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**PUBLIC SERVICE
COMMISSION**



955 Jefferson Ave.
Valley Forge Corporate Center
Norristown, PA 19403-2497

Terry Boston
President and CEO
610.666.8262
610.666.4281 | FAX

December 29, 2010

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort KY 40602-0615

Dear Mr. Derouen:

I am writing in response to the directive contained in the December 22 Order in the Public Service Commission of the Commonwealth of Kentucky (“Kentucky Commission”) Case No. 2010-00203, that PJM Interconnection, L.L.C. (“PJM”) file with the Kentucky Commission a written acknowledgment of the demand response participation requirement placed upon Duke Energy Kentucky, Inc. (“Duke Kentucky”) together with assurances that PJM will publicize such requirement according to its demand response rules.¹ While PJM is a federally regulated entity not subject to state jurisdiction, in furtherance of PJM’s commitment to ongoing cooperation and fostering a positive working relationship with the Kentucky Commission, PJM hereby acknowledges the Kentucky Commission’s requirement placed upon Duke Kentucky with respect to Duke Kentucky retail customer participation in PJM demand-response programs. Specifically, the demand response participation requirement placed upon Duke Kentucky is stated as follows:

[W]e will condition the approval of membership in PJM upon Duke Kentucky’s commitment that no retail customer will be allowed to participate directly or through a third party in a PJM demand-response program until either: (1) the customer has entered into a special contract with Duke Kentucky and that contract has been filed with, and approved by, the Commission; or (2) Duke Kentucky receives Commission approval of a tariff authorizing such customer participation. In addition, we will require PJM to file a written acknowledgment of this

¹ Case No. 2010-00203, Application of Duke Energy Kentucky, Inc. for Approval to Transfer Functional Control of Its Transmission Assets from the Midwest Independent Transmission System Operator to the PJM Interconnection Regional Transmission Organization and Request for Expedited Treatment (Ky. PSC Dec. 22, 2010) (December 22 Order”) at 16.

requirement and require PJM to publicize this requirement according to its demand-response program rules.²

As discussed in PJM's post-hearing brief, PJM's market rules permit end-use customers aggregated by Curtailment Service Providers ("CSPs") or Load Serving Entities ("LSEs") to commit Demand Resources into PJM's Capacity Market, thereby diminishing the capacity obligation such LSEs are required to satisfy.³ However, FERC Order 719-A⁴ requires that RTOs and ISOs not accept bids from CSPs⁵ that aggregate the demand response of the customers of utilities that distributed four million MWh or less in the previous fiscal year, unless the Relevant Electric Retail Regulatory Authority ("RERRA") (in this instance the Kentucky Commission) permits such participation.⁶ Duke Kentucky distributed approximately 3.9 million MWh in 2009, and hence neither a CSP nor Duke Kentucky itself would be able to offer Demand Resources into PJM's Markets unless the Kentucky Commission, as the RERRA, determined to "opt-in" and expressly authorize the participation of such Demand Resources in PJM's Markets.⁷

² *Id.*

³ See Case No. 2010-00203, Post Hearing Brief of PJM Interconnection at 11-13.

⁴ *Wholesale Competition in Regions with Organized Electric Markets*, Order on Rehearing, Order No. 719-A, Docket No. RM07-19-001, 74 FR 37,776 (Jul. 16, 2009), 128 FERC ¶ 61,059 (July 16, 2009) ("Order 719-A"), *reh'g denied*, Order Denying Rehearing and Providing Clarification, Docket No. RM07-19-002, 129 FERC ¶ 61,252 (Dec. 17, 2009).

⁵ Rather than "CSP", FERC uses the phrase "aggregator of retail customers" (ARC) to refer to an entity that aggregates demand response bids.

⁶ Order 719-A, FERC Stats. & Regs. ¶ 31,292 at P 60. "Therefore, we direct RTOs and ISOs to amend their market rules as necessary to accept bids from ARCs that aggregate the demand response of: (1) the customers of utilities that distributed more than 4 million MWh in the previous fiscal year, and (2) the customers of utilities that distributed 4 million MWh or less in the previous fiscal year, where the relevant electric retail regulatory authority permits such customers' demand response to be bid into organized markets by an ARC. RTOs and ISOs may not accept bids from ARCs that aggregate the demand response of: (1) the customers of utilities that distributed more than 4 million MWh in the previous fiscal year, where the relevant electric retail regulatory authority prohibits such customers' demand response to be bid into organized markets by an ARC, or (2) the customers of utilities that distributed 4 million MWh or less in the previous fiscal year, unless the relevant electric retail regulatory authority permits such customers' demand response to be bid into organized markets by an ARC."

⁷ With respect to "4 million MWh or less" requirement, at the point at which a CSP registers an end-use customer, pursuant to PJM rules, the EDC/LSE must verify whether the load is permitted or conditionally permitted by the RERRA to participate in PJM's load response programs. If the EDC/LSE asserts that the load is permitted or conditionally permitted (which condition the EDC/LSE asserts has been satisfied) to participate in the PJM load response program, then the EDC/LSE must provide to the Office of Interconnection evidence from the RERRA indicating that the RERRA permits or conditionally permits the end-use customer to participate in the PJM load response program. Evidence from the RERRA shall be in the form of either: (a) an order, resolution or ordinance of the RERRA permitting or conditionally permitting the end-use customer's participation, (b) an opinion of the RERRA's legal counsel attesting to the existence of a regulation or law permitting or conditionally permitting the end-use customer's participation, or (c) an opinion of the state Attorney General, on behalf of the RERRA, attesting to the existence of a regulation or law permitting or conditionally permitting the end-use customer's participation. For exact language quotes, please refer to the Economic and Emergency Load Response Programs provided in Schedule 1 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. ("Operating Agreement") as well as the parallel provisions of Attachment K-Appendix of the PJM Open Access Transmission Tariff ("PJM Tariff") (Schedule 1 of the Operating Agreement and Attachment K-Appendix of the PJM Tariff are substantively identical).

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Further, in accordance with PJM's load response program rules,⁸ PJM does already post on its website a list of those RERRAs that the EDCs or LSEs assert prohibit or condition retail participation in PJM's load response Programs, together with a corresponding reference to the RERRA evidence that is provided to PJM by the EDCs or LSEs. In this case, the Kentucky Commission has directly provided the relevant evidence to PJM concerning the requirement it placed upon Duke Kentucky retail customer participation in PJM load response programs, and therefore PJM will update its website to reflect same.

Thank you for your expedited review of this important matter. I look forward to continuing our work together to improve the operation, efficiency, and reliability of the Commonwealth of Kentucky's electric transmission service.

Sincerely,

A handwritten signature in black ink that reads "Terry Boston". The signature is written in a cursive, flowing style.

Terry Boston
CEO
PJM Interconnection, LLC

⁸ See PJM Economic Load Response section 1.5A.11, Reporting, and the Emergency Load Response reporting section, both of which are provided for in Schedule 1 of the Operating Agreement and Attachment K-Appendix of the PJM Tariff.