

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

PJM Interconnection, L.L.C.)	Docket No. ER18-1314-000
)	Docket No. ER18-1314-001
)	

**MOTION FOR LEAVE TO ANSWER AND ANSWER
OF THE PJM POWER PROVIDERS GROUP**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure,¹ the PJM Power Providers Group (“P3”)² respectfully submits this Motion for Leave to Answer and Answer (“Answer”) in response to the Answer filed on May 22, 2018, by Exelon Corp. (“Exelon”) and the PSEG Companies (“PSEG”) (“Exelon/PSEG Answer”),³ as well as the Answer filed on May 25, 2018, by the PJM Interconnection, L.L.C. (“PJM”), filed in regard to PJM’s April 9, 2018 filing in this proceeding.⁴ The Exelon/PSEG Answer includes “new evidence” in the form of a “Declaration by Michael M. Schnitzer” (“Schnitzer Decl.”) to support its Answer. P3 files this Answer, in

¹ 18 C.F.R. §§ 385.212; 385.213 (2017).

² P3 is a non-profit organization dedicated to advancing federal, state and regional policies that promote properly signed and well-functioning electricity markets in the PJM Interconnection, L.L.C. (“PJM”) region. Combined, P3 members own over 84,000 MWs of generation assets, produce enough power to supply over 20 million homes and employ over 40,000 people in the PJM region covering 13 states and the District of Columbia. For more information on P3, visit www.p3powergroup.com. The comments contained in this filing represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue.

³ Motion for Leave to Answer and Answer of Exelon Corp. and the PSEG Companies, *PJM Interconnection, L.L.C.*, Docket Nos. ER18-1314-000; ER18-1314-001, dated May 22, 2018 (“Exelon/PSEG Answer”).

⁴ Capacity Repricing or in the Alternative MOPR-Ex Proposal: Tariff Revisions to Address Impacts of State Public Policies on the PJM Capacity Market of PJM Interconnection, L.L.C., Docket No. ER18-1314-000, filed on April 9, 2018.

part, to correct certain inaccuracies contained in the Exelon/PSEG Answer as they relate to P3's Protest that was filed in this proceeding on May 7, 2018, and to provide a fuller record for the Commission's consideration in this important matter.

I. MOTION FOR LEAVE TO ANSWER

Pursuant to 18 C.F.R. § 385.212 and 18 C.F.R. § 385.213, P3 respectfully submits this Motion for Leave to Answer the Exelon/PSEG Answer and the PJM Answer. Although the Commission's rules do not permit answers to pleadings, the Commission has, on occasion, accepted answers to answers if the answer assists in the Commission's decision-making process or otherwise assists in the fuller development of a record.⁵ Good cause exists here for the Commission to waive its regulations and accept P3's Answer to the Exelon/PSEG Answer and the PJM Answer. In part, P3 is providing additional information regarding events that have occurred following the filing of P3's Protest on May 7, 2018, that should be taken into account during this proceeding. P3 also seeks to correct certain misrepresentations of P3 and its positions in its pleadings, due to certain statements contained in the Exelon/PSEG Answer. P3 respectfully submits that providing this additional information will help contribute to a fuller record and will assist the Commission in its decision-making process.

II. ANSWER

A. New Jersey's New Nuclear Subsidy Law is Not About Pricing an "Environmental Attribute."

On Wednesday, May 25, 2018, New Jersey Governor Phil Murphy signed into law Senate Bill 2313 that establishes a Zero Emission Credit ("ZEC") program in the state

⁵ *San Diego Gas & Elec. Co.*, 117 FERC ¶ 61,020, at P 8 (2006); *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,204, at P 14 (2003); *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,318, at P 36 (2007).

available only to selected nuclear resources (“New Jersey Nuclear Subsidy Law”).⁶ It is critically important to understand what this law is and what this law is not. Simply stated, this is a law that was designed with the express intention of providing an out-of-market revenue stream to specific electric generation plants located in New Jersey – Salem and Hope Creek.

This law was neither created nor intended to make wholesale generation markets more competitive by pricing an environmental externality. Rather, the New Jersey Nuclear Subsidy Law was designed and enacted with the express intent of being a targeted subsidy for specific units. New Jersey Senate President Steven Sweeney made this point abundantly clear as he offered remarks at a legislative hearing on the subject, “The nuke plants in Salem provide 40 percent of the energy in the State of New Jersey, and it’s important that we find a way to keep them open, providing clean energy.”⁷ Governor Murphy reiterated this point in his press release for the new law, stating that the ZEC program was established “to maintain New Jersey’s nuclear energy supply,” and that the law gives the New Jersey Board of Public Utilities “broad latitude” to “adjust ZEC payments as necessary to meet a plant’s actual financial need.”⁸ It is telling that during the legislative hearings neither Senator Sweeney, the bill’s sponsor, nor any of his legislative colleagues, mentioned the social cost of carbon or the fact that other carbon-free resources could potentially achieve the same carbon reduction goals. Legislative hearings were

⁶ [NJ Senate Bill 2313, 2018-19 Legislative Session.](#)

⁷ [Committee Meeting of the Senate Environment and Energy Committee, Assembly Telecommunications and Utilities Committee, SB 3560; AB 5339, Dec. 20, 2017, p. 2.](#)

⁸ [Governor Murphy Signs Measures to Advance New Jersey’s Clean Energy Economy, May 6, 2018](#) (“Gov. Murphy Press Release”) p. 1, emphasis added.

packed with employees⁹, unions, former Governors, local elected officials and other interest groups all strongly imploring the New Jersey General Assembly to act to retain operations and jobs at the Salem and Hope Creek nuclear stations.¹⁰ Thus, in signing the New Jersey Nuclear Subsidy Law, Governor Murphy offered that Senate Bill 2313 not only "maintained" New Jersey's nuclear energy supply, but also that "Employees at plants participating in the ZEC program would further be protected from layoffs for reasons other than underperformance or misconduct." The debate in New Jersey was about jobs and economic impact in the state, not pricing an environmental externality.

The mechanics of the law confirm this desire to funnel money to certain generation plants. As a result of this law, later this year, all New Jersey utilities will file tariffs with the Board of Public Utilities to require all New Jersey ratepayers to pay a non-bypassable, irrevocable charge of \$0.004 per kilowatt hour. The money collected from this customer surcharge will be put in separate accounts for each utility that will eventually be divided up among the selected "nuclear" power plants.¹¹ The amount of money the selected nuclear power plants receive will be based on how much money is in the separate account - - not based on the social cost of carbon or any other acceptable basis for pricing the environmental externality. There is no legislative justification for the unsupported assertion that the \$0.004 per kilowatt hour "...reflects the emissions avoidance benefits

⁹ See, [Nuclear subsidy approved, could cost NJ ratepayers billions, State House Bureau, April 12, 2018](#), "Dozens of PSEG employees and supporters, many wearing matching orange T-shirts with stickers reading "SAVE MY JOB traveled to Trenton..."

¹⁰ [Committee Meeting of the Senate Environment and Energy Committee, Assembly Telecommunications and Utilities Committee, Dec. 4, 2017](#)

¹¹ Gov. Murphy Press Release, *supra*, p. 1.

associated with the continued operation of selected nuclear power plants.”¹² In fact, the number appears to be picked out of thin air and the distribution of the funds is based on how much money is “in the pot,” not how much carbon is avoided in the environment.¹³

The legislative history of the New Jersey Nuclear Subsidy Law offers telling insights into the derivation of the \$0.004 per kilowatt hour charge. Senate Bill 3560 was introduced on December 14, 2017, in the 2016-17 legislative session, by the same sponsor of Senate Bill 2313 that was signed into law six months later in the 2018-19 legislative session.¹⁴ Senate Bill 3560 in the 2016-17 Session was the original New Jersey Nuclear Subsidy Bill and, under the provisions of that legislation, eligible nuclear power plants would be entitled to receive a “Nuclear Diversity Certificate” or “NDC” which would represent the “environmental and fuel diversity attributes” of power produced by an eligible nuclear power plant. In other words, under Senate Bill 3560, New Jersey would compensate nuclear power plants for *both* their “environmental attributes” and their “diversity attributes.” The price that Senate Bill 3560 sets for *both* those attributes was, not coincidentally, \$0.004 per kilowatt hour. Confirming the theory that the \$0.004 represents a mere subsidy for favored resources and not a justified price of an environmental attribute, Senate Bill 3560 does not contain a single reference to carbon in the legislation – yet \$0.004 per kilowatt hour was still the proposed amount to be collected

¹² *Id.*

¹⁴ [New Jersey Senate Bill 3560, Dec. 21, 2017](#)

from all New Jersey ratepayers in order to “compensate” eligible nuclear power plants for their environmental and diversity attributes.

Moreover, if carbon reduction was indeed the driving force behind New Jersey Senate Bill 2313, the legislation would have been constructed much differently. The ZEC payment would have been available to all zero emitting carbon resources – including demand response and energy efficiency. It is not. Although many other technologies are available to provide carbon-free capacity to the grid, New Jersey’s subsidy is only available to nuclear generation power plants.

Furthermore, New Jersey is about to re-enter the Regional Greenhouse Gas Initiative (“RGGI”), which will provide the Garden State a mandatory market-based mechanism to explicitly price the environmental externalities associated with carbon.¹⁵ Under RGGI, New Jersey will be able to set its carbon goals and use a regional carbon market to address those goals. RGGI is not targeted to support a specific form of generation and is already incorporated into the PJM markets in Maryland and Delaware. Had New Jersey’s motivations been focused on pricing the externalities of carbon, instead of “...maintaining New Jersey’s nuclear supply,” RGGI represents a proven path forward to achieve those goals.

Ironically, given the results of the PJM Base Residual Auction (“BRA”) for the 2021-22 Delivery Year, New Jersey, if it is sincerely committed to preserving at-risk

¹⁵ [ICYMI: Governor Murphy Notifies RGGI Governors of New Jersey's Commitment to Rejoining Climate-Change Compact, Feb. 26, 2018](#)

nuclear units, may have an unforeseen, yet extremely problematic, opportunity to do so. This year's PJM BRA saw 7,400 MW of nuclear capacity fail to clear the auction and a marked increase in demand response making up for most of the reduction in nuclear capacity. All of this un-cleared nuclear capacity was outside of New Jersey (mostly in Ohio, Pennsylvania and Illinois). Based on disclosures by PSEG, Salem and Hope Creek, the nuclear units targeted by Senate Bill 2313, have capacity commitments in PJM until May 2022, and are not going to "cease operations within three years" as the bill requires in order to receive a ZEC.¹⁶ The funding by New Jersey ratepayers of out-of-state nuclear facilities, which is expressly provided for in the New Jersey Nuclear Subsidy Law, has huge political implications in New Jersey. However, P3 submits that these particular subsidies have even more troubling implications for the wholesale market, as New Jersey legislatively established a process to reach across its border and provide out-of-market revenue streams to plants in other PJM states, effectively allowing New Jersey to determine whether resources in other states are economic.¹⁷

The bottom line for the Commission is that the facts on the ground in New Jersey do not square with the esoteric, economic theories that are being advanced by some parties in this proceeding.¹⁸ While proponents of the ZECs would like to claim that it is consistent

¹⁶ Note that the New Jersey Nuclear Subsidy Bill requires that a nuclear power plant, in order to qualify for a ZEC, "certify that it will cease operations within 3 years unless the nuclear power plant experiences a material financial change." The Commission should be rightly concerned if any capacity resource with physical commitments to the PJM market certifies to a state commission with the ability to subsidize that its cleared resource will cease operations within the period of that capacity commitment.

¹⁷ See Exelon Press release which notes that Quad Cities cleared the 2019 BRA "as a result of Illinois legislation." [Exelon Announces Outcome of 2021-2022 PJM Capacity Auction](#)

¹⁸ See Declaration of Robert D. Willig, attached to the Protest of Exelon Corp., ER18-1314-000; ER18-1314-001, dated May 7, 2018 ("Willig Declaration").

with markets for states to merely “compensate environmental attributes,” the New Jersey Nuclear Subsidy Law, as evidenced by the statutory language and its many proponents, is targeted at something other than the carbon reduction. As confirmed by the President of the New Jersey Senate and prime sponsor of Senate Bill 2313, Senator Steven Sweeney, who publicly thanked the Governor for “...saving the 5800 jobs in Salem County,”¹⁹ New Jersey’s new law is about providing an out-of-market revenue stream to plants that are committed to the market until 2022 – not pricing an environmental externality.

B. P3 Has Consistently Supported Properly Designed and Well-Functioning Markets That Allow All Resources to Compete, Regardless of Fuel Type.

As detailed in P3’s Protest and the supporting affidavit from Dr. Roy Shanker to PJM’s April 9 filing in this proceeding, P3 supports a “Clean MOPR” that removes the problematic exceptions from PJM’s proposed MOPR-Ex. Such a market policy provides the market the best protection from the market-distorting impacts of state subsidization of certain resources. Contrary to the assertions otherwise, P3’s position is completely fuel-neutral and would apply mitigation to all resources that receive material subsidies as defined by PJM.

The suggestion that P3 is advocating for a policy that favors only fossil resources while targeting policies that promote “clean generation” is patently false.²⁰ All resources, regardless of fuel type, that receive a material subsidy would be mitigated under P3’s approach and no materially subsidized resource would be spared. P3’s proposal is designed

¹⁹ [Two Environmentally Friendly Bills Signed Into Law, May 23, 2018](#)

²⁰ Exelon/PSEG Answer, p. 16.

to maintain the integrity of the wholesale market in the face of state efforts to pick winners and losers in the wholesale market. Pointing to provisions of Pennsylvania’s state tax law that exempt electricity, gas, coal, oil and firewood from sales tax is a red herring meant to distract the Commission from the efforts of New Jersey to use direct subsidies to specific plants in order to discriminatorily pick which units in PJM will remain in the market.

As to the suggestion that the Commission will not find any economic authority to support the “broad proposition” that subsidies are “a problem,”²¹ the Commission should look to the joint work of **A. Joseph Cavicchi**, Executive Vice President, Compass Lexecon; **Richard J. Gilbert**, Emeritus Professor of Economics and Professor of the Graduate School, University of California, Berkeley Former Deputy Assistant Attorney General for Economics, U.S. Department of Justice, Antitrust Division; **Joseph P. Kalt**, Ford Foundation Professor of International Political Economy, Harvard John F. Kennedy School of Government, Harvard University; **Ioannis Kessides**, Senior Lecturer, Ethics, Politics & Economics, Jackson Institute for Global Affairs, Yale University Former Lead Economist, Development Research Group, World Bank; **John W. Mayo** Professor of Economics, Business and Public Policy, McDonough School of Business, Georgetown University Executive Director, Center on Business and Public Policy, Georgetown University; **Janusz A. Ordover**, Professor of Economics, New York University Former Deputy Assistant Attorney General for Economics, U.S. Department of Justice, Antitrust Division; **John C. Panzar**, Professor of Economics, University of Auckland; **Louis W. Menk**, Professor, Emeritus, Northwestern University; **Richard Schmalensee**, Howard W. Johnson Professor of Management, Emeritus, Professor of Economics, Emeritus, & Former

²¹ Exelon/PSEG Answer, p. 16.

Dean, Massachusetts Institute of Technology Sloan School Management. Chairman of the Board, Resources for the Future; **J. Gregory Sidak**, Founder & Chairman, Criterion Economics, LLC. Founder & Co-Editor, Journal of Competition Law & Economics; **James L. Sweeney**, Professor, Management Science and Engineering, Stanford University Director, Stanford University Precourt Energy Efficiency Center; and **Robert D. Willig**, Professor of Economics and Public Affairs, Woodrow Wilson School of Public Policy & International Affairs, Princeton University Former Deputy Assistant Attorney General for Economics, U.S. Department of Justice, Antitrust Division.²² These very distinguished economists felt jointly compelled, without compensation, to pen an amicus brief to the Supreme Court of the United States explaining why a proposed subsidy to new natural gas plants in Maryland, “harms the economic cost efficiency of the PJM capacity and energy markets.”²³

Proponents of the New Jersey Nuclear Subsidy Law will no doubt try to distinguish Maryland’s attempt to subsidize a new natural gas plant by claiming that New Jersey is attempting to address an environmental externality and not change the economics of the PJM markets.²⁴ However, as explained above, the New Jersey program is not about providing appropriate economic compensation for an environmental externality. It is

²² [Brief of Leading Economists as Amici Curiae, Nazarian v PPL; CPV Maryland v PPL, et al, U.S. Supreme Court, Jan. 19, 2016](#) (“Leading Economists Amici Curiae”)

²³ See Leading Economists Amici Curiae, *supra*. While Maryland’s attempt to subsidize new natural gas plants was structured differently than the New Jersey Nuclear Subsidy Bill and targeted different units for subsidization, the impact on the market is similarly damaging. See, [Statement of Dr. Joseph Bowring, IMM for PJM, Establishing Nuclear Diversity Certificate Program, Bill No. 5330, Before the NJ Senate Environment and Energy Committee and the Assembly Telecommunications and Utilities Committee, Dec. 20, 2017](#)

²⁴Willig Declaration, P. 67

about keeping “5800 jobs” in Senator Sweeney’s home county, at the expense of countless other jobs in the PJM footprint, by inappropriately interfering with and "influencing" the competitive wholesale market.

P3’s proposed “Clean MOPR” would provide the best shield for the market, regardless of whether the subsidization is in the form of a ZEC payment to a selected nuclear unit, or a capacity adder to new natural gas plants, as New Jersey enacted in 2011.²⁵ The nature and motivations for subsidies can and do change over the time. The Commission’s obligation under the Federal Power Act to ensure just and reasonable rates in the wholesale market should not.

C. A Properly Designed MOPR Does Not Prohibit States’ Jurisdictional Authority to Manage an In-State Utility's Portfolio of Generation.

The Exelon/PSEG Answer posits that this Commission must cede to a state’s determination of subsidized resources into the wholesale market. The Exelon/PSEG Answer asserts that with respect to a state’s imposition of subsidies for favored capacity resources “ . . . the Commission has no business trying to deter states from protecting citizens’ health and welfare . . .”²⁶ To the extent that states inappropriately seek to "influence" wholesale market rates as the tool to allegedly protect a state’s citizens’ health and welfare, P3 disagrees. As PJM stated, the “U.S. District Court found that while the Illinois ZEC program was not preempted by the Federal Power Act (“FPA”), the FPA did empower PJM and the Commission to impose rules to address any impacts in federal

²⁵ 2011 New Jersey Energy Master Plan, Governor Chris Christie, Lieutenant Governor Kim Guadagno, NJ Board of Public Utilities President Lee Solomon, December 6, 2011, *see* Long Term Capacity Agreement Pilot Program, P.L. 2011, Chapter 9, pp 68-69. [2011 New Jersey Master Plan, Dec. 6, 2011](#)

²⁶ Exelon/PSEG Answer, p. 5.

markets that would result from the Illinois program.”²⁷ Therefore, there can be no question that this Commission can rightfully, and legally, impose rules to address and limit the impacts in federal markets of state-sponsored subsidies.²⁸ Furthermore, the imposition of market-protecting rules does not prohibit a state from exercising its jurisdictional rights to impose specified costs for capacity resources or protection from wholesale competition through the use of state resource adequacy planning. As PJM notes, PJM states can utilize PJM’s fixed resource requirement (“FRR”) rules that permit states and their retail utilities to opt out of the competitive capacity market zonally within a state.²⁹ PJM furthers this important point by noting the following:

Many protests make the point that States have jurisdictional authority to manage their utility’s portfolio of generation. *See, e.g.*, Comment of the Harvard Electricity Law Initiative at 3-8 (May 7, 2018). PJM agrees. But what these protests dismiss is that certain states in PJM decided by legislation to demure from the active exercise of picking and choosing generation resources, to instead rely on federally regulated competitive electricity markets to handle this resource adequacy function on their behalf. As they were free to take this step, they are similarly free to reverse course. No one, and certainly not PJM, appears to argue that state authority in this respect has been forfeit or is preempted and that a state is legally prevented from returning to actively managing its generation portfolio through regulation. **But this Commission can insist if a state elects to have its resource adequacy needs met, in whole or part, by a wholesale market whose outcomes the Commission is duty bound to ensure are just and reasonable, that it then must respect rules in that market which ensure compliance with such FPA standards. Not only is this consequence required by law, it represents a logical and sound policy approach to implement cooperative federalism in this area.** *See* Anthony T.

²⁷ PJM Answer, p. 5, citing, in part, *Village of Old Mill Creek v. Star*, 2017 U.S. Dist. LEXIS 109368, at *43-44 (N.D. Ill. 2017) (“The market distortion caused by subsidizing nuclear power can be addressed by FERC. . . . So long as FERC can address any problem the ZEC program creates with respect to just and reasonable wholesale rates . . . there is no conflict.”), (full footnote omitted)

²⁸ The Commission has recently reaffirmed its belief that it has the authority to address state actions that render wholesale rates unjust and unreasonable, by noting that “The Commission’s existing statutory authority ensures its ability to ameliorate, as needed, detrimental effects on markets within its jurisdiction.” *Brief for the United States and the Federal Energy Regulatory Commission as Amici Curiae in Support of Defendants-Respondents and Affirmance*, dated May 29, 2018, *Village of Old Mill Creek, et al., v. Anthony Star, et al.* Nos. 17-2433 and 17-2445 (consolidated) (7th Cir.), p.7. [Brief of the United States and FERC as Amici Curiae \(7th Cir., May 29\)](#)

²⁹ PJM Answer, pp. 17-18.

Clark, *Regulation and Markets: Ideas for Solving the Identity Crisis*, Wilkinson Barker Knauer LLP, 13 (July 14, 2017).³⁰

As P3 outlined in its initial protest, this proceeding is not about whether states do or do not have the ability to choose their generation mix. This proceeding is about how the wholesale market can maintain its viability if certain individual states in a 14-state regional market are picking the resources for their consumers as well as the consumers in other states. This proceeding is just as much about the states that chose to subsidize certain resources that operate in the wholesale market as it is for the states that chose to allow the markets to work free from targeted state "influence" to support specific, uneconomic plants. The Commission has provided a path for states in PJM to assume resource adequacy responsibilities if any state decides to rely on something other than the PJM markets to determine a specific resource's economic viability. However, if a state elects to stay in the market and rely on the wholesale market to price capacity, then that state must be prepared to accept a just and reasonable wholesale market rate as determined by the Commission.

June 1, 2018

Respectfully submitted,

On behalf of the PJM Power Providers Group

/s/ Glen Thomas
Glen Thomas
Laura Chappelle
GT Power Group
101 Lindenwood Drive, Suite 225
Malvern, PA 19355
gthomas@gtpowergroup.com
610-768-8080

³⁰ *Id.*, footnote 34, p. 18 (emphasis added; citation omitted).

CERTIFICATE OF SERVICE

I hereby certify that in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2017), I have served a copy of the foregoing to all parties on the official service list in these proceedings.

Respectfully submitted,

On behalf of the PJM Power Providers Group

/s/ *Laura Chappelle*

Laura Chappelle
GT Power Group
101 Lindenwood Drive, Suite 225
Malvern, PA 19355
laurac@chappelleconsulting.net
610-768-8080

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