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## **After Commissioner Danly Raises Concerns, EPSA and P3 File Motion to Strike FERC Brief in Ongoing PJM Reliability Litigation**

*Statement by EPSA President and CEO Todd Snitchler and P3 President Glen Thomas*

WASHINGTON – The Electric Power Supply Association (EPSA) and the PJM Power Providers Group (P3) filed a joint [motion](#) Wednesday to strike a Federal Energy Regulatory Commission (FERC) brief impacting the rules governing how the nation’s largest wholesale-electricity market secures reliable power for 65 million customers in 13 states and the District of Columbia. FERC’s brief and this motion from EPSA and P3 were filed in the focused Minimum Offer Price Rule (MOPR) proceeding pending in the United States Court of Appeals for the Third Circuit.

EPSA and P3’s action comes in response to significant concerns raised by FERC Commissioner James Danly in a [statement](#) released Friday, August 26, 2022. In his statement, Commissioner Danly argues that the July 22 brief filed by FERC at the Third Circuit improperly represents the view of the full commission and should be stricken by the court.

The litigation in question concerns the 2-2 split of FERC in November 2021 that allowed PJM’s proposed changes to the MOPR in its capacity market to become effective. The PJM capacity market helps ensure reliability by procuring power generation resources to meet peak demand and the MOPR is a long-standing tool employed by FERC and PJM to preserve the sanctity of that market.

EPSA President and CEO Todd Snitchler released the following statement:

“Commissioner Danly’s Statement raised significant procedural and legal concerns, and it has profound implications for the litigation we and other parties are engaged in surrounding the focused MOPR in the PJM capacity market. FERC has a vital mandate to advance reliable and affordable power for Americans, based on nonpartisan consensus forged by at least a majority of Commissioners. The implementation of the focused MOPR, stemming from an evenly divided Commission by operation of law, did not result in a FERC order being issued. This litigation arises due to the complications associated with an outcome that is not supported by a majority of the

Commission. In such circumstances, a compromise among at least a majority of the Commissioners would have delivered legally durable solutions – not outcomes that cannot garner a majority of votes, regardless of the Commission’s makeup.”

P3 President Glen Thomas also released a statement:

“Commissioner Danly’s statement should give the court and all FERC stakeholders great pause. Ultimately, commission policy is set by commission orders, and commission orders only result from the actions of a FERC majority. That did not happen in the case of the PJM MOPR as the result of new and untested provisions of the Federal Power Act. Regardless of one’s view of the MOPR, all FERC stakeholders should be concerned about FERC legal filings that purport to represent the views of the commission but in fact represent the views of a subset of FERC commissioners that were not able to garner sufficient support to issue an order. This case is now about a lot more than the MOPR.”

EPSA and P3 continue to advocate for policies that enable generators to provide reliable power at competitive prices, leveraging market forces to incentivize innovative and better solutions for the nation’s energy needs.

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The Electric Power Supply Association (EPSA) is the national trade association representing America’s competitive power suppliers. EPSA members provide about 150,000 MW of reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies including natural gas, wind, solar, hydropower, geothermal, storage, biomass, and coal. EPSA seeks to bring the benefits of competition to all power customers. Learn more at [www.epsa.org](http://www.epsa.org) and connect with us on [LinkedIn](#) and Twitter [@EPSAnews](#).

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](http://www.p3powergroup.com).