

**BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Calpine Corporation, Dynegy Inc.,)	
Eastern Generation, LLC, Homer City)	Docket Nos. EL16-49-000
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)	
)	
PJM Interconnection, L.L.C.)	
)	EL18-178-000
PJM Interconnection, L.L.C.)	(Consolidated)

**REQUEST FOR LIMITED REHEARING OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pursuant to Rules 212 and 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission or FERC)¹ and section 313 of the Federal Power Act (FPA),² the Pennsylvania Public Utility Commission (PAPUC) requests limited rehearing of the Commission’s *Order on Rehearing and Clarification* issued April 16, 2020,³ in this consolidated proceeding⁴ on the issue of State Default Service Procurements (State DSP) and their treatment as “State Subsidy.”

¹ 18 C.F.R. §§ 385.212 and 385.713.

² 16 U.S.C. § 8251.

³ *Calpine Corp. v. PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,035 (2020) (April 16 Order).

⁴ *Calpine Corp. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239 (2019) (December 19 Order).

I. INTRODUCTION

Pursuant to section 206 of the FPA,⁵ the December 19 Order determined that a replacement rate for capacity resources receiving out-of-market state support was required. It directed PJM, Interconnection, L.L.C. (PJM) to expand its Minimum Offer Price Rule (MOPR) to new and existing resources, internal and external, that receive or are entitled to receive state out-of-market payments, with certain exemptions. The Commission defined the term “out-of-market payments” as “out-of-market revenue that a state either provides, or requires to be provided, to a supplier that participates in the PJM wholesale capacity market.”⁶ The December 19, 2019 Order explicitly notes that the intent of the order was to define a new term, “State Subsidy.”⁷

Commissioner Glick, in his Dissent, noted the possible confusion that the enormously broad definition of State Subsidy may cause in relation to State DSP, which might fall into the definition of State Subsidy.⁸ If the State Subsidy is a narrow subtype of out-of-market payment, resources which participate in State DSP programs would not be considered to have received a regulated State Subsidy under the December 19 Order.

⁵ 16 U.S.C. § 825e (2018).

⁶ December 19 Order ¶ 1 n.2.

⁷ *Id.*

⁸ December 19 Order, Commission Glick’s Dissenting Opinion ¶ 24.

The PAPUC and other parties sought rehearing and clarification on whether State DSP is a State Subsidy.⁹ In its April 16 Order, the Commission for the first time announced that the new term State Subsidy would encompass State DSP.¹⁰

II. REQUEST FOR REHEARING

A. The Procedural Posture of the Case Allows for a New Grant of Rehearing

Generally, rehearing orders which deny rehearing on a particular issue are not again reviewable on rehearing.¹¹ One key exception to this rule is “where the rehearing order introduces a new source of complaint”.¹² It is well-recognized that when a rehearing order improves the rationale of a prior order, it does not introduce a new source of complaint so that it again becomes reviewable on rehearing.¹³ Even so, where the result reached in the original order is modified, rehearing is the appropriate recourse.¹⁴

The Commission’s April 16 Order modified the result of its December 19 Order by creating an entirely new principle that State Subsidies are not limited to out-of-market payments which are state-required but also include nondiscriminatory payments as part of an auction, where those payments are not state-required, but merely the mechanism of the auction is state-sponsored.

⁹ *Request for Rehearing and Clarification of the PAPUC*, Docket No. EL16-49-000, et al., (January 21, 2020) (PAPUC Petition). *See also Request for Clarification of the Independent Market Monitor for PJM*, Docket No. EL16-49-000, et al. (Jan. 17, 2020); *Request for Rehearing and Request for Clarification of PJM Interconnection, L.L.C.*, Docket No. EL16-49-000, et al. (Jan. 21, 2020); *Request for Rehearing and Clarification of the New Jersey Board of Public Utilities*, Docket No. EL16-49-000, et al. (Jan. 21, 2020).

¹⁰ April 16 Order ¶ 386.

¹¹ *PacifiCorp*, 150 FERC ¶ 61084, 61550 (Feb. 9, 2015).

¹² *Canadian Ass’n of Petroleum Producers v. F.E.R.C.*, 254 F.3d 289, 296 (D.C. Cir. 2001).

¹³ *S. Nat. Gas Co. v. F.E.R.C.*, 877 F.2d 1066, 1072–73 (D.C. Cir. 1989).

¹⁴ *Id.* at 1073.

Before its April 16 Order expanding the definition of State Subsidy, the Commission explicitly focused on “those forms of out-of-market *payments* provided or required by certain states”¹⁵ and offered specific examples of the payments it aimed to mitigate:

[I]f an out-of-market *payment* meets the definition of State Subsidy above—including ZEC and RPS programs— then the State-Subsidized Resource is subject to the default offer price floor.¹⁶

* * * * *

The record in this proceeding indicates that State Subsidies for both existing and new resources are increasing, especially out-of-market state support for renewable and nuclear resources.¹⁷

Moreover, in the same paragraph of the December 19 Order, the Commission made it clear that the purpose of the new MOPR rule was to address supposed inequities in out-of-market payments which distort the participation of uneconomic resources in PJM’s wholesale capacity market: “our concern is with those forms of State Subsidies that ... are most nearly ‘directed at’ or tethered to the new entry or continued operation of generating capacity.”¹⁸

It was not until the April 16 Order addressing rehearing and clarification petitions that parties might have thought the opposite were true. Instead of adding clarity and

¹⁵ December 19 Order ¶ 68 (internal quotations omitted; emphasis added).

¹⁶ *Id.* ¶ 69 (emphasis added).

¹⁷ *Id.* ¶¶ 37–38.

¹⁸ *Id.* ¶ 68. (citing *Oneok v. Learjet, Inc.*, 135 S. Ct. 1591, 1602 (2015); *Hughes v. Talen Energy Marketing, LLC*, 136 S. Ct. 1288, 1299 (2016)).

granularity, the April 16 Order went beyond the form of out-of-market payments described by FERC in the December 2019 Order.

The PAPUC’s Petition for Clarification described the state-sponsored Default Service procurement auctions conducted in Pennsylvania in which it merely oversees nondiscriminatory EDC procurement of energy, capacity, and other services to fulfill the obligation to provide electric generation supply services to customers who do not choose an alternative electric generation supplier (EGS).

Despite the clear statements describing the auction showing that these were not “out-of-market payments” as that term had been defined by FERC, and thus were not categorically State Subsidies, FERC held that even a state-sponsored auction mechanism is subject to the MOPR and must prove otherwise on an individualized basis:

State default service auctions meet the definition of State Subsidy to the extent they are a payment or other financial benefit that is a result of a state-sponsored or state-mandated process and the payment or financial benefit is derived from or connected to the procurement of electricity or electric generation capacity sold at wholesale, or an attribute of the generation process for electricity or electric generation capacity sold at wholesale, or will support the construction, development, or operation of a capacity resource, or could have the effect of allowing a resource to clear in any PJM auction. If these auctions are truly competitive, as parties assert, and a winning resource wishes to offer below the default offer price floor for its resource type, the resource may demonstrate that its costs are competitive through the Unit-Specific Exemption, or qualify for another exemption elaborated on in the December 2019 Order.¹⁹

¹⁹ April 16 Order ¶ 386.

The Commission’s departure from the “out-of-market payments” emphasis in the December 19 Order and the new outcome in the April 16 Order justify a grant of limited rehearing on the issue of State DSP and their treatment under the April 16 and December 19 Orders in conjunction. The categorical treatment of State DSP as a State Subsidy would cause nearly every market participant to unnecessarily apply for exemptions to the December 19 rules. The targeted result, to address resources which receive out-of-market payments, is overrun by this duplicative rule. State-Subsidized *resources* would still have to comply with the new FERC rules even if the State DSP auctions were not treated as a state subsidy categorically. Because of this modified result, limited rehearing is appropriate.

B. Description of the PAPUC State DSP Process

While the PAPUC provided a general description of its State DSP components and process in its first petition,²⁰ in-depth explanation of the Pennsylvania DSP (PADSP) program may enhance the Commission’s understanding of the competitive, nondiscriminatory structure of the PADSP. In addition, the temporal execution of the PADSP is designed to follow PJM’s Base Residual Auction (BRA) in a way that obviates the need to subject suppliers participating in the PADSP from a duplicative MOPR screen.

²⁰ PAPUC Petition at 13.

Under State law,²¹ each of the Pennsylvania Electric Distribution Companies (EDCs) have unbundled the provision of electric service to allow customers to shop for the generation portion of their electric service. Each of the EDCs undergo a PAPUC-approved process²² for acquiring the wholesale elements for retail supply that are required under PJM's Reliability Assurance Agreement (RAA) as a Load Serving Entity (LSE), for customers that do not contract for electricity supply with a competitive retail EGS. This service, contracted for by the EDCs, is called default service in Pennsylvania.²³ Many of these RAA requirements, including capacity, energy, and ancillary services²⁴ are acquired on behalf of retail electric customers through *competitive, transparent, and nondiscriminatory* bidding processes open to all credit-worthy wholesale market participants.²⁵

Competitive results are assured by the inclusion of an Independent Evaluator (IE) that presides over the entire Request For Proposal (RFP) process,²⁶ and provides two independent confidential reports to the PAPUC. The first is a pre-bid auction information report, which provides information describing the generation products to be procured, the timeline involved, and a detailed market review of the underlying auction products, costs, and anticipated bid ranges. The second confidential report is a post-auction results

²¹ Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801–2812 (1996) (Competition Act).

²² Default Service Programs and Periods of Service, 52 Pa. Code § 54.185.

²³ See 66 Pa.C.S. §2803 Definition of default service provider.

²⁴ Default Service Cost Elements, 52 Pa. Code § 69.1808(a)(1).

²⁵ See 66 Pa.C.S. § 2807(e)(3.1).

²⁶ Competitive Bid Solicitation Processes, 52 Pa. Code § 69.1807(8); Default Service Procurement and Implementation Plans, 52 Pa. Code § 54.186(c)(3).

report, which provides more information about the solicitation process, including market outreach to potential bidders, bidder information sessions, question and answer postings on RFP website information, confidential bidder application process and outcomes, updates to expected market-based bid prices, and the level of competition.²⁷ The IE then provides its independent conclusions on whether or not the bid process was properly executed, the level of auction competition, and whether the bid results reflect competitive outcomes, based on the underlying bid cost analysis.

The auction bidding is observable in real time by PAPUC staff,²⁸ which provides an independent, informed recommendation to the PAPUC based on the IE's underlying prevailing market cost analysis, bidder participation levels (bid ratios), and adherence to the competitive bid requirements of the solicitation. Many EDCs have further imposed market load caps for any given supplier to ensure minimum levels of supplier diversity and encourage competition. These competitive market provisions ensure that no out-of-market revenues are conveyed to generators that ultimately provide the supply, as detailed below.

Lastly, as it relates to default service, default service costs in each EDC's Price to Compare (PTC), are bypassable. The PTC represents all the costs to provide default service²⁹ and is paid only by customers on default service. It is a line item that appears

²⁷ NERA Economic Consulting, PECO Bidder Information Session DSP IV: September 2019 Solicitation (Aug. 27, 2019), slides 2, 12, http://www.pecoprocurement.com/assets/files/PECO_DSP%20IV_September%202019_Webcast_27AUG.pdf.

²⁸ Default Service Procurement and Implementation Plans, 52 Pa. Code § 54.186(c)(3), (5).

²⁹ Default Service Cost Elements, 52 Pa. Code § 69.1808.

on a retail customer's monthly bill and is equal to the sum of all unbundled generation and transmission-related charges for customers on default service. Customers can leave default service at any time by selecting service from an EGS, without the payment of a switching fee.³⁰ This competitive market construct further ensures that the benefits of competition reach all Pennsylvania customers.

Transparency is assured by auction outreach processes required under each default service plan, which includes:

- Bidder information sessions hosted by the IE.³¹
- Auction description, FAQs, relevant market information, and auction timelines posted on the EDC RFP website.³²
- Direct market outreach provided to prospective bidders by the IE.
- Public release of winning bid price results.³³

Nondiscriminatory bidding is a fundamental characteristic of these procurements. All credit-worthy wholesale market participants can participate, independent of whether they own generation, through an open and nondiscriminatory RFP process.³⁴ There are

³⁰ Default Service Customers, 52 Pa. Code § 54.189(c)–(e)

³¹ NERA ECONOMIC CONSULTING, PECO ENERGY COMPANY DEFAULT SERVICE PROGRAM REQUEST FOR PROPOSALS, 17, 62, 69, http://www.pecoprocedurement.com/assets/files/0_DSP%20IV%20-%20PECO%20Sept19%20RFP%20Rules_August%202,%202019.pdf.

³² PECO PROCUREMENT FOR DEFAULT SUPPLY, <http://www.pecoprocedurement.com/index.cfm?s=background&p=archivesDocument&archiveTypeId=26> (last visited May 15, 2020).

³³ *Disclosure of Default Service Solicitation Results and Creation of a Default Service Rate Calculation Model*, PUC Docket No. M-2009-2082042 (Secretarial Letter issued October 12, 2010); NERA ECONOMIC CONSULTING, PECO ENERGY COMPANY DEFAULT SERVICE PROGRAM REQUEST FOR PROPOSALS, 15, http://www.pecoprocedurement.com/assets/files/0_DSP%20IV%20-%20PECO%20Sept19%20RFP%20Rules_August%202,%202019.pdf.

³⁴ Default Service Procurement and Implementation Plans, 52 Pa. Code § 54.186(c).

no restrictions on the underlying generation sources that provide the full requirements, block energy, or hourly price service products sought in these competitive procurements.³⁵ Wholesale bidders do not provide, nor are they required to provide, generation unit-specific information for the default service products procured. At the time of the procurement, wholesale bidders are usually not aware of the specific source of these wholesale elements. Rather, they use knowledge of NYMEX market prices, known BRA PJM capacity prices, and historical ancillary service prices to price their bids. *With the exception of Alternative Energy Portfolio Standards (AEPS) procurements, procurements are not tied to specific generation.* Instead, generation technologies, new and existing, compete to provide the energy, capacity, or ancillary service requirements of these default service bids.

Below is a summary of some of the products sought in PAPUC-approved EDC default service auctions.

1. Full Requirements Service

This service is where the wholesale supplier provides many elements required under the RAA for a specified percent of customer segment load, initially around 50MW, of energy, capacity, ancillary services, and alternative energy credit requirements under Pennsylvania's AEPS Act.³⁶ Sometimes the bid requirements also include certain transmission requirements, such as Network Integrated Transmission Service

³⁵ Electric Generation Supply Procurement, 52 Pa. Code § 69.1805.

³⁶ See *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 through May 31, 2021*, PUC Docket No. P-2016-2534980 (Recommended Decision issued September 23, 2016) at 10–11.

requirements. Almost all of these procurement structures are currently 3-24 months in duration and are used to serve residential, small, and medium sized commercial and industrial customers.³⁷

2. Energy-only products

This service includes on-peak, off-peak, or 24-hour energy only solicitations. Contract durations can vary, with many starting from 6 months³⁸ and some continuing into five years.³⁹

3. Spot energy purchases

Generally, customers with greater than 100kw in load are served through “Hourly Priced” default service that provides real-time or day-ahead pricing and the recovery of ancillary and other services to non-shopping customers. The wholesale bid may or may not include capacity costs, and transmission related costs are usually recovered through a transmission rider charged by the EDC to these customers. These large Commercial and Industrial (C&I) Customer Classes are generally served by 12-month, full-requirements,

³⁷ See *Petition of Duquesne Light Company for Approval of a Default Service Plan for the Period June 1, 2016 to May 31, 2021*, PUC Docket P-2016-2543140 (Recommended Decision issued November 8, 2016) at 1.

³⁸ See *Petition of UGI Utilities, Inc. – Electric Division For Approval of a Default Service Plan and Retail Market Enhancement Programs for the Period of June 1, 2017 through May 31, 2021, and Associated Potential Affiliated Interest Transactions*, PUC Docket P-2016-2543523 (Recommended Decision issued October 3, 2016) at 5.

³⁹ See *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2021 through May 31, 2025*, PUC Docket P-2020-3019356 (filed March 25, 2020) at 13.

load-following, spot market contracts procured once a year.⁴⁰ Some utilities also include a spot component to their residential customer default service portfolio.⁴¹

4. AEPS cost recovery

AEPS compliance costs are generally embedded in the full-requirements wholesale bidder costs.⁴² But some isolated transactions, including some spot purchases or longer-term purchases, are conducted to meet AEPS compliance requirements under Pennsylvania Law.⁴³

As for this last default service procurement category, no matter how these Alternative Energy Credits (AECs) are acquired, they are all traceable back to specific units. Any alternative energy resource generator providing these compliance AECs will have to be required to report them as a subsidy under PJM's initial compliance filing provisions.⁴⁴ This will therefore ensure that AEPS payments are accounted for as State

⁴⁰ See *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 Through May 31, 2021*, PUC Docket P-2016-2526627 (Initial Decision issued August 10, 2016) at 6.

⁴¹ See *Petitions of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, PUC Docket Nos. P-2017-2637855, P-2017-2637857, P-2017-2637858, P-2017-2637866 (Consolidated) (Recommended Decision issued May 31, 2018) at 9.

⁴² See *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 through May 31, 2021*, PUC Docket P-2016-2534980 (Recommended Decision issued September 23, 2016) at 10–11.

⁴³ See *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan For the Period January 1, 2011 Through May 31, 2013 for Approval to Modify its Procurement of Solar Alternative Energy Credits*, PUC Docket P-2008-2060309 (Order entered March 1, 2011) at 5–11.

⁴⁴ See *PJM Interconnection, L.L.C., 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*, Docket Nos. EL16-49, ER18-1314, and EL18-178 (Consolidated) (March 18, 2020) at 22–27.

Subsidies, without having to subject the supplier to another MOPR screen simply because of its participation in the PADSP.

C. Statement of Issues

In accordance with Rule 713(c)(2) of the Commission's Rules of Practice and Procedure, the PAPUC hereby sets forth the issues on which it seeks rehearing of the December 19 Order:

The Commission's April 16 Order unreasonably, and without sufficient explanation, modified the result of its December 19 Order by creating an entirely new principle that State Subsidies are not limited to out-of-market payments which are state-required but also include nondiscriminatory payments as part of an auction, where those payments are not state-required, but merely the mechanism of the auction is state-sponsored.

See Administrative Procedure Act, 5 U.S.C. § 706(2)(A); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 43 (“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made’” (citation omitted)); *Hatch*, 654 F.2d at 834 (“An agency must provide a reasoned explanation for any failure to adhere to its own precedents.”).

D. Discussion

The Commission's April 16 Order unreasonably, and without sufficient explanation, modified the result of its December 19 Order by creating an entirely new principle that State Subsidies are not limited to out-of-market payments which are state-required but also include nondiscriminatory payments as part of an auction, where those payments are not state-required, but merely the mechanism of the auction is state-sponsored.

In its December 19 Order, the Commission justified its new MOPR rule with the perceived need to address supposed inequities in out of market payments which distort

the participation of uneconomic resources in PJM’s wholesale capacity market: “our concern is with those forms of State Subsidies ... that are most nearly ‘directed at’ or tethered to the new entry or continued operation of generating capacity.”⁴⁵ The April 16 Order, without sufficient explanation and only relying on the broad language of the new State Subsidy definition, abandoned the direct link requirements and boldly announced that “[s]tate default service auctions meet the definition of State Subsidy to the extent they are a payment or other financial benefit that is a result of a state-sponsored or state-mandated process ...”⁴⁶ Painting with the same broad brushstrokes, the Commission could have just as easily announced that any retail ratemaking mechanism is a State Subsidy to the extent that it is mandated or permitted by State law, including bundled and unbundled retail ratemaking models, mandatory non-bypassable riders of federally regulated costs, such as generation and transmission costs, or even state-administered federal assistance programs, such as the Low Income Home Energy Assistance Program (LIHEAP).

Indeed, under this interpretation of State Subsidy, any cost component of a customer’s electric bill could be mitigated, because it is a payment that results from a state-sponsored process. Such unbridled mitigation at all costs and departure from established jurisprudence is hard to fathom even for a strong supporter of competitive wholesale markets, such as the PAPUC, which has relied on these markets since their

⁴⁵ December 19 Order ¶ 68. (citing *Oneok v. Learjet, Inc.*, 135 S. Ct. 1591, 1602 (2015); *Hughes v. Talen Energy Marketing, LLC*, 136 S. Ct. 1288, 1299 (2016)).

⁴⁶ April 16 Order ¶ 386.

inception and has supported the Commission's previous attempts to design appropriate mitigation measures.⁴⁷ The Commission's failure to establish a limiting principle to its interpretation of State Subsidy unlawfully reaches into retail ratemaking processes, an area reserved by the Federal Power Act to the States.⁴⁸

This proclamation of newly found authority, while currently limited to State DSP, could just as easily be applied to State EGS entities that compete in the retail market to supply generation to end-use customers and are required to participate in State-mandated ratemaking programs, such as Customer Assistance Programs. Even the customer's basic choice of whether to shop for electric supply or remain a default service customer appears to be "tainted" by State Subsidy, according to the Commission's heavy-handed approach. The Commission's overly ambitious undertaking needs appropriate guardrails guided by the principles of federalism embodied in the Federal Power Act. To that end, the PAPUC suggests several appropriate modifications to the April 16 Order and the Commission's interpretation of State Subsidy.

1. The Commission's MOPR screen should be limited to generation resources and should not mitigate ratemaking models.

Every generation resource, directly or indirectly serving a State-authorized ratemaking program, such as State DSP, will be subject to the Commission's initial MOPR screen, as envisioned in the December 19 Order, if it is a recipient of a State Subsidy. This principle holds true no matter if the resource is procured by a State EDC

⁴⁷ See *PJM Power Providers Group v. PJM Interconnection, L.L.C.* (Docket No. EL11-20-000); *PJM Interconnection L.L.C.* (Docket No. ER11-2875-000) (Not Consolidated); Comments of the Pennsylvania Public Utility Commission (March 4, 2011).

⁴⁸ 16 U.S.C. § 824.

or EGS. The application of a secondary or additional MOPR screen for resources serving only State DSP is for that reason duplicative and unnecessary. It also creates burdensome reporting requirements for generation resources and introduces a new level of uncertainty into State DSP auctions that rely on predictable market signals.

If the Commission seeks to mitigate resources receiving State Subsidies based on fuel type, locational requirements, or other resource-specific criteria it should specifically limit the MOPR application only to such resource(s). For instance, only those resources selling AECs for Pennsylvania’s compliance market could be subject to the MOPR rule. As noted by the Commission, “[n]ew and existing resources, other than new gas-fired resources, that apply for the Competitive Exemption may, as part of that process, certify that they will only sell their RECs through voluntary REC arrangements.”⁴⁹ A resource receiving AEPS revenues for state compliance purposes will be unable to make such a certification, and will therefore be subject to the MOPR. Such ruling will appropriately respect retail ratemaking authority and will apply with the same force to the entire portfolio of AEPS resources required to be supplied by EGSs and State DSP plans. It will also enable State DSP plans to isolate those types of transactions from other commercial transactions.

⁴⁹ April 16 Order ¶ 381.

2. Pennsylvania’s DSP plans are designed after the BRA to reflect the State’s goals of price stability and market conditions. They are temporally incapable at affecting BRA price signals and therefore should not be mitigated.

As described above, Pennsylvania DSP plans embed *capacity market costs* in the full-requirement contract bids. These one-to-two-year products are acquired after PJM’s BRA has already occurred, and thus cannot influence capacity market clearing prices, as PJM’s BRA procures capacity three years out.⁵⁰ Instead, the opposite is true: PJM’s capacity market BRAs establish the cost basis of this RAA requirement incorporated into Pennsylvania’s default service costs. For that reason, mitigation of State DSP is impractical, burdensome, and unnecessary.

The PAPUC urges the Commission to limit its MOPR ruling to the principles described in this petition in order to provide appropriate deference to the jurisdictional federalism embodied in the Federal Power Act and provide the necessary market certainty that benefits all BRA participants.

⁵⁰ PJM Open Access Transmission Tariff, 40 (Effective Date: 1/1/2020 - Docket No. ER19-2105-000, page 8) (last accessed May 15, 2020) <https://www.pjm.com/directory/merged-tariffs/oatt.pdf>.

III. CONCLUSION

For these reasons, the PAPUC respectfully requests that the Commission grant its request for rehearing of the April 16 Order. We urge the Commission to make the appropriate determinations, adopt our recommendations, and direct PJM to implement them.

Respectfully submitted,

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Dated: May 18, 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.

Dated at Harrisburg, PA this 18th day of May 2020.

Respectfully submitted,

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