

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.))	Docket Nos. ER18-1314-003 ER18-1314-004
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COMMENTS OF THE PJM POWER PROVIDERS GROUP

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or the “Commission”),¹ as well as the Commission’s March 19, 2020, March 25, 2020, and March 31, 2020 notices in the above-captioned proceedings, the PJM Power Providers Group (“P3”)² provides these comments in response to PJM Interconnection LLC’s (“PJM”) March 18, 2020 filing³ in compliance with the Commission’s December 19, 2019 order in Docket Nos. EL16-49-000 and EL18-178-000.⁴

¹18 C.F.R. § 385.212 (2019). Combined Notice of Filings #1, Docket Nos. EG20-103-000, *et al.* (Mar. 19, 2020); Combined Notice of Filings #1, Docket Nos. EC20-48-000, *et al.* (Mar. 25, 2020); and *PJM Interconnection, L.L.C.*, Notice of Extension of Time, Docket Nos. ER18-1314-003, *et al.* (Mar. 31, 2020).

² P3 is a non-profit organization that supports the development of properly designed and well-functioning markets in the PJM region. Combined, P3 members own approximately 67,000 megawatts of generation assets, produce enough power to supply over 50 million homes 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. P3 has separately moved to intervene in this proceeding.

³ Compliance Filing Concerning the Minimum Offer Price Rule, Request for Waiver of RPM Auction Deadlines, and Request for an Extended Comment Period of at Least 35 Days, Docket No. ER18-1314-003 (filed Mar. 18, 2020) (the “Compliance Filing”). *See also* Errata to PJM Compliance Filing re: Hope Creek Nuclear Plant, Docket No. ER18-1314-004 (filed Mar. 25, 2020).

⁴ *Calpine Corp. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239 (2019) (the “December 2019 Order”), *on reh’g*, 171 FERC ¶ 61,035 (2020) (the “December 2019 Rehearing Order”). *See also Calpine Corp. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (2018), *on reh’g*, 171 FERC ¶ 61,034 (2020) (the “June 2018 Rehearing Order” and, together with the December 2019 Rehearing Order, the “Rehearing Orders”).

I. INTRODUCTION

As an initial matter, P3 submits that PJM's Compliance Filing is consistent with the December 19 Order and should largely be approved. Although there are issues in the Compliance Filing that will likely need to be addressed in subsequent proceedings,⁵ the Compliance Filing should be approved with the caveats as discussed herein. Issues and concerns relating to the April 16 Rehearing Order can be addressed in PJM's response to the compliance filing required by the April 16 Rehearing Order and in the PJM stakeholder processes – at the Commission's direction or otherwise.

PJM's Compliance Filing is the result of a robust stakeholder process in which the December 19 Order was discussed at nine separate meetings – four of which were exclusively dedicated to the subject of the December 19 Order and proposed compliance filing.⁶ PJM also set up a special “hotline” in which it fielded hundreds of questions related to the December 19 Order. Although not every issue was provided a fulsome vetting, given the time constraints, PJM should be commended for its outreach and interaction with PJM stakeholders in the ninety days between December 19, 2019 and March 16, 2020.

Although the PJM stakeholder process was robust and produced a largely acceptable filing, the Commission's April 16 Rehearing Order, which was issued one month following PJM's Compliance Filing, provided some helpful clarifications that materially impact PJM's Compliance Filing. The April 16 Rehearing Order also generated some confusion and uncertainty regarding

⁵ *Calpine Corp. v. PJM Interconnection, L.L.C.*, Dockets No. EL16-49-002; EL18-172-002 (consolidated), 171 FERC ¶ 61,035 (2020), *Order on Rehearing and Clarification*, 171 FERC ¶ 61,035 (2020) (the “April 16 Rehearing Order”).

⁶ Compliance Filing, p. 3

auction timing and state default procurement programs that P3 urges the Commission to provide further clarification on as soon as possible.

For example, the crux of the December 19 Order is the Commission’s proposed definition of a “State Subsidy.”⁷ While P3 took issue with certain aspects of the Commission’s proposed exemptions to the definition, in general, P3 believes that the Commission presented a workable definition of a subsidy that captures many of the market-distorting subsidies that the Minimum Offer Price Rule (“MOPR”) is designed to address. PJM’s Compliance Filing adds several important qualifications to the Commission’s definition – including specific language that excludes the increases in market prices as a result of the Regional Greenhouse Gas Initiative (“RGGI”) and clear guidance that voluntary, arm’s length renewable energy credit (“REC”) purchases that were not made pursuant to a state initiative should not trigger the MOPR. The Commission provided appropriate clarifications as it relates to RGGI and voluntary REC purchases that are consistent with PJM’s Compliance Filing.

However, the Commission also interjected in the April 16 Rehearing Order issues related to the timing of the next PJM Base Residual Auction (“BRA”) and implementation of state default procurement programs that would benefit from further guidance from the Commission. P3 urges the Commission to use its deliberations surrounding PJM’s Compliance Filing to address these issues and provide further direction to PJM and its stakeholders.

II. COMMENTS

A. The Timing Of The 2019 Base Residual Auction

The delay of the May 2019 Base Residual Auction for Delivery Year 2022/2023 is well beyond the pale of acceptable. For the sake of suppliers, consumers and the sanctity of the PJM

⁷ December 19 Order, P 67.

wholesale market, resumption of these auctions must become a priority for the Commission and PJM. PJM and the Commission continue to look to each other to “make the call” on the timing of the next auction. P3 urges the Commission to end this back and forth and provide specific direction to PJM so these auctions can resume.

The impacts of the auction delay have been far reaching. Decisions related to investments and maintenance have been thwarted. Projects have not been financed or refinanced. Utilities have been forced to adjust their default procurement programs to account for the lack of forward price signals.⁸ Consumers have not been able to enter pricing contracts because of the significant unknowns. It has been approximately two years since PJM last conducted a Base Residual Auction. Every day without one moving forward is a day too long.

In fact, Moody’s Investors Service expressed concerns regarding the auction timing in August of 2019. At the time, Moody’s offered, “We see the uncertainty produced by the auction's delay as credit negative....Lack of certainty on forward capacity prices inhibits market participants' ability to make decisions on where plants should be added or retired and creates an overhang on investment in the market.”⁹ This uncertainty has only gotten worse since August of 2019 and, since then, companies have had their credit ratings downgraded effecting billions of dollars of debt.¹⁰

Unfortunately, PJM informed stakeholders at the April 30th Markets & Reliability Committee (“MRC”) meeting that it intends to run the auction 6.5 months following the Commission’s final order on the compliance filing stemming from the April 16 Rehearing Order,

⁸ Energy Choice Matters, April 9, 2020: <http://www.energychoicematters.com/stories/20200409c.html>

⁹ Moody’s Investors Service, *Regulatory order delaying PJM capacity auction is credit negative for merchant power projects*, August 1, 2020, page 1.

¹⁰ See, Moody’s Investors Service, *Rating Action: Moody's revises Lightstone Generation's outlook to negative from stable*, April 23, 2020.

instead of on this Compliance Filing. Our organization and its members have consistently encouraged PJM to schedule the delayed 2019 auction on a shorter timeline than the one proposed by PJM in its Compliance Filing. Simply stated, P3 believes that PJM does not need over 6 months to prepare for and run an auction. This fact is highlighted by PJM's own Compliance Filing, in which it proposes a 4.5-month time period for pre-auction activities for the subsequent BRAs for the 2023/2024, 2024/2025 and 2025/2026 Delivery Years. While P3 is sensitive that additional work is required of both PJM and the Independent Market Monitor ("IMM") to run an auction under these new rules, given the extraordinary circumstances, every effort needs to be pursued to have these auctions run as soon as possible.

P3 respectfully requests that the Commission direct PJM to commence the auction preparation process following its order on this March 18 Compliance Filing and prior to the Commission's ruling on the second compliance filing stemming from the April 16 Rehearing Order.¹¹ At a minimum, the Commission could settle the issue of the definition of a State Subsidy in this Compliance Filing and allow capacity resources to make the determination within 21 days of the order on this Compliance Filing as to whether or not they are subject to the Minimum Offer Price Rule. For those units that are considered subsidized and not eligible for an exemption, PJM and the IMM could immediately commence the unit specific review process for those units that elect that process. The Commission could also finalize Net CONE and ACR values in this proceeding which, again, would facilitate the efforts to mitigate subsidized resources. Finally, new gas-fired resources that were planning on participating in the May 2019 auction and already went through the unit specific review process could be grandfathered.

¹¹ PJM informed stakeholders at the April 30th MRC meeting that they intend to run the auction 6.5 months following the Commission's final order on that compliance filing.

P3 feels strongly that PJM does not need to forestall commencement of the 2019 BRA preparation and the pre-auction planning process until the Commission's approval of the compliance filing stemming from the April 16 Rehearing Order. PJM should not be idly waiting for the Commission's second order on compliance. Instead, the Commission should direct PJM to commence its auction preparation following its approval in this compliance proceeding and then direct PJM, as part of the second compliance process, to derive a timeline shorter than 6-and-a-half months.

B. Specific Concerns Related To State Default Service Auctions

In light of the Commission's April 16 Rehearing Order, P3 requests that the Commission direct PJM to amend its Compliance Filing, or provide further direction to PJM, related to the treatment of the state default service procurement programs.¹² PJM's March 18 Compliance Filing, which was submitted prior to the issuance of the April 16 Rehearing Order, specifically provides that the default service auctions are not State Subsidies:

More particularly, PJM is proposing to codify in its Tariff that the following items are not State Subsidies:.....(e) any state-directed default service procurement program that is competitively procured without regard to resource fuel type (e.g., New Jersey Basic Generation Service, Maryland Standard Offer Service).¹³

PJM's proposed compliance language is at odds with paragraph 386 of the Commission's April 16 Rehearing Order. The language in paragraph 386 suggests that any generator that receives a "payment or financial benefit" that is "derived from or connected to" a state default procurement program would be subject to the MOPR. The paragraph also specifically states that the New Jersey BGS process is a "state-sponsored process" and includes "indirect payments" to generation

¹² April 16 Rehearing Order, P 386.

¹³ Compliance Filing, pp. 12-13.

resources. This language in paragraph 386 has generated numerous questions regarding the Commission's view of resources that supply default load and the application of the MOPR.

Minimally, the Commission should address this conflict. P3 is concerned that language in the April 16 Rehearing Order related to state default service auctions creates confusion for both states and market participants in the PJM footprint. Without further direction from the Commission through the compliance process, the Commission's determination on this issue could undermine the robust financial hedging that market participants undertake because of the potential risks associated with actual physical delivery over which they may have no knowledge or control, as described below. The Commission's determination could be read to require nearly every generator in PJM to consider itself subsidized when participating in PJM's capacity auctions – regardless of whether the resource is receiving a material subsidy or not. To avoid further delay in the BRA timeline, P3 urges the Commission to provide much needed guidance on this issue. The Commission could do so by either ordering PJM to address the issue in the compliance filing required by the April 16 Rehearing Order or by providing guidance to PJM in advance of its June 1 compliance filing.

State default procurement programs are a component of the market design of states that have elected to pursue retail choice. These programs provide a means of procuring power for those consumers, regardless of customer class, who elect not to choose an alternative supplier. While rules vary among jurisdictions, states generally conduct auctions or bidding events in which bidders offer to provide a load-following obligation for a portion of the generation supply to a specific customer class. Winning bidders assume the obligation to provide the amount of power of their winning “tranche” or proportional share of default needs (which can vary depending on shopping penetration and demand). Winning bidders may or may not own generation. Many, if

not most times, winning bidders only line up their supply contracts after they are determined to be the actual auction winners, lest they be left holding stranded contracts. Moreover, since a winning bidder's obligation is load-following, that bidder has no idea how many actual megawatts it will be called upon to supply in the delivery year.

Default service providers generally have significant flexibility to meet their obligations and can enter commercial arrangements of their choosing. This is a positive feature of state default procurement programs and puts competitive pressure on default service providers to seek the lowest possible means to meet their obligations. This competitive check provides state regulator and consumer confidence that the competitive prices produced from default service auctions are just and reasonable.

Importantly, these default service auctions generally occur two years to six months prior to the delivery year. As the Commission is aware, PJM's Base Residual Auctions are scheduled to occur three years prior to the delivery year. As a result, most generators participate in PJM's Base Residual Auctions not knowing if they are committed to providing default service in a state-mandated procurement program. In addition, generators that do not participate in the default service program could be viewed as participating indirectly in the default service auction if that generator supplies an entity that, unknown to the generator, uses the power from such generator to serve load from a default service auction. This could impact nearly every generator in PJM, because generators will not know whether power from their resources are being used to serve load from a default service auction. P3 respectfully suggests that this is not the result the Commission intended and urges the Commission to provide further guidance to PJM on the interaction of state default procurement auctions and the MOPR.

III. CONCLUSION

The PJM March 18 Compliance Filing represents a thoughtful attempt by PJM to address a myriad of challenging issues presented by the December 19 Order. Just as the Commission should be commended for taking bold steps to address a material problem undermining PJM's capacity markets, PJM should be commended for its good faith efforts to comply with the holdings of the order. PJM's Compliance Filing is not perfect, but it does not need to be. There are issues that will likely need to be addressed in subsequent proceedings and stakeholder discussions. The need for further refinements is nothing unusual following groundbreaking decisions by the Commission. For now, and to resume PJM's return to normalcy, PJM's Compliance Filing largely complies with the Commission's December 19 Order and should be approved.

For all of the foregoing reasons, P3 requests that the Commission approve PJM's Compliance Filing and provide additional guidance as described above.

Respectfully submitted,

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Dated: May 15, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document 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 DC, this 15th day of May, 2020.

/s/ Laura Chappelle
Laura Chappelle