UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.) Docket No. ER21-2582-000

REPLY TO COMMENTS OF THE PJM POWER PROVIDERS GROUP

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure,[1] the PJM Power Providers Group ("P3")[2] submits this answer to comments submitted in response to the July 30, 2021 filing in this docket by PJM Interconnection, L.L.C. ("PJM") entitled Revisions to Application of Minimum Offer Price Rule ("PJM Filing" or "Narrow MOPR Proposal").

I. INTRODUCTION

The Commission has before it a robust record, most of which points to one conclusion – the PJM Narrow MOPR Proposal is not just and reasonable and should not be accepted by the Commission. In its August 20, 2021 protest, P3 described numerous legal and evidentiary defects in the Narrow MOPR Proposal that cause it to fall far short of the standard for Commission acceptance under FPA section 205. As P3 explained, the PJM Narrow MOPR Proposal would ignore undue preferences for subsidized resources that unduly discriminate against competitive resources; it would yield an unsustainable market structure that cannot be considered just and reasonable; and the economic analysis presented by PJM is deeply flawed. P3 will not repeat the

[1] 18 C.F.R. § 385.213(a)(3) (2021). Under the Commission's procedural rules, parties may answer comments as a matter of right. *See* 18 C.F.R. § 385.213(a)(3). To the extent the Commission views certain comments as tantamount to a protest, Rule 213(a)(2) gives the Commission discretion to permit a reply. *See* id. § 385.213(a)(2). The Commission will permit such answers when it determines that the "answers assist the Commission in its decision-making process." *E.g.*, *Rockies Express Pipeline LLC*, 142 FERC ¶ 61,075, at P 4 (2013). P3 respectfully submits that this answer will assist the Commission in its decision-making process.

[2] 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 67,000 MWs of generation assets and 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 herein represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue.

arguments offered in our initial protest here, but will instead highlight arguments by other parties that also recognize that the only reasoned choice available to the Commission is to reject the PJM Filing.

It is glaringly apparent that PJM's proposal lacks support from three major constituencies:

1. The PJM Independent Market Monitor ("IMM"),

2. Companies and member organizations who have and would like to continue to invest merchant capital in the PJM region, and

3. Pennsylvania and Ohio, two of the largest PJM states that together represent roughly 40% of the population, load, and capacity in the PJM footprint.[3]

The lack of support from these groups should give the Commission pause. The IMM filing places the Commission on notice that, if the patently inadequate PJM proposal is allowed to go into effect, there will no longer be meaningful protection against the exercise of buyer-side market power. Similarly, if the Narrow MOPR Proposal is allowed to go into effect, continued merchant investment in PJM is likely to cease. Finally, as Pennsylvania and Ohio warn, the unfettered ability of states to dictate the energy policies of other states is not sustainable. All three of these considerations should prompt the Commission to reject the Narrow MOPR Proposal and invite PJM to submit a just and reasonable alternative.

II. ANSWER

A. Even Supporters of PJM's Proposal Have Conceded that the Narrow MOPR has Many Serious Problems

Most comments in this proceeding are united in support of a single proposition with which P3 agrees: the currently effective Expanded MOPR could be improved. The current MOPR may

[3] Joint Protest of the Pennsylvania Public Utility Commission and Public Utilities Commission of Ohio to PJM's Filing Concerning Application of the Minimum Offer Price Rule ("Joint Protest of PAPUC and PUCO") at 3 (noting that Pennsylvania and Ohio together account for approximately 38% of the 65 million people who are served by PJM, nearly 39% of PJM's installed capacity, and nearly 40% of summer and winter peak load.)

be broader than it needs to be and may not necessarily target the right resources—for example, by imposing unique and unnecessary burdens on new natural gas-fired resources.[4] P3 would welcome the opportunity to support a more balanced MOPR reform proposal than what PJM has put forward in this proceeding.

The problem is not finding agreement that the current MOPR could be improved; rather, the problem is that PJM's proposed solution is a gross overcorrection. The Narrow MOPR Proposal would destroy the "guardrails" against buyer-side market power that PJM and its "supporters"[5] admit are required by law. The Narrow MOPR Proposal is the product of a rushed stakeholder process that was focused on getting stakeholder votes, rather than a just and reasonable means of addressing buyer side market power. The Commission should not make the mistake of conflating what may appear to be popular with what is just and reasonable. Likewise, the Commission should not be distracted by arguments that are not germane to the only question before it: whether the Narrow MOPR Proposal is just, reasonable, and not unduly discriminatory or preferential. The answer to that question is no.

Even the so-called "supporters" of the PJM proposal raise serious reservations about PJM's proposal and are calling for various amendments and clarifications.

For example, the Public Interest Organizations ("PIOs"), whose filing offers the most detailed critique of the current MOPR, make clear that PJM's filing related to Conditioned State

[4] P3 does not contend that the existing MOPR is unjust and unreasonable. The Expanded MOPR reform was necessary to address large out-of-market subsidies for existing resources, which did not emerge as a material threat to market integrity until after the elimination of the state mandate exemption in 2011. The Expanded MOPR was also necessary to address subsidies in a fuel-neutral manner, because the 2011 reform was targeted at natural gas-fired resources and subsidies for other types of resources were not a material threat to competition at that time.

[5] *See* Comments of Natural Resources Defense Council, Sustainable FERC Project, Sierra Club, and Union of Concerned Scientists Comments of Natural Resources Defense Council, Sustainable FERC Project, Sierra Club, and Union of Concerned Scientists ("Comments of PIOs") at 29 ("To be sure, the Commission cannot unquestionably accept a market-based rate as just and reasonable without having adequate measures in place to detect and protect against the exercise of market power.")

Support is "fundamentally misguided" and appropriately points out that applying preemption doctrine as a screen for market power makes no sense.[6] P3 does not agree with various aspects of the PIOs' analysis of the *Hughes* decision, or with their remarkable assertion that the ineffectiveness of the Conditioned State Support rule is somehow a redeeming virtue.[7] But P3 concurs with the fundamental point that the Conditioned State Support provisions are ill-conceived and should not be accepted by the Commission. As the PIOs correctly observe, "neither PJM nor the Commission is institutionally suited to applying preemption doctrine, much less through the vehicle of market pricing."[8]

Supporting commenters also take issue with PJM's vague standards for applying both the Buyer Side Market Power and Conditioned State Support prongs of PJM's proposal. Exelon/PSEG ask for clarification of the meaning of "material" as it relates to the impact of a subsidy to mean "suppressive effect on zonal capacity prices of five percent or greater."[9] While presented as a "clarification," a change of such a specific nature clearly goes beyond a clarification. Exelon/PSEG then ask for additional "clarifications" related to the calculation of variable costs for nuclear facilities.[10] The Joint Consumer Advocates refer to PJM's definition of Conditioned State

[6] *Id.* at 50 ("PJM's proposal to apply a market mitigation remedy to a federal preemption problem is fundamentally misguided.").

[7] *See id*. at 2 ("However, because the current filing exempts all existing state policies, and *the preconditions for future filings are extremely narrow and may never be triggered*, these flaws do not make proposed tariff unjust and reasonable.") (emphasis added); *id.* at 15 & n.16 (quoting Spees/Newell Testimony at 4); *id.* at 31 (describing PJM's Narrow MOPR Proposal as "a vast improvement" because "the proposed Tariff would not apply to any existing state policies or laws").

[8] *Id*. at 51.

[9] Comments of Exelon Corporation and the PSEG Companies at 17.

[10] *See id.* at 18 ("The Commission should also clarify that nuclear units subject to the MOPR are not required to follow the Brattle Group methodology in calculating Net Energy & Ancillary Services ('E&AS') Offsets used to calculate the price floor.")

Support as "ambiguous" and ask the Commission to approve specific changes to it.[11] Moreover, the Indicated Cooperatives contend that the PJM proposal is only just and reasonable if certain provisions related to cooperatives are changed.[12]

P3 agrees that PJM's proposal is far too vague in numerous respects, but all of the suggestions for tariff changes and clarifications by supporters of the PJM proposal are beyond what the Commission has the legal authority to order in this proceeding under FPA section 205. The Commission must either accept or reject the PJM proposal. The PJM Filing expressly invokes judicial precedent that forecloses the Commission's latitude to make changes to the rate design that are different than what PJM proposed.[13]

B. Numerous Protests Point Out the Unjustness and Unreasonableness of PJM's Proposal

Putting aside all of the concerns that the "supporters" of the PJM proposal raise, the Commission cannot turn a blind eye to the numerous protests that were filed against the PJM proposal. The protests of the PJM IMM and the Public Utilities Commissions of Ohio and Pennsylvania are particularly insightful and important.

[11] *See* Joint Consumer Advocates Comments in Support of PJM's MOPR Filing and Request for Clarification at 10 ("PJM's definition of "Conditioned State Support" is ambiguous and contrary to PJM's stated reasoning for proposing the Focused MOPR.")

[12] *See* Comments and Conditional Protest of Old Dominion Electric Cooperative, Wolverine Power Supply Cooperative, Inc., Wabash Valley Power Association, Inc. and North Carolina Electric Membership Corporation at 8-10 (offering several tariff modifications and stating that those modifications are "a critical precondition to the Indicated Cooperatives' support of PJM's July 30 Filing").

[13] PJM Filing at 48 & n55-57 ("The Commission must evaluate PJM's proposal here within the bounds of section 205 and the scope of PJM's proposal in this filing, and may not approve material deviations.") (footnotes omitted) (citing *Emera Maine v. FERC*, 854 F.3d 9, 24 (D.C. Cir. 2017); *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 115 (D.C. Cir. 2017)).

1. PJM's Proposal Leaves the Independent Market Monitor With No Means By Which to Effectively Address the Exercise of Market Power

The Independent Market Monitor, which is the entity principally responsible under the Commission's own regulations and the PJM Tariff for identifying the exercise of market power in the PJM footprint, unequivocally stated that "PJM's proposal would effectively eliminate the MOPR while creating a confusing and inefficient administrative process that effectively makes it impossible to prove market power as PJM has defined it."[14] The Commission cannot rationally overlook the IMM's warning that "[t]he markets would work better and more efficiently if the MOPR were eliminated without pretense than with PJM's effective elimination of the MOPR plus the addition of a new, incorrect and entirely unnecessary definition of buyer-side market power."[15]

The IMM also points to the Achilles Heel of the PJM proposal: market power can be exercised so long as the perpetrators surround their actions with appropriate rhetoric. With "slightly more careful wording"[16] market power could be exercised, and PJM's tariff would have no means to address it. The Commission cannot ignore the IMM's admonitions and expect a functional market to result. Market power is unacceptable in any form, and the Commission has no reason to feel confident that the PJM proposal will be anywhere near an effective means to address it.

2. Pennsylvania and Ohio, Which Represent Roughly 40% of the Load and Capacity in the PJM Footprint, Warn of Gaming Concerns and that the Unfettered Ability of Certain States to Dictate the Energy Policies of Other States Is Unsustainable

Agreeing with the IMM, the Public Utilities Commission of Ohio and the Pennsylvania Public Utility Commission jointly commented that PJM's "unsupported and experimental"

[14] Protest of the Independent Market Monitor for PJM at 1.

[15] *Id.* at 2.

[16] *Id.* at 5.

proposal could "lead to gaming" and "destabilize PJM's capacity market."[17] The Ohio and Pennsylvania commissions offered very specific reasons for rejecting the PJM proposal pointing to the numerous flaws associated with it and specifically calling on the Commission to reject the filing and commence a 206 proceeding.[18] Importantly, both Ohio and Pennsylvania policymakers have expressed serious concerns that their policy choices are not being accommodated by PJM and, even more troubling, the policy decisions of other states are being exported to their states by other jurisdictions.[19]

Those concerns were amplified in a letter just filed in this docket by Senator Huffman, President of the Ohio State Senate, and Senator McColley, the Ohio Senate Majority Whip and Chairman of the Ohio Senate Energy and Public Utilities Committee. The Ohio legislators urged the Commission to reject PJM's Narrow MOPR proposal, writing that "Ohio desires a market based on competition, not subsidies, and FERC has a duty to protect that market from the disruptive actions of a one state that impact the outcomes for other states."[20] Moreover, Senator Huffman and Senator McColley indicated that "[t]he Ohio Senate also intends to hold hearings and

[17] Joint Protest of PAPUC and PUCO at 4.

[18] *See id.* at 5-20.

[19] *See id.* at 7 ("[T]he state policy choices of one state should not be unreasonably foisted upon or burdensome to other PJM states when those choices result in reliability concerns or the premature displacement of competitive merchant resources."); *accord* Comments of Ohio State Senator Romanchuk at 1 ("Simply stated, other states' policy decisions should not be allowed to create unfair advantages for select generators in a competitive regional market. FERC needs to stand firm against a market structure which exports the policies and higher prices of one state to another state."); *see also* EPSA Protest, Attach. C (Commissioner Daniel R. Conway's Comments to PJM Board Regarding PJM's Proposed MOPR June 30, 2021); *id*., Attach, D (Letter from Chairman and Commissioners of the Pennsylvania Public Utility Commission to the PJM Board of Managers dated July 7, 2021); *id*., Attach. E (Letter from Pennsylvania Representative Metcalf, Chairman of the Pennsylvania House Environmental Resources and Energy Committee to Manu Asthana, President and CEO of PIM Interconnection dated June 17, 2021); *id.*, Attach. F (Letter from Pennsylvania State Senator Yaw to to Manu Asthana, President and CEO of PIM Interconnection dated April 12, 2021); *id.*, Attach. G (Letter from Ohio State Romanchuck to the Federal Energy Regulatory Commission dated May 6, 2021).

[20] Comments of Senator Huffman and Senator McColley at 1 ("Comments of Ohio Senators Huffman and McColley"); *see also id.* (quoting Letter from Ohio State Romanchuck to the Federal Energy Regulatory Commission dated May 6, 2021).

otherwise explore how to maintain Ohio's commitment to competitive markets in the face of a PJM filing that is clearly antithetical to that cause."[21]

Academic theories that state subsidies will not result in interstate cost shifts should not be seriously entertained[22] in the face of clear objections by states that will actually bear the brunt of such shifts.

3. Market Participants Which Have and Would Like to Continue to Invest Merchant Capital in PJM Have Raised Serious Concerns About the PJM Proposal and its Potential to Destroy the PJM Capacity Market

Similarly, if PJM and the Commission desire to have resource adequacy at the lowest sustainable price, it cannot ignore the pleas from those who have invested at risk capital in the PJM market with the expectation that the market will be functional and competitive. As Carrol County Energy ("CCE") and South Field Energy ("SFE") explain, PJM's "proposed MOPR revisions ignore the reasonable expectations and assumptions of the CCE and SFE investors and lenders who have made total capital investments of $2.2 billion in their respective facilities without state subsidies in reliance on the RPM rules, including longstanding MOPR protections, against below cost offers by state subsidized facilities."[23] Unsubsidized capital will naturally be dissuaded from the PJM market when price signals are distorted by out-of-market subsidies. As CCE and SCE make clear, "the capacity price suppression caused by elimination of MOPR protection will disincentivize future investments in unsubsidized facilities in PJM."[24] The inevitable result from

[21]. Comments of Ohio Senators Huffman and McColley at 1.

[22] *See* Comments of the Institute for Policy Integrity at New York University School of Law ("NYU Law") at 19-21 (arguing that state support for subsidized resources does not "inappropriately" shift costs among states).

[23] Joint Protest of Carroll County Energy LLC and Southfield Energy LLC at 3-4.

[24] *Id.* at 3.

such a market construct will be a competition among suppliers for subsidies rather than a competition to provide reliability at lowest cost.

These concerns are echoed by Calpine and LS Power, who write that "PJM never explains how unsubsidized resources can be expected to fairly compete against subsidized resources in the RPM auctions, and correspondingly, how permitting such an uneven playing field is consistent with the principle of non-discrimination mandated by the FPA, or with 'a capacity market that relies on competitive auctions to set just and reasonable rates.'"[25] Cogentrix represents that "[c]ompetitively market-priced capacity payments . . . were a pivotal factor in the initial investment decision by Cogentrix affiliates to participate in [PJM's] markets."[26] Cogentrix then explains: "In making investments, suppliers have accepted the risks of the business environment and the competitive playing field certified by PJM through application of the MOPR. Suppliers *did not* accept the risk that PJM would turn its back on mitigation of one-half of the marketplace before suppliers could recover long-duration investments, thereby abandoning the competitive construct."[27] No reasonable investor would have anticipated that an abdication of a reasonable application of a determination of "just and reasonable" rates would fall within the ambit of "market" risks assumed when investing in a Commission jurisdictional market.[28]

In light of these concerns by the entities who have actually placed their own capital at risk, commenters who spend the bulk of their energy criticizing flaws in the currently effective Expanded MOPR are missing the fact that PJM's Narrow MOPR proposal would be worse.

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[25] Joint Protest of Calpine Corporation and LS Power Development at 22 (footnotes omitted) (citing, inter alia, 16 U.S.C. §§ 824(b), § 824e(a)) (quoting December 2019 Order at P 5).

[26] Protest of Cogentrix Energy Power Management, LLC at 1.

[27] *Id.* at 16.

[28] The PIOs are wrong to equate arguments that the Commission must fulfill its obligation to mitigate buyer-side market power from distorting and harming markets with a demand that merchant investors be "indemnified" from environmental and other risks. *See* PIOs at 12-13.

C. The Commission Must Not Be Distracted By What this Case Is Not About

The Commission should not be distracted by the multiple red herrings that have been offered in the comments. This is not a case about whether the Expanded MOPR is just and reasonable. Various parties argue that PJM need not prove that the Expanded MOPR is unjust and unreasonable for the Narrow MOPR Proposal to be accepted under Section 205, notwithstanding the fact that the Expanded MOPR was directed by the Commission under FPA section 206. But they, like PJM, proceed to fail to make the required demonstration that PJM's proposal is just and reasonable. Moreover, this is not a case that is only about undoing changes made in the Expanded MOPR Orders. PJM, and the parties that support its proposal, are seeking to undo more than a decade of Commission precedent in PJM and other markets by asking the Commission to effectively eliminate meaningful guardrails against buyer-side market power.

This is also not a case about environmental regulation. P3 has never questioned the ability of states to regulate environmental issues.[29] P3 members know better than anyone the costs associated with compliance with environmental regulations and know that those regulations can change as politics change. P3 members have closed facilities due to environmental regulations and many times on an accelerated schedule.[30] Those who suggest that out of market subsidies to favor uneconomic units are a form of environmental regulation clearly do not understand the nature of either.

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[29] *See* Erratta to Comments of PIOs, Exhibit A, Written Testimony of Dr. Kathleen Spees and Dr. Samuel A. Newell at p. 21.

[30] *See, e.g.,,* https://talenenergy.investorroom.com/2020-11-10-Talen-Energy-Announces-Transformational-Move-Toward-a-Sustainable-ESG-Focused-Future; https://investor.vistracorp.com/2021-07-19-Vistra-Accelerates-Closure-of-Ohio-Coal-Plant-to-Mid-2022,-Years-Earlier-Than-Planned; https://investor.vistracorp.com/2021-04-06-Joppa-Power-Plant-to-Close-in-2022-as-Company-Transitions-to-a-Cleaner-Future; https://www.genon.com/genon-news/genon-holdings-llc-announces-extension-of-retirement-of-avon-lake-and-cheswick-power-plants.

Moreover, the Commission is an economic regulator, not environmental regulator.[31] As the environmental regulator, the Environmental Protection Agency has actively exercised its authority to govern emissions in the energy sector in the past through, for example, the Cross-State Air Pollution Rule ("CAPR") and Mercury and Air Toxics Standards Rule ("MATS," also known as the Utility Toxics Rule). The Commission, as the economic regulator, is a "creature of statute" and may not exceed its statutory authority just because a state has decided to subsidize certain forms of generation in the name of the environment.[32] The Commission must interpret its authority within the limits of the FPA regardless of any consideration of the perceived merit of proposals before it.

This is also not a case about pricing externalities. Regardless of any state policy decisions, the Federal Power Act requires the Commission to ensure that rates are the product of workably competitive markets that are not distorted by buyer-side market power. No party can have the reasonable expectation that a state can pick its "externality", pay only in-state resources for that "externality" and then have FERC ignore the impact of that payment on the wholesale market rate.[33] Moreover, as discussed above, P3 agrees with other commenters that it is not the Commission's role to judge whether any particular state policy is good or welfare-enhancing; even if it were, these arguments are inapposite because the PJM proposal provides no avenue for the

[31] *Grand Council of Crees v. FERC*, 198 F.3d 950, 957-58 (D.C. Cir. 2000).

[32] *Cal. Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395, 398 (D.C. Cir. 2004) ("'As a federal agency, FERC is a 'creature of statute,' having 'no constitutional or common law existence or authority, but only those authorities conferred upon it by Congress.' *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 8 (D.C. Cir. 2002) (quoting *Michigan v. EPA*, 268 F.3d 1075, 1081 (D.C. Cir. 2001)) (emphasis in *Atlantic City Elec. Co*.). Therefore, 'if there is no statute conferring authority, FERC has none.' *Id.* As the Supreme Court has recognized, 'an agency literally has no power to act ... unless and until Congress confers power upon it.' *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986).").

[33] *See, e.g*., *Ill. Commerce Comm'n v. FERC*, 721 F.3d 764, 776 (7th Cir. 2013) ("Michigan cannot, without violating the commerce clause of Article I of the Constitution, discriminate against out-of-state renewable energy.").

Commission to distinguish between subsidies it deems beneficial versus those it deems not.[34] Facile attempts to rebrand subsidies as benign "corrections" for negative externalities[35] are not a reasoned basis for the Commission to escape its statutory obligation to mitigate market power or to depart from years of precedent addressing the dangers of price suppression.[36] Moreover, the Commission should be skeptical of the pious rhetoric that states subsidizing inefficient units are altruistically pricing an externality that the market does not in the name of carbon reductions. New Jersey's recent nuclear subsidy law speaks to this point. This law was neither created nor intended to make wholesale generation markets more competitive by pricing an environmental externality. Rather, the New Jersey Nuclear Subsidy Law was designed and enacted with the express intent of being a targeted subsidy for specific units in the state of New Jersey. New Jersey Senate President Steven Sweeney made this point abundantly clear as he offered remarks at a legislative hearing on the subject, "The nuke plants in Salem provide 40 percent of the energy in the State of New Jersey, and it's important that we find a way to keep them open, providing clean energy."[37] Governor

[34] We note that the subsidies directed toward the 66-year-old OVEC coal units continue to be in effect, despite the repeal of the nuclear subsidies in Ohio. *See, e.g.,* https://ohiocapitaljournal.com/2021/07/13/ohio-consumer-watchdog-asks-regulators-to-revisit-coal-plant-bailouts/.

[35] *See, e.g.*, PIOs at 8 ("When viewed through the proper lens, payments made to non-polluting resources as 'subsidies' are not subsidies in the traditional sense of the term of propping up an 'economically inefficient' market player. Rather, the incentives provided by states in this context are more appropriately described as compensation provided for the environmental benefits these resources provide that are necessary to correct a market failure. Compensation for the environmental value of policy-supported resources should not be considered an illegitimate distortion of markets that must be excluded, but rather a correction that is needed to achieve a more efficient outcome." (footnotes omitted); NYU Law at 12 ("By correcting the market's current failure to internalize the damage that results from the emission of air pollution, well-designed state payments can improve the efficiency of market outcomes.")

[36] In the same vein, attempts to justify the elimination of market power mitigation rules that are essential to the justness and reasonableness of jurisdictional rates by portraying them as "artificial barriers to entry," *see, e.g.,* NYU Law at 18-23, are divorced from reality and contrary to Commission precedent. *See, e.g.*, *N.Y. Pub. Serv. Comm'n v. N.Y. Indep. Sys. Operator, Inc.,* 170 FERC ¶ 61,119 at P 40 (2020) ("[W]e find that buyer-side market power mitigation is not inconsistent with Order No. 841's mandate that ISOs/RTOs reduce or eliminate barriers to electric storage participation in their markets. Order No. 841 does not address buyer-side market power mitigation. Thus, it neither mandates that electric storage resources be exempt from such mitigation, nor states that buyer-side market power mitigation, on its own, presents an impermissible barrier to entry.")

[37] Committee Meeting of the Senate Environment and Energy Committee, Assembly Telecommunications and Utilities Committee, SB 3560; AB 5339, at 2 (Dec. 20, 2017).

Murphy reiterated this point in his press release for the new law, stating that the ZEC program was established "to maintain New Jersey's nuclear energy supply," and that the law gives the New Jersey Board of Public Utilities "broad latitude" to "adjust ZEC payments as necessary to meet a plant's actual financial need."[38] It is telling that during the legislative hearings neither Senator Sweeney, the bill's sponsor, nor any of his legislative colleagues, mentioned the social cost of carbon or the fact that other carbon-free resources could potentially achieve the same carbon reduction goals. Moreover, the ongoing $300 million a year subsidy has no basis or no relation to the social cost of carbon or any other means of pricing the carbon externality.[39] Clearly, New Jersey's $300 million a year nuclear subsidy is not and was never about pricing an environmental externality, but rather ensuring a competitive advantage for an in state generator competing against resources from other states.

D. The Commission Must Remain Focused on What this Case is About: Whether the PJM Capacity Market Produces Just and Reasonable Wholesale Market Rates When a Subset of Suppliers is Receiving Out-of-Market Subsidies

Ultimately, this is a case about the justness and reasonableness of wholesale market rates when a subset of resources is receiving a subsidy outside of market revenues and in turn lowering market prices below the unsubsidized competitive level. It is the same question that was before the Commission in 2005, 2009, 2011, and 2019. The Commission has spoken consistently and definitely to the point that subsidies have an impact on the justness and reasonableness of wholesale market rates. Nothing has changed since the Commission succinctly stated in 2009, and repeated in 2011, that "[a] capacity market will not be able to produce the needed investment to

[38] Governor Murphy Signs Measures to Advance New Jersey's Clean Energy Economy, May 6, 2018 ("Gov. Murphy Press Release") p. 1.

[39] A review of the New Jersey Board of Public Utilities application for Zero Emission Credits is telling. While the applicants are required to provide energy and capacity revenues, there is no evaluation of the cost of carbon and the pricing of any environmental externality. *See* Zero Emission Certificate Application, https://www.nj.gov/bpu/pdf/ZEC%20Application%20for%20Second%20Eligibility%20Period.pdf.

serve load and reliability if a subset of suppliers is allowed to bid noncompetitively to suppress market clearing prices."[40] The issue before the Commission is how to best address that question, not how to effectively pretend that it does not exist.

As the Commission considers how to dispose of the proceeding, it should be mindful of the narrow question before it: will the proposed PJM tariff provisions lead to just and reasonable wholesale rates? The question is not whether the current MOPR can be improved. Virtually every party in this docket agrees that it can. However, the Commission does not have the flexibility to make changes to the PJM proposal.[41] It must accept it or reject it, and that is exactly what PJM demanded.[42] Given the record in this proceeding, there clearly is only one lawful choice: PJM's Narrow MOPR Proposal must be rejected.

III. CONCLUSION: THE PJM PROPOSAL IS NOT A JUST AND REASONABLE SOLUTION AND MUST BE REJECTED

Simply stated, the PJM proposal fails in its attempt to be a just and reasonable solution. It does not strike a balance; it does not provide any meaningful protection against the exercise of market power; it does not provide any confidence to investors of at-risk capital that the market will be free from manipulation; and it will not produce just and reasonable wholesale market rates. It is strongly opposed by the Independent Market Monitor because it will allow market power to occur without consequence, is unworkable, and cannot be practicably implemented. It is strongly opposed by those who invest the at-risk merchant capital in PJM which has led to robust reliability and historically low prices. It is strongly opposed by two of the largest states in the PJM footprint

[40] *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022, at P 16 (2011) (quoting *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,157, at P 90-91 (2009).

[41] *See, e.g.*, *NRG Power Mktg., LLC*, 862 F.3d at 115.

[42] PJM Filing at 48 & nn.55-57 ("The Commission must evaluate PJM's proposal here within the bounds of section 205 and the scope of PJM's proposal in this filing, and may not approve material deviations.") (footnotes omitted).

because it will impair their ability to pursue the benefits of competitive markets. It cannot be allowed to go into effect and must be affirmatively rejected by the Commission.

As P3 detailed in its protest, the Commission should send the proposal back to PJM with specific guidance. As P3 stated explained, there is time and opportunity to develop a proposal that will meet the needs of the IMM to have meaningful measures to thwart the exercise of market power. Likewise, changes can be made to provide investors of at-risk capital the assurance that they need that the PJM market remains a viable market in which to invest their money. The Commission should charge PJM with finding such a solution while making it clear, by rejecting this current PJM proposal, that the Commission will not tolerate the exercise of market power in any form and is serious about having markets that are functional and capable of delivering value to consumers.

Respectfully submitted,

On behalf of the PJM Power Providers Group

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September 3, 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 in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2021).

Dated at Washington, DC this 3rd day of September, 2021.

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