



## I. COMMENTS

PJM filed its Motion for an Order on Remand in response to the decision of the United States Court of Appeals for the District of Columbia Circuit in *NRG Power Marketing, LLC, et al v. FERC*. (“*NRG*”).<sup>4</sup> The Court of Appeals held in *NRG* that, in the orders under review,<sup>5</sup> FERC exceeded its authority under Section 205 and “vacate[d] FERC’s Orders with respect to unit-specific review, the competitive entry exemption, the self-supply exemption, and the mitigation period,” and on that basis “remand[ed] the matter to FERC.”<sup>6</sup>

Given the Court’s action in *NRG* to vacate FERC’s Orders with respect to unit-specific review, the competitive entry exemption, the self-supply exemption, and the mitigation period, PJM market participants – particularly those seeking to bring new capacity to the market – have no clear understanding of the current standards or the process by which units may participate in PJM’s capacity auctions. Direction is needed because MOPR exemption requests are due to PJM on December 26, 2017, for the May 2018 Base Residual Auction.

P3 appreciates PJM’s Motion to bring clarity on the PJM MOPR that is necessary in light of the D.C. Circuit’s vacation of parts of the Commission’s 2013 order. While

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<sup>4</sup> *NRG Power Marketing, LLC, et al v. FERC*, 862 F.3d 108 (D.C. Cir. 2017) (“*NRG*”).

<sup>5</sup> *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 (2013), *order on rehearing and compliance*, 153 FERC ¶ 61,066 (2015).

<sup>6</sup> *NRG*, at 117.

strong arguments exist that, following *NRG*, the MOPR should return to the 2011 MOPR Orders<sup>7</sup>, in the interest of market certainty, P3 supports PJM’s Motion.

The question before the Commission on remand is a narrow one: should the Commission approve or disapprove what PJM asserts is a validly pending 205 filing? The Court invalidated the Commission’s 2012 action on that filing, therefore, consistent with PJM’s theory, the filing is still pending and can be acted upon by the Commission. P3 supported the original 205 filing as it addressed a threat to the competitive market at that time and believes the prudent path forward for the Commission on remand is to approve the 2012 205 filing as submitted.

P3 agrees with PJM that “the nature of the potential threats to the efficient operation of its wholesale markets may have evolved since 2012, and accordingly, prospective changes to its MOPR, or its Tariff more generally, may be warranted.”<sup>8</sup> Many P3 members are seeking prospective changes to the MOPR in light of evolving views on potential threats to the market<sup>9</sup> and PJM has an ongoing stakeholder senior task force considering MOPR-related issues.<sup>10</sup> The Commission has an opportunity before it in other dockets and may have future opportunities to address broader issues related to

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<sup>7</sup> On April 12, 2011, the Commission largely approved PJM’s February 2011 MOPR revisions accepting PJM’s proposed tariff changes subject to certain conditions and the submission of a compliance filing (“April 2011 MOPR Reform Order I”). *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 (2011) (“April 2011 MOPR Reform Order I”), *order on reh’g*, 137 FERC ¶ 61,145 (2011), *order on reh’g*, 138 FERC ¶ 61,194 (2012), *aff’d sub nom. N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74 (3d Cir. 2014). In May 2011, PJM filed changes to the MOPR in compliance with the April 2011 MOPR Reform Order I. In November 2011, the Commission issued an order on PJM’s May 2011 compliance filing (as well as on and the July 2012 self-supply technical conference that the Commission ordered) (“November 2011 MOPR Reform Order”) (together “2011 MOPR Orders”).

<sup>8</sup> PJM Motion at p 10.

<sup>9</sup> *Calpine Corporation, et al v. PJM Interconnection, L.L.C.*, Docket No. EL16-49, March 21, 2016.

<sup>10</sup> *See* PJM Motion at p 10. The PJM ongoing senior task force considering these issues is the Capacity Construct/ Public Policy Senior Task Force (CCPPSTF).

the MOPR; however, for purposes of this proceeding on remand, the Commission should simply accept PJM's 2012 205 filing as filed on December 7, 2012.<sup>11</sup>

## II. CONCLUSION

P3 respectfully requests that the Commission consider these comments and issue an order accepting PJM's Motion for Order on Remand.

Respectfully submitted,

On behalf of the PJM Power Providers Group

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<sup>11</sup> *PJM Interconnection LLC*, Docket No. ER13-535-000 (Dec. 7, 2012).

## 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 14<sup>h</sup> day of November 2017.

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