-Supply LSE. The slope of the supply curve can vary, and the difference between the effect of a 150 MW addition and a 600 MW addition could be quite significant. Moreover, many cooperative and municipal organizations engage in joint development of new capacity,[34] so sensitivities that consider 50% and 75% of a combined cycle unit also should be required by the Commission.

Finally, to the extent that FERC allows PJM to engage in "balancing," PJM should be required to define: (i) how it will identify normal business operations, (ii) how it will determine the appropriateness of one outcome over another, and (iii) what outcomes reasonably balance the interests of protecting the market against the business activities of Self-Supply LSEs.

B. PJM's Proposal for a Nearly Five-Year Lag from FERC's Directive to Review and Update the Thresholds to Recognize an Evolving Marketplace to the Earliest Point at Which Change Could Be Implemented Is Unjust and Unreasonable.

In the May 2 Order, the Commission required PJM to submit a compliance filing within 30 days "memorializing its obligation . . . to review and, if necessary, revise these thresholds on an appropriate, periodic basis . . . ."[35] The Commission emphasized the fact that "the effectiveness of the [Self-Supply LSE] exemption depends critically on the thresholds that limit the incentive of self-supply entities to influence market-clearing capacity prices"[36] and that "evolving market conditions could affect the accuracy and/or usefulness of these thresholds in

[34] Examples of such joint development/ownership include the Rock Springs facility (672 MW) which is owned in equal parts by Old Dominion Electric Cooperative and Essential Power, L.L.C., and the now-terminated Eastlake station (75% American Municipal Power, Inc. and 25% FirstEnergy Corp.). *See* Old Dominion Electric Cooperative, Generation & Transmission, Energy Resources, Natural Gas, http://www.odec.com/View.aspx?page=generation/resources/naturalgas (last visited June 24, 2013). *See also* FirstEnergy Corp., News Releases, FirstEnergy and AMP Sign Memorandum of Understanding, https://www.firstenergycorp.com/content/fecorp/newsroom/news_releases/firstenergy-and-amp-sign-memorandum-of-understanding-to-build-ne.html (last visited June 24, 2013).

[35] May 2 Order at P 113.

[36] *Id.* at P 110.

the future."[37] Therefore, the Commission made clear that PJM's timely and adequate review of these thresholds is necessary to ensure their accuracy and usefulness.

In response to this directive, PJM proposes to leave the current thresholds, which admittedly were not developed "with an eye towards precision," in place for the foreseeable future, with the first opportunity to implement an update nearly five years away. This proposal plainly does not address the Commission's concern regarding "evolving market conditions" and the risk of harm to the market in the intervening years is significant.

Prior to the 2016/2017 BRA, PJM posted information concerning the amount of new entry that sought and was granted a MOPR exemption. In short, over 13,000 MWs of new entry qualified for a MOPR exemption,[38] and, while the majority of the exemptions were for competitive entry, 1,432.5 MWs of new generation qualified for the self-supply exemption. Of the MWs that qualified for the self-supply exemption, 100% cleared.[39] As illustrated by the testimony of Dr. Tabors and Mr. Stoddard, depending on the location of this capacity, the price suppressing effect of such exempt new entry can be significant.[40]

The price suppressing effects are also long-lasting. As the Commission directed, the MOPR is only applicable for one year, and thus after obtaining an exemption and clearing one BRA, a new entrant is no longer subject to the MOPR and may offer for the rest of the unit's life

[37] *Id.* at P 113.

[38] PJM INTERCONNECTION, L.L.C., 2016/2017 RPM BASE RESIDUAL AUCTION RESULTS at 4, *available at* http://www.pjm.com/~/media/markets-ops/rpm/rpm-auction-info/2016-2017-base-residual-auction-report.ashx ("2016/2017 BRA Auction Report"). All the requests that were submitted were granted.

[39] *Id.* In contrast, only 29.4% of the MWs that qualified for the competitive exemption cleared.

[40] *PJM Interconnection, L.L.C.*, Motion to Intervene, Protest and Comments of the FirstEnergy Companies, Tabors Aff. at 2, Docket No. ER13-535-000 (filed Dec. 28, 2012); *PJM Interconnection, L.L.C.*, Supplemental Protest and Comments of the FirstEnergy Companies, Tabors Supp. Aff. at 26, Docket No. ER13-535-000 (filed Mar. 25, 2013); *PJM Interconnection, L.L.C.*, NRG Companies Protest and Motion for Leave to File Out of Time, Stoddard Aff. at 3 (filed Dec. 28, 2012); *PJM Interconnection, L.L.C.*, NRG Companies' Protest to PJM Interconnection, L.L.C.'s Deficiency Filing, Stoddard Reply Aff. at 10-11 (filed Mar. 25, 2013).

as a price taker.[41] Despite the fact that PJM concludes in the 2016/2017 BRA Auction Report that the MOPR "likely had little effect on BRA outcomes for 2016/2017 as less than half of all requested and approved MOPR exemptions [cleared the market],"[42] the sheer volume of MOPR-exempted installed capacity indicates that with some variation in the supply curve, the amount of MOPR-exempted capacity that cleared could have been much higher. It was for this exact reason that the Commission was concerned about changing market conditions and directed a periodic review.

PJM proposes to synchronize its review of the net position thresholds with the review of the Variable Resource Requirement ("VRR") curve parameters, the Energy and Ancillary Services offset ("E&AS offset") mechanism and the gross Cost of New Entry ("gross CONE") update that was recently changed from a once-every-third year review to a once-every-fourth year review.[43] Unlike the VRR curve, the E&AS offset mechanism, and the gross CONE, which have been in place since the RPM's inception, and have been through several review cycles already, the self-supply exemption, including the net-short and net-long thresholds, is an entirely new and untested aspect of RPM. Furthermore, the thresholds admittedly were not developed with precision, and evidence of their effectiveness depends entirely on limited data concerning the 2012 BRA parameters.[44] It is simply not just and reasonable to lump review and update of these thresholds with the other basic auction parameters. The Commission should reject PJM's proposal with respect to the frequency of review.

The NRG Companies suggest that there are at least two ways in which to design a review process that comports with the Commission's directive and would be responsive to evolving

[41] *See* Section 5.14(h)(4) of Attachment DD to the Tariff.

[42] 2016/2017 BRA Auction Report at 6.

[43] *See PJM Interconnection, L.L.C.*, Letter Order, Docket No. ER13-1044-000 (issued May 22, 2013).

[44] March 4 Deficiency Filing, Ott Affidavit at 21:14-16.

market conditions. The optimal approach would be to incorporate a test into the market clearing mechanism of the BRA itself. Such a mechanism would use actual Self-Supply LSE net-short positions and actual supply and demand curves for the relevant year. It would perform the calculation of whether the Self-Supply LSE (based on its actual net-short position) will incur a net benefit from bidding the new unit at a level lower than the relevant net CONE and only mitigate those bids that fail the test. The advantages to this type of mechanism are significant. Over- and under-mitigation would be entirely avoided and the thresholds would be determined pursuant to a precise mathematical calculation that would withstand scrutiny. Nor would PJM be setting thresholds based on a "snapshot" of Self-Supply LSE's portfolios or market clearing prices once every four years. While the overall supply and demand relationship at the RTO level has not changed dramatically since RPM's inception, the clearing prices in the various LDAs have varied widely. Even the RTO LDA has experienced extreme price volatility. For example, the clearing price for 2007/2008 was $40.80 MW-day, and, three years later, the clearing price was $174.29 MW-day for 2010/2011. Two years after that, prices had dropped to $16.46 MW-day for 2012/2013, and after two more years prices were once again over $100 MW-day ($125.99 MW-day in 2014/2015).[45] Changing market rules can also contribute to pricing shifts and would tend to limit the usefulness of historical data in determining future prices. For a strategy such as the exercise of market power that depends largely on price impacts to be successful, using the right prices to determine when to mitigate is critical. The NRG Companies submit that it is very difficult to select a single set of fixed thresholds that apply consistently-appropriate mitigation in light of such volatile prices. An automatic test built into the auction

[45] *See* 2016/2017 BRA Auction Report at 6.

clearing mechanism would appropriately mitigate such Self-Supply LSEs based on their actual net-short positions and actual market conditions.

A second, less-optimal approach, would provide the same type of periodic review and update on the same schedule as the E&AS offset mechanism. As discussed above, the E&AS offset mechanism is subjected to a comprehensive review every four years, but it updated periodically (*i.e.*, each year) using a rolling three calendar years' worth of historical energy market data. The formula by which the E&AS offset is calculated is set forth in the Tariff at Section 5.10(a)(v), and, for the yearly update, the formula is applied to new energy market data.[46] A similar update process could be designed for the net position thresholds. PJM would be required to set forth the formula or the method by which the thresholds would be calculated, and then it could be applied to the previous three years' worth of market data to calculate the thresholds. This process would also be analogous to the process for updates of gross CONE values. Those values also are subject to a comprehensive review every four years, but are adjusted according to the Handy-Whitman index each year in the interim.[47]

Both of these proposals present vast improvements over the unjust and unreasonable four-year review proposed by PJM. If, however, the Commission decides to accept PJM's proposal to review the thresholds once every four years, it must require PJM to make a Section 205 filing reflecting the outcome of the review. If PJM decides to update the thresholds, a Section 205 filing is obviously required. If not, a Section 205 filing should nonetheless be required so that PJM may demonstrate that maintaining these thresholds continues to be just and reasonable despite the evolving market conditions over the intervening four years.

[46] Three calendar years' of market data is used and each year a new year's worth of data is added and the oldest year of data is removed.

[47] *See* Section 5.10(a)(iv) of Attachment DD to the Tariff.

C. In Light of the Nature of the Thresholds, PJM Must Be Required to Post Detailed Information About the Review it Conducts Sufficiently In Advance of the Proposed October 1 Filing Deadline.

As discussed in detail above, the standard that PJM proposes to govern its review and updates of the net position thresholds is amorphous and ill-defined, and the Commission should direct PJM to eliminate the ambiguity. If it does not, it is essential that the Commission require PJM to post the outcome of its review and its proposal to update the thresholds sufficiently in advance of the proposed October 1 filing deadline. The recently-approved process for review of the VRR curve parameters, the E&AS offset mechanism, and the gross CONE values all provide for notice of PJM's proposal on July 15 in advance of a December 1 filing deadline,[48] so the NRG Companies suggest that a deadline of May 15 or June 1 would be appropriate. More importantly, PJM also must be required to identify any instances in which "balancing" of self-supply business interests caused PJM to deviate from the thresholds that resulted from the purely mathematical analysis of net benefit described above. Under the review process proposed by PJM, market participants simply will have no ability to discern the factors contributing to PJM's decision-making. In order for the stakeholders and investors to have confidence in the review process, the Commission must require more precision with respect to how PJM will make its determination and the information that PJM is required to share with stakeholders.

[48] *See PJM Interconnection, L.L.C.*, PJM Interconnection, L.L.C. Tariff Revisions re Quadrennial Review at 5, Docket No. ER13-1044-000 (filed Mar. 6, 2013).

V. CONCLUSION

WHEREFORE, for the reasons described above, the NRG Companies respectfully request that the Commission reject PJM's proposed Section 5.14(h)(6)(v) and require PJM to adopt Tariff language consistent with the NRG Companies' proposals, specifically:

- submit unambiguous and precise language setting forth the standard that will govern the update process that PJM will employ concerning the net position thresholds;
- incorporate a test based on such a standard into the market clearing mechanism, or, alternatively, provide for a yearly update of the thresholds based on such a standard;
- file, pursuant to Section 205, the outcome of any four year review, if a four year review process is accepted; and
- add fixed deadlines for the posting of the outcome of PJM's review and, to the extent that "balancing" of interests is allowed, require the posting of each instance in which the decision to update or not involved any accommodation for "normal business operations" of Self-Supply LSEs.

Respectfully submitted,

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Attorneys for the NRG Companies

Dated: June 24, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon each person listed on the official service list maintained by the Secretary of the Commission in the above-captioned proceeding.

Dated at Washington, DC this 24th day of June 2013.

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