

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

Baltimore Gas & Electric Company)	
)	Docket No. EL24-149-000
PECO Energy Company)	
)	

**JOINT PROTEST OF THE
ELECTRIC POWER SUPPLY ASSOCIATION
AND THE PJM POWER PROVIDERS GROUP**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”) (18 C.F.R. § 385.213) and the Combined Notice of Filings issued on October 2, 2024,¹ the Electric Power Supply Association (“EPSA”)² and The PJM Power Providers Group (“P3”)³ respectfully submit the following protest to the Petition for Declaratory Order (“Petition” or “PDO”) submitted by Baltimore Gas & Electric Company (“BGE”) and PECO Energy Company (“PECO”) (jointly, “Petitioning Utilities”) on September 30, 2024, pursuant to 18 C.F.R. §§ 381.302 and 385.207(a)(2).

¹ Federal Energy Regulatory Commission, *Combined Notice of Filings #1*, (Issued October 2, 2024).

² EPSA is the national trade association representing competitive power suppliers in the U.S. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. EPSA seeks to bring the benefits of competition to all power customers. These comments represent the position of EPSA as an organization but not necessarily the views of any particular member with respect to any issue. EPSA filed a doc-less intervention in this proceeding on October 2, 2024.

³ P3 is a non-profit organization dedicated to advancing federal, state and regional policies that promote properly designed and well-functioning electricity markets in the PJM Interconnection, L.L.C. (“PJM”) region. Combined, P3 members own over 83,000 MWs of generation assets and produce enough power to supply over 63 million homes in the PJM region covering 13 states and the District of Columbia. These comments represent the position of P3 as an organization but not necessarily the views of any particular member with respect to any issue. For more information on P3, visit www.p3powergroup.com. P3 filed a doc-less intervention in this proceeding on October 3, 2024.

EPSA and P3 protest the Petition because the declarations requested are overly broad and ignore that there may be an array of contractual and operational structures utilized by co-located generation and end-use load. While the jurisdictional and interconnection agreement issues are described in the Petition as simple and clear, co-location remains a new and innovative approach to serving certain large end-use customers, with a wide range of emerging potential structures and business relationships. This is, in fact, the impetus behind the Commission's upcoming Commissioner-led technical conference, *Large Loads Co-Located at Generating Facilities*, to be held on November 1, 2024.⁴ There is no reason for the Commission to jump ahead of that discussion to mollify the Petitioning Utilities desire to ensure that these large loads are by definition distribution utility retail customers, regardless of their arrangements with a generation provider.

I. BACKGROUND

The Petitioning Utilities seek declarations from the Commission "to remove uncertainty about the procedure for the co-location of end-use load at generator interconnections."⁵ Primarily the requested declarations address jurisdictional issues regarding the end-use load that has entered a co-location arrangement in order to declare – as the Petitioning Utilities argue – that FERC's Order No. 2003 on generator interconnection procedures⁶ applies to generation only, not end-use load, and that the

⁴ Federal Energy Regulatory Commission, Third Supplemental Notice of Commissioner-Led Technical Conference, *Large Loads Co-Located at Generating Facilities*, Docket No. AD24-11-000, scheduled for November 1, 2024, (October 10, 2024).

⁵ Petition, p. 1.

⁶ *Standardization of Generator Interconnection Agreements & Procedures*, Order No. 2003, 68 FR 49,846 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 at PP 1, 7 (2003) ("Order 2003"), *order on reh'g*, Order No. 2003-A, 69 FR 15,932 (Mar. 26, 2004), FERC Stats & Regs. ¶ 31,160 ("Order 2003-A"), *order on reh'g*, Order No. 2003-B, 70 FR 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2005) ("Order

end-use load “interconnection” is a matter of state jurisdiction outside of any federal scope of authority. Further, the Petition asks for clarifications on the substance and required consent for modified existing generator interconnection agreements to accommodate any new or modified nature and purpose of the interconnection.

The matters that instigated the broad request from the Petitioning Utilities are negotiations between the Petitioning Utilities and Constellation Energy Generating, LLC (“Constellation”) regarding possible co-location arrangements at Constellation’s Calvert Cliffs Nuclear Power Plant (“Calvert Cliffs”) in BGE’s service territory and Constellation’s Limerick Nuclear Power Plant (“Limerick”) in PECO’s service territory. Attached to the Petition is correspondence between the utilities and Constellation over the completion of studies and reviews needed to move forward with these co-location negotiations, with each stating that the other is withholding either information or input needed to move forward with possible co-location contracts. As the Petition comes from the utilities, the claim is that the co-location arrangement necessarily modifies the existing generator interconnection agreement, which requires consent from the distribution utility, and also requires a service request from the generator to the distribution utility under a “routine, well-understood, and...successfully implemented” process.⁷

II. PROTEST

Given the numerous details in and underlying the exchanges between the Petitioning Utilities and Constellation, EPSA and P3 are concerned that – ostensibly in

2003-B”), *order on reh’g*, Order No. 2003-C, 70 FR 37,661 (June 30, 2005), FERC Stats & Regs. ¶ 31,190 (2005) (“Order 2003-C”), *aff’d sub nom. Nat’l Ass’n of Regul. Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *see also Ameren Servs. Co. v. FERC*, 880 F.3d 571, 574 (D.C. Cir. 2018) (Order No. 2003).

⁷ Petition, p. 5.

an attempt to resolve those individual disputes – the PDO is overly broad and would lock-in one-size-fits-all assumptions about the jurisdictional and factual posture of co-located load interconnection agreements that almost certainly will not apply to all co-location arrangements. A Modified Interconnection Service Agreement must be submitted to the Commission for approval, as the Petition itself acknowledges,⁸ for this very reason: proper administrative procedure requires the assessment of individual co-location arrangements on a case-by-case basis.

That said, if there are issues of general concern or applicability worthy of discussion, EPSA and P3 expect such issues will be raised at the November 1 FERC technical conference convened to address those very issues and variations. Beyond the discussion during the technical conference, EPSA and P3 assume that all interested parties will have the opportunity to participate in the docket through post-conference comments, which is an appropriate forum to address generic implications of these arrangements under the Commission's Federal Power Act authority.

Much of the substance of the Petition is based on correspondence between a generation owner/operator and two distribution utilities. But that substance is largely finger pointing from each to the other for information, data, approvals, and explanations needed but not provided. Setting up this seeming stalemate as an issue of fundamental jurisprudence that FERC can generically resolve – for all co-location arrangements – through a set of declarations is a distraction and misplaced. The Commission has broad discretion in how it disposes of petitions for declaratory order.⁹ It is a disservice to

⁸ Petition, p. 3 at footnote 2.

⁹ See, e.g., *Stowers Oil and Gas Co.*, 27 FERC ¶ 61,001 (1984); *New England Ratepayers Ass'n*, 172 FERC ¶ 61,042, at P 35 (2020).

market participants who may consider entering into co-location arrangements in order to directly serve a large load – which have become increasingly critical and of national significance. These arrangements can vary in their configuration sufficiently to invoke different statutory authorities, rules, or laws and therefore should be assessed on an individual basis.

III. CONCLUSION

EPSA and P3 urge the Commission to reject the Petition. The declarations requested are overly broad and do not consider that there may be an array of contractual and operational structures utilized by co-located generation and end-use load. Co-location scenarios, which are newly emerging, innovated sales constructs, will be addressed at the November 1st Commissioner-led technical conference, *Large Loads Co-Located at Generating Facilities*. The Commission should not skip ahead of that discussion to make generic declarations without a specific contract, arrangement, or configuration to be assessed.

Respectfully submitted,

On behalf of the Electric Power Supply Association

/s/Nancy Bagot

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Dated: October 30, 2024

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document via email on each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington, D.C., this 30th day of October, 2024.

/s/Sharon Theodore
Sharon Theodore, VP Regulatory Affairs