

**BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.

)

Docket No. ER21-2582

**JOINT PROTEST OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION  
AND PUBLIC UTILITIES COMMISSION OF OHIO TO PJM’S FILING  
CONCERNING APPLICATION OF THE MINIMUM OFFER PRICE RULE**

The Pennsylvania Public Utility Commission (PAPUC) and Public Utilities Commission of Ohio (PUCO) file this Protest in response to the PJM Interconnection, L.L.C. (PJM) proposed revisions (Proposal) to its Open Access Transmission Tariff (OATT or tariff), filed July 30, 2021, to reform the Minimum Offer Price Rule (MOPR). PJM made its filing under Section 205 of the Federal Power Act (FPA)<sup>1</sup> and part 35 of the Federal Energy Regulatory Commission’s (FERC or Commission) regulations.<sup>2</sup>

**I. BACKGROUND**

As discussed in PJM’s filing,<sup>3</sup> the Commission approved the use of the MOPR via a 2006 settlement agreement<sup>4</sup> that established PJM’s initial capacity market design. The MOPR was intended to mitigate the exercise of buyer-side market power in PJM’s capacity market.

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<sup>1</sup> 16 U.S.C. § 824d.

<sup>2</sup> 18 C.F.R. part 35.

<sup>3</sup> PJM Filing at 5.

<sup>4</sup> *PJM Interconnection, L.L.C.*, Settlement Agreement and Explanatory Statement of the Settling Parties Resolving All Issues, Docket Nos. ER05-1410-000, -001, and EL05-148-000, -001, at section II.J and Explanatory Statement, Attachment E (Supplemental Affidavit of Robert B. Stoddard) ¶¶ 8-19; *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, at PP 103-104 (2006), *order on reh’g & clarification*, 119 FERC ¶ 61, 318 (2007).

On April 9, 2018, PJM proposed revisions to its capacity market, filed under Section 205 of the FPA.<sup>5</sup> The Commission rejected PJM’s proposed revisions, finding PJM’s OATT to be unjust and unreasonable, and instituted an FPA Section 206 Proceeding<sup>6</sup> to determine a just and reasonable replacement rate.<sup>7</sup>

Following an extensive proceeding, in which PJM proposed multiple revisions to its capacity market, the Commission directed PJM to submit a replacement rate that kept the existing MOPR application for new natural gas-fired resources, and “...extends the MOPR to include both new and existing resources, internal and external, that receive, or are entitled to receive, certain out-of-market payments, with certain exemptions...”<sup>8</sup> This was followed by a period of FERC orders and PJM compliance filings resulting in FERC generally accepting PJM’s tariff changes in January 2021, and implementing the “Expanded MOPR” beginning with the Base Residual Auction (BRA) for the 2022/2023 Delivery Year.<sup>9</sup>

Beginning in February 2021, PJM held a series of workshops to discuss changes to PJM’s capacity market. Following the workshops, the PJM Board announced initiation<sup>10</sup> of PJM’s Critical Issue Fast Path (CIFP) Process to provide an accelerated stakeholder process to recommend to the PJM Board necessary changes to MOPR. The result of the

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<sup>5</sup> *PJM Interconnection, L.L.C.*, Capacity Repricing or in the Alternative MOPR-Ex Proposal: Tariff Revisions to Address Impacts of State Public Policies on the PJM Capacity Market, Docket No. ER18-1314 (April 9, 2018).

<sup>6</sup> 16 U.S.C. § 824e(c).

<sup>7</sup> *Calpine Corp. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (2018).

<sup>8</sup> *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239 (2019) (December 2019 Order), *order on reh’g & clarification*, 171 FERC ¶ 61,035 (2020), *order on reh’g*, 173 FERC ¶ 61,061 (2020), *appeals pending*, *Ill. Com. Comm’n v. FERC*, Nos. 20-1645, et al. (7th Cir.).

<sup>9</sup> *Calpine Corp. v. PJM Interconnection, L.L.C.*, 174 FERC ¶ 61,036 (2021).

<sup>10</sup> See Letter from Ake Almgren, Chair, PJM Board of Managers to PJM Stakeholders, April 6, 2021.

CIFP Process was an affirmative sector vote supporting the PJM staff proposal – the basis of PJM’s filing before the Commission.

While PJM provides service to 13 states and the District of Columbia, Pennsylvania and Ohio represent the largest portion of the regional transmission organization (RTO) – by population, geographical size, portion of existing installed capacity, portion of queued capacity, and forecasted annual load. PJM serves 65 million people, approximately 38% of whom are in Pennsylvania and Ohio. Together, our two states represent nearly 25% of the geographical landmass of PJM’s service territory. PJM’s existing installed capacity as of December 31, 2020, was 184,396 MW. Of that, nearly 39% was in Pennsylvania and Ohio.<sup>11</sup> As of that date, the two states represented nearly 32% of the queued capacity (in MW) in PJM.<sup>12</sup> And, as provided in April 2021, PJM forecasted nearly 40% of both its summer and winter peak load coming from Pennsylvania and Ohio.<sup>13</sup> Collectively, Pennsylvania and Ohio represent a significant portion of PJM’s customers, territory and electric generation base and, as such, the Commission should take our concerns with consideration appropriate to our impacts on the region and the effects of region-wide policy on our ratepayers.

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<sup>11</sup> *PJM Interconnection, L.L.C.*, 2020 Pennsylvania State Infrastructure Report (January 1, 2020 – December 31, 2020), dated April 2021, at 7-8 (PA Report). <https://www.pjm.com/-/media/library/reports-notice/state-specific-reports/2020/2020-pennsylvania-state-infrastructure-report.ashx>. *PJM Interconnection, L.L.C.*, 2020 Ohio State Infrastructure Report (January 1, 2020 – December 31, 2020), dated April 2021, at 7-8 (OH Report). <https://www.pjm.com/-/media/library/reports-notice/state-specific-reports/2020/2020-ohio-state-infrastructure-report.ashx>.

<sup>12</sup> PA Report at 9-10. OH Report at 9-10.

<sup>13</sup> PA Report at 27. OH Report at 35.

## **II. PROTEST**

PJM's Proposal makes significant revisions to its tariff which largely defer to federal authority for the determination of whether market power has been exercised or could have been. The PJM Proposal makes improvements for state policy accommodation by removing capacity resources participating in competitive and non-discriminatory state default service procurements from being subject to buyer-side market power mitigation and affording the same treatment to competitive new natural gas capacity resources that receive no state support. That said, in its attempt to accommodate, the PJM Proposal fails to provide the necessary checks and balances to ensure that sufficient market power protections exist. In this respect, the PJM Proposal fails to reach a just and reasonable outcome.

Moreover, the Proposal's unsupported and experimental accommodations threaten to destabilize PJM's capacity market. That is, without close study by PJM and its Independent Market Monitor, the unrestrained behavior of market participants could lead to gaming of generally permissive rules under this Proposal. The extent of the accommodation also unjustly transfers the consequences of a particular state's policy preference(s) to all states and consumers within the PJM region. To guard against these harmful ends, the Commission should direct PJM to include in its tariff a requirement for ongoing studies of the effects of PJM's MOPR policies on competitive markets. These studies should be filed with the Commission and contemporaneously provided to the states and market participants.

For these reasons, we recommend that FERC deny PJM's Proposal and open a

Section 206 proceeding to ensure a just and reasonable capacity market with all deliberate speed. In doing so, the Commission should not disrupt the long-delayed capacity procurement auctions going forward under existing capacity market rules.

In making this recommendation, we offer this protest to help FERC sculpt PJM's capacity market construct related to the MOPR and related tariff provisions.

**A. The PJM filing makes progress in several areas that should be retained in a future Section 206 MOPR filing.**

While PJM's filing must be rejected, the Commission, in requiring submission of a new Section 206 filing, should direct PJM to maintain two main elements from its current Proposal – exempting from MOPR application new natural gas units that do not receive state subsidies<sup>14</sup> and state retail default service procurements (DSPs).<sup>15</sup>

**1. The PJM filing excludes new natural gas units that do not receive state support, and any new MOPR should continue to do so.**

We agree with PJM Witness Adam Keech that, “The Legacy MOPR also is overly broad in that it mitigates all new natural gas resource offers, even those from market sellers with no incentive to suppress prices and who would otherwise be expected to offer in a way that reflects economic costs.”<sup>16</sup> A new unsubsidized gas resource may be competitive and should not be required to utilize the MOPR floor price simply because, prior to the December 2019 Order, an assumption was made “that a new natural gas

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<sup>14</sup> PJM filing at 20.

<sup>15</sup> *Id.* at 46. See also, PJM's Proposed OATT at (h-2)(2)(A)(ii).

<sup>16</sup> Keech Affidavit at 5, paragraph 15.

resource would be the exclusive vehicle by which an entity would seek to exercise buyer-side market power.”<sup>17</sup> Applying the MOPR across all new, unsubsidized natural gas-fired resources is unnecessary and there is no evidence to show that such a broad application prevents the exercise of buyer-side market power. In fact, evidence previously provided to the Commission shows that, over the five BRAs before this most recent auction, the BRA prices were only 34% of the combined cycle natural gas<sup>18</sup> default MOPR floor price.<sup>19</sup> As such, new, unsubsidized gas should be exempted from MOPR application.

**2. The PJM Filing explicitly excludes default service proceedings which are non-discriminatory, resource-neutral, and competitive, and any MOPR going forward should continue to do so.**

PJM’s Proposal maintains the exclusion for state retail default-service procurement from MOPR applicability. This is appropriate where states hold auctions on a competitive and resource-neutral basis. In many restructured states, including Pennsylvania and Ohio, auctions use independent evaluators to ensure competitive results.<sup>20</sup> In these auctions, no conditions are placed on the ownership, location, affiliation, fuel type, technology, or emissions, of any resources or supply, with the

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<sup>17</sup> Keech Affidavit at 5, paragraph 14.

<sup>18</sup> CCNG represented the marginal technology in the supply stack.

<sup>19</sup> *Pennsylvania Public Utility Commission*, Request for Rehearing and Clarification of the Pennsylvania Public Utility Commission, Docket No. EL-16-49-000, at 9.

<sup>20</sup> *Pennsylvania Public Utility Commission*, Comments of the Pennsylvania Public Utility Commission to PJM’s Second Compliance Filing Concerning Application of the Minimum Offer Price Rule, Docket No. EL16-49, June 22, 2020.

exception of state Renewable Portfolio Standards (RPS) procurements.<sup>21</sup> Lastly, default service costs are bypassable. By imposing a MOPR on these auctions, the Commission and PJM would create uncertainty and needless administrative costs for state DSPs.

**3. PJM’s proposed attestation process for state supported resources provides visibility and accommodation of state policies but should be clarified to allow for transparency.**

Generally, we support the accommodation of state policies within the PJM markets where such policies do not lead to an unjust and unreasonable outcome. But the state policy choices of one state should not be unreasonably foisted upon or burdensome to other PJM states when those choices result in reliability concerns or the premature displacement of competitive merchant resources. PJM’s proposed attestation process aligns with the accommodation of state policy resources through general deference, so long as these resources do not receive “Conditioned State Support” which PJM defines as:

[A]ny financial benefit required or incentivized by a state, or political subdivision of a state acting in its sovereign capacity, that is provided outside of PJM Markets and in exchange for the sale of a FERC-jurisdictional product conditioned on clearing in any RPM Auction, where “conditioned on clearing in any RPM Auction” refers to specific directives as to the level of the offer that must be entered for the relevant Generation Capacity Resource in the RPM Auction or directives that the Generation Capacity Resource is required to clear in any RPM Auction.<sup>22</sup>

The limitation to benefits offered “in exchange for the sale of a FERC-jurisdictional product conditioned on clearing in any RPM Auction” is critical.

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<sup>21</sup> PJM appropriately proposes exempting Renewable Energy Credits from being classified as “Conditioned State Support.” See PJM’s Proposed OATT at (h-2)(2)(A)(ii).

<sup>22</sup> Proposed Tariff, Definitions – C-D – “Conditioned State Support.”

This condition preserves individual state authority without damaging the market as a whole.

To determine which resources, receive Conditioned State Support, PJM proposes the following: that a capacity resource receiving Conditioned State Support memorialize that status through an attestation that must be made 150 days prior to a capacity market auction:

[E]ach Capacity Market Seller must certify to the Office of Interconnection for each Generation Capacity Resource... (i) whether or not the Generation Capacity Resource is receiving or expected to receive Conditioned State Support under any legislative or other governmental policy or program that has been enacted or effective at the time of the certification.<sup>23</sup>

This definition and attestation process also retains the benefit of being readily verifiable. State incentives or benefits are highly transparent, generally offered through open auctions, through legislation or regulation, or subject to transparency laws. Unlike the Buyer-Side Market Power attestation, discussed below, the attestation that a party is receiving or expects to receive Conditioned State Support should be relatively easy to confirm. Thus, as to the state support certification, there is a low likelihood or incentive for gaming this certification. While FERC, under the proposed tariff, would have to review challenges to whether a particular program constitutes Conditioned State Support, the first step in such a challenge would be transparent awareness of whether a generation resource claims to be receiving such support. PJM's proposed attestation process satisfies this first step.

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<sup>23</sup> Proposed Tariff, Attachment DD, section 5.14(h-2)(1)(A)(i).

That being said, given that the PJM Section 205 filing should be converted to a Section 206 proceeding, the Commission should also take this opportunity to correct an ambiguity in the proposed tariff which would frustrate the transparency benefits of the conditioned state support attestation. We are concerned that while attestations are transparent and readily verifiable to those who view them, the PJM Proposal does not state to whom the attestations are available. Presently, the attestation process is only necessarily visible to the Independent Market Monitor and PJM’s Office of the Interconnection. To prevent needless challenges from private parties before FERC, the tariff should clearly state that this information is available to all market participants, state regulators, and other interested parties. We do not foresee any confidentiality issues with the attestation of the receipt of state support.

**B. FERC should reject several provisions of the PJM filing in establishing a Section 206 proceeding.**

**1. PJM’s attestation process for buyer-side market power uses unclear or contra-legal standards.**

PJM’s proposed tariff revisions define “Buyer-Side Market Power” as “the ability of Capacity Market Sellers with a Load Interest to suppress RPM Auction clearing prices for the overall benefit of their (and/or affiliates) portfolio of generation and load.”<sup>24</sup> We agree with PJM that this definition describes Buyer-Side Market Power in terms of two factors: ability and incentive.<sup>25</sup> “Ability” is clearly stated in the definition. The definition introduces the Market Seller’s incentive through the description of a Market Seller’s

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<sup>24</sup> Proposed Tariff, Definitions – A-B – “Buyer-Side Market Power.”

<sup>25</sup> PJM Filing at 3.

“Load Interest.” Load Interest is a defined term in the proposed tariff, and tests whether a Capacity Market Seller has an interest in lower capacity prices.

That is, on a net basis, these Market Sellers will have a “responsibility in serving load”<sup>26</sup> that requires them to pay for capacity, and therefore, desire a lower capacity price.

That said, PJM’s method for applying the MOPR to resources that exercise Buyer-Side Market Power is problematic. Namely, PJM defines an “Exercise of Buyer-Side Market Power” in a way that introduces the *intent* of the Capacity Market Seller into PJM’s test:

[A]nti-competitive behavior of a Capacity Market Seller with a Load Interest, or directed by an entity with a Load Interest, to uneconomically lower RPM Auction Sell Offer(s) *in order to* suppress RPM Auction clearing prices for the overall benefit of the Capacity Market Seller’s ... portfolio of generation and load or that of the directing entity with a Load Interest.<sup>27</sup>

PJM’s attestation process clouds the matter more. Capacity Market Sellers are required to attest, 150 days prior to a capacity market auction, that they do not “*intend to submit a Sell Offer for their Generation Capacity Resource as an Exercise of Buyer-Side Market Power.*”<sup>28</sup>

At best, these provisions are ambiguous. The attestation could reflect a lack of *intent to submit* an offending offer, or, it could mean that the Capacity Market Seller does *not intend, as an Exercise of Buyer-Side Market Power, to submit* an offending offer.

Moreover, PJM proposes to give these subjective attestations a “presumption of

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<sup>26</sup> Proposed Tariff, Definitions – L-M-N – “Load Interest.”

<sup>27</sup> Proposed Tariff, Definitions – E-F – “Exercise of Buyer-Side Market Power.”

<sup>28</sup> Proposed Tariff, Attachment DD, section 5.14(h-2)(1)(A)(ii).

innocence,” thus shifting the burden of proof from the Capacity Market Seller to PJM and the IMM, or to any aggrieved party.<sup>29</sup> In any event, PJM cannot consider the subjective intent of a Capacity Market Seller in mitigating Buyer-Side Market Power.

The Court of Appeals for the DC Circuit most recently spoke on this issue in *Public Citizen v. Federal Energy Regulatory Commission*, — F.4th — (August 6, 2021). Precisely one week after PJM submitted its Section 205 filing, the DC Circuit emphasized an RTO’s responsibilities to prevent anticompetitive market behavior. While *Public Citizen* related to supply-side market power, its lessons are equally applicable to private demand-side behavior.

To approve a market-based tariff such as this one, the tariff must ensure “that the seller *cannot* exercise anticompetitive market power.” *Id.* at \*3 (emphasis added). Similarly, the “seller *cannot* erect any barriers to entry against potential competitors.” *Id.* (emphasis added). Previously the Commission has stated, “it is the possession of market power (and, therefore, the potential to exercise it)... that triggers the need for mitigation. Once it is shown that market power exists, adequate mitigation of the potential to exercise market power becomes essential.” *California Indep. Sys. Operator Corp.*, 126 FERC ¶ 61150, ¶71 (2009). And, as emphasized by the Court of Appeals for the D.C. Circuit, FERC has found that uneconomic entry into the capacity market, “regardless of resource and *regardless of intent*, ‘can produce unjust and unreasonable prices by artificially depressing capacity prices.’” *New England Power Generators Ass'n, Inc. v.*

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<sup>29</sup> PJM Filing at 29.

*F.E.R.C.*, 757 F.3d 283, 291 (2014) (quoting FERC, ISO New England, Inc. & New England Power Pool Participants Comm. New England Power Generators Ass'n, Docket Nos. ER-10-787-000, et al, Order on Paper Hearing and Order on Rehearing, ¶ 170, April 13, 2011) (emphasis added).

These recitations all state one theme: market power must be mitigated based on its potential exercise, not the market participant's subjective intent to exercise market power. As a result, PJM's definitions of "Exercise of Buyer-Side Market Power" and the tariff references to intent in PJM's attestation process, are unjust and unreasonable and must be modified to remove intent.

**2. PJM's attestation process for Buyer-Side Market Power does not afford a meaningful ability to review offers.**

Even if the attestation itself were sufficient, the proposed tariff does not allot adequate time for meaningful review of these attestations and potential mitigation prior to a capacity market auction. PJM's filing provides that a Capacity Market Seller must make its attestation 150 days prior to a capacity market auction:

By no later than one hundred and fifty (150) days prior to the commencement of the offer period of any RPM Auction ..., each Capacity Market Seller must certify to the Office of Interconnection for each Generation Capacity Resource the Capacity Market Seller intends to offer into the RPM Auction.<sup>30</sup>

Next, the Independent Market Monitor and PJM will have until 135 days prior to the auction to review every attestation, and notify the Capacity Market Sellers of the bases for a fact-specific review:

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<sup>30</sup> Tariff, Attachment DD, section 5.14(h-2)(1)(A).

The Office of the Interconnection and/or the Market Monitoring Unit shall notify the Capacity Market Seller of the bases for inquiry and initiation of review at least 135 days in advance of the RPM Auction.<sup>31</sup>

This provides a potential window of only 15 days to review these attestations for Buyer-Side Market Power.

Plus, given the ambiguity in the language of the attestations and their lack of depth regarding Buyer-Side Market Power, the burden to show that market power will not be exercised shifts from the Capacity Market Seller to the Independent Market Monitor and PJM's Office of the Interconnection. The Office of the Interconnection and the Independent Market Monitor must review every Capacity Market Seller's intent to offer and determine whether an Exercise of Buyer-Side Market Power is sufficiently likely to justify a fact-specific review. To make things worse, PJM has confirmed in its filing that it does not intend to conduct such reviews and will instead rely on its newly-proposed "presumption of innocence" that the Market Seller attests in good faith.<sup>32</sup> This relinquishment of RTO responsibility strays from *Public Citizen* and the provisions should be rejected as unjust and unreasonable.

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<sup>31</sup> Tariff, Attachment DD, section 5.14(h-2)(2)(B)(i).

<sup>32</sup> PJM Filing at 29-30.

**3. There is no economic or legal reason to exempt state legacy policies from review for the sole reason that they already exist.**

PJM includes in its Proposal an exemption for state policies/programs that are currently in effect – the “Legacy Policy” exemption.<sup>33</sup> As defined in PJM’s proposed tariff:<sup>34</sup>

“Legacy Policy” shall mean any legislative, executive, or regulatory action that specifically directs a payment outside of PJM Markets to a designated or prospective Generation Capacity Resource and the enactment of such action predates **October 1, 2021**, regardless of when any implementing governmental action to effectuate the action to direct payment outside of PJM Markets occurs.

(emphasis added).

Yet, PJM’s Proposal conflicts in its cut-off date for what constitutes a “Legacy Policy” stating,

PJM is proposing to define “Legacy Policy” as any legislative, executive, or regulatory action that specifically directs a payment outside of PJM Markets to a designated or prospective Generation Capacity Resource and the enactment of such action predates **September 1, 2021**...

(emphasis added).<sup>35</sup>

Apart from the issue of different dates in the tariff, PJM’s Proposal should not be accepted because there is no economic basis for exempting all currently effective state policies and programs. Echoing the PUCO’s Comments in this proceeding from 2018, we are still of the position that, based on the lack of analysis of price suppression to date, no one can know “what level of subsidized resources actually moves the needle towards

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<sup>33</sup> PJM Filing at 46-47.

<sup>34</sup> See PJM’s Proposed OATT at Definitions – L-M-N – “Legacy Policy.”

<sup>35</sup> PJM Filing at 46-47, n. 153.

unjust and unreasonable RPM prices.”<sup>36</sup> The implication with PJM’s Proposal is that the needle is safely behind the “unjust and unreasonable” zone. Again, a more definitive analysis is needed, and PJM’s Proposal does not move in that direction.

While it is a state’s right to enact policies and programs to support specific types of generation, when those policies provide a competitive advantage to a participant in a *regional* marketplace by conditioning the provision of state support on clearing the capacity market, that participant should be subject to the MOPR. Otherwise, FERC would be allowing the State to substitute the Commission’s judgment of a just and reasonable rate with its own and placing the interested party in charge of determining that rate. *See generally Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288 (2016).

Competition is the basis of PJM’s markets and allowing a free pass to all policies, regardless of their economic impacts or their legality under current case law, undermines that foundational principle.

Moreover, the Legacy Policy Exemption contradicts precedent of the Supreme Court. PJM’s definition of “Conditioned State Support” explicitly exempts “any Legacy Policy.”<sup>37</sup> This means that a state may condition a financial benefit that a resource receives on bidding in and clearing a capacity market auction. And prior to the auction, the Capacity Market Seller is not even required to disclose that they have received the financial benefit that otherwise would constitute Conditioned State Support. This exemption flouts the controlling U.S. Supreme Court precedent in *Hughes*.

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<sup>36</sup> PUCO, “Comments and Protest,” ER18-1314-000 and ER18-1314-001, May 7, 2018.

<sup>37</sup> See PJM’s Proposed OATT at Definitions – C-D – “Conditioned State Support.”

In *Hughes*, the Supreme Court explicitly held that a state may not condition the receipt of a financial benefit on clearing the PJM capacity market. PJM adopts the *Hughes* test to detect state-based demand-side market power manipulation. Yet, it exempts Legacy Policies from this otherwise reasonable test. Distinguishing older legacy state policies from newer state policies without consideration of the economic impact on competition is arbitrary and unreasonable.

Additionally, PJM's Proposal may weaken reliability in PJM. As demonstrated in its most recent Base Residual Auction, PJM enjoys a surplus of capacity resources. The 2022/2023 BRA resulted in an RTO-wide reserve margin of 19.9%, which was 5.4% higher than the targeted reserve margin.<sup>38</sup> However, it should not be assumed that these conditions will exist in perpetuity. At some point, PJM will have to depend on its capacity market to send the correct price signals to incent the proper amount of entry and exit of resources.

PJM should keep sight of the balance between intermittent, non-baseload and quickly dispatchable baseload resources. This obligation is especially pertinent now when the resource mix is changing so drastically. A recent discussion at the National Association of Regulatory Utility Commissioners Summer Policy Summit underscores the concept that aggressive RPS and decarbonization targets call for careful and meticulous attention to the right resource mix, and careful attention to wholesale markets that send the right price signals. While states should be able to have their own targets for

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<sup>38</sup> Available at <https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2022-2023/2022-2023-base-residual-auction-report.ashx>.

generation, allowing a medley of state goals to displace competitive-market price signals puts the goals of reliability and affordability at risk.<sup>39</sup>

PJM’s Proposal is certainly accommodative, but it is not the careful and meticulous solution that is needed to address the challenges that face the PJM capacity market today and going forward. As stated in its Letter to the PJM Board of Managers, dated July 7, 2021, the PAPUC acknowledged and agreed with concerns expressed by PUCO Commissioner Daniel R. Conway, stating that “the accommodation of state preferred resources should not come at the expense of displacing easily dispatchable and reliable resources.”<sup>40</sup>

PJM has failed to adequately address these concerns surrounding competition, resource adequacy and reliability impacts resulting from the Legacy Policy Exemption and, more broadly, its proposed MOPR. PJM has provided no quantifiable data surrounding the effects of such an exemption on the market, nor has it provided any analysis of the potential impacts of its proposed MOPR changes on competitive market prices and on the ability to attract and retain resources that can respond when needed. Such information is necessary before providing a blanket exemption to existing policies. As a result, it is incumbent upon the Commission to reject the proposed Legacy Policy Exemption and require PJM, as part of its Section 206 filing, to commit to studying

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<sup>39</sup> NARUC Summer Policy Summit, Dr. Paul Joskow, Dr. Karl Hausker, Dr. Karen Palmer, and Dr. Susan Tierney, “Round Table Discussion on the Challenges of Wholesale Market Design,” July 15, 2021.

<sup>40</sup> *Pennsylvania Public Utility Commission Letter to The PJM Board of Managers*, dated July 7, 2021. Available at <https://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/20210706-pa-puc-letter-regarding-minimum-offer-price-rule.ashx>.

market impacts resulting from any future MOPR and its exemptions for state policies and programs.

For these reasons, together with those previously stated, the Commission should find that the Legacy Policy Exemption is unjust and unreasonable.

**4. PJM’s unit-specific exemption lacks consistent criteria and could allow market participants to evade proper review.**

PJM proposes a revised unit-specific exemption process (renamed from “resource-specific”).<sup>41</sup> Under the Proposal, a Capacity Market Seller must submit to PJM and the Independent Market Monitor its written request for an exemption, including all supporting documentation, no later than 120 days before the offer period for the applicable auction.<sup>42</sup> PJM proposes, among other things, allowing a unit-specific exemption even if the seller is unable to support each claimed cost advantage.<sup>43</sup> PJM notes that, currently, it can reject a seller’s request if the seller does not support each of its claims. But, PJM also argues that there are many data points to be reviewed during this process and it is too harsh to deny a request because a single cost element is not adequately supported. As a compromise, PJM proposes that an unsupported element will simply not be considered in determining the unit-specific offer floor.<sup>44</sup>

The benefit of this flexibility is unclear. Consistent criteria must be used to determine exemptions on a comparable basis, with clearly understandable parameters.

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<sup>41</sup> PJM Filing at 51.

<sup>42</sup> PJM Proposed OATT (h-2)(4)(A).

<sup>43</sup> PJM Filing at 52.

<sup>44</sup> PJM Filing at 52-53.

While PJM states that it simply will not consider an unsupported element in a unit-specific offer floor determination, it invites the question of why it is appropriate to allow a seller to pick and choose data elements to sufficiently justify its request for an exemption. FERC should require PJM to include in its Section 206 filing more defined parameters as to: (1) why a seller is unable to support an element with the appropriate data and (2) whether the requested exemption may be granted without appropriate data or an acceptable explanation for the lack of data.

**5. While the PJM Proposal should be rejected, the December 2021 Base Residual Auction should not be delayed.**

As discussed above, FERC should reject PJM's Section 205 filing and direct PJM to submit a Section 206 filing addressing concerns outlined in this protest.

If FERC rejects PJM's Section 205 filing, the Commission should not delay the December BRA. PJM states that it is requesting approval of its Proposal by September 28, 2021, to ensure that tariff changes may be effective for the 2023/2024 BRA to be held in December 2021.<sup>45</sup> While the current MOPR construct has many deficiencies that need to be addressed, its impacts in the most recent 2022/2023 BRA appeared to be minimal. The RTO clearing price was down to \$50/MW-day compared to \$140/MW-day from the last BRA in 2018.<sup>46</sup> When considering the Fixed Resource Requirement load and resources, the RTO reserve margin was 19.9%, showing a clear availability of capacity

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<sup>45</sup> PJM Filing at 2.

<sup>46</sup> *PJM Interconnection, L.L.C.*, 2022/2023 RPM Base Residual Auction Results, (22/23 BRA Report) at 1. <https://pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2022-2023/2022-2023-base-residual-auction-report.ashx>

for the delivery year.<sup>47</sup> Therefore, allowing the December BRA to occur as scheduled would be preferable as near-term negative impacts are not expected. PJM's capacity market has experienced enough delay already, with three years lapsing between the 2021/2022 and 2022/2023 BRAs. A delay in the December auction may impair state retail DSPs, as well as investment decisions and energy planning for many market participants. A Section 206 proceeding can be accomplished within a timeframe that provides for a revised MOPR that may apply for the following 2024/2025 BRA, to be held in June 2022.

### **III. CONCLUSION**

PJM's filing addresses some weaknesses in the existing MOPR process, but it opens doors to new problems. Because PJM filed its proposed changes under Section 205 of the FPA, the Commission is required to accept the Proposal without amendment or to reject it as unjust and unreasonable. As detailed above, the PAPUC and the PUCO advocate the latter. The vagaries introduced in PJM's proposal will merely complicate the challenge of ensuring a robust and fair capacity market that accommodates state resource preferences without detriment to others in the market. A new filing under Section 206 of the FPA is the best remedy.

For all these reasons, the PAPUC and PUCO respectfully request that our protest be considered by FERC in this proceeding. We urge the Commission to adopt our recommendations and direct PJM to implement them.

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<sup>47</sup> 22/23 BRA Report at 3.

Respectfully submitted,

*/s/ Christian A. McDewell*

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**On Behalf of The Public Utilities  
Commission of Ohio**

Dated: August 20, 2021

## CERTIFICATE OF SERVICE

I hereby certify that I have on this date caused a copy of the foregoing document to be served on each person included on the official service list maintained for this proceeding by the Commission's Secretary, by electronic mail or such other means as a party may have requested, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010. Dated this the 20<sup>th</sup> day of August 2021, at Columbus, Ohio.

*/s/ Thomas G. Lindgren* \_\_\_\_\_

**Thomas G. Lindgren**  
Assistant Attorney General