

**BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Calpine Corporation, Dynegy Inc.,)	
Eastern Generation, LLC, Homer City)	Docket No. EL16-49
Generation, L.P., NRG Power Marketing)	
LLC, GenOn Energy Management, LLC)	
Carroll County Energy LLC,)	
C.P. Crane LLC, Essential Power, LLC)	
Essential Power OPP, LLC, Essential)	
Power Rock Springs, LLC, Lakewood)	
Cogeneration, L.P., GDF SUEZ Energy)	
Marketing NA, Inc., Oregon Clean)	
Energy, LLC, and Panda Power)	
Generation Infrastructure Fund, LLC)	
v.)	
PJM Interconnection, L.L.C.)	
)	ER18-1314
PJM Interconnection, L.L.C.)	
)	EL18-178
PJM Interconnection, L.L.C.)	(Consolidated)

**COMMENTS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION
TO PJM'S SECOND COMPLIANCE FILING CONCERNING APPLICATION
OF THE MINIMUM OFFER PRICE RULE**

The Pennsylvania Public Utility Commission (PAPUC) herein files these Comments in response to the Second Compliance Filing of PJM Interconnection, L.L.C., (PJM) Concerning Application of the Minimum Offer Price Rule (MOPR) filed on June 1, 2020. PJM's Second Compliance Filing was submitted to comply with the Federal Energy Regulatory Commission's (FERC or Commission) April 16, 2020 Order on

Rehearing and Clarification¹ of the Commission's December 19, 2020 Order² regarding capacity market rule changes to PJM's Open Access Transmission Tariff (OATT or Tariff).

I. COMMENTS

A. **The PAPUC Requests That The Commission Rule On The PAPUC Request For Rehearing On Or Before The Date It Rules On PJM's First And Second Compliance Filings.**

On March 18, 2020, PJM filed its Compliance Filing Concerning the Minimum Offer Price Rule, Request for Waiver of RPM Auction Deadlines, and Request for an Extended Comment Period of at least 35 days (PJM's First Compliance Filing).³ Various parties, including the PAPUC, filed responsive comments to PJM's First Compliance Filing on May 15, 2020. Subsequent to PJM's First Compliance Filing, the Commission for the first time announced in its April 16 Order that state Default Service Procurements (DSPs) fall within PJM's newly proposed definition of State Subsidy.⁴ On May 18, 2020, the PAPUC, Vistra Energy Corp. and Dynegy Marketing and Trade, LLC (together the Vistra Companies), and Energy Harbor LLC (Energy Harbor) filed Petitions for Rehearing on this issue. On May 28, 2020, a Motion for Leave to File Answer and Answer of the Public Utilities Commission of Ohio was filed in support of the PAPUC's

¹ *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,035 (2020) (April 16 Order).

² *Calpine Corp. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239 (2019) (December 19 Order).

³ Compliance Filing Concerning the Minimum Offer Price Rule, Request for Waiver of RPM Auction Deadlines, and Request for an Extended Comment Period of at Least 35 Days of PJM Interconnection, L.L.C., Docket No. ER18-1314-003 (Mar. 18, 2020) (PJM's First Compliance Filing).

⁴ April 16 Order ¶ 386.

Request for Rehearing.⁵ Shortly thereafter, PJM filed its Second Compliance Filing on June 1, 2020, addressing, among other things, the proposed implementation of the Commission's April 16 Order regarding DSPs.

The PAPUC requests that the Commission rule on the Petitions for Rehearing filed by the PAPUC, the Vistra Companies, and Energy Harbor no later than the date it issues responsive orders on PJM's two Compliance Filings in order to provide necessary regulatory and legal certainty as to the market rules associated with the Commission's MOPR orders. It is vital that states and market participants have reasonable certainty as to the tariff provisions with which they must comply in order to minimize customer impact and market risk premiums associated with regulatory and legal uncertainties.

B. The Commission Should Not Impose A MOPR On Generation Resources Ultimately Used As Sources Of Supply For Normal Commercial Transactions in Default Service Procurements.

PJM's proposed definition of State Subsidy excludes transactions or obligations associated with a state DSP auction where the underlying state auction is competitive and resource neutral.⁶ PJM's proposed revised definition of State Subsidy includes the following components that comprise a competitive and resource neutral state auction:

- State default service auctions must be subject to oversight by a consultant or manager, independent of the Market Participants, who certifies that the auction was conducted through a non-discriminatory and competitive bidding process.⁷

⁵ Motion for Leave to File Answer and Answer of the Public Utilities Commission of Ohio, Consolidated dockets Docket Nos. EL16-49, ER18-1314 and EL18-178 (May 28, 2020).

⁶ PJM's Second Compliance Filing at 19.

⁷ PJM's Second Compliance Filing at 20.

- State default service auctions must not place any conditions based on the ownership, location, affiliation, fuel type, technology, or emissions, of any resources or supply.⁸ This provision specifically excludes from the definition of State Subsidy auctions with state RPS requirements, the treatment of which was already contemplated in the Commission’s December 19 Order.
- State DSP supply charges must be by-passable by customers who wish to shop for generation.⁹
- State default service auctions must not result in any contracts between the Entity Providing Supply Services to Default Retail Service Provider and the electric distribution company (EDC) that impose any conditions that would require any upstream bilateral transactions to be sourced from any specific Capacity Resource or resource type in order to satisfy the retail supply obligations.¹⁰
- Generation resources receiving renewable energy certificates will be subject to the MOPR and its applicable exemption relating to existing renewable resources participating in renewable portfolio standards (RPS) programs, per the Commission’s December 19 Order.¹¹

The PAPUC continues to assert that the Commission should limit its MOPR screen to generation resources and not mitigate state ratemaking models, consistent with its position in the PAPUC Petition for Rehearing.¹² PJM’s Second Compliance Filing recognizes the unintended consequences of FERC’s April 16 Order and attempts to limit its burdensome and unnecessarily broad application by adopting many of the PAPUC’s proposals. Specifically, in its Petition for Rehearing, the PAPUC noted that its DSP auction is competitive and resource neutral;¹³ it utilizes an Independent Evaluator to

⁸ PJM’s Second Compliance Filing at 20.

⁹ *Id.* at 21.

¹⁰ *Id.* at 20-21.

¹¹ *Id.*

¹² *See* Request for Limited Rehearing of the Pennsylvania Public Utility Commission, Consolidated Docket Nos. EL16-49 and EL18-178 at 13-16 (May 18, 2020) (PAPUC Petition for Rehearing).

¹³ *Id.* at 7, 9-13.

assure competitive results;¹⁴ it does not place any conditions based on the ownership, location, affiliation, fuel type, technology, or emissions, of any resources or supply, with the exception of state RPS procurements, the resources for which are already subject to a MOPR screen under the Commission’s December 19 Order;¹⁵ and default service costs are by-passable.¹⁶ While these practical limitations to the State Subsidy reach that PJM has proposed are thoughtful, the PAPUC asserts that they would be unnecessary if the Commission grants the PAPUC Petition for Rehearing.

The PAPUC urges the Commission not to impose a MOPR screen on generation resources ultimately used as sources of supply for normal commercial transactions in state DSP auctions. As PJM has recognized, “a blanket inclusion of all payments from state default service auctions ... could mean that nearly all PJM Capacity Resources would be subject to the MOPR. Under such a reading of the April 16 Order, almost every Capacity Resource in PJM could be forced into the resource-specific exception process, imposing an immense, unintended, and unreasonable administrative burden on PJM and Capacity Market Sellers.”¹⁷

Such burdensome requirements impose market uncertainty and needless administrative costs on the market for state DSPs. As the PAPUC depends on an

¹⁴ PAPUC Petition for Rehearing at 7-9.

¹⁵ *Id.* at 9-13.

¹⁶ *Id.* at 8-9.

¹⁷ PJM’s Second Compliance Filing at 18. *See also* the Vista Companies’ Request for Rehearing or, in the Alternative, Clarification Consolidated Docket Nos. EL16-49 and EL18-178 at 9 (May 18, 2020): “Failure to recognize these complications will result in otherwise competitive generators going through the Unit-Specific Exemption process in order for themselves or their affiliated power marketers to retain flexibility to offer into a state default service auction. This is unduly burdensome and not based on substantial evidence that state default service auctions that are resource neutral and decided solely based on price are not competitive.”

efficient competitive market to benefit its citizens, it requests that its Petition for Rehearing be granted on the merits.

C. Resource Specific Exception Offers Should Be Permitted To Use Flexible Financial Modeling Assumptions, Including A 35-Year Asset Life, Where Appropriate Supporting Documentation Is Provided.

In its First and Second Compliance Filings, PJM included tariff language allowing Resource Specific Exemption Offers to reflect flexible financial modeling assumptions, including a 35-year asset life, where appropriate supporting documentation is provided. In its comments to PJM’s First Compliance Filing, the Independent Market Monitor (IMM) asserted that there has been no demonstration that any asset type has a financial life longer than 20 years or that investors in some asset types are subjectively more willing to take investment recovery risk than investors in other asset types.¹⁸ Nonetheless, the IMM asserted that it was “open to unit specific demonstrations that the financial life of any asset is longer than 20 years but the authority to make such demonstrations should be limited to a reasonable financial life, e.g. 25 or at most 30 years.”¹⁹ Finally, the IMM proposed that any flexibility to asset life be limited to the next Quadrennial Review.²⁰

In its comments to PJM’s First Compliance Filing, the PAPUC supported flexibility for all economic parameters to capture the unique characteristics of each unit

¹⁸ Comments of the Independent Monitor for PJM, Consolidated Docket Nos. ER18-1314-003, EL16-49-000, and EL18-178-000 at 16 (May 15, 2020) (Comments of the IMM).

¹⁹ *Id.* at 16.

²⁰ *Id.*

under the Resource Specific Exemption (RSE) process.²¹ For example, such flexibility may be appropriate for solar resources that are backed by long-term power purchase agreements or long-term renewable energy credit agreements, with contract extension options. The IMM's aversion to changes in financial life assumptions may be understandable under the existing MOPR construct in PJM where combined cycle natural gas (CCNG) plants are often pure merchant plants lacking the revenue security of solar facilities. Nonetheless, the existing MOPR will soon be replaced by a new model that will subject a much greater and diverse portion of PJM's generation resources to offer mitigation, and PJM's two compliance filings reflect rational amendments to incorporate these various financing models used by the evolving technologies in PJM's generation market.

For the same reasons, the Commission should reject the IMM's suggestion that changes to the use of flexible financial parameters should be deferred to the next Quadrennial Review. As the Commission is expanding the application of the MOPR to all subsidized technologies, it should not delay consideration of how such expansion will impact the financial assumptions for these technologies.

²¹ Comments of the PAPUC to PJM's First Compliance Filing Concerning the Minimum Offer Price Rule, Consolidated Docket Nos., ER18-1314-003, EL16-49-000, and EL18-178-000, at 20-22 (May 15, 2020).

D. Load-Backed Demand Response Gross Avoidable Cost Rate Should Not Be Set Equal to Load-Backed Demand Response Gross Cost Of New Entry.

In its First and Second Compliance Filings, PJM established separate Gross Cost of New Energy (CONE) and Gross Avoidable Cost Rate (Gross ACR) values for load-backed Demand Response (DR). PJM testified that lower Gross ACR values were attributable to the following:

PJM is not aware of any material avoidable costs to carry forward the load reduction capability on an Existing Demand Resource or an existing Energy Efficiency Resource for electrical equipment purchased once the initial investment has been made. Given this, and the difficulty in implementing a resource-specific process for load-backed Existing Demand Resources and existing Energy Efficiency Resources, it is appropriate to provide in the Tariff that the MOPR Floor Offer Prices for existing Demand Resources and Energy Efficiency are zero dollars.²²

In response to PJM's First Compliance Filing, the IMM recommended that load-backed DR Gross ACR be set equal to load-backed DR Gross CONE because there is no meaningful difference between initial and avoidable costs for load-backed DR.²³ The IMM asserts that the cost of DR is the cost of taking the actions to interrupt and not the cost of creating the capability to interrupt and that this is consistent with DR Resources' offer behavior.²⁴

The IMM's assertions are not supported by practical business considerations of operating a DR program. Starting up a new DR program requires the installation of

²² PJM's First Compliance Filing, Attachment E, Keech Affidavit at 17.

²³ Comments of the IMM at 9.

²⁴ *Id.*

various systems, depending on the nature of the DR program, including one-time program development costs, potential pricing systems, automated load control equipment, energy monitoring systems, communication equipment, customer marketing, recruitment and education related expenses, as well as back office capability. Most of these costs are not continuing in nature or are significantly reduced going forward.

The IMM offers no cost information, testimony, reference material, or studies to support its position. Instead, it relies on the unsupported premise that since offer behavior is similar between existing and new resources, one should infer that their cost characteristics must be the same. Even assuming, *arguendo*, that there was any data to support the IMM's premise, the IMM fails to account for the many diverse drivers of actual offers by DR. For example, taking into consideration the IMM's conclusion that capacity markets are not structurally competitive,²⁵ capacity offers may not always reflect actual going forward costs, particularly in constrained zones, and may vary depending on the level of competition. Additionally, DR bids often reflect a certain level of uncertainty as to which customers—new or existing, high cost or lower cost—will ultimately be registered prior to the delivery year to back a cleared capacity market offer three years forward. Lastly, offers could reflect long-term costs or short-term costs, depending on the bidding strategies of different market participants. For these reasons, the IMM's assertions that Gross ACR should be set equal to Net CONE for DR resources should be rejected, as the IMM has not provided any support for its position.

²⁵ State of the Market Report for PJM at 7, (May 14, 2020), available at: http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2020/2020q1-som-pjm.pdf.

II. CONCLUSION

For all the foregoing reasons, the PAPUC respectfully requests that its Comments be considered by FERC in this proceeding. We urge the Commission to adopt our recommendations and direct PJM to implement them.

Respectfully submitted,

/s/ Aspasia V. Staevska

Aspasia V. Staevska

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA 17105-3265

Tel: 717-787-5000

astaevska@pa.gov

Counsel for the Pennsylvania

Public Utility Commission

Dated: June 22, 2020

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.

Respectfully submitted,

/s/ Aspasia V. Staevska
Aspasia V. Staevska
Counsel for the Pennsylvania
Public Utility Commission

P.O. Box 3265
Harrisburg, PA 17105-3265
Tel: (717) 787-5000

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