

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

CPV Power Holdings, L.P.,                    )  
Calpine Corporation, and                    )  
Eastern Generation, L.L.C.                )

Docket No. EL18-169-000

**ANSWER IN SUPPORT OF COMPLAINT  
OF THE PJM POWER PROVIDERS GROUP**

Pursuant to Rules 213 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure,<sup>1</sup> and the Commission’s Notice of Complaint, filed on June 1, 2018, the PJM Power Providers Group (“P3”)<sup>2</sup> respectfully submits this Answer in support of the Complaint filed on May 31, 2018, by CPV Power Holdings, L.P., Calpine Corporation, and Eastern Generation, L.L.C. (“Complainants”) against PJM Interconnection, L.L.C. (“PJM”), pursuant to Sections 206 and 306 of the Federal Power Act (“FPA”) and Rule 206 of the Commission’s Rules of Practice and Procedure (“Complaint”).<sup>3</sup>

The Complaint alleges that PJM’s Open Access Transmission Tariff (“Tariff”), and more specifically, its existing Minimum Offer Pricing Rule (“MOPR”), are unjust and unreasonable because the Tariff does not include any provisions to effectively prevent the suppression of

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<sup>1</sup> 18 C.F.R. §§ 385.213 (2017).

<sup>2</sup> 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](http://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.

<sup>3</sup> Complaint Seeking Fast Track Processing, CPV Power Holdings, L.P., Calpine Corporation and Eastern Generation, L.L.C., v. PJM Interconnection, L.L.C., Docket No. EL18-169-000, filed on May 31, 2018. (“Complaint”).

prices by generation resources receiving out-of-market subsidies designed to supplement FERC-approved wholesale power rates. The Complainants request that the Commission act expeditiously to protect PJM’s capacity market, the Reliability Pricing Model (“RPM”), from below-cost offers for resources these receiving market-distorting subsidies.

P3 supports the Complaint and urges the Commission to swiftly act and grant all of the relief requested therein.

## **I. BACKGROUND**

The Complaint requests that the Commission act expeditiously to protect PJM’s capacity market from below-cost offers from resources receiving out-of-market subsidies. Specifically, the Complaint requests that the Commission act pursuant to its authority under Section 206 of the FPA and require PJM to adopt what Dr. Roy J. Shanker, Ph.D., refers to as a “Clean MOPR,” namely, a MOPR applicable to all materially subsidized resources without categorical exemptions.<sup>4</sup>

As the Commission is well aware, there are several pending proceedings dealing with the issue of state subsidies in the PJM capacity market. Most notably, PJM’s April 9 Filing that proposes either of two mutually exclusive alternatives to replace its current MOPR in order “to address supply-side state subsidies and their impact on the determination of just and reasonable prices in the PJM capacity market.”<sup>5</sup> As more extensively explained by Complainants, a separate

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<sup>4</sup> Complaint, p. 2.

<sup>5</sup> Capacity Repricing or in the Alternative MOPR-Ex Proposal: Tariff Revisions to Address Impacts of State Public Policies on the PJM Capacity Market, Docket No. ER18-1314 (filed by PJM on April 9, 2018) (“April 9 Filing”).

complaint from a group of generation suppliers regarding out-of-market subsidies in the PJM market is also pending in Docket No. EL16-49-000.<sup>6</sup>

The core of Complainants' concern in this proceeding is two-fold. As an initial matter, the Complaint provides additional and convincing evidence, through Dr. Shanker's Affidavit, that out-of-market subsidies are, in fact, harmful to unsubsidized resources in the PJM capacity market.<sup>7</sup> The Complaint's inclusion of an extensive Affidavit from Dr. Shanker proves this point, and certainly confirms PJM's concern that "... submitting offers below the seller's costs can 'have the unintended effect of depressing the market clearing prices in [RTO] markets, thus adversely affecting other market participants.'"<sup>8</sup>

Equally as important, this Complaint stems from the recognition that despite several other docketed proceedings before the Commission, there may not, in fact, exist a clear avenue in which the Commission can take swift action to address the real harm that out-of-market state subsidies can and do have on generating assets in the PJM market. As the Complainants note, while PJM is to be commended for attempting to address this issue by its April 9 Filing that proposes either one of two options, both options fail to produce just and reasonable rates as P3, and numerous other parties, articulated in Docket No. ER18-1314-000.<sup>9</sup> In recognition that a "just and reasonable" solution to the issues with PJM's current Tariff may not be accepted given PJM's proposed alternatives, the Complainants rightfully seek Commission action pursuant to

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<sup>6</sup> Complaint Requesting Fast Track Processing, Docket No. EL16-49-000 (filed March 21, 2016); Motion to Amend, and Amendment to, Complaint and Request for Expedited Action on Amended Complaint, Docket No. EL16-49-000 (filed January 9, 2017).

<sup>7</sup> See Affidavit of Dr. Roy Shanker, Ph.D., "Attachment A," dated May 31, 2018, Docket No. EL18-169-000 ("Shanker Affidavit"), P 19; 22-25.

<sup>8</sup> PJM April 9 Filing, p. 19, citing *Cal. Indep. Sys. Operator Corp.*, 142 FERC ¶ 61,191, at P 28 (2013).

<sup>9</sup> P3 filed a Protest to PJM's April 9 Filing on May 7, 2018, which also included an Affidavit from Dr. Roy Shanker, Ph.D. See Protest of the PJM Power Providers Group, Docket No. ER18-1314-000; ER18-1314-001, dated May 7, 2018 ("P3 Protest").

Section 206 of the FPA to remedy what P3 agrees is the “demonstrably unjust and unreasonable status quo.”<sup>10</sup>

## II. ANSWER

### A. The Commission Should Expeditiously Exercise its Authority Pursuant to Section 206 of the FPA and Order PJM to File a “Clean MOPR” Tariff.

P3 supports the Complaint’s purpose of offering a vehicle for the Commission to require PJM to adopt a “Clean MOPR,” as initially proposed by P3 in its Protest in Docket No. ER18-1314-000.<sup>11</sup> Substantively, P3 supports Complainants proposal that the Commission require PJM to modify the definition of “Material Subsidy” to cover not only material state subsidies, but also material federal subsidies or other support granted after May 31, 2018, the date of the Complaint.<sup>12</sup>

Moreover, P3 supports the procedural recommendation that the Commission utilize its authority under Section 206 of the FPA to ensure just and reasonable rates in PJM’s capacity market. As Complainants assert, there is no other clear avenue which the Commission could utilize to ensure that just and reasonable rules and regulations will exist in the PJM market, given the deluge of out-of-market subsidies.<sup>13</sup> As PJM, the regulated utility, has been unable to file a

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<sup>10</sup> Complaint, p. 23.

<sup>11</sup> P3 specifically incorporates by reference in this docket P3’s comments that were submitted in ER18-1314-000. As P3 noted in its Protest in ER18-1314-000, states that want to choose certain generation technologies for their consumers have options available to them that do not distort the wholesale market rates. See, P3 Protest, p. 21.

<sup>12</sup> Complaint, pp. 19-20.

<sup>13</sup> As Complainants note, “The scope of the EL16-49 Complaint would allow the Commission to take broad action to protect the RPM market from *existing* resources, but would likely preclude the Commission from replacing the currently effective MOPR with a new MOPR applicable to both new and existing resources supported by out-of-market subsidies. At the same time, the limitations on the Commission’s authority under Section 205 of the FPA described in the NRG decision would almost certainly prevent the Commission from conditioning the acceptance of the MOPR-Ex proposal in PJM’s April 9 Filing on the elimination of exceptions and exemptions that will prevent that mechanism from providing adequate protection and that render that proposal unjust and unreasonable.” Complaint at pp. 10-11 (Emphasis in original).

proposed tariff that will ensure just and reasonable rates, it now must fall upon the Commission to make these assurances. The courts have long recognized this Commission's regulatory authority to not only *approve* just and reasonable rates, but also, where need be, to on its own motion *determine* and *fix* rates to meet the necessary statutory standards. Thus, the D.C. Circuit Court has recently held:

The Federal Power Act (the "Act") requires that "[a]ll rates and charges ... by any public utility for or in connection with the transmission or sale of electric energy" "and all rules and regulations affecting or pertaining to such rates or charges" must be "just and reasonable" and not "undu[ly] preferen[tial]." 16 U.S.C. § 824d(a), (b). Two sections of the Act "govern FERC's adjudication of just and reasonable rates...." *FirstEnergy Serv. Co. v. FERC*, 758 F.3d 346, 348 (D.C. Cir. 2014). Under Section 205, when a public utility seeks to "change" any rates or rules, it must file the proposed changes with the commission. 16 U.S.C. § 824d(d). The utility bears "the burden of proof to show that the increased rate ... is just and reasonable...." *id.* § 824d(e). When acting on a public utility's rate filing under section 205, the Commission undertakes "an essentially passive and reactive role" and restricts itself to evaluating the confined proposal. *City of Winnfield v. FERC*, 744 F.2d 871, 875-76 (D.C. 1984). [860 F.3d 663]

Relatedly, Section 206 authorizes the Commission to investigate existing rates on a complaint or its own initiative. 16 U.S.C. § 824e(a). If the Commission finds that a rate is "unjust, unreasonable, unduly discriminatory or preferential, **the Commission shall determine the just and reasonable rate ... and shall fix the same by order.**" *id.* Thus, under Section 206, "[i]t is the commission's job — not the petitioner's — to find a just and reasonable rate." *Md. Pub. Serv. Comm'n*, 632 F.3d at 1285 n.1. When the Commission changes an existing filed rate under section 206, it is "the Commission's burden to prove the reasonableness of its change in methodology." *PPL Wallingford Energy L.L.C. v. FERC*, 419 F.3d 1194, 1199 (D.C. Cir. 2005).<sup>14</sup>

P3 strongly supports the Complaint and joins the Complainants in urging the Commission to exercise its own authority under Section 206 to ensure just and reasonable rates in the PJM capacity market. The matter warrants prompt leadership and decisive action by the Commission

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<sup>14</sup> *Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656, 662-663 (D.C. Cir. 2017) (Emphasis added).

to ensure that the current use of unduly discriminatory and preferential out-of-market subsidies are appropriately addressed. For all of these reasons, the relief requested in the Complaint should be granted in full.

### **III. CONCLUSION**

For the foregoing reasons, P3 supports the Complaint filed in this docket and urges the Commission to act expeditiously to (i) exercise its Federal Power Act Section 206 authority, (ii) grant Complainants request for fast track processing under Rule 206(b)(11) of the Commission's Rules of Practice and Procedure and (iii) grant the relief requested in the Complaint.

Respectfully submitted,

On behalf of the PJM Power Providers Group

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June 20, 2018

**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

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