UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

Modernizing Electricity Market Design) **Docket No. AD 21-10-000**

COMMENTS OF THE PJM POWER PROVIDERS GROUP (P3)[1]

P3 appreciates the opportunity to offer post technical conference comments following the March 23, 2021, technical conference on resource adequacy in the eastern RTOs. P3 applauds the Commission for a successful conference that covered a wide range of topics and raised critical issues that merit further consideration and discussion. P3 and its members look forward to constructively engaging in the dialogue moving forward at PJM and FERC in hopes of developing market rules that preserve the benefits of capacity markets to PJM and its consumers.

P3 agrees with the comments offered by many participants that FERC should strive to create durable solutions as it relates to the MOPR specifically and to capacity markets in general. Markets benefit from stability, which has been lacking in PJM's capacity construct due to delayed auctions and uncertainty regarding the MOPR. P3 is pleased that PJM has a schedule to run the

[1] 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.

delayed capacity auctions and looks forward to a return to the regular schedule in which capacity auctions are conducted three years prior to the delivery year.

In addition to the importance of regularly scheduled auctions, capacity markets work best when orderly entry and exit is managed by price signals that are reflective of market conditions. Preserving the integrity of the capacity market price signal allows consumers to make appropriate decisions regarding energy efficiency, demand response and energy management while producers benefit from knowing a future revenue stream upon which decisions can be made regarding construction of new facilities or upgrades to existing facilities.

P3 hopes that PJM, its stakeholders, and the Commission share these goals and seek solutions moving forward that will preserve these goals. While PJM's capacity construct is not without its challenges, the general framework has worked well to achieve resource adequacy at just and reasonable rates. The Commission should look to build upon the work that has been done to date as opposed to answering the calls of those who would seek to rip apart its foundation. In order to move forward, P3 offers four specific recommendations, as further explained below, as the Commission seeks to refine the MOPR in PJM:

1. **Appreciate the benefits that capacity markets have provided and make sure they continue**. Competitive pressures have driven down capacity costs while significant market entry and exit have occurred in an orderly manner. The integrity of the capacity market signal is essential for this success to continue.
2. **Let the auctions run.** PJM has gone three years without a capacity auction causing significant challenges for consumers and suppliers. The Commission should be committed in anything it does to retaining the current auction schedule as it works through various issues related to market reform.

3. **Focus on getting a durable solution as opposed to a quick fix.** All indications are that the existing MOPR will not have significant impacts on the scheduled auctions in 2021. PJM and the Commission should use this window to develop a well-thought out and durable approach to the challenge, rather than rush into a partial solution to address an immaterial short-term problem.
4. **Respect the rights of all states.** Individual states should not be allowed to export their policy choices to other states. Moreover, the right of states who have elected not to subsidize certain resources should be respected as much as the rights of those states who have elected to do so.

I. Recommendations

1. Appreciate the Benefits that Capacity Markets have Provided, and Insure They Continue.

It is unlikely that any commentor will come before the Commission and argue that PJM's capacity market is without its challenges. Given that capacity markets are fundamentally a mechanism to guarantee a certain level of supply in a competitive commodity market, it is likely that there may never be a perfect capacity market design. However, as it relates to electricity and capacity markets, the perfect should not be the enemy of the good.

Electricity is a unique commodity and capacity markets are an occasionally awkward, but arguably essential, tool that reflect our perpetual need for electricity without interruption. Consider that our society tolerates shortages of certain commodities other than electricity during extreme conditions. Shelves are bare of water bottles in the advance of hurricanes and bread and milk usually run short before a blizzard. Electricity is unique. We can never tolerate not having enough electricity when called upon particularly during times of weather emergencies as recent events in Texas and California make abundantly clear. Lack of electricity leads to loss of life, as has been unfortunately proven over many years.

The capacity market is the security blanket that allows market participants and policy makers to have comfort today that there will be sufficient power three years in the future. At its core, the capacity market is designed to achieve resource adequacy through competitive principles in a market structure that does not rely on integrated resource planning or other means of mandating investment in power generation. Whether it is couched in terms of "missing money" or minimized as an "administrative construct," the capacity market is a big part of the reason that PJM has enjoyed low prices, robust reliability and sustained environmental progress over the past two decades.

When compared to other regions, PJM has fared remarkably well. The PJM region has not experienced the shortfalls that California and Texas endured. PJM capacity prices are consistently lower than other parts of the country and lower than payments resulting from utility rate cases.[2] PJM endured two polar vortexes in 2014 and 2015 that were not able to break the system and PJM has enjoyed enormous investment in new facilities and orderly retired older, less efficient and many times environmentally challenged resources.[3]

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[2]. In Michigan, the two largest utilities in that state have instituted potential capacity payments (entitled a State Reliability Mechanism) of approximately $300/MWday. See: https://www.michigan.gov/documents/mpsc/MPSC_Issue_Brief_--_State_Reliability_Mechanism_606769_7.pdf.

[3] "Since its inception in 2007, more than 33,000 MW of coal generation has retired in PJM. At the same time, the capacity market has sent an investment signal for the entry into the region of 40,000 MW of new natural gas generation resources in total; 13,700 MW of wind and solar; 10,000 MW of demand response; and 2,800 MW of energy efficiency resources." Statement of PJM, "Technical Conference on Resource Adequacy in the Evolving Electricity Sector," AD21-10. March 23, 2021, at 3.

Before the Commission embarks on any actions that will whittle away the benefits of capacity markets, it should consider the current state of PJM's markets and contrast that with other regions. Again, capacity markets are not without challenges, but it is difficult to find fault with PJM's current position as it relates to price, reliability, and environmental progress.[4]

Moving forward, it is incumbent upon the Commission, PJM and its stakeholders to build upon the benefits of PJM's capacity market, rather than weaken its foundation. Indeed, capacity markets should evolve to recognize the changing nature of the grid. It is always appropriate to examine existing structures to ensure they are properly constituted; however, P3 cautions the Commission from straying too far from the fundamentals of PJM's current construct that have delivered value to consumers, reliability to the region and emissions reductions for a better planet.

2. Let the Auctions Run.

While P3 will defer to the analysis of the PJM Independent Market Monitor and others, the implications of the existing MOPR on the next two to three Base Residuals Auctions ("BRA") appear minimal to non-existent. Most currently subsidized resources are exempt from the application of the MOPR, have default MOPR floors that are well below historical clearing prices, or can use the unit specific review process to establish default floor values below historical clearing prices.

Moreover, the Maryland offshore wind projects, which are significantly above market propositions, have been delayed until at least 2026.[5] As it relates to New Jersey, the earliest possible in-service date for those projects is 2024, but, given the experience in Maryland, that date

[4] For information on emissions reductions in PJM, see, https://www.pjm.com/-/media/library/reports-notices/special-reports/2019/2019-emissions-report.ashx?la=en
[5] See, https://delawaretoday.com/life-style/skipjack-wind-farm/

could conceivably slip. Given the premium that New Jersey and Maryland consumers will be paying for offshore wind capacity, the current MOPR will most certainly apply to offshore wind facilities. However, given the continued delay of the in-service dates for these projects, and given that the BRA for delivery year 2025/26 is not scheduled to be conducted until January of 2023, PJM and its stakeholders have ample time to address any impacts of a MOPR on the Maryland project and likely the New Jersey project, which represent the most significant threat of consumers paying twice for capacity.

The Commission should also be skeptical of claims of significant consumer impacts by 2025, if quick action is not taken to revise the MOPR. Both Sierra Club and the New Jersey Board of Public Utilities in their pre-filed testimony point to a single power point presentation prepared by the Brattle Group claiming that New Jersey consumers could pay and extra $300 million in 2025 if the current MOPR is in place for that year.[6] This number appears to be based on the staggering assumption that over 8000 MWs of nameplate subsidized capacity would participate in the capacity auctions either occurring in June of 2022 or January of 2023. Brattle appropriately assumes that the state's subsidized nuclear units would continue to clear the auction (given the ability of New Jersey's subsidized nuclear units to bid into the auction at extremely low levels), but then appears to assume incorrectly that every single resource necessary to meet New Jersey's resource would be bid into the auction and none of these resources would receive a capacity commitment following the application of the MOPR. Both assumptions, if true, are highly questionable at best.[7] Other assumptions about clearing prices and capacity factors are not fully

[6] To view the report reference by Sierra Club and New Jersey Board of Public Utilities - https://www.nj.gov/bpu/pdf/ofrp/2021-03-11%20RA%20economic%20analysis%20results%20deck%20(1).pdf
[7] See comments of the PJM Independent Market Monitor, https://www.monitoringanalytics.com/filings/2021/IMM_Comment_Docket_No_EO20030203_20210305.pdf at 3.

explained either. Before taking abrupt action, the Commission needs to better understand the justification offered by Sierra Club and the New Jersey Board of Public Utilities as a basis for quick action by the Commission or possible delay of future capacity auctions based on concerns about consumer impact.

The importance of timely auctions was articulated by the PJM Industrial Customer Coalition ("PJM ICC") in a joint letter with P3 to the PJM Board in October of 2019. Stressing the importance of timely auctions, the PJM ICC and P3 offered:

> "From a customer's perspective, a forward capacity auction provides businesses like PJMICC members with the ability to manage energy costs and make appropriate business decisions knowing the magnitude of future capacity costs. Many customers in states with retail access have retail contracts that incorporate the three-year forward-capacity construct. Those arrangements are likely already impacted by the delay in the capacity auction. Moreover, many businesses either participate or anticipate participating in capacity auctions as demand resources. A forward view of those commitments supports business decisions either to invest in new facilities or commit to limited production in the future. Industrial customers also value the coordination that occurs between the resource adequacy and transmission planning functions at PJM to support more efficient investment of customer resources."[8]

P3 members continue to have concerns related to auction delay in that investment decisions for new and existing facilities hinge on capacity market outcomes. Uncertainty can lead to higher capital costs at minimum and auction delays could render certain projects infeasible due to time constraints. P3 and its members are willing to work through any and all issues related to capacity market reforms. However, as those discussions are occurring, it is imperative that additional auction delays be avoided and the current PJM BRA schedule remains unaltered.

[8] https://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/20191025-pjm-industrial-customer-coalition-and-p3-letter-re-the-pjm-capacity-market.ashx

3. Focus on Getting a Durable Solution as Opposed to a Quick Fix.

To be clear, P3 would prefer a world with no MOPR. However, as history teaches us, in an interstate market like PJM there needs to be a mechanism that addresses the ability of a state actor to influence market outcomes to the detriment of other market participants and foist its policy choices on to neighboring states. If not the MOPR, something else is necessary to preserve a functional regional market. Given the very nature of a regional market, it is not only appropriate, but necessary, that certain regulatory decisions be made at the regional/federal level as the actions of one state could impact the market of the 13 other states in the PJM region and perhaps undermine the efforts of another state to achieve its desired policy outcome. The Pennsylvania Public Utility Commission succinctly made this point to a federal court about New Jersey's efforts to advance a state interest (subsidizing a new natural gas fired power plant) at the expense of the regional wholesale market:

> "The PAPUC contends that state-sponsored subsidies such as New Jersey's LCAPP are counterproductive and interfere with the efficient operation of RPM. Under the RPM mechanism, capacity prices respond to market conditions, increasing when and where capacity is scarce and decreasing when and where capacity is plentiful. When RPM's capacity prices are high, it indicates that there is demand for additional capacity and new capacity resources should be provided. When RPM's capacity prices are low, it indicates that there is no need for new capacity to enter the market and higher-cost capacity resources should be retired. These pricing signals help to ensure that there is sufficient capacity available to meet reliability requirements.
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> State-sponsored subsidy programs like the LCAPP program distort these pricing signals and interfere with the proper functioning of the market. When state subsidies incent generators to enter the market below their true economic costs, capacity prices fall in the short term. **This price decline affects not only the state where the subsidized generator is located but significantly impacts market operations across the PJM region and discourages capacity investment at cost-based prices.** Although this reduction in price of capacity investment may seem positive, the actual costs of distorting the market's pricing signals greatly outweigh perceived short term "benefits" resulting from lower capacity prices. Lower capacity prices

> reduce the incentive for new capacity to enter the market even if that new capacity would be more efficient than the subsidized generators and even if that new capacity is needed to ensure reliability. Because more efficient resources are excluded from the market by the subsidized participants, state subsidy programs result in higher prices in the long-term."[9]

New Jersey's LCAPP policy (referenced above) speaks to the need for some form of market protection. New Jersey offered a myriad of reasons for pursuing its LCAPP policy in 2011. Among the "benefits" associated with the decision to pursue this subsidy was the ability to achieve a net benefit to consumer as the result of an exercise of buyer market power.[10] Following the efforts of New Jersey and Maryland to exercise buyer market power in the name of jobs and reliability, PJM and its stakeholders submitted proposed tariff revisions specifically aimed at the very exercise of market power employed by New Jersey and Maryland (the subsidization of new natural gas plants via a contract for differences). The Commission rightly agreed with PJM that rules need to be in place, "to address the concern that some market participants might have an incentive to depress market clearing prices by offering supply at less than a competitive level."[11]

While there have been suggestions that the MOPR should only apply when states are attempting to exercise market power, moving to an intent-based evaluation is a slippery slope that should be avoided in Commission policy. Ascribing good or bad intention to a state actor is a subjective exercise which will most certainly lead to additional implementation challenges. For example, a state action could be motivated to preserve thousands of local power plant jobs and reduce a state's total capacity payments by hundreds of millions of dollars. Was the state

[9] PAPUC Amicus Brief at 13-14, 766 F.3d 241It. (emphasis added). http://www.puc.state.pa.us/General/pdf/FERC/DN_EL16-33-000.pdf (emphasis added).

[10] Order of the New Jersey Board of Public Utilities, "In the Matter of the Long-Term Capacity Agreement Pilot Program," Docket Number: EO11010026, Mach 29, 2011, at 8.

[11] 135 FERC ¶ 61,022 at 6.

motivated by the job retention benefits of the subsidy or the cost savings from the exercise of market power? Who gets to make that evaluation? PJM? The PJM IMM? FERC? The state?

Moreover, any state could claim that the grid is more reliable if an uneconomic plant is retained, which could be justified as a state policy in pursuit of a more reliable grid. Just because a state "covers its tracks" as it relates to intention does not mean its actions are not market distortive or benignly motivated. The Commission should not set up a scheme that relies on some evaluation of state intent which really is irrelevant to the question of market impact and preservation of capacity market integrity. Instead, the Commission should focus on objective measures of market power combined with limitations on the ability to export policy choices to other states.

P3 continues to believe that MOPR or some form of market protection cannot be eliminated.[12] However, the organization is open to alternatives that preserve the core tenets of a capacity market as articulated by the Commission.[13] P3 and its members intend to work diligently through the PJM stakeholder process in hopes that a better mousetrap than the MOPR can be found. However, throughout that process, P3 will remain committed to solutions that maintain a functional capacity market that appropriately reflects the value of capacity and is not influenced by the market distorting effects caused by the subsidization of uneconomic resources.

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[12] As David Patton, market monitor for MISO, ERCOT, NY ISO and ISO NE, offered at the technical conference, "However, in a competitive market paradigm, allowing states unlimited flexibility to enter into long-term contracts will eventually devolve into the centralized planning paradigm as subsidized entrants push down wholesale prices to the point where no resource is financially viable without a bilateral contract with the central procurement entity." Testimony of Potomac Economics, AD21-10, March 23, 2021 at 3.

[13] The Commission has articulated the core feature of a capacity market as follows:

1. facilitate robust competition for capacity supply obligations,
2. provide price signals that guide the orderly entry and exit of capacity resources,
3. result in the selection of the least-cost set of resources that possess the attributes sought by the markets,
4. provide price transparency,
5. shift risk as appropriate from customers to private capital, and
6. mitigate market power.

ISO New England Inc. 162 FERC ¶ 61,205 (CASPR Order) March 9, 2018 at p. 9.

4. Respect the Rights of All States

As an RTO, PJM is uniquely challenged to support a grid and market in which 14 separate political jurisdictions with very disparate state regulatory structures must co-exist. PJM has states with various structures: traditional vertically integrated states, states that are fully committed to competitive wholesale and retail markets, and states that have restructured, yet want to dictate resource choices for their consumers and subsidize specific forms of generation. PJM's and FERC's challenge is to join disparate state regulatory structures into a single regional RTO market that is beneficial to all states who have elected to join.

PJM's and FERC's jobs are not to pick one structure over another, but rather oversee a competitive wholesale market that produces just and reasonable rates consistent with the Federal Power Act knowing that any state can voluntarily withdraw from the market if it so chooses. While states certainly have an interest and need to be constantly vigilant, informed, and proactive, the regulatory authority over the wholesale market unquestionably rests with FERC. States voluntarily entered such an arrangement in the early 2000s and can leave at any moment. The courts have upheld this arrangement and the Commission should not be afraid to proactively continue its proper oversight and the regulatory role that it was given to it by Congress through the Federal Power Act. The Commission appropriately did exactly that in 2016 regarding the efforts of AEP and FirstEnergy to secure a purchase power agreement (PPA) from their regulated affiliates without a competitive bid process.[14] Under the Commission's affiliate power sales restrictions, no wholesale sale of electric energy or capacity may be made between a franchised public utility with captive customers and a market-regulated power sales affiliate without first receiving Commission

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[14] *EPSA et al.,* v. *FirstEnergy Solutions Corporation, et al*., 155 FERC ¶ 61,101 (April 27, 2016); *EPSA, et al.,* v. *AEP Generation Resources, Inc., and Ohio Power Co.*, 155 FERC ¶ 61,102 (April 27, 2016).

authorization under section 205 of the Federal Power Act. However, the Public Utilities Commission of Ohio approved precisely what the Commission proscribed, and the Commission appropriately required the state commission-approved PPA (which was a wholesale sale of power) to be effectuated consistent with FERC standards.[15] FERC appropriately told the state, in this case Ohio, that its actions were inconsistent with Federal law.[16]

As a matter of policy, P3 feels strongly that states should not be able to export their policy decisions to other states and FERC has a role to play in this regard. Just as New Jersey should not be impacted by West Virginia's decision to subsidize coal fired generation; West Virginia should not face consequences from New Jersey's decision to subsidize offshore wind. The nuclear facilities that New Jersey and Illinois have elected to subsidize are in direct competition with nuclear facilities in Pennsylvania, Maryland and Ohio that have elected not to subsidize their state's nuclear facilities. The decision not to subsidize certain resources is a policy decision that needs to be respected equally with those competing decisions to subsidize certain resources.

As changes to the MOPR and other areas of PJM's capacity construct are contemplated, the Commission must be cautious not to favor the policies of one state directly or indirectly over another. All state policy choices must be respected and for that to occur, FERC occasionally must limit the actions of one state to protect the integrity of the regional market upon which other states depend. States joined PJM voluntarily and have greatly benefited from the access to a broad range of resources and the downward cost pressures associated with it. The continuation of these benefits for all states comes with the recognition that a federal regulator may limit the actions of

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[15] 155 FERC ¶ 61,101, *supra*.

[16] Federal intervention also could save consumers hundreds of millions of dollars in some cases. Consider in New Jersey, the invalidation of the of the 2011 LCAAP law by the United States Supreme Court will likely save New Jersey consumers over a billion dollars in subsidies to new natural gas plants that did not need them in order to be constructed (as New Jersey contended at the time). See, https://www.p3powergroup.com/siteFiles/News/2485D2A986AFE85AB02994D05F6DD55B.pdf at 12-13.

some states so as to protect the interests of the broader region. All states understood this broader federal market design when they approved their utilities joining PJM and all states are counting on FERC to play its appropriate role when called upon. No state policy enjoys a higher legitimacy than another's and FERC must be cautious to respect the policies of all PJM states – including those that have elected not to favor certain forms of uneconomic generation.

II. CONCLUSION

P3 remains committed to the promise of a competitive capacity market in PJM and appreciates the challenge faced by PJM and the Commission of placing the proper parameters around actions that may undermine the broader regional market upon which all states depend. While states have policy choices that need to be respected, every PJM state also has responsibilities associated with RTO membership that must be honored. PJM's low capacity prices, robust reliability and dramatic sustained environmental progress are all a testament to the value of a well-designed and properly functioning market. While improvements can always be made, the core of what PJM and FERC have assembled should be maintained for the benefit of all.

Respectfully submitted,

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April 26, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 26th day of April, 2021.

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