

FOR IMMEDIATE RELEASE

May 10, 2022

CONTACT: Glen Thomas | 610.724.0659 | gthomas@qtpowergroup.com

Power generators and states defend competitive markets

Statement from The PJM Power Providers Group
on critical federal-court case regarding PJM's MOPR

[View this release online](#)

MALVERN, Pa. – The PJM Power Providers (P3) Group – joined by the Electric Power Supply Association (EPSA), the Pennsylvania Public Utility Commission (PA PUC) and the Public Utilities Commission of Ohio (PUCO) – filed opening briefs on Monday in the U.S. Court of Appeals for the 3rd Circuit to demand reinstatement of a strong minimum offer-price rule (MOPR) to ensure the competitiveness of PJM's capacity market. P3's brief can be downloaded [here](#).

P3 President Glen Thomas released the following statement on the issue:

“Late last year, FERC allowed a dramatic reversal in commission policy to take effect that eviscerates more than a decade of its own precedent concerning a critical mechanism to protect consumers against market manipulation — not through a properly-developed regulatory order, but rather announced through its secretary in response to a lack of consensus amongst FERC’s four commissioners at the time. P3 joins other defenders of competitive markets in urging the U.S. Court of Appeals for the 3rd Circuit to keep with its own precedent through orders it has previously upheld and invalidate these market-damaging changes.”

P3's concerns are shared not only by power generators around the country but utility regulators in states that have employed competitive markets to build new power facilities and resisted the temptation to subsidize politically-favored resources. The MOPR is intended to prohibit capacity resources from using below-cost bids made possible through subsidies to artificially depress auction-clearing prices, subsequently encouraging new and existing resources to seek subsidies instead of becoming more efficient.

However, last year — in response to public urging from FERC — PJM expedited MOPR revisions that the PJM Independent Market Monitor (IMM) described as “convoluted, unnecessarily complicated, unenforceable and incorrect.” While FERC didn't directly rule on the proposal due to a deadlock between the four commissioners, enough time passed without action that, thanks to a recent federal law, it automatically went into effect. Thus, the market-power rules on the buyers' side effectively no longer exist, continuing to discourage unsubsidized investment in the market.

Thomas highlighted several key passages in other briefs filed Monday in support of competitive markets:

— [EPSA](#): “FERC’s 2-2 ... silent acceptance violated both the procedural protections of the Administrative Procedure Act and the Federal Power Act’s substantive prohibition on discriminatory ratemaking ... because it permits States to project their own generation policy preferences into other States through the FERC-regulated capacity markets ... [and] allows States to export the costs of subsidies through the PJM capacity market, thus rendering other forms of generation in other States—that have made different policy choices—not economically viable.”

— **The Pennsylvania Public Utility Commission and Public Utilities Commission of Ohio**: In a joint filing, the commissions called FERC’s decisions “a monumental departure from decades-old jurisprudence” on the issue and that “FERC’s failure to protect against the exercise of market power in PJM’s capacity market severely impedes the Joint Commissions’ ability to ensure that adequate electric generation is available to meet the needs of retail customers. ... FERC has an ongoing obligation to deliver a wholesale electricity market that is based on actual competition and has strong measures in place to prevent anti-competitive market behavior. ... Instead of upholding that obligation, FERC tacitly approved tariff provisions that allow for the unchecked exercise of buyer-side market power ... [and] will have the effect of lowering prices below the competitive level. When that happens, electric reliability suffers because capacity is underbuilt.”

###

P3 is a non-profit organization that supports the development of properly-designed and well-functioning markets in PJM’s operating region of the electricity grid, which encompasses 13 states and the District of Columbia. Combined, P3 members own more than 67 gigawatts of virtually all forms of electricity generation, provide demand-response services, serve end-use consumers through retail affiliates, and produce enough power to supply more than 50 million homes. For more information, visit www.p3powergroup.com.