

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

Independent Market Monitor for PJM)
v.)
PJM Interconnection, L.L.C.) Docket No. EL17-82-000

**ANSWER
OF THE PJM POWER PROVIDERS GROUP**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or the “Commission”), 18 C.F.R. §385.212 (2017), the PJM Power Providers Group (“P3”)¹ respectfully submits this answer regarding the July 24, 2017 Complaint and Request for Fast Track Treatment of the Independent Market Monitor for PJM (“IMM Complaint”).² The IMM filed a Complaint in response to the PJM Interconnection, L.L.C. (“PJM”) determination to grant a competitive entry exemption from the Minimum Offer Price Rule (“MOPR”) to a participant that the IMM states is ineligible for such an exemption, because, among other things, the generator is the merchant affiliate of a vertically-integrated utility that enjoys a financial advantage over other merchant generators that are not supported by a parent company that receives regulated utility revenues. As a result of this inequity, the IMM argues that the project

¹ 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.

² *Independent Market Monitor for PJM v. PJM Interconnection, L.L.C.*, Complaint and Request for Fast Track Treatment of the Independent Market Monitor for PJM, Docket No. EL17-82-000, July 24, 2017 (“IMM Complaint”).

sponsor in question should not be eligible for the competitive entry exemption, but instead be required to enter the market through the unit specific review process.

On July 25, 2017, the Commission issued a Notice of Complaint setting August 21, 2017, as the intervention and comment date. On August 17, 2017, P3 filed a doc-less Motion to Intervene. P3 respectfully submits this answer³ in response to the IMM Complaint.

I. ANSWER

P3 agrees with the IMM that the generator in question should be required to participate in future capacity auctions following a unit specific review, albeit for different reasons than those put forth by the IMM. Without passing judgment on the IMM's reasoning, P3 provides this answer to clarify that as a result of the decision of the United States Court of Appeals for the District of Columbia in *NRG Power Marketing, LLC, et al. v. FERC*, (“NRG”)⁴ all PJM tariff provisions related to the competitive entry exemption are judicially vacated. Therefore, until FERC takes further action, the tariff provisions approved by the Commission in 2011 will be in effect. The 2011 provisions require all new natural gas plants to go through a unit specific review process to determine the applicable minimum offer price. As a result, the only legally available remedy the Commission can offer in response to this complaint is to require PJM to review the proposed new entry under the unit specific review process.

A. MOPR Background

In order for competitive wholesale markets to deliver value to consumers, market participants need confidence that market prices reflect market conditions. As this Commission has

³ 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.

⁴ *NRG Power Mktg., LLC, et al. v. FERC*, Nos. 15-1452, *et al.* (D.C. Cir. July 7, 2017) (“NRG”).

recognized, some market participants might have an incentive to depress market clearing prices by offering supply at less than a competitive level, to the detriment of the overall market.⁵ To prevent such damage, the Commission has consistently supported the notion that in certain circumstances generation facilities should be required to offer their capacity at a threshold or minimum price.⁶ In PJM, as well as other RTOs, the MOPR has been the means to govern such market entry. It is imperative that an effective MOPR is in place in order to maintain the efficacy of PJM's capacity market.

1. MOPR 2006 to 2011

In PJM, the MOPR originated in the 2006 settlement that established RPM.⁷ The performance of PJM's RPM auctions and the continuing validity of the MOPR was subsequently addressed by the Commission in a series of orders issued in 2008 and 2009, upon request by a coalition of market participants, and the subsequent filing by PJM of proposed RPM revisions.⁸ In 2011 several reforms occurred and developed as follows. On February 1, 2011, due to concerns about efforts in the PJM footprint to subsidize new market entry with out-of-market revenues, P3 filed a complaint urging the Commission to order revisions to the MOPR.⁹ P3 requested extensive

⁵ See *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 (2011) ("April 2011 MOPR Reform Order I") at P 6.

⁶ See April 2011 FERC MOPR Reform Order I; see also *ISO New England, Inc. and New England Power Pool Participants Committee*, 131 FERC ¶ 61,065 (2010) (ISO-NE Capacity Market Revisions Order) and 135 FERC ¶ 61,029 (2011); *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,211 (NYISO Mitigation Order), *order on reh'g and compliance*, 124 FERC ¶ 61,301 (2008) (NYISO Mitigation Reh'g Order); *New York Independent System Operator, Inc.*, 133 FERC ¶ 61,178 (2010) (NYISO Mitigation Enhancements Order).

⁷ *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 at PP 103 and 104 (2006).

⁸ See *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,037 (2008); *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,272 (2008); see also *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 (March 2009 RPM Order), *order on reh'g and compliance*, *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,157 at P 90 (2009).

⁹ *PJM Power Providers Group*, Complaint and Request for Clarification Requesting Fast Track Processing, Docket No. EL11-20-000, (Feb. 1, 2011) ("P3 Feb. 1, 2011 Complaint").

changes to the MOPR, based in part on P3's concern that "uneconomic entry" into PJM pursuant to a recently enacted New Jersey capacity procurement statute was "imminent."¹⁰

In response to the February 1, 2011 complaint from P3, on February 11, 2011, PJM proposed significant changes to the MOPR that differed from those suggested by P3, but were similarly designed to address the disruption of capacity prices caused by entry supported by out of market revenue streams.¹¹ PJM filed these changes to the MOPR based on PJM's concern that, despite the potential for below-cost bidding to adversely affect the capacity market, the MOPR in the form it then existed was outdated, ambiguous, and ineffective.¹²

PJM noted that the Commission had seen in other RTOs that state programs intended to support new generation entry through out-of-market payments to the generator could raise price-suppression concerns that MOPR type provisions are intended to address.¹³ Yet, as PJM explained, such programs likely would escape the reach of PJM's then current MOPR. PJM stressed that these shortcomings were significant, as some states in the PJM region had begun to implement generation procurement programs similar to the state programs in New England that had raised significant concerns about capacity price suppression through out-of-market payments.¹⁴

¹⁰ *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,145 (2011) ("November 2011 MOPR Reform Order II"); S. 2381, 214th Leg. (N.J. 2010).

¹¹ *PJM Interconnection, L.L.C.*, Docket No. ER11-2875-000 (Feb. 11, 2011) ("February 2011 MOPR Filing").

¹² *PJM Interconnection, L.L.C.*, Docket ER13-535-000 (Dec. 7, 2012) at 4 ("PJM Dec 2012 MOPR Filing") (citing PJM February 2011 PJM MOPR Filing at 5).

¹³ *Id.* (citing February 2011 PJM MOPR Filing at 3 (citing *ISO-New England, Inc.*, 131 FERC ¶ 61,065, at P 77 (2010) (directing parties to address treatment of resources receiving out-of-market payments made to support resource adequacy or other public policy objectives)).

¹⁴ *Id.* (citing February 2011 PJM MOPR Filing at 3).

2. April 2011 MOPR Reform Order I

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”).¹⁵ The Commission found that the MOPR “helps to ensure that the wholesale capacity market prices remain at just and reasonable levels.”¹⁶ Accepting PJM’s proposal to eliminate a state-procurement exception to MOPR, the Commission found that “allowing selected new projects to bid into RPM as price-takers because they are state-mandated would undermine the objective of RPM to procure the least-cost competitively-priced combination of resources necessary to meet the region’s reliability objectives on a three-year forward basis.”¹⁷ While largely accepting PJM’s proposed changes, the Commission required PJM to make certain further changes, including eliminating reliance on FPA § 206 complaints as the vehicle for MOPR exceptions,¹⁸ and establishing a process by which the IMM and PJM would review whether an offer below the MOPR’s minimum-offer screens should nonetheless be permitted.¹⁹

3. November 2011 MOPR Reform Order II

In May 2011, PJM filed changes to the MOPR in compliance with the April 2011 MOPR Reform Order I. Among other compliance changes, PJM filed detailed standards and procedures for a case-specific MOPR exception process that would allow market sellers to show that their

¹⁵ *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).

¹⁶ November 2011 MOPR Reform Order II at P 91.

¹⁷ *Id.* at P 90. PJM had proposed to replace the state exemption then in the Tariff with language allowing states that sought a MOPR exception to seek one under FPA section 206. While agreeing with the elimination of the prior state exemption, the Commission rejected PJM’s proposed replacement as unnecessary. *Id.* at P 88 (citing April 2011 MOPR Reform Order I, 135 FERC ¶ 61,022, at P 140 (2012)).

¹⁸ April 2011 MOPR Reform Order I at P 118.

¹⁹ *Id.* at P 121. PJM had proposed that the Commission make such determinations, pursuant to FPA section 206.

offers below the MOPR benchmark level were in fact consistent with the reasonably expected net cost of their proposed new capacity projects.

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 II"). The Commission found that the unit specific review process in PJM's compliance filing "appropriately addresses concerns from load serving entities developing resources through arrangements outside of RPM."²⁰ The Commission expressly confirmed that "the MOPR was not intended to change the long-standing business models parties use to support investment in specific capacity procurement projects." Therefore, PJM's proposed exception process was permitted to "accommodate reasonable estimates of the costs and revenues of specific projects and will recognize business practices that may vary from the model embedded in the MOPR's CONE estimate."²¹ In summary, the Commission found that "PJM's proposed tariff language appropriately recognizes varying long-standing business structures and practices while also protecting against attempts to exercise buyer market power."²²

The Commission denied the rehearing requests by P3 and other parties that had been filed on various details of the MOPR's implementation. P3 and others, petitioned for review of the Commission's 2011 MOPR orders at the U.S. Court of Appeals for the Third Circuit. The Third Circuit denied the petitions challenging the 2011 Commission orders.

4. December 2012 PJM Tariff Filing

As a result of the stakeholder dissatisfaction with the revised MOPR in the 2012 BRA, a broad cross section of PJM stakeholders developed revisions to the MOPR that enjoyed broad

²⁰ November 2011 MOPR Reform Order II at P 242.

²¹ *Id.*

²² *Id.* at P 244.

stakeholder support and were eventually submitted to the Commission under the Section 205 of the Federal Power Act. As part of the compromise that led to the 205 filing, PJM stakeholders agreed to remove the unit specific review process from the MOPR and replace it with two narrower, categorical exemptions: the competitive entry²³ and self-supply exemptions.²⁴ The mitigation period, the period during which the MOPR applies, was proposed to be extended from one year to three years. On December 7, 2012, PJM filed the tariff containing those revisions with FERC (the “December 2012 PJM Tariff Filing”).²⁵

5. FERC Directed MOPR Revisions – PJM June 2013 Compliance Filing

On May 2, 2013, FERC rejected the broadly supported MOPR proposal, finding it not “just and reasonable.”²⁶ FERC stated that “[w]hile we find that PJM’s competitive entry exemption and, subject to conditions, its self-supply exemption, appropriately identify entry that is consistent with competitive behavior, we find that PJM’s proposal does not provide a just and reasonable replacement for the unit-specific review process. There may be resources ineligible for any MOPR exemptions that have lower competitive costs than the default offer floor, and these resources should have the opportunity to demonstrate their competitive entry costs. We will therefore accept PJM’s filing conditioned on the retention of its unit-specific review process.”²⁷ FERC directed PJM to submit a compliance filing that retained unit specific review, added the two categorical exemptions on top of that exception, and kept the one-year mitigation period (“FERC Directed

²³ An exemption for competitive entry projects that are receiving no out of market payments related to the construction of new generation.

²⁴ A self-supply exemption for load-serving entities that meet certain net short and net long criteria and that are operating under long-standing business models that predate RPM

²⁵ *PJM Interconnection LLC*, Docket No. ER13-535-000 (Dec. 7, 2012).

²⁶ *PJM Interconnection LLC*, 143 FERC ¶ 61,090, P 26 (May 2, 2013) (“May 2013 Order”).

²⁷ May 2013 Order at P 26.

MOPR Revisions”).²⁸ On June 3, 2013, PJM submitted a revised tariff containing the FERC ordered changes (the “PJM June 2013 Compliance Filing”). PJM however did not put that filing to a stakeholder vote, as would have been required for a §205 filing. On rehearing before the Commission, several stakeholders including P3 objected. After considering the request for rehearing for over two years, the Commission denied rehearing.²⁹

On December 12, 2015, P3 and NRG each filed for Petition of Review at the D.C. Circuit Court of Appeals. On July 7, 2017, the D.C. Circuit in *NRG* reversed, vacated, and remanded FERC’s decision.³⁰ The Circuit Court held in *NRG* that FERC exceeded its authority under Section 205. The Circuit Court granted the petitions for review 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 “remand[ed] the matter to FERC.”³¹

B. The Competitive Entry Exemption Does Not Exist

The D.C. Circuit’s decision in *NRG* does not specify which version of the tariff now controls PJM’s MOPR. However, the terms of the D.C. Circuit’s decision, as supported by precedent and specific language in PJM’s December 2012 transmittal letter, all indicate that the PJM tariff in place *before* PJM’s December 2012 filing—the tariff revisions approved in the April 2011 MOPR Reform Order I and November 2011 MOPR Reform Order II (together the “2011 MOPR Reforms”) now govern (except insofar as there were unchallenged changes). No

²⁸ *Id.* at PP 141-143; Ordering Paragraph (B).

²⁹ *PJM Interconnection, LLC*, 153 FERC ¶ 61,066, P 1 (Oct. 15, 2015).

³⁰ *NRG Power Marketing, LLC, et al. v. FERC*, Nos. 15-1452, *et al.* (D.C. Cir. July 7, 2017) (“*NRG*”).

³¹ *NRG*, slip op. at 16. The court mandate issues 7 days after the Commission’s 45-day period to seek rehearing. That process was interrupted when the Commission filed a petition for panel rehearing on August 18, 2017. That petition is described *infra* at 9-10.

alternative to a return to the 2011 MOPR Reforms is legally supported: FERC found PJM's December 2012 proposal to be unjust and unreasonable and FERC's order approving the PJM June 2013 Compliance Filing has been overturned by the D.C. Circuit. Although not specifically stated in *NRG*, it is consistent with precedent, the spirit and terms of the court's decision, and with what PJM stated in its December 2012 Compliance Filing that the 2011 MOPR Reforms are the currently-effective rules governing MOPR.

1. **The court's decision in *NRG* prevents PJM from continuing to use the Competitive Entry Exemption.**

When it acts on the IMM's complaint, the Commission should acknowledge that *NRG* prevents PJM from continuing to use the competitive entry exemption. The D.C. Circuit has vacated FERC's order approving the PJM June 2013 Compliance Filing. The effect of the court's vacatur is clear: not only is the vacated order null and void, so too are any tariff provisions approved under the order.³² The judicial mandate compelling FERC to vacate its orders has not yet issued, because the court followed its standard practice of withholding the mandate until one week after the deadline for requesting rehearing had passed. The Commission just filed a petition for panel rehearing on August 18,³³ but that limited request alleges that the opinion (i) mischaracterized PJM's status as a utility³⁴ and (ii) erred by "giv[ing] primacy to the view of one group of stakeholders."³⁵ The Commission's request does not challenge the court's two key holdings that "the Commission's conditional acceptance [of PJM's 2013 MOPR proposal]

³² See *Nat. Res. Def. Council v. E.P.A.*, 489 F.3d 1250, 1261–62 (D.C. Cir. 2007) ("As a result of our decision today [to vacate and remand], neither of the two Rules survives remand in anything approaching recognizable form."); *Cement Kiln Recycling Coal. v. E.P.A.*, 255 F.3d 855, 872 (D.C. Cir. 2001) ("[T]his decision leaves EPA without standards regulating HWC emissions[.]").

³³ Petition for Panel Rehearing, *NRG Power Mktg, LLC, et al. v. FERC*, Nos. 15-1452, et al. (Aug. 18, 2017).

³⁴ *Id.* at 6.

³⁵ *Id.* at 11.

significantly modified the proposed rate design,” and that governing precedent “limit[s] the Commission’s authority to require major modifications under section 205 even when the filing utility consents to those conditions.”³⁶ Rather, the petition seeks to clarify how those holdings, which “impede the Commission’s ability to exercise its independent policy judgment,” apply to RTOs.³⁷

Absent a decision by the merits panel to reverse the fundamental holding in its unanimous opinion, which the Commission’s petition does not challenge, the competitive entry exemption will not remain in effect and cannot serve as the basis for any decision not to mitigate new entry.

2. Returning to the 2011 MOPR Reforms is consistent with precedent.

Prior to the December 2012 PJM Tariff Filing, the 2011 MOPR Reforms were in effect. PJM sought to replace that tariff which incorporated the 2011 MOPR Reforms with the 2012 PJM Tariff Filing. However, FERC rejected the December 2012 PJM Tariff Filing as unjust and unreasonable.³⁸ As a result, the 2011 MOPR Reforms remained in effect until such time as FERC approved further tariff changes.³⁹ The D.C. Circuit in *NRG* neither addressed nor overturned FERC’s determination that the December 2012 PJM Tariff Filing was unjust and unreasonable. The D.C. Circuit’s decision should be read as returning the tariff to the position it was absent the conduct the Court invalidated as unlawful. In this instance that means returning to the 2011 MOPR Reforms. As the D.C. Circuit has explained, “when the Commission commits legal error, the proper remedy is one that puts the parties in the position they would have been in had the error not

³⁶ *Id.* at 3.

³⁷ *Id.*

³⁸ May 2013 Order P 141.

³⁹ See *Columbia Gulf Trans. Co.*, 134 FERC ¶61,194, P 21 (2011); *Panhandle E. Pipe Line Co.*, 66 FERC ¶61,329, 62,071 (1994).

been made.”⁴⁰ Also, as the Supreme Court explained long ago, “general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used.”⁴¹ The highly general expression that FERC’s orders are vacated “with respect to” certain issues must be so read as well.

Reinstating the 2011 MOPR Reforms is also consistent with how FERC handled the primary D.C. Circuit precedent on which the *NRG* decision rests. In *Western Resources, Inc. v. FERC*,⁴² FERC accepted a forward-haul rate proposed by the utility but rejected the proposed backhaul rate.⁴³ Instead, it set the backhaul rate at half of the forward-haul rate.⁴⁴ The D.C. Circuit held that, by adopting “an entirely different rate design,” FERC had exceeded its authority under a provision of the Natural Gas Act identical to § 205.⁴⁵ On remand, the parties disputed which backhaul rate applied—the proposed rate or the prior rate.⁴⁶ FERC determined that, because the proposed rate was “unjust and unreasonable, the pre-existing backhaul rate must remain in effect.”⁴⁷ That same reasoning applies here.

Returning to the 2011 MOPR Reforms is also consistent with the logic of the D.C. Circuit’s decision. Once FERC chose to reject the December 2012 PJM Tariff Filing, the *NRG* ruling confirms that the only option open to FERC under § 205 was to allow *PJM* to propose a new rate; in the meantime, the old rate would still control. Since FERC’s effort to follow a separate route—requiring a compliance filing of PJM pursuant to the FERC Directed MOPR Revisions—has been

⁴⁰ *Exxon Co., U.S.A. v. FERC*, 182 F.3d 30, 47 (D.C. Cir. 1999) (quoting *Pub. Utils. Comm’n of Cal. v. FERC*, 988 F.2d 154, 168 (D.C. Cir. 1993)).

⁴¹ *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 399 (1821).

⁴² *Western Resources, Inc. v. FERC*, 9 F.3d 1568 (D.C. Cir. 1993).

⁴³ *Id.* at 1571-72.

⁴⁴ *Id.* at 1577.

⁴⁵ *Id.* at 1578.

⁴⁶ *Panhandle E.*, 66 FERC ¶ 61,329, 62,071.

⁴⁷ *Id.*

invalidated, the matter should return to the same state of affairs as before the December 2012 PJM Compliance Filing proposal. Simply stated, PJM's December 2012 proposal stands rejected and, as a legal matter, the 2011 MOPR Reforms govern (except for some modifications that were uncontested).

3. **Returning to the 2011 MOPR Reforms is consistent with the terms and spirit of the D.C. Circuit Court's decision in *NRG*.**

Further, returning to the 2011 MOPR Reforms while PJM stakeholders negotiate a new § 205 filing is consistent with the terms and spirit of the D.C. Circuit's decision in *NRG*. The alternative approach, reinstating PJM's December 2012 proposal, is not. PJM remains free, with stakeholder input, to make another § 205 filing to begin the process anew. This would restore the stakeholder process and the § 205 objection process that FERC unlawfully circumvented.

The D.C. Circuit was worried about due process in holding in *NRG* that PJM's June 2013 Compliance Filing—which was filed pursuant to the FERC Directed MOPR Revisions—did not afford Generators and Load Serving Entities an “opportunity to comment on FERC's modifications before FERC issued its decision.”⁴⁸ The court explained that, “[a]s a result, PJM's stakeholders lacked the protections provided by Section 205.”⁴⁹ Continuing to abide by PJM's June 2013 unlawful Compliance Filing would violate *NRG* and perpetuate the very problem that the D.C. Circuit sought to remedy. PJM stakeholders still have not received the required “opportunity to comment” on the June 2013 PJM Compliance Filing that includes both the unit specific review process and competitive entry exemption. Treating the June 2013 PJM

⁴⁸ See *NRG*, Slip Opinion at 15.

⁴⁹ *Id.* at 16.

Compliance Filing as the current rate, without an opportunity for stakeholder comment, would be inconsistent with the terms of the D.C. Circuit's opinion in *NRG*.

4. **Returning to the 2011 MOPR Reforms is consistent with PJM's December 2012 Tariff Filing.**

In addition, PJM's December 2012 Tariff Filing itself appears to foreclose resurrecting the failed 2012 tariff proposal. Under § 205's utility-driven process, tariffs go into effect at the time stated in the tariff.⁵⁰ In its December 2012 transmittal letter, PJM stated that its proposed MOPR exceptions would not be effective *absent* FERC approval. PJM stated, "Any final action to grant an exemption under the enclosed rules . . . *will depend* on Commission acceptance of [the] changes."⁵¹ PJM was very clear that the December 2012 PJM Tariff Filing would not take effect without FERC approval.

FERC never approved the December 2012 PJM Tariff Filing, but rather FERC explicitly rejected it.⁵² FERC never affirmatively "accept[ed]" PJM's proposed MOPR "changes." Therefore, under the terms of the December 2012 PJM tariff submission, those proposed changes cannot take effect. Hence, *NRG* returns the PJM tariff to as it read following the 2011 MOPR Reforms.

II. CONCLUSION

P3 respectfully requests that the Commission consider these comments and issue an order (either in response to this complaint or under its own initiative) requiring PJM to cease the use of

⁵⁰ See 16 U.S.C. § 824d(d).

⁵¹ PJM Dec 2012 MOPR Filing at p. 2 (emphasis added).

⁵² May 2013 Order P 141.

the competitive entry exemption⁵³ and utilize the unit specific exemption process pursuant to the D.C. Circuit Court decision in *NRG*, until such time as further action is taken. As a result, the Commission need not address the issues raised by the IMM concerning the competitive entry exemption at this time. Since the issues raised in this answer and the IMM complaint could impact incremental auctions, the Commission should ideally provide clarification prior to the September Incremental Auction for the 2018/19 delivery year.

Respectfully submitted,

On behalf of the PJM Power Providers Group

By: /s/ Glen Thomas

Glen Thomas

Diane Slifer

GT Power Group

101 Lindenwood Drive, Suite 225

Malvern, PA 19355

gthomas@gtpowergroup.com

610-768-8080

⁵³ Although not addressed in the IMM's complaint, the provisions related to the self-supply exemption were vacated by the court and are not legally available to generators absent further action from the Commission.

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 21st day of August 2017.

On behalf of the PJM Power Providers Group

By: /s/ Glen Thomas

Glen Thomas
GT Power Group
101 Lindenwood Drive, Suite 225
Malvern, PA 19355
gthomas@gtpowergroup.com
610-768-8080

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