

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.

:

Docket No. ER15-852-000

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**PROTEST OF THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**I. INTRODUCTION**

On January 14, 2015, PJM Interconnection L.L.C. (PJM) filed its *Revisions to the Reliability Pricing Model (RPM) and Related Rules in the PJM Open Access Transmission Tariff (OATT) and the Reliability Assurance Agreement (RAA) Among Load Serving Entities (LSEs)*.<sup>1</sup> PJM proposes an effective date of April 1, 2015. This filing proposes changes to PJM's Demand Response (DR) programs that are to be implemented *only* if the United States Supreme Court (Supreme Court) denies the Federal Energy Regulatory Commission's (FERC) and other parties' Petitions for Certiorari seeking review of the decision in *Electric Power Supply Ass'n v. FERC (EPSA decision)*.<sup>2</sup> This filing is intended to allow PJM and the marketplace to have a fully adjudicated method to allow demand response to participate in the May 2015 Base Residual Auction (BRA) in the event the Supreme Court fails to act in the *EPSA* matter. In the event the Supreme Court grants certiorari to review the *EPSA* decision, PJM anticipates making a subsequent filing with the FERC to withdraw these proposed tariff

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<sup>1</sup> *PJM Interconnection L.L.C.* dated January 14, 2015 at Docket No. ER15-852.

<sup>2</sup> *PJM Interconnection L.L.C.* at Docket No. ER15-852 at 1.

revisions. If the Supreme Court has not acted on *EPSA* before the FERC issues its order on this filing, PJM requests that the FERC accept its tariff revisions, but suspend their effectiveness for a period of five days, until April 6, 2015. This nominal suspension will allow PJM to submit a motion to continue the suspension and further defer the effectiveness of this proposal, as needed, to provide additional time to await the Supreme Court's determination. In the event the Supreme Court has not yet acted as the next Base Residual Auction (BRA) approaches, PJM will proceed with the auction under existing rules governing DR.<sup>3</sup> PJM files two sets of tariffs, one tariff reflecting FERC adoption of PJM's proposed Capacity Performance Product (CP Product)<sup>4</sup> and the second tariff reflecting retention of the status quo.<sup>5</sup>

The Pennsylvania Public Utility Commission (PAPUC) herein files its Protest to PJM's filing in this proceeding pursuant to Rule 211 of the FERC's Rules of Practice.<sup>6</sup>

## **II. BACKGROUND**

The *EPSA* decision held that FERC lacked jurisdiction over DR resources voluntarily participating in the energy markets where there is state regulatory authority to regulate DR resources. The uncertainty surrounding this decision is further compounded by the FirstEnergy Services Company (FES) Complaint pending before FERC that seeks to remove all PJM tariff provisions relating to demand response resource participation in the PJM capacity markets.<sup>7</sup> PJM's filing is designed to provide options to preserve DR

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<sup>3</sup> *Id.* at 2.

<sup>4</sup> PJM filing of December 12, 2014 at ER15-623.

<sup>5</sup> *PJM Interconnection L.L.C.* at Docket No. ER15-852 at 12-13.

<sup>6</sup> 18 C.F.R. § 385.211.

<sup>7</sup> *Complaint of FirstEnergy Service Company* dated May 30, 2014 at FERC Dkt. EL14-55.

participation in PJM capacity markets under any of the potential scenarios presented by the *EPSA* litigation. PJM believes the rules it proposes herein will preserve the reliability and economic benefits of some demand response in the capacity market as opposed to no DR participation. PJM does assert that this proposal could result in substantially lower amounts of DR being available in the future.<sup>8</sup>

### **III. DESCRIPTION OF PJM'S PROPOSAL**

#### **A. Overview Of The PJM Wholesale Load Reduction (WLR) Proposal**

The principal change in PJM's proposal is that, going forward, only Load Serving Entities (LSEs) will be able to bid load reductions, known as Wholesale Load Reductions (WLRs), into future BRAs. This differs from the current mechanism wherein Curtailment Service Providers (CSPs) have traditionally bid DR resources into the BRA directly and have received compensation directly for those products. Under PJM's proposal, CSPs would not be permitted to offer DR directly into the PJM market.<sup>9</sup>

Under PJM's proposal, an LSE or other wholesale entity may submit a bid for a WLR commitment on its own behalf, or such a bid may be submitted by an agent or bilateral contract to act on the LSE's behalf. Wholesale entities may utilize agents to perform obligations and/or to exercise rights on their behalf under the tariff provisions relating to WLRs. WLRs accepted in RPM will result in reductions to the PJM capacity obligations and associated charges of the affected LSEs. Reductions in load made

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<sup>8</sup> *PJM Interconnection L.L.C.* at Docket No. ER15-852 at 7.

<sup>9</sup> *Id.* at 7.

pursuant to a WLR Load commitment in response to price shall be added back in determining Peak Load Contributions (PLC).<sup>10</sup>

From an RPM perspective, PJM will adjust the amounts of capacity it procures in RPM Auctions by modifying the demand curve for such auctions, known as the Variable Resource Requirement (VRR) Curve, to conform to qualifying commitments by wholesale entities to reduce their wholesale loads in the capacity market. Only wholesale entities shall be eligible to submit WLR Bids into a BRA and these entities must comply with the terms and conditions of all WLR Bids, as established by the PJM Office of the Interconnection. Mechanistically, PJM will shift the VRR curve to the left reducing the amount of capacity PJM will procure in the auction and the price at which the auction will clear.<sup>11</sup>

Mechanistically, WLR commitments accepted into the BRA will result in reductions to the PJM capacity obligation and reductions to the associated charges of the affected LSEs. Committed WLRs will be subject to measurement and verification (M&V) requirements and non-performance penalties.<sup>12</sup> The LSE will have to gather and provide to PJM from its customers the same kinds of customer- and site-specific metering and other data that are already required under the current PJM DR tariff provisions. To conform to changes in LSE responsibility associated with customers that switch LSEs,

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<sup>10</sup> *Id.* at 8.

<sup>11</sup> *Id.* at 7-8, 19-26.

<sup>12</sup> *Id.* at 8, 57-62.

wholesale entities will be permitted to transfer WLR commitments, associated reductions in capacity obligations, M&V obligations and compliance charge liabilities.<sup>13</sup>

Under this proposal, PJM will not pay retail end-users (either directly or indirectly) or wholesale entities for DR cleared in RPM auctions. PJM only proposes to reduce the capacity obligations of and the capacity charges owed to PJM by wholesale entities that commit to reduce the wholesale load they are responsible for serving. PJM asserts this approach avoids the jurisdictional flaw that *EPSA* found in the energy market compensation prescribed in FERC Order 745 even if the *EPSA* decision is determined to extend to the capacity markets.<sup>14</sup>

PJM's filing presents two sets of proposed tariff revisions: Option A and Option B. Option A reflects changes to the PJM OATT and RAA designed to integrate implementation of the WLR model with the changes PJM proposed in the pending Capacity Performance Filing. Option A tariff provisions provide for Base Capacity WLR and Capacity Performance WLR which conform to the requirements proposed for Base and Capacity Performance DR proposed in PJM's CP filing at ER15-623.<sup>15</sup>

Option B reflects revisions to the currently effective versions of the PJM OATT and RAA.<sup>16</sup> Option B will allow for variations of WLR, similar to current DR products including Limited WLR and Extended Summer WLR which will have similar constraints as currently exist for Limited and Extended Summer DR.<sup>17</sup> PJM files these two

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<sup>13</sup> *Id.* at 8, 56-57.

<sup>14</sup> *Id.* at 8, 11, 18, 49-54.

<sup>15</sup> *Id.* at 12-13.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 13.



alternatives to accommodate various scenarios that affect the desired effectiveness of the proposed tariffs depending on actions of the FERC and the Supreme Court.

## **B. Other Components Of The PJM Proposal**

### **1. Energy Efficiency**

PJM proposes a new demand side load reduction product called Wholesale Energy Efficiency Loads (WEELs). PJM proposes this product as a replacement for traditional energy efficiency resources. This product can be bid into the BRA and the LSE may obtain a reduction in its capacity obligation. The rules governing continuous reduction, performance and M&V of WEELs are closely modelled on those approved for existing energy efficiency resources. WEELs can be transferred to other LSEs or can be replaced with other generation resources. WEELs are subject to compliance charges for deficiency shortfalls and non-performance.<sup>18</sup>

### **2. Credit Requirements**

PJM proposes revisions to Attachment Q to the OATT to require WLR and WEEL providers update their credit requirements to meet the RPM rules that require market participants demonstrate that they can cover the risks associated with commitments of planned resources (WLRs and WEELs) on a three year forward basis.<sup>19</sup> PJM proposes two sets of credit rules: (i) one set to apply should its Capacity Performance proposal be adopted and (ii) an alternative set to apply under the current RPM rules.

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<sup>18</sup> *Id.* at 30, 50-52.

<sup>19</sup> *Id.* at 30, 73-77.

### 3. Compliance Charges

PJM proposes a variety of compliance charges to incent parties to honor their RPM commitments under this new DR proposal. These charges are modelled on charges previously approved by FERC for application to existing DR products. The proposed charges are as follows: (i) deficiency charges applicable to a WLR provider whose demand reduction commitment clears for a Delivery Year (DY) but ultimately does not have the capability to honor the commitment; (ii) testing charges to verify during the DY that the WLR can fulfill any load reduction commitments; and (iii) performance measurement rules and charges to evaluate whether the WLR has performed when called upon.<sup>20</sup> PJM's filing proposes a complex mechanism for the calculation and assessment of these three types of compliance charges. The non-performance charge proposal is designed in the alternative depending on which option is adopted. The funds collected through the WLR/WEEL compliance charges will be distributed to all Capacity Market Sellers (CMS) in proportion to each seller's net RPM revenues for that DY. To be eligible to receive such distributions, a CMS must have committed capacity resources in an RPM auction for that DY. If the FERC accepts PJM's Capacity Performance proposal, however, revenues collected under the CP model of the proposed WLR Non-Performance Charge will be distributed among over performing WLR loads and market participants.<sup>21</sup>

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<sup>20</sup> *Id.* at 29, 63-73.

<sup>21</sup> *Id.* at 73.

#### **4. WLR Obligations**

PJM proposes to revise Section 6.2 of the RAA to require WLR Load to respond within 30 minutes of a request from PJM to reduce energy consumption subject to reasonable exceptions. The 30-minute time period corresponds with the current requirement imposed on DR resources.<sup>22</sup>

#### **5. Agents**

LSEs with WLR Load that wish to submit WLR bids into the RPM auctions may make arrangements with authorized agents to perform any act authorized under Section 6.2 of the RAA relating to bid activities. PJM must be notified in writing of the agency relationship. Under an agency relationship, the LSE remains the actual participant in the RPM market.<sup>23</sup>

#### **6. WLR Plans**

To ensure that WLR bids are fully supported, WLR providers must submit WLR plans detailing the loads supporting the load reduction bid. WLR plans must be submitted on a form template provided on PJM's website. This requirement ensures that WLR providers will be treated comparably with other RPM participants.<sup>24</sup>

#### **7. Reducing Capacity Obligations Of LSEs For WLR Load Commitments**

PJM proposes a measurement process involving an algorithm that accurately calculates the reduction of an LSE's capacity obligation for each committed WLR Load

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<sup>22</sup> *Id.* at 44-46.

<sup>23</sup> *Id.* at 46.

<sup>24</sup> *Id.* at 47-49.

and WEEL. PJM will assign a value to each type of WLR Load and WEEL that reflects the relative contribution of that commitment to reliability. PJM will then apply that valuation in reducing the LSEs capacity obligation.<sup>25</sup>

## **8. Registration**

PJM will require any WLR provider who commits a WLR Load, based on a WLR bid that clears in any RPM auction, to register with PJM sufficient WLR Load to satisfy its Nominated WLR Quantity Commitment no later than 10 days prior to the start of the DY. Registration of LSE-provided WLR involves the collection of sufficient information regarding the WLR Provider's curtailable loads for PJM to verify that any aggregate wholesale load reduction, ultimately provided by the LSE, fulfills its committed level of load reduction.<sup>26</sup>

## **9. WLR Bids**

PJM proposes that each submitted WLR bid for WLR Load be consistent with the WLR Provider's Plan. A WLR bid may be supported by one or more WEELs. A WLR bid must specify the relevant zone or sub-zonal load delivery area (LDA), a nominated WLR quantity and a WLR bid price. WLR providers may submit coupled bids for one or more types of WLR products.<sup>27</sup>

## **10. WLR Transfers Between Wholesale Entities**

Because WLR bids will be made for WLR commitments three years into the future, PJM asserts that flexibility is required to provide an incentive for LSE

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<sup>25</sup> *Id.* at 49-54.

<sup>26</sup> *Id.* at 54.

<sup>27</sup> *Id.* at 54-56.

participation and to ensure that committed WLRs are honored. Loads often change LSEs more frequently than every three years especially in retail choice states. When an LSE loses load that is part of its WLR commitment, the LSE may lose its ability to honor its commitment. To ensure performance, a WLR Provider that clears WLR in a BRA must be able to transfer all or part of its commitment to any LSE that ultimately serves the load from which the WLR was committed. To address this issue, PJM proposes changes to Section 6.2 of the RAA to allow a WLR Provider to transfer all or part of a WLR commitment for a DY to another wholesale entity in the same zone or sub-zone LDA that is acting as a WLR provider.<sup>28</sup>

## **11. Measurement And Verification Of WLRs**

By clearing WLR in a BRA, PJM will forego procuring generation resources based on the LSE's representation that it will reduce its wholesale loads during emergency or pre-emergency conditions. PJM asserts it must have clear and effective rules for measuring the resulting load reductions. PJM recognizes that WLRs must be based on the LSE's arrangements with controllable loads that are capable of timely reducing consumption in direct response to the LSE's instructions. LSEs will be required to gather and provide PJM from its customers the same types of customer and site specific information that is currently being provided under the existing DR programs.<sup>29</sup>

PJM proposes to measure load reductions using the Direct Load Control (DLC) and Firm Service Level (FSL) approaches. Further, PJM is proposing to measure all load

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<sup>28</sup> *Id.* at 56-57.

<sup>29</sup> *Id.* at 57-58.

reductions outside the summer peak using the Customer Baseline Load (CBL) approach. This method will allow WLR Providers with WLR loads to rely on load research studies to set the per-participant reduction below the Peak Load Contribution (PLC) to support the nominated WLR Quantity in a WLR bid. A WLR Quantity must be supported with documentation and data to allow PJM to verify the amount of load management available to set the maximum allowable nominated WLR Quantity. WLR providers must provide this information to PJM and the host electric distribution company (EDC).<sup>30</sup>

For each emergency/pre-emergency event when PJM requests a WLR Provider to reduce load, the WLR Provider must demonstrate to PJM that the requested load reduction occurred. WLR Providers must show that each identified WLR Load reduced consumption by the committed MW amount below the end-use customers PLC. Included in that information must be the actual energy usage by the identified WLR Loads during the emergency/pre-emergency events. PJM will measure compliance by each WLR Provider across a zone and by measurement type to determine the WLR Provider's net compliance position for each WLR zone.<sup>31</sup>

## **12. Committing Less Available WLR Loads And WEELS**

PJM's filing proposes to offer variants on WLR that are analogous to the current Limited DR (LDR) and Extended Summer DR (ESDR). PJM recognizes the value of these types of resources even though they do not provide the same availability as annual resources. PJM's proposal includes types of WLR Load with availability limitations

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<sup>30</sup> *Id.* at 59-60.

<sup>31</sup> *Id.* at 60.

similar to LDR and ESDR. PJM's proposal differs with regard to its Option A and Option B proposal. Under Option A (assuming FERC accepts PJM's Capacity Performance proposal), PJM proposes a Base Capacity WLR Load Constraint to set the maximum amount of Base Capacity WLR Loads and WEELs that may be committed consistent with reliability. If Option B occurs (status quo), PJM proposes to create a Limited DR Load Constraint and a Sub-Annual Load Constraint which are designed to ensure that the maximum quantity of Limited WLR and Extended Summer WLR Loads are committed consistent with reliability and maintenance of the 1.1 to 10 loss of load expectation standard.<sup>32</sup>

#### **IV. PROTEST**

##### **A. Basis For The PAPUC Protest**

The PAPUC Protests PJM's filing as it presents an unprecedented reform to its capacity market mechanism that shifts DR from a supply to a demand resource. PJM makes this filing despite the potential for U. S. Supreme Court review of the *EPSA* decision and, in effect, complies with the relief requested in the FES Complaint prior to FERC disposition of that matter.

On its face, PJM's proposal, in the guise of conforming to the *EPSA* decision, effectively sets the stage for removal of DR as a viable and cost effective resource in the capacity market that provides the benefits of system reliability, supply diversity and cost

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<sup>32</sup> *Id.* at 77-80.

reduction.<sup>33</sup> The proposal presents significant obstacles to all parties currently involved in the market process for procuring supply: LSEs, CSPs, end-use customers (residential, commercial, institutional and industrial), EDCs (who choose to function as an LSE) and state commissions. Adding insult to injury, is the implementation timetable that provides virtually no time for market participants to adjust their business practices, contractual relationships and regulatory compliance obligations to accommodate the wide-ranging impacts of the proposal. The filing also doesn't account for the potential legislative, regulatory and policy changes that state commissions will need to implement to conform to the filing including major changes to default supply processes and retail DR programs.

#### **B. The *EPSA* Decision Does Not Impact DR In The Capacity Markets**

The PAPUC contends that PJM's DR proposal represents a broader reaction to the *EPSA* ruling than legally required. In Order 745, FERC ordered planning authorities to compensate retail DR in the wholesale energy market at the locational marginal price (LMP) when it is cost effective to do so. The *EPSA* decision vacated Order 745 and held that FERC lacked jurisdiction under the Federal Power Act (FPA) to order compensation for DR from retail customers because this DR involved retail electric consumption which is wholly within the exclusive jurisdiction of the states. The Court relied on Section 201(a) of the FPA that states federal jurisdiction extends "only to those matters which are not subject to regulation by the states."<sup>34</sup> The Court relied on the assertion that demand response "involves *retail* customers, their decision whether to purchase *at retail*, and the

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<sup>33</sup> In the 2014/2015 DY, PJM reported there were 2,096 of capacity DR from 5,310 locations in Pennsylvania. Approximately, 77% of PA DR is with CSPs and 10% is from the LSE. See, *PJM Demand Response Operations Markets Activity Report (August 2014)*, at 2-3.

<sup>34</sup> *Electric Power Supply Ass'n v. FERC* 753 F.3d 216, 218 (D.C. Circuit 2014).



levels of *retail* electricity consumption.”<sup>35</sup> The Court’s rational only applies to retail sales involving electricity. The PJM capacity market only involves the purchase of electric generation capacity to serve PJM’s peak demand three years into the future. There is no equivalent *retail* market for capacity. Thus, the *EPSA* ruling, on its face, only applies to DR resources in the energy market and does not extend to DR resources that bid into the capacity markets. On that basis, PJM’s “stop-gap” DR proposal goes beyond the scope of the *EPSA* ruling when it applies the ruling and rational of that decision to the capacity market.

PJM’s “stop-gap” DR proposal is, to a degree, influenced by the FES Complaint currently before FERC that requests FERC to remove DR from PJM’s capacity market and requests that PJM be required to rerun the 2014 BRA by removing all of the DR bids. FES’s Complaint is predicated on the same expansive reading of the *EPSA* decision that PJM is using to justify the need for this stop-gap proposal.

The PAPUC is concerned that PJM’s filing, while proposed only as an attempt to resolve pending legal and implementation uncertainties, is fundamentally driven by the same misreading of the scope of the *EPSA* decision that FES advances in its complaint. Thus, adoption of PJM’s stop-gap proposal will essentially require FERC to grant FES’s complaint. Therefore, the PAPUC requests that this stop-gap proposal be rejected at this time. If, however, FERC believes that this stop-gap proposal should be adopted regardless of the applicability of the *EPSA* ruling and rational, the PAPUC requests that the implementation of this proposal be delayed to allow for an orderly transition. As will

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<sup>35</sup> *Id* at 219.

be discussed later, PJM is proposing significant changes to how DR resources are treated in the capacity market on an accelerated timeline that threatens the future viability of DR as a capacity resource. In evaluating the merits of PJM's proposal, FERC must be cognizant of the real scope of the *EPSA* decision, as well as the other variables presented, such as the ability of the PJM BRA process to accommodate the many changes being posed, the ability of DR providers to implement the changes to their business models and the ability of retail choice states to adapt rules and regulation to facilitate the development of DR and participation of DR as a supply resource in the capacity market.

### **C. PJM's Proposal Represents A Massive Change To Capacity Markets**

DR has been a benefit to the capacity markets. The Independent Market Monitor (IMM) has estimated that the value of DR's contribution to PJM capacity markets in the 2017/2018 BRA was approximately \$9 billion in benefits to end-use customers.<sup>36</sup> PJM estimates the value of commitments for capacity payments to DR providers for the 2017/2018 DY to be \$450 million.<sup>37</sup>

PJM's DR filing represents a monumental change in how DR resources will be managed in capacity markets in the future. PJM's proposal fundamentally shifts DR resources from the supply side of the capacity market to a mechanism where LSE's estimate load reductions to be experienced on a three year forward basis. Under its proposal, CSPs that have traditionally been full participants in the PJM RPM auction process and directly compensated, as all other resource providers, are now removed from

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<sup>36</sup> See Monitoring Analytics, *Analysis of the 2017/2018 RPM Base Residual Auction* at p. 6 (Oct. 6, 2014).

<sup>37</sup> *PJM Interconnection L.L.C.* at Docket No. ER15-852 at 4-5 fn 8.

that process. DR providers will now only participate in PJM capacity markets by negotiating with LSEs in developing load reduction programs that result in Wholesale Load Reduction (WLR) commitments on a three year forward basis. PJM proposes a mechanism, involving LSEs working with DR entities (including CSPs), to determine three years into the future the amount of load reduction that can be identified and committed into a BRA. PJM also proposes a similar mechanism for LSEs to identify and estimate Wholesale Energy Efficiency Load (WEEL) reductions on a three year forward basis.

PJM's proposal is presented "in the alternative" complete with an Option A set of tariffs and an Option B set of tariffs depending on various scenarios involving the Supreme Court's disposition of pending *certiorari* requests and approval of its Capacity Performance proposal. PJM's proposal contains complex provisions governing WLR obligations, bids and transfers, registration of bids, use of agents, WLR M&V, compliance charges (including charges for commitment deficiencies, testing and performance shortfalls), credit requirements, and treatment of WEELs. PJM's proposal amounts to a complete rewrite of its DR program with an expedited request for FERC approval in time for the May 2015 BRA for delivery year 2018/2019. Given the scope and breadth of the proposal, the PAPUC has only been able to identify the most obvious deficiencies with the filing as detailed below.

The PAPUC is very concerned about the massive changes proposed by PJM to be decided by FERC in a relatively short timeframe. PJM's filing consists of 1,300 pages of pleadings and tariff pages which contain vast amounts of material which must be

reviewed and analyzed. PJM's DR proposal was not the product of any stakeholder committee process but resulted from an expedited internal mechanism designed to address perceived legal exigencies presented by the *EPSA* decision and the FES Complaint. PJM's proposal also impacts and is related to the complex issues currently being considered by FERC in PJM's Capacity Performance (CP) proceeding. Other far less disruptive proposals filed by PJM have at least had the benefit of stakeholder input prior to filing with some outreach to state commissions potentially impacted by the change.

On this basis alone, FERC should reject the filing or, at a minimum, allow a more gradual transitional process for implementation recognizing the massive impacts on DR providers, end-use customers, state commissions and the capacity markets.

**D. Adoption Of PJM's Proposal Presents Risks And Uncertainties For LSEs, CSPs And End-Use Customers**

**1. Impacts On The CSP/Retail Customer Relationship**

The PAPUC recognizes that DR has been a clear benefit to PJM capacity markets from both a reliability and resource diversity standpoint. However, PJM's proposal stands to largely undo the benefits of DR involvement in the capacity markets. PJM's DR "stop-gap" is not, as it implies, a "temporary fix" but a permanent change in capacity market structure. PJM's proposal removes DR resources and CSPs from the role of a supplier of capacity and a full participant in the RPM capacity market to a more attenuated role "behind" the LSE who will, if it chooses, identify load reduction opportunities (WLRs), secure commitments from end-users three years into the future

and incorporate those WLRs into its bid for the next BRA as a load reduction. While the proposal arguably solves PJM's perceived *EPISA*-related jurisdictional problem, PJM's proposal presents a host of potential participation obstacles for CSPs and DR end-users.

The current DR resource relationship involves CSPs securing contractual commitments from DR end-users (residential, commercial, industrial and institutional) to participate in load reduction efforts during emergency and pre-emergency conditions. CSPs currently receive capacity payments from PJM for these commitments while end-use customers receive regular and predictable payments for their load reduction activities from CSPs. CSP marketing strategies rely on a demonstration of savings to DR participants and compensation as an economic inducement to participate.

PJM proposes to eliminate these payments to retail end-users (either directly or indirectly through aggregators) for demand response cleared in RPM Auctions. PJM proposes only to reduce the capacity obligations of, and thus the capacity charges owed to PJM, by wholesale LSEs that commit to reduce the wholesale loads they are responsible for serving. PJM will reflect the reduced load through a reduction in billing determinants and will publish the monetary value of this reduction for the LSE on a billing report. PJM's new rules leave to LSEs, retail customers, and state regulatory authorities all arrangements regarding calculating compensation to end-use consumers that support WLRs by reducing their electricity consumption. The PAPUC asserts that PJM's failure to design a DR mechanism that retains some means of compensation for market participants represents a major flaw in its proposal. This is no doubt due to its misreading of the applicability of the *EPISA* decision to capacity markets.

Under PJM's proposal, CSP's loss of direct involvement in the PJM capacity market reduces the CSP's ability to directly benefit its end-user clients to the degree they have in the past by virtue of having a "seat at the capacity table" in the market and as a member of PJM. CSPs will now be required to identify interested LSEs and negotiate with those LSEs on future estimates of load reductions while also identifying potential end-users and convincing those parties to participate in a DR program that does not involve direct compensation. CSPs may also be required to assist the end-user in the M&V process which LSEs are required to perform, again, without compensation.

Additionally, both CSPs and end-use customers will incur additional expense on the administrative side. CSPs will need to completely remake their existing business models to transition from a direct market participant to an intermediary negotiating with cooperating LSEs and identifying end-users who will be induced to participate through promises for future reductions in electricity use and not by direct compensation for those reductions. CSPs will be required to redesign their transactional process to create contractual relationships with LSEs and with end-use customers. CSPs may also have to enter into contractual arrangements with EDCs who choose to act as WLR Providers. CSPs will be required to adapt to new state regulatory policies designed to meet the requirements of the PJM proposal.

End-users will also face unique challenges. PJM's proposal removes the CSP from direct involvement in the capacity bid process and eliminates the opportunity for direct payments to end-users. Instead, end-users will presumably benefit from discounted electric supply charges, benefits that are harder to quantify and present less of an

inducement for end-user participation. Customers may be required to sign multi-year contracts with LSEs that precludes them from shopping.

End-use customers of all classes may find participation in DR programs less attractive given the lack of DR compensation and the business risks that CSPs may face in an uncertain market environment. End-use customers may be reluctant to commit to a CSP that may not be in existence three years hence. Furthermore, it will be difficult for retail end-users to predict the potential load reductions three years into the future. LSEs typically have shorter supply contracts with customers, much shorter than the required three year commitment. Forcing the bundling of DR with shorter term supply contracts may simply not be feasible for many LSEs who are responding to more short-term market conditions.

PJM's proposal does not permit sufficient portability for end-use customers. Under PJM's proposal, LSEs can only offer WLR to customers to whom it is acting as the supplier. An LSE is not permitted to sign up future WLR customers who are not their supply customers. Further, under PJM's timetable, LSEs and CSPs will be required to change business practices and enter into new complex commercial arrangements by April 17, 2015. Clearly, these massive changes cannot be practically implemented in such a short time period.

The PAPUC contends that LSEs should be permitted to offer WLR service to any customer whether supplied by the LSE or not. This would permit CSPs to aggregate customers and, through agency agreements, commit those customer reductions to the LSE who can register the WLR to offset load. Under PJM's proposal, CSPs do not

appear to be able to aggregate but will be forced to make arrangements on an LSE by LSE basis and a customer by customer basis. In short, portability of end-use customers would introduce some measure of flexibility into the process to allow DR resources to continue to participate in the markets and provide value to customers.

## **2. Impacts On Industrial Customers**

Industrial customers will also face obstacles to DR participation under PJM's proposal. Most industrial customers currently participate in DR through a CSP. Only a few industrial entities are large enough and sophisticated enough to participate as their own LSE. Under PJM's proposal, industrial customers would lose the benefit of direct participation in the PJM capacity markets. Industrial customers will lose the economic benefits of DR payments while facing the prospect of significantly higher capacity prices. Since the advent of the capacity market, DR has been an essential tool that industrial customers use to manage energy costs. Industrial customers that operate in very competitive product markets may feel that the prospect of energy reductions alone (with no compensation) coupled with uncertainty in CSP viability is not worth the risk of participating in DR programs. Industrial customers may also resort to pre-deregulation practices, such as peak shaving, that is not subject to PJM control. Lack of PJM control would threaten local and regional reliability during system stress conditions and introduce greater uncertainty to day ahead and real time load forecasts, placing further stress on peaking generation assets within PJM.



### **3. Impacts On Residential Customers**

Residential customers will also be harmed by this proposal. Currently, 23% of DR consists of residential customers, many participating in EDC-sponsored weatherization programs. The PAPUC is concerned insofar as PJM's proposal appears to exclude existing weather-sensitive DR programs.<sup>38</sup> Under PJM's model, those customers that participate in DR through a state-mandated program with the EDC will not be on LSE service and cannot participate in the WLR mechanism. If these customers cannot participate, these DR benefits disappear, state-mandated programs are rendered valueless and retail customers' electric service costs increase.

### **4. Impacts On The LSE**

LSEs face risks as well. The fact that DR commitments may not match up with the typical retail contract cycle increases the risks to LSEs of customer switching. If the customer switches and the new LSE is not willing or is unable to take on the DR obligation of the customer, then the original LSE is left with the obligation and risk of penalty if they are unable to replace the departing customer. The prospect of uncertain DR participation, represented by a WLR commitment three years in the future coupled with performance and compliance charges, is a weak incentive for LSE participation.

LSEs also face a host of additional administrative expenses which may be a barrier to their participation. LSEs will need to invest in new information technology to track and implement the bundling of DR into their supply offerings. LSEs will need to track which customers have participated in DR, the amount of participation and the cost

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<sup>38</sup> *Id.* at 26.

impacts. There will also be additional LSE expenses associated with dispatch and settlement activities. In performing some or all of these roles, LSEs will expect compensation for their additional burdens and risks placed on them - compensation which will come out of the DR reduction in customer capacity costs.

## **5. Impacts On State Commissions**

PJM anticipates that some state commissions will prescribe by rule or order terms for retail customers' role in facilitating WLRs, while in other states such arrangements may be governed solely by contracts between end-users and LSEs.<sup>39</sup> PJM proposes that WLR will reduce the capacity obligation that the RAA otherwise determines for an LSE. *PJM does not propose to reflect this reduction in load as a financial credit or to monetize it;* rather, the committed WLR quantity will simply reduce the peak load on which the LSE's capacity obligation is based and reduce the increment of reserves associated with that peak load that would otherwise be embedded in the LSE's capacity obligation. PJM claims that LSEs, other market participants, or state regulators that wish to transfer or extend the financial benefit of RPM capacity obligation reductions to other parties will readily be able to identify that financial benefit based on the shift in the VRR under the RAA.<sup>40</sup>

The PAPUC contends that, without some clear mechanism to monetize benefits to retail end-users, there will be little incentive for end-users to participate in DR programs. Additionally, because the states differ in regulatory structure (vertically integrated vs.

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<sup>39</sup> *Id.* at 8-9.

<sup>40</sup> *Id.* at 14-15.

restructured, retail DR vs. no DR, etc.), PJM's proposal will lead to a patchwork of regulatory mechanisms with differing levels of transactional complexity and differing types of compensation mechanisms that will be confusing, administratively burdensome and potentially not cost-effective for both DR providers and retail end-users.

That is assuming the state regulatory authorities have the requisite legal authority to implement this model at the state level. As will be discussed later, the PAPUC does not currently possess the necessary legal/administrative authority to implement the PJM proposal at the state level.

Additionally, mass market DR programs in certain restructured states may not be adaptable to the new DR model because these programs are offered through the electric distribution utility that may not be the LSE for some or all of the participants. As will be addressed later, Pennsylvania, a restructured state, allows DR providers to participate in its Alternative Energy Portfolio Standards (AEPS) and Energy Efficiency and Conservation (EE&C) programs that are administered by the jurisdictional electric distribution utilities. PJM's proposal would require changes to these programs to allow DR providers to interact with both EDCs and LSEs in order to effectuate the full intent of PJM's proposal at the state level. These changes may require regulatory or legislative changes, or both. As these processes require the ability for all stakeholders to provide input, unlike the process used by PJM to develop this proposal and its CP proposal, it will take months, if not years to fully develop and promulgate these changes.

Given the uncertainties facing CSPs and end-use customers under PJM's proposal, the PAPUC requests that the FERC carefully assess the obstacles and risks to CSPs and

end-users, as well as the capacity market as a whole, and reject PJM's proposal as filed. Should PJM's proposal be adopted, the capacity markets may experience a *permanent* loss of a valuable resource, for both reliability and resource diversity, which cannot be easily replaced.

## **6. Impacts On The Incremental Auction Process**

The PAPUC further opposes PJM's proposal to exclude WLR/WEEL sell offers from incremental auctions. PJM's proposal permits WLR/WEEL bids only in the BRA. PJM's proposal effectively leaves only generation resources as participants in incremental auctions.<sup>41</sup> This reduces resource diversity and flexibility. LSEs should be permitted to bid WLR/WEELs into incremental auctions for the same reasons DR currently participates in these auctions. In particular, in the event of a PJM load forecast increase, a proportional increase in limited WLR offer limits should be permitted as occurs under the current DR protocol. There may also be WLR providers that are short and WLR providers that are long DR resources relative to their BRA WLR commitments. PJM does not offer any sound reasoning as to why these parties cannot participate in the incremental auction in order to meet their BRA commitments through the transparent incremental auction process as they can today. Additionally, a generation resource that is overcommitted in a BRA can benefit by allowing it to work with a WLR Provider (CSP) to reduce load in an amount that matches the generation resource's offered reduction in capacity during an incremental auction. WLR/WEEL participation in incremental auctions should be permitted as it increases market participant flexibility and price

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<sup>41</sup> *Id.* at 41-42.

transparency in the event of changes in load forecasts or other unforeseen market occurrences.

PJM cites past incremental auction trading trends and unspecified “burdens” as reasons for excluding WLR/WEEL participation in the incremental auction. However, PJM’s historical over-procurement of resources in the BRA, combined with a strong historical generation over-capacity environment should not be dispositive of future incremental auction trading activity. Moreover, PJM provided no information as to the alleged burdens on them.

The PAPUC contends that PJM’s proposal to exclude WLR/WEEL participation is not rationally based. If PJM’s proposal is adopted, PJM should be required to accept additional WLR/WEEL bids into the incremental auction process.

**E. LSEs Have No Incentive To Participate In The PJM DR Proposal**

PJM’s proposal assumes LSEs will actively embrace a program that is designed to lessen reliance on generation resources and lower the price of capacity. As PJM’s own filing admits, the WLR concept may result in lower DR capacity participation.<sup>42</sup> LSEs are, for the most part, generation resources whose business model is designed to maximize sales of generated electricity at the highest price available. The fiduciary obligation of an LSE is to its shareholders and any action that lessens the value of the LSE’s assets and LSE productivity is not conducive with entering into load reduction arrangements with market competitors even if the purpose of those arrangements is to

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<sup>42</sup> *Id.* at 2, 3: Demand response participation “could be substantially lower under this proposal than it has been historically.”

ensure the reliability and resource diversity of the PJM capacity market. The net effect of this proposal, if not carefully implemented and monitored, will be a lessening of DR participation, less competition in the wholesale capacity market and higher capacity prices that may be unjust and unreasonable.

The PAPUC asserts that this proposal is not workable and should be rejected. If the FERC approves the proposal, there should be sufficient assurances and safeguards in place to ensure LSE and CSP participation at sufficient levels such that the contributions of DR in the capacity market is not substantially reduced.

**F. PJM’s Model May Not Be Legally Or Practically Integrated Into Existing State Programs**

PJM’s DR “stop-gap” proposal will definitely impact state commissions by requiring regulatory actions that may not be legally or practically feasible in the time period provided for implementation. As stated previously, PJM’s proposal does not entail any compensation component to DR providers or participating retail end-use customers. PJM’s new DR program leaves the responsibility to design a workable program for LSEs, retail customers and DR entities to the States and state commissions. While PJM does provide a mechanism for valuing different types of load reductions that can be translated into an auction process, this complex process provides little guidance to the actual market participants and the state commissions that have to struggle to develop new programs or reform existing programs to make DR viable in this new market paradigm.

Pennsylvania is a restructured state with a vibrant retail choice program. Under its restructuring statutes, the PAPUC has limited jurisdiction over the actions of generation suppliers (LSEs). These suppliers have no filing or reporting requirements with the agency regarding their participation in the wholesale markets. Any information regarding operational or market activities must be requested from PJM subject to strict confidentiality procedures. In addition, there is a question as to whether the PAPUC currently has any jurisdiction over CSPs, let alone jurisdiction over how a CSP interacts with LSEs or end-use customers under this new paradigm.

PJM's proposal presents a number of potential hurdles to the PAPUC's ability to implement those aspects of the program delegated to it. First, in order to implement the PJM model at the retail level, statutory and/or regulatory changes will likely need to occur. These legislative and administrative processes typically take two to three years to complete. Second, LSEs and CSPs, not subject to PAPUC jurisdiction, may not be compelled by the agency to enter into contractual arrangements for WLR/WEEL commitments. Third, assuming it had the authority to do so, the PAPUC would be tasked with developing some form of mechanism to compensate CSPs, LSEs and retail end-users for participation in and administration of DR offering as a demand side resource in the capacity market as proposed by PJM. Given that the PAPUC has no experience with state-wide retail DR programs as envisioned by this proposal, the time required to develop, approve and implement such a program would take far longer than the expedited process PJM envisions in its proposal.

The PAPUC requests that FERC reject PJM’s proposal insofar as it fails to account for the difficulties that individual states will face in being required to adapt to this far-reaching proposal in an extremely compressed timeframe. In the event FERC does approve PJM’s proposal, it must consider both the legal and administrative obstacles to implementation at the state commission level. Under the circumstances, FERC should adopt a delayed implementation timeline coupled with requiring PJM to retain or hold back a portion of its traditional DR resources in the capacity auction process subject to addressing the many implementation issues outlined herein.

**G. Suggested Modifications/Clarifications To The PJM Proposal**

The PAPUC requests FERC reject PJM’s filing. In the event, FERC does approve PJM’s proposal, the PAPUC recommends that PJM make the following modifications and/or clarifications to PJM’s tariff to assist the PAPUC in better understanding the details of the proposal:

- PJM should permit full portability of WLR/WEEL amongst LSEs. As argued above, an LSE should not be required to serve a customer in order to administer WLR/WEEL load reductions and receive wholesale capacity credits. This would help remove the DR barriers associated with LSEs that do not want to participate in WLR/WEEL demand side markets on behalf of the load they serve.
- The filing defines “wholesale entities” as the entities that can submit WLR bids into the BRA. The tariff also defines the term "Party" and “Agent” as entities that can bid WLR into the BRA.<sup>43</sup> However, Paragraph 1.87C of the RAA may be read to prohibit an entity other than a LSE from making WLR/WEEL load reduction commitments. Section 1.87C should be clarified to also include an LSE’s agent as being authorized to commit WLR/WEEL into PJM markets and operations. Also,

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<sup>43</sup> *Id.* Section 1.87C of the proposed RAA: “Wholesale Load Reduction or WLR: Wholesale Load Reduction or WLR shall mean a commitment by a Load Serving Entity to reduce the load served or to be served by such Load Serving Entity during a pre-emergency or emergency action at the request of the Office of the Interconnection.”



the tariff is unclear as to whether a utility (or EDC) can bid WLRs into the BRA. PJM's proposed tariffs should be modified to permit LSEs, LSEs' agents or EDCs to commit WLR/WEEL into PJM markets and operations.

- PJM needs to clarify, in the context of the filing and the tariff, how the crediting mechanism for LSEs who commit WLR/WEEL into the BRA will operate. How will these credits and/or reduced billing determinants be reflected and are they transferable to the CSP? As states may be faced with the task of overseeing a retail DR program, there must be a better mechanism for monetizing the load reduction savings in a transparent and understandable fashion for all participating parties. PJM should clarify in their tariff the allowance of wholesale billing credits associated with WLR/WEEL commitments, to enhance transparency and transfer of DR wholesale bill credits to an LSE and its designed agents.
- Under Schedule 6.2 (G) of the proposed RAA:

The WLR Provider may change the end-use customers registered to meet the WLR Provider's commitment during the Delivery Year, but such WLR Provider must always in the aggregate register sufficient WLR Load to meet or exceed the Zonal or sub-Zonal LDA committed Nominated WLR Quantity level.<sup>44</sup>

Paragraph J of Schedule 6.2 of the RAA proposed RAA state that a:

WLR Provider may transfer all or part of its WLR commitment for a Delivery Year as to WLR Load in a Zone or sub-Zonal LDA to another Wholesale Entity acting as a WLR Provider in the same Zone or sub-Zonal LDA, provided that the transferee WLR Provider is the Load Serving Entity that shall serve such WLR Load.<sup>45</sup>

It is not clear reading these two provisions whether a WLR Provider is prohibited from transferring obligations between WLR providers during the DY within the same zone, which may be necessary if the customer changes LSEs. PJM needs to clarify the intent of these sections and clearly provide for transfer of WLR commitments, at both the zonal and sub-zonal levels, both before and within the DY. The foregoing provisions need to be drafted in a manner that preserves this opportunity for customer shopping within the DY.

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<sup>44</sup> *Id.* Section 6.2, paragraph G of the proposed RAA.

<sup>45</sup> *Id.* at 56-57, Section 6.2, paragraph J of the proposed RAA.

- At p. 26 of the filing, PJM states that<sup>46</sup>:

"[t]he aggregate loads of most regulated utility LSEs generally include considerable weather-sensitive demand. Weather-sensitive loads are unpredictable and, more importantly in this context, are not controllable by the LSE. It would be impractical, and almost certainly would be intolerably risky, for an LSE to base a commitment of wholesale load reduction to PJM on weather-sensitive loads."

This statement appears to disqualify most heating, ventilation and air conditioning (HVAC) direct load control (DLC) programs from participation as a WLR. However, the underlying tariff changes make no reference to this language. PJM should clearly change the tariff language to make its intent clear on this point.

- In its filing, PJM states:

Notwithstanding any other provision of this Attachment DD, Demand Resources and Energy Efficiency Resources, except to the extent committed before April 1, 2015, shall not be permitted to commit to provide capacity, whether through an RPM Auction, bilateral transaction, self-supply, or by any other means, for the 2016/2017 Delivery Year and subsequent Delivery Years unless and until revised tariff records restoring authorization for commitment of such resources become effective after acceptance by the Commission.<sup>47</sup>

The PAPUC is concerned this language fundamentally affects the availability and performance of DR resources that already committed in the BRA for the transition years of 2015/2016, 2016/2017 and 2017/2018. This language could be read to prevent DR resources from trading with other DR resources in subsequent incremental auctions, in bilateral transactions, or self-supply in order to ensure performance in a particular DY. For example, PJM's language may prevent new DR from participating in incremental auctions to provide necessary increases in resource needs to the extent the forecast requirements increase above levels assumed in the BRA. Furthermore, this could prevent a DR provider from trading a long resource position with a DR provider with a short resource position, or from prohibiting a DR provider from replacing end-use DR resources that have closed their business, with new DR end-use resources. The PAPUC asserts this potential

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<sup>46</sup>*Id.* at 26.

<sup>47</sup> *Id.* at Attachment DD of the proposed OATT at Tariff Pages: 141, 143, 145, 151, 154, 156, 171 *et al.*

outcome threatens the viability of DR already committed and may threaten the reliability of the PJM grid in the short-term.

The foregoing points identify only a few of many potential issues presented by this filing. While the PAPUC recommends rejection of the filing, FERC, if it decides to accept the filing, should do so on condition PJM be required to address the foregoing concerns raised by the PAPUC (and likely issues raised by other parties in this matter). The PAPUC's concerns, as outlined in this Protest, are indicative of what occurs when a proposal is drafted and filed without any stakeholder review, input, analysis or discussion. To the extent a reasoned decision-making process was ignored in the drafting stage of the proposal, FERC must act to cure those deficiencies in its review.

## **V. CONCLUSION**

For all the foregoing reasons, the PAPUC respectfully requests its Protest be accepted in this proceeding and that PJM's tariff filing in this matter be rejected.

Respectfully submitted,

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Dated: February 13, 2015

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am on this date serving a copy of the foregoing document upon each person designated on the official service list compiled by the Federal Energy Regulatory Commission in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Harrisburg, PA this 13th day of February, 2015.

Respectfully submitted,

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